



### **What comes next when consistent selection criteria are set?**

CSC should be made known to employees or job applicants upon request. They should be kept under periodic review and updated to reflect any changes in the nature of the job. It is good management practice that employers ensure that CSC are up-to-date and relevant.

## **(2) Recruitment Advertisements**

There are various ways of inviting job applications, one of which is by advertisement. As an advertisement is the first step to recruitment, it is important to get it right. Employers are advised to be alert to discriminatory biases which may be unlawful under the anti-discrimination ordinances, i.e. the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO). It is recommended that employers should follow the recommendations on setting out consistent selection criteria, job descriptions and shortlisting<sup>2</sup>.


Under the anti-discrimination ordinances, any advertisement which indicates or might reasonably be understood to indicate an intention to discriminate is unlawful. This means the advertisement, when taken as a whole, must not indicate such an intention unless the job is one for which sex, absence of disability or race is a Genuine Occupational Qualification (GOQ) or unless one of the legal exceptions applies so that the discrimination would not be unlawful<sup>3</sup>.

### **Discriminatory advertisements under the SDO**

An intention to discriminate may be attributed even without such obvious words as “male driver” or “female typist”, and can be inferred where single-sex words are used, for example, “waitress”, “salesman” or “stewardess”, unless the advertisement contains an indication to the contrary. For instance: “This post is open to both men and women”, or to pair words with the other sex equivalents, i.e. “waiter/waitress”, “saleswoman/salesman” or “steward/stewardess”. Where there are no feminine (or masculine) equivalents commonly in use, one alternative would be to use gender-neutral job titles, for example, “camera operator” instead of “cameraman”.

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<sup>1</sup> Please also read “Sex as a Genuine Occupational Qualification”, “Race as a Genuine Occupational Qualification” and “Absence of Disability as a Genuine Occupational Qualification” in this publication.



Employers should also check that advertisements are available to both sexes. Therefore, an advertisement should not be published only in a magazine of which the target readers are men or women only, or be displayed in a place to which only one sex has access. Nor should any drawings, real life examples or portrayals of serving employees be shown in an advertisement in such a way as to give the impression that one sex, as opposed to the other, is sought or preferred by the employer.

If services of employment agents are needed, employers should ensure that the agents know that the vacancy is open to persons of either sex. Where vacancies are filled by promotion or transfer, they should be advertised to all eligible employees in such a way so as not to restrict applicants from either sex.

If vacancies are not advertised and recruitment is by word of mouth, employers must ensure that the recruitment exercise is as open as possible, particularly where the exercise relies solely on word of mouth of existing employees in a certain department of the company where the staff are all of one sex.

#### ***Discriminatory advertisements under the DDO***

Some wordings in a recruitment advertisements, such as “excellent health”, or “五官端正”<sup>4</sup> and “體健”<sup>5</sup>, which are commonly found in Chinese advertisements, may imply that people who have an illness or a disfigurement would be refused employment. In other words, persons with certain illnesses or disfigurement, which are disabilities as defined under the DDO, who read such advertisements might feel they would be excluded because they cannot meet the requirements of the job being advertised. Such advertisements would therefore, on the face of it, be unlawful.

In order to avoid any unnecessary misunderstanding or uncertainties, it is recommended that words which describe particular physical attributes are avoided. Instead, the advertisement should set out the duties of the job which would require, or otherwise indicate the reasons for requiring, those attributes. For example, rather than specifying the requirements of “體健” for the position of “delivery worker”, it would be far better and precise to

say that the job involves lifting heavy materials manually.

#### ***Discriminatory advertisements under the FSDO***

The FSDO makes it unlawful to advertise a job for people without family status. Family status means having responsibility for the care of an immediate family member. Employers are advised not to include statements indicating that only people without family responsibilities can apply, as this may indicate an intention to discriminate on the ground of family status.

#### ***Discriminatory advertisements under the RDO***

According to the RDO, it is unlawful to publish an advertisement indicating that only people of a certain race would be employed unless the job is one for which race is a GOQ.

Employers should 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.

Moreover, employers should use different advertising channels, such as newspapers, Labour Department’s job centres, employment agencies, professional journals and specialist magazines or publications, to let people from all racial groups know the information. Where the ability to read and write in a particular language is necessary for the satisfactory performance of a job, advertisement may specify the language requirement and may be published in that language. As 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. 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 advised to provide their services in both Chinese and English where reasonably practicable.



### **Other considerations in a recruitment advertisement**

Employers are strongly advised not to request photographs and copies of ID cards at the application stage as this may indicate an intention to discriminate on the ground of sex, disability or race. It is, however, acceptable to ask ID card numbers from job applicants. Requests for photographs and copies of ID card can be made at the interview stage for identification purposes.

In addition, employers are advised to include statements such as "This post is equally open to persons with a disability" in a recruitment advertisement where absence of disability is not a GOQ for the job. Employers are also encouraged to 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.

### **Exceptions**

The law provides that publication of an advertisement which indicates, or might reasonably be understood as indicating, an intention to discriminate is not unlawful if, in fact, the intended act itself is not unlawful. For example, if being a man or a woman is a GOQ for the job in question, advertising for a person of a particular sex is not unlawful in such circumstances.

Furthermore, a publisher is not liable for the publication of a discriminatory advertisement if that publisher has relied on a statement from the advertiser to the effect that an exception applies and therefore the advertisement would not be unlawful. The publisher in such case must show not only that he or she relied on the statement from the advertiser before publishing the discriminatory advertisement, but that it was reasonable to rely on such statement.

### **Penalty**

The EOC may apply to the District Court for the imposition of a financial penalty on a person who has published or caused to be published a discriminatory advertisement. The penalty shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and shall not exceed

\$30,000 for the second or subsequent occasion on which a penalty is imposed.

Any advertiser who knowingly or recklessly makes a statement to a publisher to the effect that an exception applies and therefore publication of the advertisement would not, in fact, be unlawful, commits a criminal offence if that statement is false or misleading in a material respect. Liability upon conviction may lead to a fine being imposed.

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2 Please also read "The Use of Consistent Selection Criteria", "Pre-hiring and Post-hiring Procedures" and "Interviewing Procedures" in this publication.

3 Please also read "Sex as a Genuine Occupational Qualification", "Race as a Genuine Occupational Qualification" and "Absence of Disability as a Genuine Occupational Qualification" in this publication.

4 "五官端正" - This is a requirement commonly found in Chinese job advertisements which, in literal terms, refers to having five properly-formed facial organs. There is no exact equivalent term in English. Literal meaning aside, the term is often taken to imply a requirement of a face with no disfigurement and/or a 'nice' face although 'nice' is open to subjective interpretation.

5 "體健" - As with the term above, this is also commonly found in Chinese advertisements and, in literal terms, can be translated as either "健康" which means "healthy" or "good health", or "健碩" which means "strong" or "a strong physique". The interpretation of this term depends on the context in which the term is used. For example, if this requirement is found in an advertisement for a delivery worker whose main duty is to carry heavy objects, it can be taken to mean a strong physique.