

**Practical Guidelines
For Employers
On Eliminating Age Discrimination
in Employment**

**The Government of the Hong Kong
Special Administrative Region**

Practical Guidelines for Employers
On Eliminating Age Discrimination in Employment

Labour Department
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Practical Guidelines for Employers

On Eliminating Age Discrimination in Employment

1. Introduction

These Guidelines are issued by the Labour Department. They form part of a programme of public education, publicity and self-regulation⁽¹⁾. They represent the Government's commitment to the elimination of all forms of discrimination.

Although these Guidelines are not backed by legislation, they set forth the best practices, which employers and employment agencies are encouraged to follow on a voluntary basis to the best of their ability. It is also in the employers' interest to ensure equal opportunities in employment. In doing so, employers will -

- gain trust and respect from their employees; and
- have a larger pool of talents from which to select the most suitable staff to meet the manpower needs of the company.

What is meant by age discrimination in employment?

Age discrimination in employment occurs when an employee or prospective employee is subject to unfair or different treatment in respect of his or her employment on the ground of age. It may occur in the arrangements for recruitment, promotion, transfer or training, the access to terms and conditions of employment, voluntary departure or redundancy schemes, or retirement policies and the procedures for handling complaints and grievances. It does not refer to measures taken voluntarily – in the spirit of promoting equal opportunities – to help persons of different age groups overcome disadvantages. Examples of such measures include the provision of retaining courses or employment services to the aged to help them find a suitable job. Such measures are

⁽¹⁾ Self-regulation means that employers also have the responsibility to ensure fair treatment in all aspects of employment, irrespective of age unless the essential nature of the job calls for a person of a particular age or age group.

not discriminatory as vocational training and employment services are also provided to other age groups as well.

2. Eliminating age discrimination in employment

Consistent selection criteria

We believe that one way to help eliminate age discrimination in employment is for employers to develop, as far as possible, a set of consistent selection criteria so that these would provide clear guidelines for use by organisations in recruitment, training, promotion, transfer, redundancy and dismissal situations as well as terms and conditions of employment. In this way, each individual can be assessed according to his or her abilities to carry out a given job and will not be judged by irrelevant considerations.

The use of consistent selection criteria will facilitate good management practice as it will help organisations to :

- (i) make faster decisions because the criteria are clear and are not hampered by irrelevant considerations;
- (ii) make better decisions as the criteria relate directly to work performance; and
- (ii) form the basis for effective job evaluation.

Unless age is a genuine job or occupational requirement, the consistent selection criteria should not make reference to age. They should cover topics that are justifiable as genuine job or occupational requirements for that particular job. Examples of such requirements include :

- the type of experience that may be required, e.g. clerical or merchandising experience;
- the amount of experience that may be required, e.g. two to four

years' experience;

- any educational qualifications that may be required, e.g. a first degree or a diploma;
- any specific managerial or technical skills that may be required, e.g. the ability to speak Putonghua or familiarity with Information Technology;
- any special requirements of the job, e.g. to travel abroad for a number of days each month, to work at heights or to possess physical strength to carry a 20kg box or hand-eye coordination to handle very small pieces of machinery (most of which could be ascertained through a clearly stated criterion or through tests).

Exceptions where age may be a genuine job or occupational requirement

The Government opposes discrimination of any kind and considers that there are not many cases where age is a genuine job or occupational requirement. An example where age might constitute a genuine job or occupational requirement is the need to recruit an actor of a particular age group to provide authenticity in a dramatic performance or as an artist's model.

Other examples include jobs where age requirement is imposed in legislation (e.g. under the Dutiable Commodities Ordinance (Liquor) Regulations, persons below a certain age are forbidden to work in licensed premises selling intoxicating liquor), or notices published in the Gazette (e.g. under the Security and Guarding Services Ordinance, both minimum and maximum age limits are set for persons performing security work). (Note : The above examples are not exhaustive.) Employers are responsible for checking whether there are any age requirements for the work to be performed and should contact the relevant authorities in case of doubt.

3. Recruitment

We encourage employers to make recruitment decisions on the basis of consistent selection criteria. In addition, training should be provided to the staff handling applications and conducting interviews to ensure fair treatment to applicants of different age groups such as by avoiding questions which could lead to discrimination on the ground of age.

Terms and conditions of employment, benefits, facilities and services

The Government is committed to the principle of equal pay for equal work and encourages all employers to share that commitment. This principle does not mean that all employees should be paid the same wage or salary regardless of their performance or productivity. Rather, it means that, in principle, all employees are entitled to access to the terms and conditions of employment, and access to benefits⁽²⁾, facilities or other services commensurate with their rank, duties, seniority, experience and any other special circumstances, irrespective their age.

Advertising

We recommend that, unless age is a genuine job or occupational requirement, employers should :

- (i) advertise for jobs based on consistent selection criteria, and in neutral terms, so as to encourage applications from suitable candidates of all ages, and to ensure that no one age group will be treated more favourably than another. Requests for photographs should not be made until the interview stage, as otherwise this may give the impression of discrimination on the ground of age. Consideration could also be given to reviewing the need for the item “Date of birth” on an application form;
- (ii) avoid specifying an age range or an upper or lower age limit when placing advertisements for employment;

⁽²⁾ “Benefits” include fringe benefits, commissions bonuses, allowances, pensions, health insurance plans, annual leave, merit or performance pay, or any other benefits available to employees generally.

- (iii) where vacancies are to be filled by promotion or transfer and where applications are invited from the employees, publish the information to all eligible employees so that there is not restriction on applications from different age groups.

Employment agencies and services

Unless age is a genuine job or occupational requirement, we recommend that employers using such services should specify that the vacancies are open to suitable qualified persons of any age, thus helping to send out a clear message that applicants of all ages are welcome. Employment agencies and other providers of employment services are also encouraged to follow this and other principles and good practices recommended in these Guidelines.

Shortlisting

We encourage employers to use the consistent selection criteria as the basis for shortlisting of applicants, and avoid making any generalisations or assumptions about the abilities of persons in a particular age group which may not be true of the individual.

Interviewing

We encourage employers to :

- (i) ensure that personnel staff, line manager and all other employees who may be involved in staff recruitment receive training in non-discriminatory practices;
- (ii) only ask questions at job interviews that either relate directly to the genuine requirements of the job or facilitate a better understanding of the applicant's personality and aptitude;
- (iii) immediately after the interview, record the assessment they have made of the applicants' ability to meet the selection criteria. This will help to ensure a fair and balanced

assessment of the applicants' strengths and weaknesses. The record should also show the reasons for appointment or rejection. These steps should help to counter any possible allegations of discrimination in the future; and

- (iv) keep records of interviews for a reasonable period of time to show the reason for offering or not offering employment to a particular applicant, after which such records should be destroyed.

Selection tests

If selection tests are used, they should be carefully designed and relate specifically to the job or occupational requirements. The tests should be reviewed regularly to ensure that they remain relevant and free of bias. Age should have no place in such tests, unless it is a genuine job or occupational requirement.

4. Eliminating Age Discrimination in Workplace

Appraisal, promotion, transfer and training

All employees are entitled to opportunities for promotion, posting, or training in accordance with their ability, experience and seniority. Age should not be a relevant consideration, unless it is a genuine job or occupational requirement. We recommend that employers should :

- (i) examine the assessment criteria where an appraisal system exists to ensure that employees are promoted on merit and that the criteria adopted are not discriminatory. It is a good practice to establish measurable standards for evaluating job performance;
- (ii) organise selection for promotion along the same lines as those recommended for recruitment in Chapter 3 above. This would entail detailed assessment of all candidates' abilities and

qualities against objective and consistent criteria. The aim is to ensure the selection of the individual whose profile best fits the job requirements;

- (iii) where opportunities for promotion, training or transfer arise, inform all eligible employees of the conditions and procedures for application;
- (iv) where promotion is by nomination, ensure that all suitable candidates are considered and that nobody with potential is overlooked;
- (v) keep records of notes taken in the course of considering candidates for promotions, transfers and training. It is a good practice to retain these records for a reasonable period of time before destroying them;
- (vi) review rules that restrict or preclude transfer between certain jobs and change them if they are found to be discriminatory; and
- (vii) examine policies and practices on selection for training and other opportunities for personal development with a view to ensuring that they do not entail discrimination.

Dismissal, redundancies and unfair treatment

No employee should be dismissed on the ground of age. In the case of redundancy, either on a voluntary or compulsory basis, the decision should be made on the basis of fair, non-punitive and non-discriminatory criteria such as length of service, nature of work, job skills etc. Employers are also encouraged to provide employees of different age groups with equal access to voluntary departure or redundancy schemes, if any.

Employers are encouraged to review their redundancy and dismissal procedures from time to time to ensure that such procedures are not discriminatory.

As a matter of principle, employers should not discipline or dismiss employees of a particular age group for performance of behaviour which would be overlooked or condoned for those of a different age group.

Retirement

A compulsory retirement policy can be justified as being reasonable and rational since it facilitates the provision of employment opportunities for younger members of the workforce; provides a basis on which to provide for pensions and other retirement benefits; and allows for career planning, staff development and succession planning. Even so, we recommend that from time to time employers should review their policy on retirement. In particular they should consider :

- (i) whether there should be a “normal” and/or a “mandatory” age of retirement;
- (ii) whether the set retirement age is appropriate; and
- (iii) how the retirement age was set, and whether this was based on any reasonable and rational grounds that a person above a particular age is unable to carry out the inherent requirements of the particular employment.

The existence of a compulsory retirement policy should not in itself stop an employer from considering job application from their serving staff members who are close to retirement age but wish to continue to work after that age. Such applications should be considered on their own merits, having regard to the retirement policy and the principle that age should not be a discriminatory factor.

Grievance and related procedures

All employees have the right to work in an environment that is free from discrimination, vilification or harassment. Where an employee feels that this right has been contravened, he or she should be able to lodge a complaint without fear of reprisal, and in the expectation that:

- (i) it will be handled according to a set of clearly laid down procedures; and
- (ii) the complaint will be handled in the same way, regardless of the position of the complainant or the alleged perpetrator.

We encourage employers to establish internal grievance procedures to deal with complaints of discrimination on the ground of age. These procedures should be explained to staff who should be encouraged to use them where necessary and should be reviewed on a regular basis to ensure that they are relevant. Employers and employees together are also encouraged to draw up procedures for redressing grievances, which should allow for discussion or conciliation between the parties concerned as well as the intervention of a neutral third party.

Equal employment opportunities policy

The employer has the prime responsibility for eliminating discrimination in the workplace, and for encouraging equal employment opportunities.

We encourage employers to make a commitment to providing employment opportunities on the basis of ability. We also encourage organisations to issue a clear policy statement that discrimination in employment will not be permitted under any circumstances. To make this message clear, we encourage organisations to assign this responsibility to a senior member of the management.

To ensure that the policy is effective, we encourage employers to:

- (i) state the policy clearly;
- (ii) involve employees in its development and review;
- (iii) make the policy known to all employees and to all job applicants. Where the policy statement is detailed and/or lengthy, it would be a good practice to tell applicants, in advertisements and invitations to interview, at least the main points/gist of the company's equal opportunities policy;
- (iv) provide training to all employees who may be involved in human resources matters;
- (v) make all new recruits aware of the equal opportunities policy; and
- (vi) take all reasonably practicable steps to ensure that a standard of conduct or behaviour is observed to prevent persons from being discriminated, harassed or unfavourably treated in the workplace.

The employees' role

Employees also have a clear role to play in helping to create a climate in the workplace where discrimination is unacceptable. We believe employees can:

- (i) help eliminate discrimination by becoming familiar with the subject so that they do not inadvertently discriminate against someone or help their employers to do so;
- (ii) encourage their employers to formulate anti-discrimination policies and implement preventive measures; and
- (iii) be supportive of fellow workers who have lodged – or who intend to lodge – a complaint against alleged age discrimination

in employment.

Monitoring the policy

Regardless of whether an informal or formal procedure for handling complaints is used, it is always a good practice for employers to monitor and review complaints of age discrimination and how they have been resolved, in order to identify and possible discriminatory practices that might result from existing company policies, and to ensure that the complaint handling procedures are working effectively.

5. Examples of Best Practices

The above guidelines can be illustrated in three examples of best practices for the easy reference of employers and employees:

(i) Recruitment Advertisement

An employer was looking for a cleaner for his trading company. He placed a job advertisement in newspapers with requirements of “primary education, strong sense of responsibility and one year’s relevant experience”. The advertisement only specified genuine job requirements for a cleaner, including education level, ability and experience, while age was not a selection criterion for the company to offer employment;

(ii) Interviewing and Shortlisting

An accounting firm planned to expand its business and intended to hire a number of accountants and office assistants. The selection process was based solely on job-related criteria, with a view to assessing interviewees’ ability and experience. Therefore, in the job application form, the item “Date of Birth” was not included. Likewise, during the interviewing process, no question concerning the interviewees’ age was raised;

(iii) Appraisal and Promotion

The dean of a tertiary education institution was considering promoting one of the senior lecturers to assistant professor. In the appraisal and promotion system of the institution, age would not be factor for consideration. To ensure that the best candidate would be selected, the dean took into account all potential candidates' teaching performance, academic research abilities and seniority. At the end, the senior lecturer with the best performance was promoted.

6. Enquiries

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