Dealing with diversity
Global workplace discrimination law and practice
Introduction

Receiving complaints of discrimination, harassment or victimisation can be especially worrying and stressful for employers. In addition to the obvious risk of possible financial exposure, employers must consider the consequences for management time, staff morale and their wider reputation. Navigating all these issues is always tricky, but even more so where an employer’s organisation spans a variety of countries with different working cultures and different discrimination laws. Further, multi-national employers are coming under growing pressure to comply with international and European, as well as national, labour standards laid down by bodies such as the International Labour Organisation (the “ILO”).
In an increasingly globalised world, senior management, legal and HR professionals need access to high level information about international employment discrimination laws that will help them to identify, at a glance, areas of legal and commercial risk. For instance, which countries offer workers the strongest protection against discrimination? Which impose the harshest sanctions on non-compliant businesses? And where do specific cultural sensitivities arise?

This Eversheds guide to global workplace discrimination:
– summarises employment discrimination law in 12 key jurisdictions;
– covers a wide spread of countries spanning Africa, North America, Europe and Asia;
– adopts a risk based approach, providing a snapshot risk rating of each jurisdiction and highlighting ‘red flag’ points to note;
– sets out the types of penalties that non-compliant employers might face; and
– indicates where a jurisdiction has not ratified the ILO’s Discrimination (Employment and Occupation) Convention (ratification is assumed unless otherwise stated) and offers insights into the ILO’s overall assessment of each country’s employment discrimination regime.

The guide has been prepared by Eversheds’ international employment and labour law team, who have a proven track record in dealing with global and cross-border employee issues for large multi-national employers. The team numbers more than 220 employment lawyers and spans 55 offices in 28 jurisdictions across Europe, the Middle East, Asia and Africa. This specialist local knowledge is underpinned by close working relationships and knowledge sharing across regions, ensuring that clients benefit from lawyers who are committed locally but connected globally to provide a seamless integrated global service.

The team thanks the following firms for their assistance in preparing the guide: Stikeman Elliott LLP, LO Baptista SVMFA, Monastyrsky, Zyuba, Stepanov & Partners and Trilegal.

If you have any questions, or need specific advice, please do not hesitate to contact the lawyers listed below or your local Eversheds contact. Please note that this guide is a summary only and should not be regarded as a substitute for taking legal advice.

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Brazil

Brazil has a complex range of discrimination laws covering the workplace. Individual claims are becoming more common and class actions may also be made; both are typically difficult to defend successfully reflecting employee-friendly labour courts. Where a dismissal is found to be discriminatory by the labour courts, reinstatement is not unusual and compensation can be expensive where it involves a termination without cause (similar to an unfair dismissal), as the employer is required to make a severance payment representing a proportion of the employee’s Severance Fund (employers pay 8% of monthly pay into employees’ Funds during employment). There is also the risk of compensation being awarded for ‘moral damages’ (non-economic loss such as humiliation, distress, mental suffering) and criminal sanctions, including imprisonment for up to five years for race discrimination.
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Compliance with ILO Discrimination Convention 111
The ILO has recognised Brazil’s efforts over recent decades to combat discrimination and address inequalities. However, the ILO continues to highlight the fact that no specific action has been taken to outlaw discrimination in employment on the basis of political opinion. In addition, it is maintaining pressure on the government to ensure that women and persons of African descent benefit from equality of opportunity, given historical and cultural behaviours which result in both having a lower representation in the workplace.

Red flags: specific discrimination risks highlighted
1. Racism is treated as a serious criminal offence. It is also a criminal offence for employers to require female employees/applicants to verify non-pregnancy.
2. Sexual orientation discrimination is not expressly outlawed and pressure is rising for such a law to be introduced.
3. Two-thirds of all employees in any company having three or more employees must be Brazilian citizens, two-thirds of the payroll must be paid to Brazilian citizens. There are rules providing for foreign employees to be laid-off before Brazilians.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>All types of workers, from recruitment until termination of employment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Colour (including race, national and ethnic origin), gender (including pregnancy and sterilisation), religion, disability, age, marital status and social condition.</td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>Direct, indirect and positive discrimination. Unequal treatment in relation to pay.</td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Compensation for pain and suffering and, where the employee has been dismissed, lost wages and a severance payment. Reinstatement may be an additional remedy, depending on the nature of the discrimination.</td>
</tr>
</tbody>
</table>
Canada

Canadian comprehensive discrimination laws (locally called ‘human rights law’) differ depending on whether the employer must comply with federal or provincial/territorial law. However, provincial and federal laws share many similarities and are based on the same core principles. The majority of employers are governed by provincial laws.

Employee complaints are raised with provincial or federal human rights commissions or tribunals, with alternative dispute resolution (ADR) typically successful and a minority of claims proceeding through the tribunals and courts, with any financial awards typically quite low (although some are significant sums).
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Red flags: specific discrimination risks highlighted

1. Federal and provincial laws protect workers on various, slightly different, specific grounds. For example, some protect workers from discrimination on additional grounds, such as language, political belief or social status. Local advice is needed.

2. Mandatory retirement is generally viewed as a form of age-related discrimination unless the employer can show a justifiable occupational requirement why an employee must retire at a certain age.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Job applicants, employees, former employees as a minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, a conviction for which a pardon has been granted or a record suspended. This list is not exhaustive – check local legislation as it differs across Canada.</td>
</tr>
</tbody>
</table>
| What type of discriminatory treatment is unlawful? | Based on one or more of the above protected characteristics:  
- Failing to hire a job applicant and terminating employment.  
- Failing to reasonably accommodate job applicants and employees.  
- Unfair treatment of an applicant or employee.  
- Following policies/practices that deprive people of employment or advancement opportunities or adversely affect employees that possess a protected characteristic.  
- Retaliating against an employee who has filed a complaint.  
- Harassment. |
| Employer penalties for unlawful discrimination? | Depending on the jurisdiction, complaints may be taken to the local human rights commission or to a tribunal. A tribunal may order corrective measures including payment for lost wages, severance pay, compensation for emotional injury, implementation of policies, reinstatement, training. |

Compliance with ILO Discrimination Convention 111

The ILO is urging the Canadian government to amend federal and provincial legislation to extend discrimination protection to include the protected grounds of political opinion and social origin, given that these grounds are absent from federal and some provincial legislation. Particular attention has recently been focused on whether discrimination protection is failing Canada’s indigenous people.
China

In summary, Chinese employment discrimination laws have improved, however, they do not meet ILO standards and there is evidence that some entrenched, cultural discriminatory practices remain.

China has not yet implemented a comprehensive framework of discrimination laws, instead relying on a patchwork of law. Over the last decade, it has introduced new protections and dismantled some old discriminatory laws, such as those disadvantaging rural workers, reflecting a renewed push to combat discrimination after it ratified the ILO Discrimination Convention (111) in 2006.
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Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Job applicants, some workers.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Race, ethnicity, gender, religion, migrant status, disability, carriers of infectious diseases (e.g. people with hepatitis B or HIV).</td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>No discrimination in recruitment on the grounds of race, ethnicity, gender, religion, migrant status, disability or infectious disease (some exceptions apply with the latter and women are excluded from some jobs which are deemed not suitable by the State). No discrimination during employment against women and the disabled. Employers must prevent and prohibit sexual harassment against female workers.</td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Small fines may apply. Claims for damages may be made under tort law.</td>
</tr>
</tbody>
</table>

Red flags: specific discrimination risks highlighted

1. Companies must hire disabled employees as directed by local regulations (approx. 1.5% of total headcount) or pay into a disabled fund (e.g. 1.6% of average payroll for the previous year).

2. The retirement age for employees is 60 for men, 50 for women (or 55 for those holding a management position or working for the public sector). It can impact on cultural expectations and the treatment of older workers and women.

3. Fines have been introduced for employers illegally testing job applicants for hepatitis B (a common recruitment practice in China).

Compliance with ILO Discrimination Convention 111

The ILO has identified the following potential areas of non-compliance: China has not expressly outlawed discrimination on the grounds of colour, national extraction, social origin or political opinion; that it has not included a definition of discrimination in law with the risk that both direct and indirect discrimination are not covered; that the differences in retirement age between men and women may be discriminatory; that pregnancy and maternity discrimination is not sufficiently addressed; that the supervision and enforcement of non-discrimination provisions may be inadequate. In addition, China does not outlaw age or sexual orientation discrimination (both grounds are covered by additional ILO instruments, not the Convention).
The EU includes 28 member states and covers most of Europe. As part of its drive to harmonise core workplace standards across the continent, the EU requires member states to introduce extensive discrimination laws.

While this harmonisation is beginning to create a level playing field for discrimination law, employers need to watch for local variations across the 28 countries. In particular, member states are free to develop national legislation that goes further than EU requirements and many have done so. Penalties for breaching discrimination laws and the risk of litigation also differ across the EU, with some countries such as Austria, Czech Republic, Netherlands and Germany experiencing low levels of litigation, while others such as France and the UK presenting a higher risk in terms of potential penalties or the likelihood of a claim.

Finally, EU states are not homogeneous in their acceptance of diversity. Cultural differences should be anticipated.

N.B. This summary provides an overview of EU discrimination law and examples of some national differences. However, it is not intended to be a comprehensive summary of the laws in all 28 states.
Red flags: specific discrimination risks highlighted

1. There is strong protection against pregnancy and maternity discrimination. In contrast, there is greater scope to justify age discrimination.

2. The burden of proof is reversed: the employer must prove it has not discriminated, once the worker shows facts from which discrimination can be presumed.

3. Many EU countries prohibit discrimination on grounds broader than the EU minimum, eg political opinion is common. A minority have open-ended grounds providing for greater protection, eg on ‘other status’ grounds.

4. Disability quotas which vary according to company size exist, eg Germany, Italy.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Job applicants, employees, former employees as a minimum.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Gender including pregnancy, maternity and gender reassignment, race or ethnic origin, religion or belief, age, disability and sexual orientation. Member states typically go further and have broader grounds (see ‘Red flags’, above).</td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>Direct, indirect discrimination, harassment and victimisation (retaliation); although limited exceptions apply (eg where treatment can be justified).* Direct and indirect discrimination on grounds of sex with regard to pay for equal work or for work to which equal value is attributed.* With disability discrimination, an employer is under a reasonable accommodation duty (to take reasonable measures to provide access etc.).*</td>
</tr>
<tr>
<td>*Some countries outlaw such treatment more widely eg France protects against general harassment, victimisation and unequal pay.</td>
<td></td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Penalties vary across member states and typically include payment of compensation linked to the financial loss suffered and to mental distress. In some countries discriminatory acts, such as a dismissal, may be declared void and reinstatement may be ordered (eg France, Spain, Netherlands). Criminal sanctions including fines and, occasionally, imprisonment may also apply (eg France, Spain, Netherlands).</td>
</tr>
</tbody>
</table>

Compliance with ILO Discrimination Convention 111

All EU member states have ratified the Convention and, reflecting comprehensive EU laws already in place, ILO scrutiny tends towards assessing progress and encouraging best practice.
There are four discrimination ordinances, prohibiting race, sex (including pregnancy and marital status), disability and family status discrimination. Litigation in HK is relatively uncommon and the number of claims for discrimination are comparatively low with approximately 700-800 complaints to the HK Equal Opportunity Commission (EOC) annually – the majority based upon alleged sex and disability discrimination. The EOC has a wide remit and can investigate employers, initiate proceedings and assist in conciliation/settlement. The EOC does not adjudicate and cannot impose penalties of itself.
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Red flags: specific discrimination risks highlighted

1. Key characteristics such as sexual orientation, religion and belief, and age are unprotected under HK discrimination law. Normal retirement ages remain common.

2. Change may be on its way further to the EOC conducting a 2014 consultation into the adequacy of HK discrimination law.

3. There are EOC Codes of Practice (COP). Whilst non-binding, following the COPs may be a defence to vicarious liability.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Job applicants, some workers.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Sex, marital status, pregnancy and maternity. Race, colour, descent, ethnic/national origin (but not nationality). Disability. Family status.</td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>Direct, indirect, harassment, victimisation (retaliation). Vilification (incitement of hatred) in respect of disability and race only, and if serious can amount to a criminal offence. Limited exceptions apply (eg where treatment can be justified). Equal Pay – no specific framework but EOC guidance confirms this is within the scope of sex discrimination. With disability discrimination, there is no positive requirement on employers to make “reasonable adjustments”, although employers must make reasonable accommodations if they wish to rely upon statutory defences.</td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>The EOC can issue enforcement notices and assist claimants with claims. A court can make a declaration of discrimination, order re-engagement and order compensation. Awards for injury to feelings can be up to HK$360,000 (based upon case law) but typically are much less. The court has held that the minimum amount of compensation in a pregnancy case should be HK$50,000. An apology may be ordered (this is rare). Although intent is irrelevant in considering whether indirect discrimination has occurred, it will be taken into account in the assessment of damages (except in respect of disability).</td>
</tr>
</tbody>
</table>

Compliance with ILO Discrimination Convention 111

ILO Convention 111 does not apply to HK, despite the fact that China itself ratified 111 in 2006. As explained above, discrimination protection does exist in HK, however, human rights groups criticise the lack of legal protection on age and sexual orientation grounds in particular, and the slow progress in achieving gender equality, for example, in senior positions.
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India

Discrimination protection derives from the Indian Constitution and diverse legislation – there is no umbrella legislation for discrimination in employment. Protection is strongest for state employees. Discrimination claims against private employers are not very common, but courts may adopt an employee-friendly stance.

Courts may award damages for unlawful discrimination based on actual loss suffered. Under certain legislation, the authorities can also impose fines of up to INR 20,000. Employees with management responsibility may in some circumstances face imprisonment for up to two years.

Employers must guard against sex discrimination in particular, as well as implementing policies and providing training on sexual harassment in the workplace. Discrimination claims are not common in the private sector, but new sexual harassment legislation (introduced in December 2013) is yet to be tested and may result in fines of up to INR 100,000. Recent media coverage of sexual harassment cases and good employee awareness of the new law make increased scrutiny of employer practices and compliance likely.
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Red flags: specific discrimination risks highlighted

1. All employers must by law set up an Internal Complaints Committee to redress complaints of sexual harassment at the workplace and spread awareness.

2. Female employees are protected from sex discrimination in recruitment and in relation to terms of service (eg promotion, training, job mobility). All employees are protected from sex discrimination in respect of remuneration.

3. Female employees cannot be dismissed during maternity leave.

4. Certain classes of company must have at least one female director on the board.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Female applicants: sex discrimination in recruitment.</th>
<th>Female employees: sexual harassment at work.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All employees: discrimination on grounds of sex or untouchability.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Applicants for/holders of state/government jobs: discrimination on the basis of religion, race, caste, sex, place of birth or residence.</td>
<td></td>
</tr>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Under the Constitution: religion, race, caste, sex, place of birth, descent. Constitutional rights are only enforceable against the state.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Under separate legislation: sex (all employees), pregnancy and maternity (all employees), disability (state employees only), caste &amp; tribal origin (all employees).</td>
<td></td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>Direct discrimination, sexual harassment, indirect discrimination, dismissal on the ground of victimisation.</td>
<td></td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Penalties range from monetary fines to imprisonment. Courts may award damages based on actual loss suffered.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New sexual harassment legislation: repeat offences could result in revocation of operating licences. Fines of up to INR 100,000.</td>
<td></td>
</tr>
</tbody>
</table>

Compliance with ILO Discrimination Convention 111

The ILO has welcomed the new sexual harassment legislation, but has queried the extent of its protection and has requested the review of certain provisions. Other areas of focus include workforce participation of women, women’s access to training (currently limited by assumptions about jobs suitable for women) and caste discrimination, with continuing measures required to end discrimination in this area.
Employment discrimination in Russia is prohibited by the Labour Code and the Constitution of the Russian Federation. Employees are entitled to equal opportunities in their employment rights and may report employers to the Federal Labour Inspectorate or go to court if those rights are breached. They may also claim financial compensation from the courts, although court decisions in this area are comparatively scarce.

Discrimination is prohibited on a wide range of grounds and there are additional protections for certain groups whom the State considers need extra support in employment (eg quotas for employment of disabled persons). It is also unlawful to dismiss parents of young or disabled children in certain circumstances – improperly terminated employees may be entitled to reinstatement.

There are no federal anti-harassment laws but, under the Labour Code, employees are guaranteed the protection of their dignity by their employer while in employment.
Red flags: specific discrimination risks highlighted

1. Special protection against certain types of dismissal for various categories of employees, including pregnant women and parents/other carers of children, especially where the child is disabled.

2. Quotas for employment of disabled persons – these vary from state to state and depend on the size of the workforce.

3. No cap on financial compensation awarded by the courts. Unpaid salaries/bonuses/other payments are usually awarded in full, with applicable interest. However, compensation for moral damages is low (usually up to RUR 10,000).

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Employees and, in some cases, job applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Sex, age, disability/health, race, colour, nationality, ethnic origin, language, religion or belief, political affiliations, social/occupational position, place of residence, pregnancy and maternity and, generally, participation or non-participation of an individual in a certain social group.</td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>Direct discrimination. Violation of dignity. There will be no discrimination if different/specific treatment is due to job-specific requirements permitted by federal law.</td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Financial compensation and compensation for injury to feelings. Compensation is uncapped but tends to be low. Discriminatory dismissals could result in reinstatement, on the basis of a court’s decision.</td>
</tr>
</tbody>
</table>

Compliance with ILO Discrimination Convention 111

Russia’s Labour Code provides for the equal rights of everyone in connection with employment. However, the ILO estimates a comparatively low level of female participation in the Russian labour market. It has also highlighted occupational gender segregation, with women being prevented from accessing professions perceived as high risk or dangerous (with a specific list of hazardous occupations being enshrined in law). Aside from gender issues, the ILO is monitoring the promotion of tolerance between different ethnic groups.
Under the Singapore Constitution, all people are equal before the law and are entitled to equal protection under the law. However, there are no specific workplace anti-discrimination laws in Singapore, with the exception of forced retirement (dismissal on the grounds of age) which is unlawful below the age of 62. Instead, the government prefers to encourage employers to adopt best practice, through education and tripartite cooperation between employers, trade unions and the state. As such, workers have limited legal recourse in the event of alleged discrimination at work.
Red flags: specific discrimination risks highlighted

1. A 2014 Supreme Court ruling upheld Singapore’s ban on same-sex relations between adult men. Employers should be aware that, while the country’s attitude to gay men has softened over recent years, it retains its conservative values which inevitably may influence workplace behaviour.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Age – forced retirement before the age of 62.</td>
</tr>
</tbody>
</table>

| What type of discriminatory treatment is unlawful? | Any dismissal of an employee below the statutory retirement age (currently 62) on the ground of age is prohibited. NB. Voluntary tripartite guidelines state that equality of opportunity should apply in recruitment regardless of age, race, gender, religion, marital status, criminal record and disability. Harassment, victimisation and failure to make reasonable adjustments may also be forms of discrimination under the guidelines. |

| Employer penalties for unlawful discrimination? | Employees below the age of 62 claiming unlawful dismissal on the grounds of age may be awarded reinstatement or compensation. Non-compliance may result in a fine not exceeding S$10,000, imprisonment (not applicable for offences by corporate bodies) or both. NB. Although voluntary, the government has taken action against companies breaching the tripartite guidelines by placing discriminatory job advertisements specifying a particular race, nationality or citizenship. The companies were required to publish online public apologies for 30 days and were barred from hiring new foreign workers for up to six months. |

Compliance with ILO Discrimination Convention 111

Singapore has not ratified the ILO Discrimination Convention 111 and has no plans to do so in the short term. It is resisting the UN’s preference that it adopts specific anti-discrimination legislation to strengthen the current strategy of encouraging fair employment practices.
South Africa

The South African Constitution enshrines the fundamental right to equality and the Employment Equity Act No.55 of 1998 (EEA) gives it effect in the employment context. Discrimination is prohibited on a large number of recognised grounds as well as “any other arbitrary ground”.

Discrimination claims are common in practice and many more are anticipated following new “Equal Pay for Equal Work” provisions in the EEA. Courts may impose significant fines on employers ranging from R1.5 million (or, in some instances, 2% of the employer’s turnover for first offences) up to R2.7 million or, in some instances, 10% of the employer’s turnover.

Designated employers (50+ employees and/or a certain level of turnover) are required to take affirmative action measures to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented at all occupational levels in that employer’s workforce.

Snapshot risk rating:

- High risk
- Medium risk
- Low risk

High levels of anti-discrimination protection and high financial risk. Designated employers are required to implement affirmative action measures.
Red flags: specific discrimination risks highlighted

1. Designated employers are required to implement affirmative action measures to promote equal employment opportunities.

2. Recent changes to the law prohibit discrimination on "any other arbitrary ground", as well as on a large number of recognised grounds.

3. The “Equal Pay for Equal Work” provision may open the floodgates to claims.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Job applicants, workers, ex-workers.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Race; gender; sex; pregnancy; marital status; family responsibility; ethnic or social origin; colour; sexual orientation; age; disability; religion; HIV status; conscience; belief; political opinion; culture; language; birth (ie whether an individual is born within a marriage or not), and “any other arbitrary ground”.</td>
</tr>
<tr>
<td>N.B. Affirmative action for blacks, women and people with disabilities.</td>
<td></td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>Unfair discrimination; harassment.</td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Compensation, damages and fines. May be linked to employer’s annual turnover.</td>
</tr>
</tbody>
</table>

Compliance with ILO Discrimination Convention 111

The ILO recognises South Africa’s efforts to improve its equality legislation, but continues to focus on occupational segregation and equality of opportunity in respect of sex, disability and race. It has requested information about measures taken to combat these issues, including affirmative action measures. The ILO notes that women are under-represented in top and senior management positions and that black women particularly are more likely to be in unskilled occupations. The ILO is also urging the government to promote equality in employment regardless of race or colour.
In summary, Switzerland does not have comprehensive discrimination laws applying to private sector workplaces, except in the field of gender discrimination. In general, a dismissal is discriminatory if based on specific characteristics of the dismissed individual. Under gender discrimination law, there is a general duty to protect employees at work and specific protection from gender discrimination, including a right to equal pay for work of equal value between men and women. Penalties for breach of gender discrimination may include a maximum of six months’ salary and an order for re-employment (where the employee has been dismissed after a complaint of gender discrimination).

With the exception of gender discrimination, private sector workplaces are not covered by comprehensive discrimination laws. Compensation is capped but re-employment may be ordered in certain cases.
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Red flags: specific discrimination risks highlighted

1. In order to successfully defend sexual harassment claims, employers must prove that they took necessary and reasonable steps to prevent sexual harassment from happening (such as appropriate training and workplace policies).

2. Companies tendering for public contracts must guarantee equal pay for men and women for work of equal value and monitor compliance – those who do not meet such requirements are excluded from the tendering procedure.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Job applicants, employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>In the private sector there is specific protection against discrimination on the grounds of gender (which includes marital status, family situation, pregnancy, etc). There is also a general duty not to treat any employee arbitrarily, however, this protection is not limited by special grounds such as race or disability. Additionally, a dismissal due to a personal attribute of the employee (eg race or sexual orientation) is wrongful unless it relates to the employment relationship or substantially impairs the operation of the business (difficult to argue in practice for many discrimination grounds).</td>
</tr>
</tbody>
</table>

| What type of discriminatory treatment is unlawful? | Arbitrary treatment of employees. Direct and indirect sex discrimination and sexual harassment at work. Men and women are entitled to equal pay for work of equal value. |

| Employer penalties for unlawful discrimination? | Compensation of up to 6 months’ salary (plus potential claims for damages). There are additional remedies for gender discrimination including orders for re-employment (where employee has been dismissed after a complaint about gender discrimination). The burden of proof is on the employer. |

Compliance with ILO Discrimination Convention 111

A recent ILO review criticised Swiss private sector discrimination laws as being inadequate to ensure the effective protection of workers against discrimination on the specific grounds of race, colour, sex, religion, political opinion, national extraction and social origin. In addition, the ILO called on Switzerland to adopt a comprehensive definition of racial discrimination and to prohibit it in all areas of private and public life.
United Arab Emirates (UAE)

Currently, there are no specific anti-discrimination laws in force in the wider UAE. UAE nationals, however, are given priority in employment matters – the Ministry of Labour must be told about terminations of UAE nationals and dismissing them without due process may result in reinstatement. Generally, terminations for discriminatory reasons could be viewed as arbitrary dismissals, giving rise to claims for compensation.

Free zones within the UAE have their own laws and regulations, including anti-discrimination legislation in the Dubai International Financial Centre (DIFC) and the Abu Dhabi Media Free Zone Authority (ADMFZA). Historically, however, employees in the DIFC and ADMFZA have not filed many discrimination claims. In the DIFC, employer penalties for unlawful discrimination include significant fines and/or compensation. In ADMFZA, employers risk warnings, fines and also revocation or suspension of their trade licence.

New legislation in the Emirate of Sharjah provides for 90 days’ paid maternity leave for government female employees. It remains to be seen whether rights in this area will develop in other Emirates.

* Reports indicate that a new anti-discriminatory law was adopted in July 2015, but the primary legislation has not been formally published to date. The impact of this new law on UAE workplaces and employment relationships is, therefore, currently unclear and the information in this Guide is subject to change.
Dealing with diversity
Global workplace discrimination law and practice

Red flags: specific discrimination risks highlighted

1. A new anti-discriminatory law is due to be published shortly – likely impact unclear.
2. Positive discrimination – UAE nationals have priority in employment matters.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>UAE nationals are given priority in employment matters. DIFC: employees. ADMFZA: employees.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>None, but priority given to UAE nationals in employment matters. DIFC: sex, race, religion, nationality, disability, marital status. ADMFZA: gender, marital status, race, religion, disability.</td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>DIFC: based on one of the protected characteristics: less favourable treatment, unwanted conduct for the purpose of creating an intimidating, hostile, degrading, humiliating or offensive work place. Failure to make reasonable adjustments for disabled persons. ADMFZA: direct discrimination.</td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Compensation for arbitrary dismissals. Reinstatement of UAE nationals who are terminated without proper process. DIFC: compensation, fines, litigation costs. ADMFZA: no specific penalties but risk of warnings, fines and revocation of the employer’s trade licence.</td>
</tr>
</tbody>
</table>

Compliance with ILO Discrimination Convention 111

The ILO actively monitors discrimination against non-nationals, who make up a significant proportion of the population yet are proportionally under-represented in employment. Attention is on the working conditions of migrant workers and discrimination against them on grounds including race and nationality. The ILO is concerned by women’s low participation in the labour market, limited protections against sexual harassment and restrictions on women’s employment (including night work) arising from persistent gender stereotypes.
In summary, the flexibility afforded by at-will employment in the United States (US) is limited by robust anti-discrimination laws at both federal and state level and the threat of high financial penalties for violations. N.B. This summary is concerned with federal law only.

Most private sector federal discrimination claims must be filed with a government agency (EEOC). The EEOC investigates, offers mediation services to encourage settlement away from the courts and, ultimately, may decide to enforce the law by suing an employer. An employee may separately claim through the courts. Race, sex and disability claims are the most common complaints. Lawsuits challenging a policy or practice that affects multiple employees (representative, class or collective actions), are a concern as they may be on behalf of hundreds or even thousands of plaintiffs, with accompanying liability and legal fee exposure.
Dealing with diversity
Global workplace discrimination law and practice

Red flags: specific discrimination risks highlighted

1. Employers are explicitly prohibited from making pre-employment inquiries about a disability. An employer may make a job offer conditional on the applicant answering certain medical questions, but only if the same condition applies to all new employees in the same job.

2. Many US states prohibit discrimination based on wider grounds than federal law, including but not limited to: sexual orientation, marital or parental status, credit history and criminal arrest or conviction record.

Key points to know about local discrimination law

<table>
<thead>
<tr>
<th>Who is protected?</th>
<th>Job applicants, employees, former employees.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the protected characteristics (on what grounds is discrimination unlawful)?</td>
<td>Race, colour, religion, sex including pregnancy, national origin, disability or genetic information (applies to employers with 15+ employees). Age: age 40 or older (applies to employers with 20+ employees). Military service or affiliation and employees who have exercised other protected rights (eg taking protected leave).</td>
</tr>
<tr>
<td>What type of discriminatory treatment is unlawful?</td>
<td>Direct, indirect discrimination, harassment and retaliation (victimisation). An employer must reasonably accommodate an employee/job applicant’s disability or religious beliefs or practices. Men and women in the same workplace are entitled to equal pay for equal work.</td>
</tr>
<tr>
<td>Employer penalties for unlawful discrimination?</td>
<td>Penalties may include reinstatement, the payment of lost wages and costs (including paying the employee’s reasonable lawyers’ fees), non-economic damages (eg emotional harm) and punitive damages (max. $300,000 for some malicious or reckless acts).</td>
</tr>
</tbody>
</table>

Compliance with ILO Discrimination Convention 111

The US has not yet ratified ILO Discrimination Convention 111. However, given comprehensive federal and state discrimination laws, the gaps between US and ILO discrimination standards are not significant. Notable differences are: federal law does not prohibit discrimination on political opinion grounds, contrary to Convention 111 and, in relation to equal pay, federal law covers equal pay for substantially equal work, whereas the ILO standard is equal pay for work of equal value (which is wider).