



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.



In what circumstances is race a GOQ for a job?

- 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.
- The job involves participation as an artist's or photographic model in the production of a work of art, visual images or sequences of visual images for which a person of a particular racial group is required for reason of authenticity.
- 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.
- 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.
- 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.

Is GOQ an automatic exception?

NO, GOQ is not an automatic exception for race discrimination. In each case it will be necessary for the employer who claims GOQ to show that GOQ does apply to the particular job in question and the court will then examine the claim strictly.

For example, the situation in point no. 4 above was held by the Court of Appeal in England as 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 group.

(12) Absence of Disability as a Genuine Occupational Qualification

Discrimination on the ground of disability is unlawful

People are entitled to equal consideration for jobs regardless of whether or not they have a disability. The Disability Discrimination Ordinance (DDO) provides that discrimination on the ground of disability is unlawful. Under the DDO, employers are not allowed to discriminate against persons with a disability, in respect of a particular job, except in the following circumstances:

- (a) where absence of a disability is a Genuine Occupational Qualification (GOQ) of the job;
- (b) where the person with the disability would be unable to carry out the inherent requirements of the job.

Exception where absence of a disability is a GOQ

Given the general rule that discrimination on the ground of disability in employment is not allowed, the DDO recognises that, for certain jobs, absence of a disability is a GOQ. In respect of such jobs it is not unlawful for the employer to discriminate against persons with the disability as regards to whom they offer employment, promotion, transfer or training.

In what circumstances is absence of a disability a GOQ?

The DDO prescribes two situations where being a person without a disability is a GOQ for a job:

- (a) The essential nature of the job requires a person without a disability for reasons of physiology or authenticity in dramatic performances. For example, the requirement of a person who is not a wheelchair user may usually constitute a GOQ for a job as a fashion model. Similarly, a woman with severe visual impairment may be refused a job as an actress to play the role of someone who has no visual impairment.
- (b) The nature or location of the establishment is such that the employee has to live in premises provided by the employer but the available premises do not have facilities for persons with the disability in question. However, before the

¹² Please also read "The Use of Consistent Selection Criteria" in this publication for further information on the subject.