



(6) Pre-hiring and Post-hiring Procedures

Pre-hiring procedures

The aim of recruitment is to select the best person for the job. Care must be taken to guard against discrimination throughout the whole recruitment process.

Job description

Sex, pregnancy, marital status, family status, disability and race (protected attributes) biases can occur even before the selection is made. Drawing up a clear job description on the scope of work, duties and responsibilities of the job is important. Employers should not overstate the requirements and duties of a job as this may have an unfair impact on persons with the protected attributes and may result in indirect discrimination. Indirect discrimination is unlawful under the anti-discrimination ordinances, namely the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO).

It is also important that a job description should not be so worded as to suggest or imply that only persons without a disability, person from a particular racial group, non-pregnant women, or persons of a particular sex, marital status or without family responsibilities can apply or perform a job.

Job titles should be gender-neutral. If this is not possible, use both male/female title for the job, e.g. waiter/waitress or alternatively, put "male or female" in brackets after the job title.

Consistent Selection Criteria

Employers should use Consistent Selection Criteria (CSC) to avoid acting unlawfully in the selection process. Based on the job description, CSC set out the personal attributes, qualifications, skills and knowledge required for the effective performance of the job. CSC should be used to facilitate shortlisting and selection. It is important to make sure that the CSC are objective, clearly

defined and ranked in order of priority⁹.

Advertisement

Having a job description and CSC are helpful to employers in preparing a recruitment advertisement. In the advertisement, list out only the requirements for the performance of the job. For example, academic qualifications, years of experience and specified technical skill. A statement such as "The post is open to applicants of both sexes, persons from all racial groups and persons with a disability" helps send out a clear and positive message.

Shortlisting

Do the shortlisting of candidates on the basis of CSC. These objective yardsticks will help reduce possible biases based on the protected attributes. Very often, candidates are rejected merely because of certain false assumptions about their personal attributes. For example:

- The job requires a person with a caring disposition, and therefore only female candidates should be shortlisted;
- The job requires extensive travelling, and therefore a married woman or a woman with young children would not be suitable;
- The job location is remote and a person with mobility difficulty or a person with family responsibilities would not be able to commute long-distance; and
- Persons from certain racial groups are only suitable to do manual work, such as domestic helpers or security guards.

Staff responsible for recruitment should be alert to the danger of making generalisations about the aptitudes and abilities of men, women, pregnant women, persons with different marital status or family status, persons with a disability or persons from different racial groups. It is important that they adopt CSC in selecting candidates.

Request for medical information

The DDO does not prohibit employers from asking a person with a disability to undergo a medical examination. Medical information may be used



in assessing whether the person is suitable to perform the inherent requirements of the job. However, it may give rise to allegations of disability discrimination if a candidate with a disability is asked to undergo medical examination without valid justifications when others are not required to do so. Medical information should only be obtained if it is necessary to ascertain that the person is able to carry out the inherent requirements of the job or would require accommodation to do so.

Where an X-ray examination is included in a pre-employment medical check, the requirement that potential employees must undergo the X-ray examination in order to be considered for employment may constitute indirect discrimination against pregnant women under the SDO as they are unlikely to comply with the requirement in view of the risks involved.

Tests

Selection tests should be directly related to the job requirements and be professionally designed to measure the abilities of the applicants. In addition, they should be modified flexibly according to the needs of applicants with a disability. Employers should also review the contents and standard of the tests on a regular basis to ensure that they are relevant to the job requirements.

Final selection

The selection process is basically one of matching the individual candidate's qualifications and attributes against the job requirements. However, they may not match perfectly because certain candidates may exceed some of the requirements but may fall short of others. It is recommended that employers should balance the strengths and weaknesses of candidates and analyse their suitability based on facts rather than impressions or generalisations. This process will help reduce significantly conscious or unconscious prejudices.

Post-hiring procedures

For the purpose of arranging medical benefits or education allowances, or in order to ascertain whom to notify in case of emergency, employers may collect personal data of the successful applicant, such as information regarding the spouse and number of children. This step should

be taken after an applicant has been hired so that there will be no misunderstanding about the employers' motives in asking such questions.

Employers may also request more detailed medical information from an employee after hiring in order to help the employee in the event of emergency. All medical information should be kept confidential and should not be released without the written consent of the employee.

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. The information should be treated in strict confidence and should not be used for other purposes.

When collecting and using the said information, the Personal Data (Privacy) Ordinance should also be observed.

Employers are advised to retain records of interviews for at least 12 months, in order to be in a position to deal with any subsequent complaints of discrimination in the selection process. The management should ensure that all staff members involved in recruitment are fully aware of the company's policy on fair recruitment and selection. They should be trained accordingly to ensure non-discriminatory hiring practices.

⁹ Please also read "The Use of Consistent Selection Criteria" in this publication.