



European Bank
for Reconstruction and Development

EBRD Performance Requirement 2: Labour and working conditions

Guidance note on non-discrimination and equal opportunity

March 2023

Disclaimer

This document contains references to good practices and should be interpreted bearing in mind the Environmental and Social Policy adopted by the EBRD; it is not a compliance document. It does not alter or amend EBRD policies and does not create any new or additional obligations for any person or entity. In case of any inconsistency or conflict between this document and the Environmental and Social Policy adopted by the EBRD as amended from time to time, such policy shall prevail. Questions of interpretation shall be addressed solely in respect of the Environmental and Social Policy.

The information and opinions within this document are for information purposes only. No representation, warranty or undertaking expressed or implied is made in respect of any information contained herein or the completeness, accuracy, or currency of the content herein. The EBRD does not assume responsibility or liability with respect to the use of or failure to use or reliance on any information, methods, processes, conclusions, or judgments contained herein, and expressly disclaims any responsibility or liability for any loss, cost, or other damages arising from or relating to the use of or reliance on this document. In making this document available, the EBRD is not suggesting or rendering legal or other professional services for any person or entity. Professional advice of qualified and experienced persons should be sought before acting (or refraining from acting) in accordance with the guidance herein.

This document does not constitute or imply a waiver, renunciation or other modification, either express or implied, of any of the privileges, immunities and exemptions granted to the EBRD under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Certain parts of this document may link to external internet sites and other external internet sites may link to this publication. The EBRD does not accept responsibility for any of the content on these external internet sites.

At-a-glance summary

All European Bank for Reconstruction and Development (EBRD) clients should ensure that:

- employment decisions, such as those on recruitment, dismissal and promotion, are not made (directly or indirectly) on the basis of personal characteristics such as gender, race and nationality or other characteristics that are unrelated to inherent job requirements
- there are policies in place that set out a clear commitment to equal opportunity and prohibit non-discrimination and harassment in the workplace
- policies are effectively communicated to all managers and staff and that managers are trained in how to apply the policies consistently.

This information is intended to assist EBRD clients in their capacity as employers. The EBRD wants to ensure that the working conditions in the projects that it finances comply with national labour laws, and health and safety regulations and international good practice in these areas. The EBRD's specific requirements are summarised in its Performance Requirement 2 (PR2) on labour and working conditions.

EBRD requirements on non-discrimination and equal opportunity (PR2.14)

PR2.14: "Projects will comply with relevant requirements on non-discrimination related to employment. In particular, with reference to the project, the client will:

- not make employment decisions on the basis of personal characteristics, such as gender, race, nationality, political opinion, affiliation to a union, ethnic, social or indigenous origin, religion or belief, marital or family status, disability, age, sexual orientation or gender identity, unrelated to inherent job requirements;
- base the employment relationship on the principle of equal opportunities and fair treatment, and will not discriminate with respect to all aspects of the employment relationship, including recruitment and hiring, job assignment, compensation (including wages and benefits), working conditions and terms of employment, including reasonable adaptation of the workplace related to disabilities, access to training, promotion, termination of employment or retirement, and discipline; and
- take measures to prevent and address any form of violence and harassment,* bullying, intimidation, and/or exploitation, including any form of gender-based violence (GBV).

The following measures will not be considered discrimination: special measures of protection or assistance to remedy past discriminatory actions; promotion of local employment opportunities; or selection for a particular job based on the inherent requirements of the job, which are in accordance with national law."

- * "Violence and harassment" should be understood as a continuum of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, having the aim of causing physical, psycho-social, or economic harm, including GBV. GBV is an umbrella term for any harmful acts perpetrated against a person's will and that is based on socially ascribed gender differences. GBV includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty.

1. Overview

Workplace discrimination is prohibited in all of the economies in which the EBRD invests,¹ in line with PR2.14 and International Labour Organization (ILO) Conventions. All economies where the EBRD invests have ratified the relevant ILO Conventions on non-discrimination ([C111](#)) and the right to equal remuneration for work of equal value ([C100](#)).

As well as being a breach of individual rights, employment discrimination is not good business practice. It prevents workers from making their fullest possible contribution to the workplace and impedes the creation of a harmonious, motivated and productive working environment. In broader terms, employment discrimination generates socioeconomic inequalities that undermine social cohesion and slow poverty reduction.

At a minimum, the EBRD requires that clients adopt clear and transparent policies that encourage workplace decision-making on the basis of personal merit rather than irrelevant personal characteristics.

“Equal pay for work of equal value”

PR2.7 requires all projects to comply with the fundamental principles and standards embodied in the ILO Core Conventions, including the principle of equal remuneration for work of equal value set out in ILO C100.

This means that men and women should receive equal remuneration, not only for carrying out the same work, but also for carrying out work that is of an entirely different nature but of equal value in terms of the effort, skill and decision-making required.

This principle of equality pertains to all elements of remuneration, including basic salary, as well as other payments and benefits.

1 With the exception of Kosovo and the West Bank and Gaza, which are not ILO members.

2. What is discrimination?

Discrimination involves treating people differently on the basis of a personal characteristic that is unrelated to their ability to do the job. Prohibited grounds under PR2 include gender, race, nationality, political opinion, affiliation to a union, ethnic, social or indigenous origin, religion or belief, marital or family status, disability, age, sexual orientation or gender identity. Non-discrimination measures should apply to all workers.

Discrimination may be direct or indirect and does not have to be intentional. Practices that appear neutral but result in the unequal treatment of people with certain characteristics are called indirect discrimination. For example, indirect discrimination may arise if part-time workers are targeted for retrenchment, as women are more likely to fall into this category than men. Discrimination may also include harassment and bullying.

Some exceptions to non-discrimination requirements

- Distinctions based on the inherent requirements of a particular job or task are permissible, although this exception should be applied narrowly. For instance, an employer may not be able to hire a worker with a disability if this would cause a real risk to the health or safety to the worker (or others) and it is not reasonably possible for the employer to make an adjustment to the workplace to enable the worker to perform the job safely.
- Measures to address specific needs of certain workers may be permissible under international law (such as maternity protection for women) or under national laws designed to meet the needs of people who are generally recognised as requiring special protection or assistance (for example, the preferential hiring of women to remedy the effects of past discrimination).
- In a number of the economies where the EBRD invests, there is legislation that prohibits women from doing certain types of work (such as heavy lifting, hazardous or night work). In several countries, these restrictions take the form of long lists of jobs in various sectors from which women are legally barred. However, clients should not use this as a reason to impose other “protective” measures on women that limit their opportunities when it comes to jobs and professional development.

3. When can workplace discrimination arise?

Recruitment, job assignment, training, promotion and termination	<ul style="list-style-type: none"> Discriminatory reasons should not be a factor in hiring, job assignment, training, promotion, training and termination decisions, including redundancy. Job announcements, application forms or interviews should not refer to an applicant's gender, marital status, age, race, disability or other personal characteristic that is irrelevant to the job. For example, women should never be asked if they are married or have children (or are planning to) during the recruitment process. Women should only be asked if they are pregnant if there is a genuine health and safety risk involved (such as exposure to hazardous chemicals). The procedure and criteria applied during retrenchment phases should be objective and transparent and should not disadvantage one group over another.
Wages and conditions of work	<ul style="list-style-type: none"> Workers should be treated equally in relation to working conditions (for example, working hours, security of tenure, leave, safety and health measures, social security and other benefits) and pay (including additional payments, such as overtime, bonuses, allowances and in-kind benefits). Men and women must receive equal pay for work of equal value. This means that rates of remuneration (including the basic wage and any additional cash or non-cash benefits) must be established without any discrimination based on gender.
Health assessments	<ul style="list-style-type: none"> Job applicants or workers should not be asked about or required to undertake health or pregnancy tests except where there is a genuine health and safety need that is closely linked to the requirements of the job. Job applicants or workers should not be asked directly or indirectly about their HIV/AIDS status. Where there is a clear need to collect health information, safeguards should be put in place to ensure that workers' rights to privacy and data protection are respected (in line with PR2.10).
Workplace adaptation	<ul style="list-style-type: none"> Employers should make necessary adaptations to the workplace to accommodate the needs of disabled workers and take steps to enable workers with disabilities to retain their work, <i>unless this imposes a disproportionate burden on the employer</i>. In particular, where new facilities are planned, the needs of disabled workers – including access and basic facilities – should be anticipated and accommodated. Specific and additional requirements in relation to workplace adaptation for disabled workers may be contained in national law. Reasonable accommodation may be required for pregnant women, although this should not act as a disadvantage. Pregnant women should not be involved in activities that generate substantial health risks to them or their babies. However, pregnancy should not be used as a reason to discriminate against women or to limit their professional development opportunities.

4. Recruitment: how to find the best person for the job

Avoiding discrimination in recruitment is not just about meeting legal requirements, but about making sure that the best person is recruited for the job.

The EBRD does not insist that clients should employ particular individuals or individuals from a defined ethnic group. Rather, the client must have recruiting procedures that are objective and seek to recruit the best person for the job on the basis of personal merit rather than arbitrary personal criteria.

To assure the EBRD that there is no risk of discrimination occurring in a recruitment exercise, clients should put in place and implement procedures on how recruitment will be carried out, ensuring that:

- there is a clear job description for every job
- where possible, jobs are advertised publicly and to as wide a group as possible
- job advertisements or application forms do not refer to discriminatory requirements, such as age, gender, race or ethnic origin (except in the very rare circumstances that this is a genuine requirement for the job)
- steps are taken to ensure that applications are received from significantly under-represented groups, such as women or certain ethnic groups
- pregnancy or health testing (for example, HIV/AIDS) is not a part of the recruitment process
- interviewers do not ask questions of a personal nature, for example, about marital status, family responsibilities, pregnancy or sexual orientation
- selection for the job is made on the basis of clear, pre-determined, objective criteria on what is necessary for the job in terms of experience and skill
- staff who are carrying out recruitment have ideally had some training and should be adopting common standards

5. Violence and harassment

Violence and harassment, including gender-based violence (GBV), are potential risk issues across workplaces in all of the economies in which the EBRD invests. Key definitions from PR2 are:

- **Violence and harassment:** A continuum of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, with the aim of causing physical, psycho-social, or economic harm, including GBV.
- **Gender-based violence:** An umbrella term for any harmful acts perpetrated against a person's will and that are based on socially ascribed gender differences. GBV includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty.

Violence and harassment should not be tolerated in the workplace. It is often based on prohibited grounds for discrimination and may include sexual harassment, bullying, intimidation or exploitation. Even if senior management is not directly involved in harassment, an employer has primary responsibility for providing a safe and healthy work environment. Examples of harassment include:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or material on computers
- making derogatory comments or taunts about someone's race.

Sexual harassment is any unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. It has nothing to do with mutual attraction or consensual behaviour. It is an extremely serious issue that is often under-reported, but should not be ignored or underestimated.

6. Employer safeguards against discrimination and harassment

There are a number of things that an EBRD client can do to ensure that appropriate policies and procedures are in place to comply with PR2.14.

- Develop policies to promote non-discrimination and equal treatment and to prevent harassment (including sexual harassment) and bullying in the workplace, and make sure that they are clearly communicated and accessible to management, supervisors and workers. Ensure that managers and supervisors are trained on how to apply the policies consistently.
- Ensure that job advertisements, job descriptions and applications do not refer to applicants'/workers' race, gender and other prohibited grounds (except rare cases where legal exceptions apply).
- Ensure that decisions on hiring, job assignments, working conditions, pay, benefits, training, promotion, termination and redundancy are not made based on discriminatory grounds or criteria that disproportionately affect one group more than another.
- Ensure that women and men are paid the same wages for work of the same value – in other words, that remuneration is based on the employee's skills, experience, responsibilities and other objective, non-gender-related factors.
- Monitor the workplace for any form of harassment and, where it is found, act quickly to address it.
- Ensure that workers are not asked about or required to undergo health or pregnancy testing, except where there is a genuine health and safety need, and that all health data and records are kept strictly confidential.
- Take steps to enable workers with disabilities to retain their jobs and make accommodations required by national law for physically disabled persons.
- Ensure that confidentiality is protected for employees who lodge a grievance, particularly where the grievance relates to GBV, including sexual harassment. Workers who lodge grievances related to discrimination or GBV should be protected from victimisation or other negative consequences.
- Worker grievance mechanisms should be adapted to effectively deal with cases of GBV, including sexual harassment. There should be more than one channel for lodging grievances, in case an employee does not feel comfortable approaching a given individual (for example, because they are the alleged harasser or have links to that person). It is good practice to have both a male and female staff member available for receiving and processing grievances so that employees can choose with whom they want to speak. There should also be channels available for workers to lodge grievances anonymously.

1543 Performance Requirement 2 guidance note series

© European Bank for Reconstruction and Development

Five Bank Street
London E14 4BG
United Kingdom

www.ebrd.com

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder.

Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

Terms, names, maps and charts used in this report to refer to geographical or other territories, political and economic groupings and units, do not constitute and should not be construed as constituting an express or implied position, endorsement, acceptance or expression of opinion by the European Bank for Reconstruction and Development or its members concerning the status of any country, territory, grouping and unit, or delimitation of its borders, or sovereignty.