

WORKPLACE FAIRNESS LEGISLATION – POTENTIAL WORKPLACE SCENARIOS

The Tripartite Committee for Workplace Fairness has recommended that legislation prohibits workplace discrimination in respect of the following characteristics: (i) age, (ii) nationality, (iii) sex, marital status, pregnancy status, caregiving responsibilities, (iv) race, religion, language; (v) disability and mental health conditions.

This document provides illustrations of potential workplace scenarios to help you understand what could amount to discrimination. Full details can be found in the [Tripartite Committee's Final Report](#).

Protected Characteristic: Nationality

Protection against workplace discrimination because of nationality helps ensure that the workforce in Singapore is fairly considered for job opportunities, while foreigners play a valuable role in complementing our local workforce.

Scenario 1:

A Singaporean job seeker applies for a senior role in a firm, and fully meets the job requirements, including the required technical expertise and years of relevant work experience. However, the interview records show that the hiring manager did not consider the Singaporean candidate fairly and offered the job to a foreigner only because the foreigner is of the same nationality as the hiring manager.

[This could amount to discrimination.](#)

Protected Characteristic: Age

As an ageing society, supporting the employment of senior workers is critical.

Scenario 1:

A jobseeker applies to be a facilitator for children's workshops. During the interview process, the employer asks about the jobseeker's age. After the jobseeker replies that she is 50 years old, the employer says that she is not suitable for the role, as they prefer a younger person who would be more energetic.

[This could amount to discrimination.](#)

Protected Characteristic: Sex, marital status, pregnancy status, caregiving responsibilities

Prohibiting workplace discrimination in these areas is important to increasing women's participation in the workforce, promoting marriage and parenthood aspirations and supporting caregivers.

Scenario 1: Pregnancy

A jobseeker is offered a role as a finance officer. When undergoing a pre-employment medical check-up, she is found to be pregnant. The company subsequently retracts the offer, citing that the nature of the job is not suitable for a pregnant employee, even though it is a desk-bound role.

[This could amount to discrimination.](#)

Scenario 2: Pregnancy

An employee applying for her company's talent development scheme is asked in an interview for the scheme if she plans to start a family, to which she replies that she is keen to do so soon. She is not enrolled in the scheme, and her employer says this is because the interview panel felt that she would not be suitable for the high demands of the scheme due to her family plans.

[This could amount to discrimination.](#)

Scenario 3: Caregiving responsibilities

A male employee is the primary caregiver for his father. With the agreement of his supervisor, the employee has been taking time off work to accompany his father for medical treatments several days a week, but has continued to meet his work requirements and maintain performance standards. His supervisor subsequently tells him that the company has decided to let him go so that he can concentrate on his caregiving responsibilities.

[This could amount to discrimination.](#)

Scenario 4: Allowing genuine occupational requirements

A wellness establishment hires female therapists, as their job is to carry out personal body massages and spa treatments for female customers.

[Being female is a genuine and reasonable job requirement in this case.](#)

Scenario 5: Provision of employee benefits

An employer offers additional non-statutory maternity leave and childcare leave as an employee benefit. A single, male employee alleges that this is a form of discrimination against employees who are not mothers, and employees who do not have children.

[As benefits are excluded from the legislation, this would not amount to discrimination under the legislation.](#)

Protected Characteristic: Race, religion, language

In multi-racial and multi-religious Singapore, protecting against workplace discrimination on the grounds of 'race', 'religion' and 'language' is fundamental.

Scenario 1: Race

A hiring manager conducts a panel interview with two candidates for a job role. Candidate A is of the same race as the hiring manager and Candidate B is of a different race. The interview panel assesses and documents in its interview records that Candidate B is more qualified for the role. However, the hiring manager offers the job to Candidate A as he feels more comfortable working with someone of the same race.

[This could amount to discrimination.](#)

Scenario 2: Exceptions for religious organisations

A mosque is hiring an administrative assistant, and states that applicants should be Muslim.

[As religious organisations are permitted to make employment decisions based on religion and appropriate religious requirements, this would not be a breach of the legislation.](#)

Protected Characteristic: Disability and mental health conditions

Protecting against workplace discrimination on the grounds of 'disability' supports the national effort to help more persons with disabilities join and remain in the workforce. Protecting against workplace discrimination based on 'mental health conditions' is also important to our objective of strengthening the employment and employability of persons with mental health conditions, in line with national initiatives to support the mental health and well-being of Singaporeans.

Scenario 1: Mental health

A new hire's colleagues observe episodes where his mood seems particularly down, although his work performance is unaffected. During a routine check-in, the new hire's manager asks if he has any mental health conditions. The new hire replies that he has depression, but the condition is being managed with psychiatric help. The new hire is dismissed with notice a week after that conversation.

[This dismissal could amount to discrimination.](#)

Scenario 2: Allowing genuine occupational requirements

A company offers a role for an audio production manager to a candidate. Candidates must pass a pre-employment health check-up, which includes a test of the candidate's hearing. However, the candidate does not pass the hearing test and the company does not proceed with the job offer.

This would not be a breach of the legislation, as passing a hearing test is a genuine occupational requirement.

Scenario 3: Enabling employers to support the hiring of people with disabilities and seniors

A company interviews two candidates for a website designer role. Both candidates score well on their test and interview. One of the candidates has a disability and requires the use of a wheelchair, while the other does not have a disability and has slightly more years of experience.

If the company selects the candidate with a disability for the role, it would not be a breach of the legislation, as employers should be supported if they wish to hire persons with disabilities.

Indirect Discrimination

Indirect discrimination typically involves an apparently neutral company practice that has the effect of putting persons with a particular protected characteristic at a disadvantage.

Scenario 1:

As part of the selection process, an employer requires all jobseekers to take and pass a numeracy test as numeracy was a relevant skill for the job (eg. a finance role). It was found that older workers performed poorer on this test than younger workers. Even though the employer did not intend to discriminate against older workers and has a reasonable basis to require the numeracy test, such workers may take the view that the disparity in test results may mean that the numeracy test is a form of indirect discrimination, since the test puts older workers at a disadvantage. If indirect discrimination was included in legislation, such grey situations could be frequently litigated and lead to considerable uncertainty for employers and employees.

In excluding indirect discrimination for legislation, TAFEP will assess and take up such cases where appropriate, guiding the parties to a reasonable resolution.

Providing Prima Facie Evidence to Support Claim

- i. The claimant should clearly cite the incident(s) that led him/her to believe that he/she suffered an adverse employment outcome because of a protected characteristic; and
- ii. The cited incident(s) should show how the consideration of the protected characteristic led to the adverse employment outcome.

Scenario 1:

A former employee approaches TAFEP and says that he was dismissed due to his age, even though he was still meeting his performance targets. He shows TAFEP two emails from his new supervisor. The first email said that the supervisor was looking to build a young team to manage the fast-paced work. The second email showed the supervisor's comments to another colleague saying, "I think he is too old to be in my team. I will just let him go."

TAFEP assesses this case as having clear and relevant evidence of age discrimination.

Scenario 2:

A jobseeker approaches TAFEP saying that he did not get a particular job because his race was different from the hiring manager's. TAFEP asks the jobseeker if the company said or did anything during the selection process to lead him to think that there was race discrimination; the jobseeker says no, and that it is just his gut feel.

TAFEP assesses that the observation alone is not enough to suggest discrimination and that he is unlikely to have a basis for a claim.

Enforcement Levers

The enforcement levers to be calibrated based on the severity of breach and applicable to the firm and/or the person responsible for the discriminatory decision (i.e. the decision-maker) resulting in a breach of the workplace fairness legislation.

Scenario 1: Low severity

A firm posts a job advertisement on MyCareersFuture for a sales role indicating a preference for females, as they feel that females can perform better in a sales role. MOM assesses that the firm breached the legislation by posting a discriminatory job advertisement.

As this is the firm's first such breach, MOM issues a Corrective Order for the firm to review its hiring processes and attend corrective workshops.

Scenario 2: High severity

After investigation, MOM finds a firm to be discriminatory as one of its departments has been intentionally promoting employees of a certain nationality, despite having candidates of other nationalities who performed better. In addition, the firm dismissed an employee after he filed a discrimination complaint against the firm.

Systemic discrimination with clear intent is an egregious breach. MOM will seek civil penalty against the firm and decision-maker(s) in the Courts and curtail the firm's work pass privileges. MOM will also take action against the firm for retaliating against the employee who filed the complaint.