



(10) What is Racial Harassment?

Harassment on the ground of race (including one's race, colour, descent, national origin or ethnic origin) occurs in the following situations under the Race Discrimination Ordinance (RDO):

(a) Unwelcome conduct harassment

Person A engages in unwelcome conduct (which may include an oral or a written statement) towards Person B on the ground of Person B's race or Person B's near relative's race, and any reasonable person would have anticipated that person B would be offended, humiliated or intimidated. Even if there is no intention or motive to offend, humiliate or intimidate, there is liability for racial harassment. Examples of racial harassment may include racist jokes, banter, ridicule or taunts, racially derogatory remarks or insults.

(b) Hostile environment harassment

Person A engages, on the ground of Person B's race or Person B's near relative's race, in conduct alone or together with other persons that create a hostile environment for Person B. Examples of racially hostile environment may include racially offensive pictures or posters, and racially hostile code of behaviour in a workplace.

Preventing 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. An absence of complaints about racial harassment does not necessarily mean an absence of racial harassment. It may mean that the recipients of racial harassment think that there is no point in complaining because nothing will be done about it, or because it will be trivialized or the complainant will be subjected to ridicule, or because they fear reprisals.

RDO provides that anything done by an employee

in the course of employment is treated as done by the employer as well under the RDO. This is so even if the employer did not know or did not approve of what the employee has done, unless the employer has taken reasonably practicable steps to prevent discrimination and harassment from happening. Employees may also personally liable for any racial discrimination or harassment in employment.

It is therefore in the interest of both employers and employees to have a policy on preventing and handling racial harassment at work¹¹. Employers should make clear to the employees and workers that they have a duty and responsibility towards creating a discrimination and harassment free working environment.

Handling complaints of racial harassment

It is recommended that employers:

- 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.
- Designate an internal grievance procedure or an officer to deal with complaints concerning discrimination and harassment on the ground of race or victimization within the organization. These procedures should be communicated to all staff and be reviewed from time to time.
- 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.
- 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.
- Handle disciplinary procedures uniformly without reference to race.
- Keep records of notes on grievances and disciplinary matters for not less than 24 months.



Confidentiality

The principle of confidentiality should be observed in any policy on racial harassment. This means that any information relating to a complaint of racial harassment will only be disclosed on a need-to-know basis. Employers need to ensure that managers understand this principle when handling complaints. The observance of principle of confidentiality gives assurance to the complainant that management appreciates the sensitive nature of racial harassment and that the details of complaint will not be disclosed to any third party.

(11) Race as a Genuine Occupational Qualification

Discrimination on the ground of race is unlawful

Employees and workers are entitled to work free from discrimination and harassment on the ground of race under the Race Discrimination Ordinance (RDO). Employers should not discriminate or harass any of their employees and workers on the ground of one's race (including race, colour, descent, national origin or ethnic origin) and are required to take reasonably practical steps to prevent such discrimination or harassment from happening.

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.

By making recruitment decisions on the basis of consistent selection 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 race¹². 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.

Exception where race is a genuine occupational qualification (S11, RDO)

Except for situations specified under Section 11 of the RDO, i.e. where the race of the employee is a Genuine Occupational Qualification (GOQ) for the job, race may not be a ground for refusing employment for job applicants and offering opportunities to employees in promotion, transfer, or training.

¹¹ Guidelines on the setting up of such a policy are contained in the Code of Practice on Employment under the Race Discrimination Ordinance published by the EOC.