

KEY RECOMMENDATIONS FROM FAIR EMPLOYMENT IN NORTHERN IRELAND: CODE OF PRACTICE

Extracted from the Equality Commission statutory Code of Practice

Recommendations

This list of recommendations is intended to be used as a quick reference and a handy reminder covering only the Role of Employers section of the Code of Practice (Section 5). It should be read in conjunction with the main document "Fair Employment in Northern Ireland: Code of Practice".

Responsibilities and Duties

The responsibility for providing equality of opportunity for all job applicants and employees rests primarily with you, the employer. You should have a written policy on equality of opportunity in employment and put it into effective and visible practice. Your policy and practice must be firmly based on the principle of selection according to merit and will be considerably strengthened if they are agreed between you and your trade unions, your employee representatives or your workforce. They should be clearly stated within the organisation, noted on relevant publications (e.g. company reports), and, particularly, in job advertisements. No one should be in any doubt about your policy and practice (page 11, para 5.1.1).

Under section 35 of the 1976 Act you will be treated for the purposes of that Act as though you yourself had done any unlawful acts committed by your employees (whether with or without your approval) in the course of their employment, except where you took such steps as were reasonably practicable to prevent those acts being done (page 11, para 5.1.2).

All private sector employers with more than 25 employees (more than 10 from 1 January 1992), have six key duties placed upon them by the Act. These duties are:

- (a) registering with the Commission;
- (b) monitoring the religious composition of your workforce, and (for certain employers) your applicants, and submitting annual monitoring returns to the Commission;
- (c) reviewing your recruitment, training and promotion practices at least once every three years;
- (d) having regard to this Code of Practice in carrying out your review;
- (e) determining on affirmative action where your review indicates that fair participation is not being enjoyed by a particular community or is not likely to continue to be enjoyed; and
- (f) considering the setting of goals and timetables where you determine on affirmative action.

Public authority employers are treated as registered from the outset and are subject to all the other duties set out above (page 11, para 5.1.3).

Detailed advice on these key duties is set out in chapter 6. The rest of this chapter sets out a general description of the approach which you should take to ensure good practice (page 11, para 5.1.4).

Good Practice for all Employers - General Guidance

Equality of opportunity in employment makes good business sense. It broadens the recruitment base and widens the choice of personnel; it also enhances the probity of a company's personnel practices and improves corporate image. Even if you regard your concern as an

entirely fair employer it is necessary to check that you are carrying out the steps mentioned in this Code – discrimination and inequality of opportunity can occur in the absence of regular scrutiny and the adoption of sound practices (page 11, para 5.2.1).

To promote equality of opportunity you should:

- draw up a clear policy to promote equality of opportunity in your recruitment, training and promotion practices - you are encouraged to consult the Fair Employment Commission in doing so;
- allocate overall responsibility for policy and practice to a senior manager - in small undertakings this is likely to devolve on the owner or chief executive/plant manager;
- consult with the appropriate recognised trade unions, employee representatives or the workforce on the implementation of your policy and any amendments to practice;
- show that your policy and practice have the backing of management at all levels - the clear backing of the chairman, Board and top management is of particular significance;
- make it clear that breaches of policy and practice will be regarded as misconduct and could lead to disciplinary proceedings;
- provide training and guidance for persons in key decision making areas (e.g. senior executives), and for personnel, reception and supervisory staff (e.g. foremen), to ensure that they understand their position in law, and company policy and practice – the whole environment within the firm should reflect good practice and these staff should be made aware of the positive influence they can exert in promoting equality of opportunity;
- highlight your policy and practice in a statement, works handbook or similar document, and issue it to all employees and job applicants;
- take all available opportunities, especially when recruiting new staff, to ensure that your policy and practice are widely known;
- promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or political opinion e.g. prohibit the display of flags, emblems, posters, graffiti, or the circulation of materials, or the deliberate articulation of slogans or songs, which are likely to give offence or cause apprehension among particular groups of employees (page 11, para 5.2.2).

It is accepted that small to medium sized employers in particular will wish to interpret the detailed advice in this Code in the light of their own individual circumstances. That is fully appreciated by the Fair Employment Commission. Such employers should consult the Commission to ensure that their practices are in full conformity with the provisions of the Acts (page 12, para 5.2.3).

Good Practice for all Employers - Core Components

Work situations differ so procedures will vary but there are two core components which, taken together with the six key duties outlined in chapter 6, form the basis of good practice (page 12, para 5.3):

- (a) systematic and objective recruitment (see paras 5.3.2 – 5.3.5); and
- (b) sound selection and promotion arrangements (see paras 5.3.6 – 5.3.7).

Systematic and objective recruitment

Your aim should be to ensure that members of both communities are aware of and encouraged to apply for job opportunities in your company or undertaking. Subject to any specific advice from the Commission, you are recommended to:

- set out the basic facts about the job to be filled. This is best done by preparing a job description including job title, duties and responsibilities, conditions of work, pay, prospects, etc;
- set out the requirements to be met by the person selected to fill the job. This is best done by preparing a personnel specification including educational standards/qualifications (essential and preferred); previous experience/training (essential and preferred); physical requirements; special aptitudes etc (page 12, para 5.3.2).

You should ensure that you:

- so far as practicable make all eligible and suitably qualified persons aware of vacancies and encourage them to put themselves forward for consideration - for example, you might hold information seminars in schools representative of both the Protestant and the Roman Catholic communities in the area, liaise with local careers teachers and invite school leavers from both communities to visit your premises;
- make use of Jobmarkets particularly when it would not be cost-effective to advertise, e.g. when recruiting sporadically for "one-off" posts or for a small number of lower paid jobs;
- always request the staff in the Jobmarket to canvass the vacancies through the other Jobmarkets in the catchment area for the job in question - they will be pleased to do so;
- make sure that recruitment is not confined to those agencies, schools or geographical areas which provide only, or mainly, applicants from a particular community and do not limit advertisements to a publication or other announcement which is likely to be read only, or mainly, by a particular community (but note if you are taking affirmative action to promote fair participation you may encourage applications from an under-represented community);
- use application forms. These assist in the objective assessment of candidates. Where used they must be available to anyone interested in any available job or jobs, but the practice of providing application forms in response to casual requests when no job vacancies exist can create problems and should be avoided;
- include in all advertisements a statement to the effect that you are an equal opportunity employer or, preferably, that applications are welcomed regardless of religious belief or political opinion (page 12, para 5.3.3).

It is unlawful to give instructions to, or bring pressure on, employment agencies or Jobmarkets to discriminate against members of a particular religious or political group (page 12, para 5.3.4).

You should avoid:

- procedures by which applicants are mainly, or wholly, identified through existing employees, trade unions or any other restricted group if this means that only members of a particular community, or a disproportionately high number of them, come forward;
- use of standing lists as a source of applicants for vacancies. If such lists have to be used, and where practicable, they should be valid only for a limited period (six months maximum is suggested) and must include all eligible persons;
- use of applications for one job for the purpose of filling a different job (page 12, para 5.3.5).

Employers' selection and promotion procedures should operate so as to ensure the appointment of the best person for the job. The actual procedures and their degree of sophistication will vary from firm to firm but should involve:

- deciding on the qualifications, ability and potential ability needed for a particular job and on their relative importance;
- ensuring that the nature and level of these requirements can be shown to be essential;
- advertising the requirements clearly and, in the case of internal promotions, ensuring that all eligible candidates are notified and have an equal opportunity to compete;
- applying the requirements fairly and consistently when shortlisting, at interview, and throughout the selection process;
- making certain that all candidates are given the same chance to demonstrate their abilities or potential abilities and that differential standards are not applied;
- remembering that e.g. with younger people or those without experience, potential ability which can be developed through training may be just as relevant an attribute as experience;
- ensuring that no extraneous or irrelevant requirements are included in the selection process (page 13, para 5.3.6).

In selecting personnel, either initially or for promotion purposes, you are strongly recommended to:

- record the various factors considered relevant in a particular job before the shortlisting, interviewing and selection of candidates. These factors might include experience, qualifications, personal attributes as demonstrated by performance in jobs having similar requirements, and interview performance;
- decide on the relative importance to be given to each factor at all stages of recruitment (initial consideration, shortlisting, interview and final choice);
- satisfy yourself that these factors and their relative importance are justifiable, appropriate to the job, and clearly objective;
- ensure that those making the selection:
 - are clearly informed of the relevant selection criteria and the need for their fair and consistent application; and
 - have been given guidance and training on sound selection procedure;
- ensure, if at all possible, that all shortlisting, interviewing and selection panels comprise two or more people;
- record the assessments and decisions of shortlisting, interviewing and selection panels in relation to the relevant factors and their importance (a simple marking chart can be helpful);
- retain all application forms and related documents for 12 months in order to be in position to deal with any subsequent complaints about the implementation of your selection procedures (but note also the obligation to retain certain specific information about applicants for monitoring purposes for three years) (page 13, para 5.3.7).

KEY RECOMMENDATIONS FROM REMOVING SEX BIAS FROM RECRUITMENT AND SELECTION: A CODE OF PRACTICE

Summarised from the Equality Commission statutory Code of Practice

Recommendations

This list of Recommendations is intended to be used as a quick reference and handy reminder. It should be read in conjunction with the Commission's main document "Removing Sex Bias from Recruitment and Selection: A Code of Practice".

Introduction

The recruitment and selection process should be consistent, with each candidate being objectively assessed against the justifiable requirements of the job. Selection should be on the basis of merit and documentation should be kept for twelve months.

1. Training

- 1.1 All those involved in assessing candidates should be trained in non-discriminatory recruitment and selection techniques and in the content of the Code of Practice.

2. Job Descriptions and Requirements

- 2.1 The job description should accurately reflect the specific duties of the job.
- 2.2 A vacant or new post should be analysed before the job description is drawn up to determine what duties it involves and the proportion of time associated with each task.
- 2.3 Job descriptions should not contain unnecessary and unjustifiable conditions or requirements.
- 2.4 Wording should not be used which implies that the post may be most suitable for women or for men.

3. Personnel Specifications

- 3.1 Objective standards should be set in the personnel specification for the essential and desirable criteria needed for the effective performance of the job.
- 3.2 Only factors which are relevant to the job should be considered; factors which were relevant in the past may no longer be so.
- 3.3 All standards set should be justifiable in terms of the duties to be carried out.

4. Attracting Applicants

Advertising

- 4.1 Advertisements should make it clear that women and men can apply.
- 4.2 Internal and external advertising practices should be regularly reviewed.
- 4.3 Phrases like "single applicants only" or "unsuitable for persons with family commitments" should not be used.
- 4.4 Positive action advertising should be considered in appropriate situations.

Positive Action Encouragement

- 4.5 Positive action encouragement should be considered when no members of one sex or only comparatively small numbers of that sex were employed in particular jobs at any time within the past twelve months.
- 4.6 All applicants should be treated equally in selection for a post and no advertisement should imply otherwise.

Temporary Recruitment

- 4.7 Longer term temporary vacancies should be advertised in accordance with the general guidelines contained in the Code of Practice.
- 4.8 Names of reserve candidates should not be retained for longer than one year.
- 4.9 Employment Agencies should be advised that all suitably qualified candidates will be considered.

Emergency Recruitment

- 4.10 Emergency vacancies should be filled by way of contact with the widest possible pool of applicants.
- 4.11 Emergency reserve lists should only be drawn up in limited circumstances and only in accordance with the recruitment and selection practices set out in the Code of Practice.
- 4.12 Emergency lists should be discarded following a reasonable period, generally no more than one year.

5. Application Forms

- 5.1 Application forms should be used for all recruitment.
- 5.2 Only questions which are relevant and job-related should be included.
- 5.3 Questions should not be asked about an applicant's marital status.
- 5.4 Questions should not be asked about an applicant's spouse/partner or children or other personal circumstances.
- 5.5 An applicant's age should not be considered unless there is a justifiable reason for doing so.
- 5.6 Any length of service requirement should be considered to ascertain if it is necessary for the post.
- 5.7 Applicants should be encouraged to indicate skills, expertise and abilities gained through voluntary work or in the home.
- 5.8 Documentation should be retained for twelve months.

6. Shortlisting

- 6.1 Shortlisting should be carried out systematically and in a consistent fashion.
- 6.2 The personnel specification should be used to develop shortlisting criteria.
- 6.3 All criteria should be strictly job-related and rigorously applied.
- 6.4 More than one person should be involved in shortlisting candidates.

- 6.5 Assumptions or stereotypes about applicants should not be allowed to influence the process.
- 6.6 A standardised method of recording shortlisting decisions should be developed and the documentation should be retained for twelve months.

7. Selection Testing

- 7.1 Tests should assess actual or inherent ability to do the tasks relevant to the job and should be validated for sex bias.
- 7.2 The continuing relevance of any tests used should be regularly reviewed.
- 7.3 If external consultants are being used, only those who are experienced in testing should be used.
- 7.4 The outcome of selection testing on women and men should be monitored.

8. References

- 8.1 Where references are sought, structured guidance, including the job description, should be provided for referees on the job for which the candidate is applying.
- 8.2 Specific questions should be asked about abilities and skill levels.
- 8.3 Comments of a personal nature should not be asked about candidates.

9. Interviews

- 9.1 All interviews should be conducted in a fair and consistent manner and should be structured and systematic.
- 9.2 Interview panels should have female and male members; if this is not possible from within, the organisation should consider bringing in a suitable outsider.
- 9.3 The areas to be covered during the interview should be determined beforehand.
- 9.4 A standardised scoring system should be devised and used throughout.
- 9.5 All interview questions should be objective and relevant to the requirements of the job.
- 9.6 Questions should not be asked about a candidate's marital status, children or other personal circumstances and stereotyped assumptions based on this type of information should not be made.
- 9.7 If any candidates are being placed on a reserve list, names should not be retained for longer than one year.
- 9.8 Every stage of the process should be documented and the documentation should be retained for twelve months.

10. Promotion

- 10.1 All promotion opportunities should be advertised and should be conducted in a fair and consistent manner with procedures being reviewed regularly.
- 10.2 Care should be taken in the use of internal trawls, especially if there is an existing imbalance in the workforce.
- 10.3 The operation of any informal mechanisms for promotion should be guarded against.

- 10.4 Employees on maternity leave or career breaks should be notified of promotion opportunities.
- 10.5 Managers should be trained on the avoidance of sex bias in any promotion assessment.
- 10.6 Any age, mobility or other conditions or requirements for promotion should be justifiable without regard to sex or marital status.
- 10.7 The monitoring system should be used to identify problem areas and positive action training courses should be considered.

11. Medicals

- 11.1 Neutral questions should be asked of all applicants.
- 11.2 Questions should not be asked about pregnancy or pregnancy-related conditions.
- 11.3 Women should not be asked about their gynaecological conditions.

12. Monitoring

- 12.1 A monitoring system should be developed to assess the effect of recruitment and promotion decisions.
- 12.2 Applications for all full-time and part-time appointments should be monitored on the basis of sex, marital and family status.
- 12.3 Success rates should be monitored at the shortlisting and appointment stages.
- 12.4 Monitoring information should be used to develop appropriate positive action initiatives.
- 12.5 Confidentiality should be maintained at all times.

13. Employment Agencies

- 13.1 Employment agencies should not be directed to discriminate on grounds of sex or marital status unless a lawful exemption applies.
- 13.2 Employment agencies should follow the recommendations laid down in the Code of Practice when recruiting from the labour market.
- 13.3 Employment agency registers should be operated in a manner consistent with the principle of equality of opportunity.
- 13.4 If executive search or headhunting is being used as the method of recruitment, vacancies should also be widely advertised.

KEY RECOMMENDATIONS FROM THE CODE OF PRACTICE FOR THE ELIMINATION OF DISCRIMINATION IN THE FIELD OF EMPLOYMENT AGAINST DISABLED PERSONS OR PERSONS WHO HAVE A DISABILITY

Summarised from the Equality Commission statutory Code of Practice

Recommendations

This list of recommendations is intended to be used as a quick reference and handy reminder covering only the recruitment provisions. It should be read in conjunction with the main document “Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability”.

Introduction

The Disability Discrimination Act 1995 protects disabled people from discrimination in the field of employment. As part of this protection employers may have to make “reasonable adjustments” if their employment arrangements or premises place disabled people at a substantial disadvantage compared with non-disabled people (page 3, para 2.1).

The Act does not prohibit an employer from appointing the best person for the job. Nor does it prevent employers from treating disabled persons more favourably than those without a disability (page 3, para 2.2).

Definition of Disability

The Act defines a disabled person as someone with a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities (page 3, para 2.3).

Recruitment

The Act says that it is unlawful for an employer to discriminate against a disabled person:

- in the arrangements made for determining who should be offered employment;
- in the terms on which the disabled person is offered employment;
- by refusing to offer, or deliberately not offering, the disabled person employment (page 32, para 5.1).

1. Specifying the Job

- 1.1 The inclusion of unnecessary or marginal requirements in a job specification can lead to discrimination (page 32, para 5.3).
- 1.2 Blanket exclusions (i.e. exclusions which do not take account of individual circumstances) may lead to discrimination (page 33, para 5.4).
- 1.3 An employer may stipulate essential health requirements but may need to justify doing so, and to show that it would not be reasonable for him to have to waive them, in any individual case (page 33, para 5.5).
- 1.4 Stating that a certain personal, medical or health-related characteristic is desirable may also lead to discrimination if the characteristic is not necessary for the performance of the job. Like a requirement, a preference may be decisive against an otherwise well-qualified disabled candidate and may have to be justified in an individual case (page 33, para 5.6).

2. Publicising the Vacancy

- 2.1 Where the job is advertised, and a disabled person who applies is refused or deliberately not offered it, and complains to an industrial tribunal about disability discrimination, the Act requires the Tribunal to assume, unless the employer can prove otherwise that the reason the person did not get the job was related to his disability if the advertisement could reasonably be taken to indicate:
- that the success of the person's application for the job might depend to any extent on the absence of a disability such as the applicant's, or
 - that the employer is unwilling to make an adjustment for a disabled person (page 34, para 5.7).
- 2.2 According to the Act 'advertisement' includes every form of advertisement or notice, whether to the public or not. This would include advertisements internal to a company or office (page 34, para 5.8).
- 2.3 It may be a reasonable adjustment to provide information about jobs in alternative formats, in particular cases (page 34, para 5.9).
- 2.4 The Act does not prevent an employer saying that he would welcome applications from disabled people. It would be a positive and public statement of the employer's policy (page 35, para 5.10).
- 2.5 The Act does not prevent employers including a question on an application form asking whether someone is disabled. Employers can also ask whether the individual might need an adjustment and what it might be (page 35, para 5.11).

3. Selection

Shortlisting

- 3.1 The Act says that the duty to make a reasonable adjustment does not apply where the employer does not know, and could not reasonably be expected to know, that the disabled person in question is or may be an applicant for the post, or, that a particular applicant has a disability which is likely to place him at a disadvantage (page 35, para 5.12).
- 3.2 Employers and their staff or agents must not discriminate against disabled people in the way in which they deal with applications. They may also have to make reasonable adjustments (page 35, para 5.13).
- 3.3 If an employer knows that an applicant has a disability and is likely to be at a substantial disadvantage because of the employer's arrangements or premises, the employer should consider whether there is any reasonable adjustment which would bring the disabled person within the field of applicants to be considered even though he would not otherwise be within that field because of that disadvantage. If the employer could only make this judgement with more information it would be discriminatory not to put the disabled person on the shortlist for interview if that is how he would normally seek additional information about candidates (page 35, para 5.14).

Interviews

- 3.4 Employers should think ahead for interviews. Giving applicants the opportunity to indicate any relevant effects of a disability and to suggest adjustments to help overcome any disadvantage the disability may cause, could help the employer avoid discrimination in the interview and in considering the applicant, by clarifying whether any reasonable adjustments may be required (page 36, para 5.15).

- 3.5 Nevertheless, if a person, whom the employer previously did not know, and could not have known, to be disabled, arrives for interview and is placed at a substantial disadvantage because of the arrangements, the employer may still be under a duty to make a reasonable adjustment from the time when he first learns of the disability and the disadvantage. However, what the employer has to do in such circumstances might be less extensive than if advance notice had been given (page 36, para 5.16).
- 3.6 An employer is not required to make changes in anticipation of applications from disabled people in general. It is only if the employer knows or could reasonably be expected to know that a particular disabled person is, or may be, applying and is likely to be substantially disadvantaged by the employer's premises or arrangements, that the employer may have to make changes (page 37, para 5.19).
- 3.7 The Act does not prohibit an employer from seeking information about a disability but an employer must not use it to discriminate against a disabled person. An employer should only ask about a disability if it is, or may be, relevant to the person's ability to do the job – after a reasonable adjustment if necessary. Asking about the effects of a disability may be important in deciding what adjustments ought to be made. The employer should avoid discriminatory questions (page 38, para 5.20).

Aptitude or other tests

- 3.8 The Act does not prevent employers carrying out aptitude or other tests in the recruitment process. Routine testing of all candidates may still discriminate against particular individuals or substantially disadvantage them. If so, the employer may need to revise the tests – or the way the results of such tests are assessed – to take account of specific disabled candidates, except where the nature and form of the test were necessary to assess a matter relevant to the job. It may, for instance, be a reasonable adjustment to accept a lower “pass rate” for a person whose disability inhibits performance in such a test. The extent to which this is required would depend on how closely the test is related to the job in question and what adjustments the employer might have to make if the applicant were given the job (page 38, para 5.21).

Qualifications

- 3.9 An employer is entitled to specify that applicants for a job must have certain qualifications. However, if a disabled person is rejected for the job because he lacks a qualification, the employer will have to justify that rejection if the reason why the person is rejected (i.e. the lack of a qualification) is connected with his disability (page 39, para 5.22).

Medical examinations

- 3.10 An employer can insist on a disabled person having a medical examination. However, if an employer insists on a medical check for a disabled person and not others, without justification, he will probably be discriminating unlawfully (page 40, para 5.23).
- 3.11 In most cases, having a disability does not adversely affect a person's general health. Medical evidence about a disability can justify an adverse employment decision (such as dismissing and/or not promoting). It will not generally do so if there is no effect on the person's ability to do the work (or any effect is less substantial), however great the effects of the disability are in other ways. The condition or effects must be relevant to the employer's decision (page 40, para 5.24).

Selection for appointment

- 3.12 In deciding to select a particular disabled person, an employer must take into account any adjustments that it is reasonable for him to have to make. Suggestions made by the candidate at any stage may assist in identifying these (page 41, para 5.25).
- 3.13 An employer must not discriminate against a disabled candidate, but there is no requirement (aside from reasonable adjustment) to treat a disabled person more favourably than he treats or would treat others. An employer will have to assess an applicant's merits as they would be if any reasonable adjustments required under the Act had been made. If, after allowing for those adjustments, a disabled person would not be the best person for the job the employer would not have to recruit that person (page 41, para 5.26).

4. Terms and Conditions of Service

- 4.1 Terms and conditions of service should not discriminate against a disabled person. An employer should consider whether any reasonable adjustment need be made to the terms and conditions which would otherwise apply (page 42, para 5.27).

5. Induction

- 5.1 Employers must not discriminate in their induction procedures. An employer may have to make adjustments to ensure a disabled person is introduced into a new working environment in a clearly structured and supported way with, if necessary, an individually tailored induction programme (page 43, para 6.3).

KEY RECOMMENDATIONS FROM THE CODE OF PRACTICE FOR EMPLOYERS FOR THE ELIMINATION OF RACIAL DISCRIMINATION AND THE PROMOTION OF EQUALITY OF OPPORTUNITY IN EMPLOYMENT

Summarised from the Equality Commission statutory Code of Practice

Recommendations

This list of recommendations is intended to be used as a quick reference and handy reminder covering only the recruitment and selection provisions. It should be read in conjunction with the main document “Code of Practice for employers for the elimination of racial discrimination and the promotion of equality of opportunity in employment”.

Introduction

The Race Relations (Northern Ireland) Order 1997 makes it unlawful to discriminate against a person, directly or indirectly, in the field of employment.

Direct discrimination consists of treating a person, on racial grounds*, less favourably than others are or would be treated in the same or similar circumstances.

Segregating a person from others on religious grounds constitutes less favourable treatment.

Indirect discrimination consists of applying, in any circumstances covered by the Order, a requirement or condition which, although applied equally to persons of all racial groups, is such that a considerably smaller proportion of a particular racial group can comply with it, it cannot be shown to be justifiable on other than racial grounds and it is to the individual’s detriment (page 5 – 6).

The Responsibilities of Employers

Responsibility for providing and maintaining equality of opportunity for all job applicants and employees rests primarily with employers. To this end it is recommended that they should adopt, implement and monitor an equal opportunities policy to ensure equality of opportunity is genuinely available (page 8, para 2.1).

This policy should be clearly communicated to all employees e.g. through notice boards, circulars, contracts of employment, written notifications to individual employees and by way of racial awareness training (page 8, para 2.2).

It is important to maintain a working environment which is free from racism and racial harassment (page 9, para 2.4).

1. Sources of Recruitment

Advertising

- 1.1 When advertising job vacancies it is unlawful for employers to publish an advertisement which indicates, or could reasonably be understood to indicate, an intention to discriminate against applicants from a particular racial group (page 9, para 2.5).

* *Racial grounds are the grounds of race, colour and nationality – including citizenship – or ethnic or national origin. Groups defined by reference to these grounds are referred to as racial groups, as are persons belonging to the Irish Traveller community (page 5).*

1.2 It is recommended that:

- employers should not confine advertisements unjustifiably to those areas or publications which would exclude or disproportionately reduce the numbers of applicants of a particular racial group;
- employers should ensure that any requirement or condition is job related and can be justified. Where a particular qualification is required, employers should accept a qualification of an equivalent standard obtained overseas (page 10, para 2.6).

1.3 In order to demonstrate their commitment to equality of opportunity, it is recommended that, where employers send literature to applicants, this should include a statement that they are an equal opportunities employer, or working to become an equal opportunities employer (page 10, para 2.7).

Employment Agencies

1.4 When recruiting through employment agencies, T&EA offices and schools it is unlawful for employers:

- to give instructions to discriminate, for example by indicating that certain groups will or will not be preferred;
- to bring pressure on them to discriminate against members of a particular racial group (page 10, para 2.8).

Other sources

1.5 It is unlawful to use recruitment methods which exclude or disproportionately reduce the numbers of applicants of a particular racial group and which cannot be shown to be justifiable (page 10, para 2.9).

2. Sources for Promotion and Training

2.1 It is unlawful for employers to restrict access to opportunities for promotion or training in a way which is discriminatory (page 11, para 2.10).

3. Selection Procedures

3.1 It is unlawful to discriminate on racial grounds in recruitment and in the arrangements made for determining who should be offered employment (page 11, para 2.11).

Selection criteria and tests

3.2 In order to avoid direct or indirect discrimination, it is recommended that selection criteria and tests are examined to ensure that they are related to job requirements and are not unlawfully discriminatory (page 11, para 2.12).

4. Treatment of Applicants

Shortlisting, interviewing and selection

4.1 Staff should be instructed not to treat applicants from particular racial groups less favourably than others. These instructions should be confirmed in writing (page 12, para 2.13).

4.2 A job description and personnel specification should be prepared before recruitment commences (page 12, para 2.13).

4.3 Staff responsible for shortlisting, interviewing and selecting candidates should be:

- agreed on the selection criteria and of the need for their consistent application;

- given guidance or training on the effects which generalised assumptions and prejudices about race can have on selection decisions;
- made aware of possible misunderstandings that can occur in interviews between persons of different cultural background.

4.4 Shortlisting, interviewing and selection panels should comprise two or more people (page 13, para 2.13).

5. Genuine Occupation Qualifications

5.1 Selection on racial grounds is allowed in certain jobs where being of a particular racial group is a genuine occupational qualification for that job (page 13, para 2.14).

6. Terms of Employment, Benefits, Facilities and Services

6.1 It is unlawful to discriminate on racial grounds in the terms of employment which are afforded and in the provision of benefits, facilities and services for employees (page 15, para 2.19).

7. Cultural and Religious Needs

7.1 Where employees have particular cultural and religious needs which conflict with existing work requirements, it is recommended that employers should consider whether it is reasonably practicable to vary or adapt these requirements to enable such needs to be met (page 16, para 2.23).

7.2 Although the Order does not specifically cover religious discrimination, work requirements would be generally unlawful if they have a disproportionately adverse effect on particular racial groups and cannot be justifiable (page 16, para 2.24).

8. Communications and Language Training for Employees

Although there is no legal requirement to provide language training, difficulties in communication can create barriers to the provision of equality of opportunity in the workplace. Good communication can improve efficiency, promotion prospects, health and safety and create a better understanding between employers, employees and unions. Where the workforce includes current employees whose English is limited it is recommended that steps are taken to ensure that communications are as effective as possible (page 17, para 2.25).

9. Monitoring of Equality of Opportunity

Whilst it is not a legal requirement of the Order, it is recommended that employers should regularly monitor the outcome of selection decisions and effects of personnel practices and procedures in order to assess whether equality of opportunity is being achieved (page 19, para 2.32).

10. Positive Action

10.1 Although they are not legally required, positive measures are allowed by the law to encourage employees and potential employees, and to provide training for employees who are members of particular racial groups which have been under-represented in particular work. Discrimination at the point of selection for work, however, is not permissible in these circumstances (page 21, para 2.41).

SEXUAL ORIENTATION DISCRIMINATION IN NORTHERN IRELAND

Good Practice Guidance for Employers

Extracted from the Equality Commission's "Sexual Orientation Discrimination in Northern Ireland - The Law and Good Practice"

The Business Case

There is a sound business case for adopting good practice measures in order to ensure that job applicants and employees are not discriminated against on grounds of sexual orientation, or indeed, on any of the grounds protected under the equality legislation.

By adopting an inclusive approach in relation to their recruitment and selection practices and procedures, employers widen their recruitment base and thereby attract a wider range of applicants. In addition, an employer that is, and is seen to be, proactive in promoting equality of opportunity is likely to enhance its image in the eyes of its employees, clients, customers and job applicants. This in turn could result in business benefits such as reduced staff turnover and more individuals seeking employment in the organisation.

In contrast, a failure to promote equality of opportunity can have serious repercussions both for employers and employees. Unfair treatment and harassment in the workplace can cause staff to resign or take sick leave due to anxiety and stress. In addition to the effect that this can have on individual employees, it can also impact on staff productivity and morale.

Discriminatory practices can have cost implications in terms of staff time and, if brought to a tribunal, the cost of defending the case and possibly paying compensation. In addition, if staff leave or are on sick leave, there can be cost implications in terms of recruiting or training new staff or as a result of lower productivity levels.

Good Practice Measures

The Regulations make it clear that employers have specific duties and responsibilities in relation to the way in which members of the gay, lesbian, bisexual and heterosexual communities are treated in the workplace.

The sections below outline good practice recommendations for employers in the following areas:

- **Equality policies, practices and procedures**
- **Recruitment and selection**
- **Harassment**
- **Monitoring**
- **Confidentiality**
- **Positive action**
- **Other employment policies.**

It is important to stress at the outset that adopting best practice measures is not simply about avoiding discrimination. The best practice measures outlined below are designed to help employers adopt a proactive rather than a reactive approach to promoting equality of

opportunity in the workplace. The practical guidance aims to help employers recognise and promote diversity and to integrate equality into all of their working policies and practices.

Implement an equal opportunities policy

- Develop and implement a clear, comprehensive, effective and accessible equal opportunities policy which specifically covers the area of sexual orientation, or
- Check that their existing policy covers the ground of sexual orientation.
- The policy should
 - set out the employer's commitment to the promotion of equality of opportunity in the workplace;
 - make it clear to employees that discrimination on grounds of sexual orientation is unlawful and will not be tolerated in the workplace.

Recruitment and Selection

Employers that already ensure that recruitment is carried out in a systematic and objective manner and use sound selection and promotion arrangements are likely to have to implement few changes as a result of the Regulations. However, as outlined in the good practice recommendations below, there are certain recruitment and selection issues which arise in relation to the area of sexual orientation.

Employers must now ensure that employees do not treat job applicants less favourably because of their actual or perceived sexual orientation. They must also ensure that criteria, practices or procedures used during the recruitment and selection process do not without justification place individuals of a certain sexual orientation at a particular disadvantage. The Regulations apply both to promotions within an organisation as well as external recruitment exercises.

Remember that employers can treat job applicants differently on grounds of sexual orientation if possessing a particular sexual orientation is a genuine occupational requirement for that post.

It is recommended that employers should:

Advertising

- Advertise all vacancies widely.
- Ensure that advertisements are not placed in publications or other announcements which people of a particular sexual orientation are less likely to have access to.
- Subject to the general occupational requirement (GOR) exception, advertisements should not expressly or implicitly indicate that the post is more suitable for people of a particular sexual orientation.
- Before intending to rely on the GOR exception, employers should closely examine the duties of the job and consider questions such as:
 - What proportion of the duties must be carried out by persons of a particular sexual orientation?
 - Are these duties necessary for meeting the objectives of the job?

- Is it necessary or merely preferable that they be performed by someone of a particular sexual orientation?
- Are there sufficient numbers of other employees who are capable of undertaking these duties?

Further information on the GOR exception is provided in Part 1.

- Use, when appropriate, the lawful positive action measures designed to encourage people of a particular sexual orientation to apply for particular work.
- Make their commitment to equality of opportunity known to all job applicants.
- Check that adverts or information to applicants includes an equal opportunities statement which refers to sexual orientation.

Selection

- Instruct selection panel members that they should not ask questions about a candidate's marital status or other personal circumstances, as this may be perceived to be intrusive and imply potential discrimination.
- Instruct selection panel members not to make stereotypical assumptions in relation to an applicant's actual or perceived sexual orientation. Assumptions or decisions should not be made about whether or not an applicant will "fit into" the existing workplace environment.

Application Forms

- Ensure that application forms only contain questions which are relevant and job related. Do not include irrelevant questions about an applicant's marital status, spouse/partner or other personal circumstances. Such questions can be considered intrusive.
- Be careful not to unlawfully take into account information on an application form which indicates that an applicant has previously worked for or assisted an organisation associated with gay, lesbian or bisexual rights.
- Exercise caution when taking into account information provided in an application form in relation to an applicant's criminal record. Laws relating to gay men have changed significantly over time. It is possible that applicants may have acquired a criminal conviction many years previously in relation to a matter no longer considered unlawful. The criminal conviction may not be relevant in relation to the job or training advertised.

References

- Make managers, supervisors or others who supply references, aware that all informal or formal references supplied should be fair and nondiscriminatory. Managers and supervisors should ensure that their references are not influenced by personal prejudices relating to an individual's actual or perceived sexual orientation.