

Employees and workers are also personally liable for harassment on the ground of race<sup>52</sup>.

4.2.3 Employees and workers have the responsibility to respect the rights of the people they work with. They should not discriminate or harass fellow workers on the ground of race. They are recommended to:-

- (1) Observe the requirement of the RDO and follow the recommendations of the Code;
- (2) Become familiar with and follow the employer's equality policy;
- (3) Respect the racial identity of fellow workers and refrain from infringing their rights to work free of discrimination and harassment on the ground of race;
- (4) Cooperate with measures taken by the management to promote equal opportunities and prevent discrimination and harassment on the ground of race;
- (5) Take part in training related to equal opportunities.

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<sup>52</sup> Paragraph 6.2 and 6.3 of the Code (p.45-48)

## 5 Practising and Promoting Racial Equality

### 5.1 Complying with the RDO

Under Part 3 of the RDO, employers may not discriminate or harass any of their employees and workers on the ground of race and are required to take reasonably practicable steps to prevent such discrimination or harassment. Good employment practice is the key to employers complying with the RDO and meeting their legal responsibilities. Employers are encouraged to adopt the recommendations below as appropriate to the scale and structure of their organizations and available resources. Organizations and businesses operating on a small scale with a simple structure may adopt less formal practices so long as they follow the spirit of practising and promoting racial equality.

### 5.2 Drawing up and implementing a policy

5.2.1 A systematic approach is the best way to develop and maintain good employment practice. Employers are encouraged to draw up an equal opportunities policy which includes explicit reference to racial equality. This represents the employer's commitment to racial equality and forms the framework for action in promoting racial equality and putting it into practice.

5.2.2 The policy should explain that, in terms of racial equality, its objective is to ensure that:-

- (1) No job applicant or employee will be treated less favourably than another on the ground of race;
- (2) No job applicant or employee of any racial group will suffer a detriment from requirements or conditions which have a disparately adverse impact on people belonging to his or her racial group than people not belonging to that racial group, unless such requirements or conditions can be justified as serving a legitimate objective and bearing a rational and proportionate connection to that objective;
- (3) Opportunities in the organization for employment, training and career development are equally open to all qualified people regardless of race;

- (4) The racial identity of every job applicant and employee is to be respected and no one is subjected to racial harassment in any way;
- (5) All job applicants and employees understand that the employer is determined to eliminate racial discrimination and harassment; and they know that racial discrimination and harassment is unlawful and they have a proper understanding of the relevant issues;
- (6) The grievance system is properly administered regardless of race for job applicants and employees to raise any concern or complaints internally; and that such matters will be dealt with properly with appropriate remedial action; and no reprisal will be directed against anyone raising concern or complaints; and that all job applicants and employees are aware that they may make use of the grievance system and how to do so.

5.2.3 To be effective, the policy must be implemented through the adoption of good employment procedures and practices which will achieve the above objectives (see paragraph 5.3 of the Code (p.22)). It is recommended that the overall responsibility for implementing the policy rests with senior management, and that employees are engaged in the development and review of the policy, such as through the establishment of a joint committee consisting of management and employee representatives. The details of the policy will depend on the scale and structure of the individual organization and the available resources, but the spirit of practising and promoting racial equality must always be followed. A sample policy is attached at the end of the Code for reference and adoption as appropriate. The policy should be disseminated and made known to all recruits and employees.

### 5.3 Good employment procedures and practices

#### 5.3.1 Recruitment using consistent selection criteria

(1) Employers should make all recruitment decisions on the basis of consistent selection criteria. Consistent selection criteria should be specific to the job. They may set out, for example:-

(a) The type of experience the job holder should have, for example,

merchandising experience;

(b) The amount of experience required for the job, for example, five years experience;

(c) The educational qualifications, for example, a diploma in merchandising;

(d) The specific technical and managerial skills, for example, use of certain computer software, proficiency in particular languages (if this is necessary for the satisfactory performance of the job<sup>53</sup>);

(e) The personal qualities required for the job, for example, willingness to travel, willingness to meet people of different backgrounds; and

(f) The physical and other skills required for the job, for example, eye-hand co-ordination for delicate assembly work.

(2) Consistent selection criteria (including language requirements<sup>54</sup>) should reflect job requirements and should be commensurate with the satisfactory performance of the job (and see paragraph 5.3.5 of the Code (p.26) for shortlisting). It is recommended that employers develop consistent selection criteria as one of the first steps in establishing a fair recruitment practice, and from time to time re-examine the criteria to see whether they still apply or need to be modified.

### 5.3.2 Race must not be a factor

(1) The race of a person does not affect his or her ability to do a job, so long as he or she possesses the 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.

(2) By making recruitment decisions on the basis of consistent selection

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<sup>53</sup> See paragraph 5.3.12 (p.32) and 6.1.1(2)(v) of the Code (p.43)

<sup>54</sup> See paragraph 5.3.12 (p.32) and 6.1.1(2)(v) of the Code (p.43)

criteria, the employer's interest is served because each individual is assessed according to his or her capabilities to carry out a given job and will not be judged by irrelevant considerations such as race.

- (3) Except where race is a genuine occupational qualification (see paragraph 5.3.3 of the Code (p.24)), employers should ensure that race is not used as a ground for determining who should be offered employment. This applies no matter whether recruiting by advertisement, through employment agencies or through career offices in educational establishments.
- (4) Employers should ensure that employees handling applications and conducting interviews are trained not to assume that people belonging to certain racial groups are not suitable for employment or to use race as a ground for determining who should be offered employment. For example, candidates with names, appearance or accent indicating they are of Pakistani origin should not be refused on the ground of their origin.

### 5.3.3 Genuine Occupational Qualification (GOQ)

- (1) Except for situations specified under RDO section 11, race may not be a ground for refusing employment and the consistent selection criteria may not make any reference to race. The situations specified in RDO section 11 are:-
  - (a) The job involves participation in a dramatic performance or other entertainment in a capacity for which a person of a particular racial group is required for reason of authenticity;
  - (b) The job involves participation as an artist's or photographic model in the production of a work of art, visual images or sequence of visual images for which a person of a particular racial group is required for reason of authenticity;
  - (c) The job involves working in a place where food or drink is provided to and consumed by the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity;

- (d) The holder of the job provides persons of a particular racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group;
  - (e) The job involves providing persons of a particular racial group with personal services of such nature or in such circumstances as to require familiarity with the language, culture and customs of and sensitivity to the needs of that racial group, and those services can most effectively be provided by a person of that racial group.
- (2) Where a particular job falls into the above situations, race is referred to as a genuine occupational qualification (GOQ). If an employer claims that GOQ applies to a job, it is for the employer to show that it is so and the court will examine the claim strictly. For example, the situation in (d) above was held not to apply to managerial and administrative jobs because the job holders did not provide personal services and did not have direct contact with service recipients of particular racial groups<sup>55</sup>.

#### 5.3.4 Advertising vacancies

Employers should ensure that the contents of advertisements are based on consistent selection criteria. Employers are encouraged to:-

- (1) Fill vacancies by open application so that people from all racial groups have the opportunity to apply. Where vacancies are to be filled by promotion or transfer, publish the information to all eligible employees so that there is no restriction on applications from any racial groups.
- (2) Avoid requests for photographs and copies of ID cards at the application stage as this may be perceived as an indication of an intention to discriminate on the ground of race although asking for ID numbers would be acceptable. Requests for photographs and copies of ID card can be made at the interview stage for identification purposes.

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<sup>55</sup> *London Borough of Lambeth v Commission for Racial Equality* [1989] IRLR 379

(3) Advertise vacancies so that job information may reach people from different racial groups. Different channels may be used, such as newspapers, Labour Department's job centres, employment agencies, professional journals and specialist magazines or publications. Where the ability to read and write in a particular language is necessary for the satisfactory performance of a job<sup>56</sup>, advertisement may specify the language requirement and may be published in that language. Given that English and Chinese are the two prevalent languages in Hong Kong, employers are encouraged to advertise in both English and Chinese media where reasonably practicable. Given that there are people who can speak but not read in Chinese, where the job requires only the ability to speak but not read or write Chinese, in addition to advertising in Chinese, employers are encouraged to consider advertising also in English where reasonably practicable. Employment agencies are also encouraged to provide their services in both Chinese and English where reasonably practicable.

(4) Include statements such as "the post is equally open to people from all racial groups" in advertisements, as this will send out a clear message that applicants from all racial groups are welcome.

#### 5.3.5 Shortlisting

It is often necessary to narrow down the field of candidates through a process of shortlisting. Shortlisting may take different stages and may take place with or without interviewing candidates. It is recommended that employers:-

- (1) Ensure that the factors taken into account in shortlisting objectively measure the candidates against the consistent selection criteria;
- (2) Ensure that the marking system is consistently applied to all applicants; the weighting on different factors, for example, command of a language or previous experience, should reflect the requirements of the job and be consistently applied regardless of race;

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<sup>56</sup> See also paragraph 5.3.12 of the Code (p.32)

- (3) Guard against making assumptions in general about the abilities of people from different racial groups which may not be true of the individual;
- (4) Train personnel staff to objectively compare applicants when shortlisting, and not to assume that people belonging to certain racial groups are less suitable for employment or to use race as a ground for determining who should be offered employment.

#### 5.3.6 Race related information

- (1) It is recommended that questions on application forms should not suggest that the employer wishes to take into account any race related factors not relevant to the job which would lead to employment being declined on the ground of race, unless GOQ applies<sup>57</sup>.
- (2) Race related information may be sought for purposes of making any special arrangement, for example, with regard to dates or times coinciding with religious festivals or observance, or dietary needs or cultural norms. The purpose for requesting or using such information should be clearly stated. This information should be detachable from the rest of the application form and should not be made known to members of selection panels before the interview. The information should be treated in strict confidence and should not be used for other purposes. Race related information may also be used for the purpose of monitoring the implementation of racial equality policy (see paragraph 5.3.17 of the Code (p.37)). When collecting and using information, the Personal Data (Privacy) Ordinance should be observed.

#### 5.3.7 Interviewing

It is recommended that employers:-

- (1) Ensure that personnel staff, line managers and all other employees who may be involved in staff recruitment receive training on

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<sup>57</sup> See paragraph 5.3.3 of the Code (p.24)



non-discriminatory practice. It should also be brought to their attention that it is unlawful to instruct or put pressure on others to discriminate<sup>58</sup>;

- (2) Only questions that relate to the requirements of the job are asked at job interviews;
- (3) Keep record of the recruitment process and interviews for 24 months, or if this is not practicable, at least not less than 12 months<sup>59</sup>.

### 5.3.8 Tests

If tests are to be used for selection purposes, it is recommended that employers:-

- (1) Use selection tests that are specifically related to the job and/or the career requirements and should measure an applicant's actual or potential ability to do or train for the job;
- (2) Give preference to using professionally designed tests wherever practicable. These can contribute important objective information about the applicant, for example, intelligence, aptitude and skills. They have the advantage that they produce numerical scores which do not depend upon opinion or subjective interpretation;
- (3) Review tests regularly to ensure that they remain relevant and free from any bias, either in content or scoring.

### 5.3.9 Recruitment through employment agencies or employment services

Where recruitment is done through employment agencies, employment services provided by the Labour Department, and educational establishments or non-government organizations, the employer should advise them that they should comply with the RDO and follow the recommendations in the Code as far as practicable, so as to ensure that there would not be any discrimination on the ground of race against any

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<sup>58</sup> RDO section 43 and 44

<sup>59</sup> Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c)) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes.

applicant. Employers should specify that vacancies are open to people from all racial groups, unless GOQ applies (see paragraph 5.3.3 of the Code (p.24)).

#### 5.3.10 Terms and conditions of employment, benefits, facilities and services

- (1) It is recommended that employers make sure their practices, rules and requirements on access to any benefits, facilities or services do not treat any employee less favourably on the ground of his or her race than another employee of a different race (see paragraph 6.1.1(1) of the Code (p.40) for direct discrimination).
- (2) It is also recommended that employers should minimize any disparately adverse impact that their practices, rules and requirements may have on any racial groups (see paragraph 6.1.1(2) of the Code (p.41) for indirect discrimination). When employees' cultural or religious practices, such as those expressed in dress codes, conflict with an employer's policies or workplace requirements, it is recommended that the employer consider whether it is practicable to vary or adapt these requirements. For example, employers may consider flexibility in working arrangements<sup>60</sup>. Employers should consult staff, trade unions and other workplace representatives on practical ways in which they can accommodate workers' needs.
- (3) In respect of pay, hours of work, overtime, bonuses, holiday entitlement, sickness leave, employers should maintain the principle of equal pay for equal work.
- (4) With everything being equal, an employee of one racial group is entitled to equal pay and benefits when he or she is doing "like work" or the same work as another employee of a different racial group. "Like work" means work which is of a broadly similar nature and where the differences between the tasks performed by either of them are not of practical importance to the terms and conditions of

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<sup>60</sup> See *Ahmad v Inner London Education Authority* [1977] ICR 490 (which is not a case under race discrimination legislation but is illustrative of what employers should do to accommodate employees), where the employer was prepared to allow a devout Muslim employee to work part-time so that he could attend Friday prayers; and *Tower Hamlets London Borough Council v Rabin* [1989] ICR 693, where the employer was prepared to seek a part-time worker to cover for a Jewish job applicant who has to observe Sabbath and cannot work on Saturdays.

employment<sup>61</sup>. Different job titles, job descriptions or contractual obligations do not necessarily imply that the work is different. It is what the job-holders actually do that matters. The question of whether the two jobs are “like work” can be answered by a general consideration of the type of work involved and the skill and knowledge required to do them.

- (5) A related principle to equal pay for equal work is that of equal pay for work of equal value. Where employees of one racial group undertake work as demanding as that of colleagues of another racial group, even though the work is different, they should receive the same pay and benefits. That is, jobs of equal value warrant equal pay.
- (6) Overseas experience suggests that different jobs done by different workers can be compared on the basis of the demands made on a worker in terms of effort, skill, responsibility and working conditions<sup>62</sup>. Employers can set individual pay rates based on market forces and individual performance but should not pay a class of workers less for doing work of equal value on the ground of race.
- (7) Employers should maintain the principle of equal pay for equal work and are encouraged to progressively implement equal pay for equal value. This will require objective and professional evaluation of different jobs within the same establishment, or alternative methods of approaching the issue of equal pay which can be demonstrated to be non-discriminatory on the ground of race. Large organizations in both the public and private sectors with a structured human resources department could take a lead in this.
- (8) Individual differences in pay are not in themselves discriminatory. Each case should be considered on its own merits. According to overseas experience<sup>63</sup>, the following considerations are relevant in considering differences in pay for equal work or work of equal value:-

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<sup>61</sup> UK Equal Pay Act 1970

<sup>62</sup> Guidelines Respecting the Application of Section 11 of the Canadian Human Rights Act and Prescribing Factors Justifying Different Wages for Work of Equal Value, 1986.

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- (a) Different performance ratings;
- (b) Length of service;
- (c) Re-evaluation and downgrading of a position on objective work-related criteria;
- (d) A temporary training position;
- (e) The existence of internal labour shortage in a particular job classification;
- (f) Re-classification of a position to a lower level, where the person continues to get the former level of pay;
- (g) Regional rates of pay; for example, an employee is rewarded because the work is done in different locations; and
- (h) Economic factors, such as a temporary shortage in a particular type of skilled labour.

#### 5.3.11 Overseas employees

- (1) Circumstances concerning employees coming from overseas to work in Hong Kong may be different from local employees and the differences may not be on the ground of race. For example, overseas employees may require relocation assistance or that they are recruited because they possess skills that are not readily available in Hong Kong.
- (2) It is recommended that, when employers address circumstances concerning employees coming from overseas to work in Hong Kong by providing benefits to them which are not available to local employees, they ensure that the benefits are commensurate with the circumstances of the overseas employees and are not given on the ground of race.
- (3) RDO section 12, 13, 14 and Schedule 2 deal with employees coming from overseas. RDO Schedule 2 defines those employees in existing employment who are on overseas terms of employment; and those

who are on local terms of employment. Situations where differences in treatment are allowed under the RDO between these employees are specified in RDO section 14 (see paragraph 6.7.2 to 6.7.4 of the Code (p.49-51)).

#### 5.3.12 Language

- (1) Employers must ensure that any language requirement (including academic qualification, fluency and accent requirement) for a job is relevant to and should be commensurate with the satisfactory performance of a job (see paragraph 6.1.1(2)(v) of the Code (p.43); and paragraphs 5.3.1 (p.22), 5.3.4 (p.25) and 5.3.5 (p.26) for recruitment criteria , vacancy advertising and shortlisting).
- (2) A person's accent in speaking a language can be related to his race, employers should ensure that employees and workers are not discriminated against or harassed because of their accent<sup>64</sup> (see paragraph 5.3.14 of the Code (p.34) for prevention of harassment). This applies to all aspect of employment including promotion, transfer and training (see paragraph 5.3.13 of the Code (p.32)).
- (3) Where the workforce includes people who are not proficient in the language of the workplace, employers should take reasonably practicable steps to ensure that they are provided with and understand information on health and safety requirements and other matters relevant to their employment; for example, safety signs and notices.

#### 5.3.13 Promotion, transfer and training

It is recommended that employers:-

- (1) Examine the assessment criteria of any appraisal system to ensure that employees are promoted on merit and the criteria adopted (for example, any language requirement) are not discriminatory on the ground of race. Measurable standards for evaluating job performance should be established;

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<sup>64</sup> Policy and Guidelines on Racism and Racial Discrimination, paragraph 3.6, Ontario Human Rights Commission, Canada, 2005

- (2) Organize selection for promotion along the same lines as recruitment. Consistent selection criteria for posts should be compared with the detailed assessment of all candidates' abilities and qualities including their potential. The individual whose profile best fits the job requirements should be selected;
- (3) Where opportunities for promotion, training or transfer arise, specify the conditions for application to all staff who may be interested, and set out related procedures in writing for communication to all employees irrespective of race who are eligible;
- (4) Assess all possible candidates, and if promotion is by nomination, ensure that everyone suitable is considered and that nobody with potential has been overlooked;
- (5) Keep records of notes on promotion, transfer and training for 24 months, or if this is not practicable, at least not less than 12 months<sup>65</sup>;
- (6) Review and change rules which restrict or preclude transfer between certain jobs if they are found to be discriminatory; and
- (7) Examine policies, rules and practices regarding selection for training, day release and personal or career development (for example, any language requirement) to ensure that:-
  - (a) No one from any racial group is treated less favourably on the ground of race than another not from that racial group;
  - (b) Any disparately adverse impact on any racial groups is minimized;
  - (c) Where there is found to be an imbalance in training between persons of different racial groups than might be expected, the cause should be identified and, if necessary, remedied to ensure that it is not discriminatory.

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<sup>65</sup> Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c)) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes.

#### 5.3.14 Prevent harassment on the ground of race

Employees and workers of all racial groups are entitled to be free from harassment on the ground of race. Employers must ensure that the working environment is one in which the racial identity of all employees is respected. It is recommended that employers:-

- (1) Make a clear statement in the equal opportunities policy that harassment on the ground of race will not be tolerated;
- (2) Provide a work environment that is safe and free from abuse and insults. Employees and workers should treat each other politely and with respect;
- (3) Explain that harassment<sup>66</sup> on the ground of race is unacceptable; and explain the types of behaviour which can be regarded as harassment on the ground of race, such as:-
  - (a) Racially derogatory remarks or insults; for example, name calling which people of certain racial group may find offensive or impolite should be avoided;
  - (b) Display of graffiti or slogans or other objects offensive to certain racial groups;
  - (c) Racist jokes, banter, ridicule or taunts; for example, laughing at the accent or habits of people belonging to certain racial groups;
  - (d) Using a disparaging or offensive tone when communicating with people on the ground that they belong to certain racial groups;
  - (e) Ostracize people because of their racial group;
  - (f) Imposing excessive workloads or unrealistic performance targets on people on the ground of race;
  - (g) Unnecessarily picking on individuals from particular racial groups;

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<sup>66</sup> See paragraph 6.3.2 and 6.3.3 of the Code (p.47-48)

- (4) Make the above known to all recruits and employees;
- (5) Ensure that grievances and complaints are properly dealt with; in doing so, as an alternative to dealing with a complaint of harassment formally in accordance with the designated internal grievance procedures, employers should consider offering an informal route to resolving a grievance;
- (6) Ensure that no one will be victimized<sup>67</sup> or penalized for coming forward with a complaint or grievance.

#### 5.3.15 Grievance procedures

It is recommended that employers:-

- (1) Ensure that employees who have in good faith taken action under the RDO do not receive less favourable treatment than other employees, for example, by being sidelined for training or promotion, disciplined or dismissed;
- (2) Designate an internal grievance procedure or an officer to deal with complaints concerning discrimination and harassment on the ground of race or victimization<sup>68</sup> within the organization. These procedures should be communicated to all staff and be reviewed from time to time;
- (3) Advise employees to use the internal grievance procedures, where appropriate, but without prejudice to the individual's right to apply to the EOC or the court;
- (4) Deal with all complaints of discrimination and harassment on the ground of race or victimization seriously, effectively and promptly. It should not be assumed that they are made by those who are over-sensitive. Confidentiality should be observed and the rights of both the complainant and respondent respected;
- (5) Handle disciplinary procedures uniformly without reference to race;

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<sup>67</sup> See paragraph 6.1.3 of the Code (p.44)

<sup>68</sup> See paragraph 6.1.3 of the Code (p.44)



- (6) Keep records of notes on grievances and disciplinary matters for 24 months, or if this is not practicable, at least not less than 12 months<sup>69</sup>.

#### 5.3.16 Dismissals, redundancies and unfavourable treatment of employees

It is recommended that employers:-

- (1) Ensure that employee of one racial group is not disciplined or dismissed for performance or behaviour which would be overlooked or condoned in the case of another employee of a different racial group;
- (2) Review redundancy procedures affecting employees of any racial group so as to ensure that there is no discrimination on the ground of race and to remove any unjustifiable and disparately adverse impact on any racial groups;
- (3) Ensure that conditions of access to voluntary redundancy benefits are available on equal terms to employees of all racial groups in the same or similar circumstances
- (4) Ensure that when there is downgrading or short-time working (for example, owing to a change in the nature or volume of an employer's business) the arrangements do not discriminate on the ground of race;
- (5) Keep records of notes on dismissals and redundancies for 24 months, or if this is not practicable, at least not less than 12 months<sup>70</sup>;
- (6) Ensure that a standard of conduct or behaviour is observed to prevent employees of any racial groups from being intimidated, harassed or otherwise subjected to unfavourable treatment<sup>71</sup>.

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<sup>69</sup> Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes.

<sup>70</sup> Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes.

<sup>71</sup> See paragraph 5.3.14 of the Code (p.34)

### 5.3.17 Monitoring

- (1) Employers are encouraged to take reasonably practicable steps to regularly monitor and review the implementation of the equal opportunities policy and the good employment procedures and practices. The objective of monitoring is to gain an appreciation of the situation regarding, for example:-
  - (a) The composition of the workforce by racial group, for comparison with benchmarks such as census data;
  - (b) The distribution of people from different racial groups within the organization, by job type and grade, or by work locations;
  - (c) The pattern of career development (including remuneration and benefits, termination or other disciplinary action) of people from different racial groups.
- (2) Such information will show, for example, whether people from particular racial groups:-
  - (a) Do not apply for employment or promotion, or that fewer apply than might be expected;
  - (b) Are not recruited, promoted or selected for training and development or are appointed or selected in a significantly lower proportion than their rate of application; and
  - (c) Are concentrated in certain jobs, sections or departments.
- (3) In organizations with a simple structure, the situation may be assessed from personal knowledge. In organizations with larger structure, monitoring will require formal processes for collecting, analyzing and evaluating information, for example, through surveys, consultation and feedback. This may be done in stages as operational requirements or resources permit and should be done with prior consultation with employees or their representatives. The purpose of collecting the information must be clearly stated. Information collected should be treated in strict confidence and

should not be used for other purposes. When collecting and using information, the Personal Data (Privacy) Ordinance should be observed; in this connection, employers and other concerned parties may consider collecting and using information in a way which does not identify particular individuals.

- (4) Information obtained through monitoring will help to show whether:-
  - (a) Employees and workers (including job applicants<sup>72</sup>) from any racial group are being treated less favourably than those not from the same racial group;
  - (b) Policies, rules and practices have disparately adverse impact on any racial group.
- (5) If monitoring data shows significant disparities between racial groups, employers should investigate the cause to ensure that race is not a barrier to opportunities. They should examine and review relevant policies, rules and practices to see if they have disparately adverse impact on any racial group; and if so, take steps to minimize such impact.
- (6) Employers are also encouraged to take positive action to address any situation where any racial group might be under-represented in the workforce than might be expected (see paragraph 5.3.18 of the Code (p.38)).

#### 5.3.18 Positive action

- (1) Because of discrimination or other disadvantages in the past, people from particular racial groups may have been deprived of the opportunity to gain the qualification or experience to fully realize their potential.
- (2) Therefore, RDO section 49 allows employers and other concerned parties to provide people from a particular racial group (or groups) goods, access to facilities, services, opportunities, grants, benefits or

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<sup>72</sup> See paragraph 5.3.6 of the Code (p.27) for obtaining race related information from job applicants.

programmes to meet their special needs in relation to employment, when it is reasonably intended to ensure that they have equal opportunities in employment.

- (3) RDO section 51 and 52 allow employers and other concerned parties to provide training for people from a particular racial group (or groups) for particular work, when for the past 12 months in Hong Kong generally (or for an employer, in a particular establishment) no person from that racial group (or groups) has been doing that work or the number of persons from that racial group doing that work has been comparatively small.
- (4) Measures taken under RDO section 49, 51 or 52 are called positive action. Examples of positive action may include encouragement to apply for employment, transfer or promotion, language classes, mentorship schemes, and management skills training or other training courses.
- (5) Positive action under the RDO means providing only training or encouragement, and does not extend to providing employment to individuals from particular racial groups on the ground of their race<sup>73</sup>.

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<sup>73</sup> UK Code of Practice on Racial Equality in Employment, p.40, Commission For Racial Equality 2005