

Necessary Requirement for the Job (Race Discrimination)

Under the Race Discrimination Ordinance (RDO), language requirements in recruitment exercises may constitute indirect discrimination if such requirements are not genuine or objective.

◆ The Complaint

Manoj is a Hong Kong permanent resident of South Asian descent. He saw a posting for the job of technical operator at a local company X. The job advertisement listed Chinese language skills as a requirement. As



Manoj had over a decade of specifically relevant experience, he applied for the job even though he does not read or write Chinese. He had been able to perform satisfactorily in similar roles at other companies without Chinese language abilities, which led him to believe that such language skills were not truly required for the job.

Manoj did not receive a response on his application, though he saw that the job continued to be advertised. He applied several more times for the same post over a period of a few months, but still heard nothing from company X. As Manoj felt that Chinese language skills were not truly necessary for the job, he believed that company

X was using the language requirement as an excuse for not considering non-Chinese applicants. Manoj also claimed that his application was unsuccessful because of his ethnic origin. He lodged a complaint of race discrimination with the EOC.

✓ **What the EOC did**

The EOC case officer explained to both the employer and the complainant the provisions under the RDO.

Under the RDO, it is unlawful for employers not to hire an applicant on the ground of his/her race. It is also unlawful for employers to indirectly discriminate by setting an unjustifiable requirement that applicants of certain races may be less able to comply with. Although language in and of itself is not a protected characteristic under the RDO, some requirements or conditions relating to language abilities which are not justifiable may indirectly discriminate against certain racial groups, who may be less able to meet such conditions. When this is so, the RDO may apply.

Both parties showed willingness to resolve the matter through the early conciliation mechanism. Company X agreed to refer Manoj's CV to another unit with English-speaking positions for their consideration, as well as to invite him for interviews when vacancies arose for relevant posts at the company. The case was thus settled.

Points to Note:

- The race of a person does not affect his or her ability to do a job, so long as he or she possesses the necessary and relevant qualifications, skills and personal qualities required by the job. Employers must not assume that people belonging to certain racial groups are not suitable for employment. As a good practice, all applicants should be assessed based on consistent selection criteria.
- Employers must ensure that any language requirement (including academic qualification, fluency and accent requirement) for a job is relevant to and commensurates with the satisfactory performance of a job.
- The EOC encourages employers to promote workplace diversity and nurture an inclusive work environment. In fact, workplace diversity can have real benefits, and the exchange of different perspectives can help to foster creativity and innovation.