

## Good Practice Note

# Non-Discrimination and Equal Opportunity

The concepts of non-discrimination and equal opportunity have for decades been part of the international community's key principles. Enshrined in numerous international instruments, including conventions of the United Nations and the International Labor Organization, these concepts are rooted in universal principles of human rights, fundamental freedoms, and equality. In today's emerging markets, companies that seek to be leaders and set examples of corporate social responsibility while building a productive and diverse workforce must address issues of discrimination in the workplace. Businesses that succeed in doing so act decisively to eliminate discriminatory practices and create the conditions for diversity and equality of opportunity and treatment in employment, often going beyond what is required of them by national law. Employers who adopt such approaches may derive a number of business advantages, including penetration of new markets, improved employee morale, a wider pool of talent from which to recruit, reduced exposure to legal challenges, and reputational benefits. (For more on The Business Case for Diversity, see p. 2.)

Both non-discrimination and equal opportunity are rooted in the principle that all employment decisions are based on the ability of the individual to do the job in question without regard to personal characteristics that are unrelated to the inherent requirements of the work. Conversely, discrimination in employment can be defined as any

distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, and is made on the basis of personal characteristics, including race, color, gender, religion, political opinion, national extraction or social origin, disability, age, sexual orientation, and/or HIV status.

Discrimination can take many forms and can affect both access to employment and the treatment of employees once they are employed. It may be direct or indirect, and arise in a range of industry sectors and cultural settings. Given the complexity of the challenge, the Good Practice Note seeks to help IFC clients and the wider private sector increase their understanding of the issue in a number of key areas, including: recognition of the various types of discrimination; how and where it can occur in the workplace; obligations under national law and other international provisions; practical approaches and options for addressing workplace discrimination; and the benefits derived from diversifying the workforce.

While tackling these issues can be sometimes controversial and difficult, particularly in an emerging market context, there are a growing number of companies engaged in good practice efforts that may go beyond their legal obligations with respect to non-discrimination. These businesses are actively reaching out among the communities in which they operate to create opportunities for previously alienated groups to participate in the labor market.

Environment and Social Development Department



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# Non-Discrimination and Equal Opportunity

*There is a growing consensus that promoting a diverse workforce is good for business.*

This Good Practice Note draws on many of these examples and case studies to illustrate how today's companies are taking positive action in the equal opportunity arena.

## The Business Case for Diversity

There is a growing consensus that promoting a diverse workforce is good for business. Employment practices and decisions based on an individual's gender, race, religion or other personal characteristics irrelevant to their performance at work restrict the available pool of workers and skills. Discrimination also can isolate a company from the community in which it operates and damage its reputation, potentially affecting profits. In

addition, emerging market companies which produce for a global export market are increasingly finding that such issues are raised by their customers, who require commitments as to the elimination of discrimination as a standard condition of business.

There are often clear business benefits for a company in recruiting employees from as wide a pool as possible. Businesses that are serving particular markets will frequently find that having a diverse workforce increases their penetration in those markets, based on the image which their workforce gives to potential and actual customers. Such companies also tend to benefit as a result of having a wide range of experiences, perspectives, and cultural understandings within the organization.

### Business Case for Diversity in Brazil

The German chemical company BASF seeks to uphold equal opportunities for all, irrespective of sex or color, in all its operations. This principle is of particular importance within its operations in Brazil, a country forged out of diverse cultures, where black people and women, in particular, are sometimes constrained in their educational and employment opportunities.

This is reflected in the composition of BASF's workforce. The company currently employs around 3,500 people in Brazil, yet fewer than one in four are women and only around 6% are black. Thirty-five women and nine black employees currently hold senior management positions.

In order to reverse the overall underrepresentation of women and black employees within the company, and above all in management positions, BASF S.A. established a Diversity Committee in 2003. The Committee is made up of members representing Brazil's diversity, particularly women and black workers.

The Committee's first actions were to review and modify recruitment selection procedures. In addition, communications measures have been taken to encourage awareness of the issue and events including workshops for management staff and community initiatives have been planned. The idea is to integrate the diversity principle firmly in the minds of decision makers and employees.

BASF recognizes that an ethnically mixed workforce brings its cultural knowledge on board and helps the company to develop new markets and service existing ones in a customer-focused manner. Diversity is thus a sound business principle, simply because BASF wants the best employees on the market.

This program places BASF among the very few multinational companies operating in Brazil that pro-actively tackle the problem of discrimination against women, black workers and other minorities, both in employment and in occupation.

*Source: BASF, Global Compact 'Learning Forum' paper*

## Non-Discrimination Roadmap

<b>Identify need for non-discrimination strategy</b>	<ul style="list-style-type: none"> <li>▶ Link non-discrimination with business priorities</li> <li>▶ Get top management support for initiatives</li> <li>▶ Identify business benefits from non-discrimination</li> </ul>
<b>Prepare baseline information</b>	<ul style="list-style-type: none"> <li>▶ Analyze the composition of workforce</li> <li>▶ Analyze the composition of local labor market</li> <li>▶ Get information on legislative requirements</li> </ul>
<b>Review and change recruitment policies</b>	<ul style="list-style-type: none"> <li>▶ Move to competence-based systems</li> <li>▶ Ensure recruitment is not based on personal specifications</li> <li>▶ Train managers in non-discriminatory recruitment</li> </ul>
<b>Assess payment practices</b>	<ul style="list-style-type: none"> <li>▶ Identify potentially discriminatory practices</li> <li>▶ Audit payment disparities for women and minority groups</li> </ul>
<b>Implement an anti-harassment policy</b>	<ul style="list-style-type: none"> <li>▶ Define an anti-harassment policy</li> <li>▶ Communicate the policy to the workforce</li> <li>▶ Train managers on the policy</li> <li>▶ Support workers who are harassed</li> </ul>
<b>Develop family-friendly policies</b>	<ul style="list-style-type: none"> <li>▶ Institute maternity leave policies</li> <li>▶ Encourage flexible working where appropriate</li> <li>▶ Consider the possibility of providing crèches</li> <li>▶ Consider ways to accommodate breastfeeding mothers</li> </ul>
<b>Understand cultural and religious diversity</b>	<ul style="list-style-type: none"> <li>▶ Know the cultural boundaries in the society in which you operate</li> <li>▶ Train and develop managers to understand cultural differences</li> <li>▶ Adjust workplace practices to facilitate religious cultural practices where possible</li> </ul>
<b>Involve underrepresented groups in your workforce</b>	<ul style="list-style-type: none"> <li>▶ Check your recruitment requirements: are they absolutely necessary?</li> <li>▶ Consider ways of providing training to potential employees to improve their chances of employment</li> <li>▶ Consider whether you can work with government, trade unions and other stakeholders to develop the potential of underrepresented groups</li> </ul>
<b>Devise a strategy to deal with disability and health issues</b>	<ul style="list-style-type: none"> <li>▶ Examine ways in which jobs can be readjusted to accommodate persons with disabilities</li> <li>▶ Have a health management system which seeks to rehabilitate or reintegrate employees who have long-term health problems</li> <li>▶ Develop a policy on HIV/AIDS</li> </ul>
<b>Communicate</b>	<ul style="list-style-type: none"> <li>▶ Ensure your managers and workforce know the standards of behavior expected of them and are aware of company policies</li> <li>▶ Let marginalized communities know about your programs</li> <li>▶ Accentuate the positive advantages of non-discrimination with all stakeholders</li> </ul>

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*In most circumstances discrimination will not tend to be overt, but rather the result of prevailing cultural, social or economic norms.*

Other business advantages derived from an approach based on non-discrimination and equality of opportunity may include:

- ▶ **being the employer of choice** - promoting their values and commitment to diversity is one tool companies use in attracting the best talent
- ▶ **improved productivity** through increased employee morale, job satisfaction and reduced turnover
- ▶ **a better market focus** with an understanding of changing customer base and awareness of customer needs
- ▶ **enhanced reputation**
- ▶ **increased competitiveness**, creativity and productivity
- ▶ **reduced vulnerability** to legal challenges

## Where Discrimination Can Occur

Discrimination can arise in a variety of work-related situations. These include access to employment and to particular occupations, and access to training and vocational guidance and support. Further, it can occur with respect to the terms and conditions of the employment, such as remuneration, hours of work and rest, paid holidays, maternity leave, security of tenure, advancement, social security, and occupational health and safety. It can also arise through harassment and victimization.

Discrimination at work may occur in a range of settings; it can exist in a rural agricultural business or in an urban high technology environment.

There are some circumstances where employers deliberately discriminate on inappropriate grounds. However, in most circumstances discrimination will

## Grounds upon Which Discrimination May Be Inappropriate or Unlawful

- ▶ Gender
- ▶ Race
- ▶ Nationality
- ▶ Ethnic origin
- ▶ Caste
- ▶ Religion or belief
- ▶ Sexual orientation
- ▶ Disability or health
- ▶ HIV status
- ▶ Union membership
- ▶ Political affiliation
- ▶ Marital status

not tend to be overt, but rather the result of prevailing cultural, social or economic norms. It may also arise from the application of particular policies which on the face of things appear neutral in their effect, but in reality are detrimental to one group as compared to another. For example, if an employer advertises only in a particular language, or claims a job needs particularly stringent qualifications, the effect may be that members of one group are less able to apply for the job. In such circumstances an employer should be able to justify the application of the requirement imposed.

Some of the areas where discrimination is most likely to occur, and where companies should exercise care in their policies and actions, include the following:

- ▶ **Recruitment of new workers.** Problems can occur as a result of basic prejudice or misunderstanding on the part of those making the hiring decisions. They can also arise from the application of particular criteria or requirements that are not necessary for the job but negatively impact a particular group. Examples include: unnecessary qualifications, language skills that are not required by the job, or a requirement that recruits must live in a particular area, unless this is necessary for the job.

- ▶ **Retrenchment and restructuring.** These processes often involve the dismissal of workers, which can give rise to discrimination against one group, depending on the procedure and criteria used. For example, dismissing those with the least amount of service may disproportionately affect women and minorities, who are often the most recent entrants in many longer established organizations.
- ▶ **Payment and promotion.** Decisions on how much individuals are paid and who should be promoted can often be subjective and open to influence by discriminatory criteria. Assessment by managers may be subjective, or the rewarding of some characteristics such as strength more than others such as dexterity, for example, can disadvantage women.
- ▶ **Dismissal for cause.** While there is nothing inherently discriminatory about dismissing an employee for good reason, employers should

ensure that policies and procedures are in place to ensure that such terminations are not a mask for discrimination practices.

- ▶ **Training and development.** Just as preferences can be made during hiring and promotion, the same can be said for training and development. It is important to bear this in mind, because an employee may later be denied promotion on the apparently non-discriminatory ground that he or she had less training and qualifications.
- ▶ **Harassment at work.** Where there are gender, ethnic or other tensions at work, harassment may take place. Women in particular are subjected to widespread harassment.
- ▶ **Maternity protection.** In order to effectively participate in the workforce and not suffer discrimination, it is essential for women to receive particular protections in relation to maternity, childbirth, and breastfeeding.

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## Anti-Discriminatory Measures in Venezuela

Norwegian energy group Statoil has taken a broad view of its responsibilities with regard to discrimination in employment. The company runs an established training program on human rights for employees and contractors in Venezuela, and prevention of discrimination against women and indigenous peoples is one of the main elements included in this program.

To gain knowledge about national requirements and challenges, Statoil cooperates closely with the government and NGOs in Venezuela. The group has signed an agreement with the United Nations Development Program (UNDP), which has among others an education program for children to promote non-discrimination and tolerance. This last component has a specific project on human rights for indigenous communities in order to combat the discrimination and intolerance which commonly

befall the Warao people of the Orinoco delta, where much oil is produced.

Statoil supports the UNDP and BanMujer, a governmental institution, with a training program to promote the incorporation of women into the productive chain in Valdez Municipality, Sucre State. As far as training programs and work placement for vulnerable or excluded groups are concerned, Statoil Venezuela sponsored the publication of the First Multicultural Bilingual Educational Guide for the Warao People. This project was carried out in partnership with the Ministry of Education, the oil company Perenco Venezuela and the NGO SOCSAL. Statoil is also currently supporting an Amnesty International training program for people with disabilities to become economically active.

*Source: Statoil, Business Leaders Initiative on Human Rights Report 2: "Work in Progress"*

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*In some countries, non-discrimination laws may be weak or may only cover a limited range of categories.*

## Standards on Non-Discrimination

Most countries have some form of non-discrimination legislation. This can range from simple one-sentence constitutional provisions prohibiting discrimination at large, to detailed labor-specific legislation on various discriminatory practices. Where rules against discrimination exist as part of national law, businesses are obliged to comply.

In some countries, however, non-discrimination laws may be weak or may only cover a limited range of categories. In such circumstances businesses that take principles of non-discrimination seriously often look to broader standards agreed to by the international community and industry best practice to help determine their own standards of behavior. Social and cultural expectations are often slow to develop around issues of discrimination, and it may often be the case that national legislation or even international standards may lag behind current best practice approaches to non-discrimination.

However, there are some common themes in both international conventions and law, as well as private and public sector best practice. In this section we set out the principles that guide IFC clients in this area as well as international and other standards which apply in relation to non-discrimination.

### ▶ IFC Standards

IFC requires specific performance standards in relation to projects that it finances. These performance standards are driven by principles of social and environmental sustainability, are outcome-focused, and contain concise objectives and requirements.

Performance Standard 2 on Labor and Working Conditions states that IFC clients shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. It goes on to state that the client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where national law provides for non-discrimination in employment, the standard requires the client to comply with national law. When national laws are silent on non-discrimination in employment, the client is still expected to meet the principles of non-discrimination set out in the performance standard. The standard also specifies that special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job will not be deemed to be discriminatory.

IFC's Performance Standard on Labor and Working Conditions is also accompanied by a Guidance Note that provides further details on the issues of non-discrimination and equal opportunity. More information can be found at: [www.ifc.org/enviro](http://www.ifc.org/enviro)

## International Instruments

There are a number of well-established international instruments related to discrimination in the workplace. Some have been in existence for over fifty years, while others have evolved more recently in response to new and emerging issues. Among the most important international conventions are those which come from the **International Labor Organization (ILO)** and the **United Nations**. The ILO places obligations on countries to take measures to eliminate discrimination in employment and occupation and to promote equality of opportunity and treatment. Discrimination is defined in **ILO Convention 111** as any distinction, exclusion or preference based on a number of specified grounds which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Some 162 States have ratified this Convention and, as a consequence, are obliged to undertake to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with non-discrimination, and to enact legislation and promote educational programs which favor its acceptance and implementation in cooperation with employers' and workers' organizations.

The **ILO Equal Remuneration Convention, 1951 (No. 100)** provides that ratifying states should—by means appropriate to the methods in operation for

## The Complexity of Employment Equity in South Africa

As a major employer in South Africa, mining company BHP Billiton is committed to achieving employment equity in its South African operations. The company has introduced an Employment Equity Policy, in consultation with trade unions and in line with the spirit of the South African Government's Employment Equity Act, which is aimed at improving labor market access and mobility for people in designated groups: black people, women, and people with disabilities. The ultimate aim for the company is to achieve representation at all levels of the business consistent with the demographic profile of South Africa.

Recognizing the country's history, in which the majority of South Africans were excluded from participating in the mainstream economy, BHP Billiton has adopted a strategy of change through empowerment.

The Employment Equity Forum addresses the issue of legislative requirements for the company, maternity benefit policy, pension provision and recruitment. It also covers transformation at the levels of ownership, management, sustainable socio-economic development, and procurement. The company's Employment Equity Policy, a key plank of the strategy, is aimed at redressing previous imbalances through accelerated development, training and education programs, and numerical goals and timetables.

Achieving this goal is far from straightforward, however. BHP Billiton's recruitment policy provides an illustration. All candidates must have specific school qualifications (Grade 12) plus mathematics and science as subjects passed. All candidates for any position in the company must pass a medical examination. Candidates applying for positions at the plant must undergo a number of tests, which include psychological assessment, medical, stamina, hearing, eyesight and lung function. According to the company, the reasons given

for the rigorous testing is that potential employees need to operate heavy machinery in the plant. On average, in an intake of 70 candidates, only three candidates qualify for employment. Most candidates fail the medical testing due to poor health and living standards. The net result, by default, is that the uptake of candidates is skewed in favor of people from the Indian and white communities.

Some positive results are already apparent, however. At the company's Hillside operation, initiatives include an Accelerated Development Program to facilitate the development and promotion of employees with potential; scholarships to help female employees achieve millwright status; practical vocational work for students; and on-site training for graduates to allow their skills to be identified and developed. It is through initiatives such as these that Hillside has attained a 60% success rate in filling promotions and appointments from the targeted designated groups since the plan was put in place.

To promote equitable access to employment, BHP Billiton is involved in a number of community projects. For example, in partnership with other major industries in the region, through Zululand Chamber of Business Forum, the company participates in a number of school initiatives aimed at providing support structures to schools in the region, with particular emphasis on the fields of mathematics, physical science and biology, as well as physical school improvements. In addition, BHP Billiton is involved with a number of skills training projects in the Empangeni region.

*Source: BLIHR, BHP Billiton 2004 Health Safety Environment and Community Report*

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*Rates of remuneration must be determined without discrimination based on gender.*

determining rates of remuneration—promote and, insofar as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. This implies that rates of remuneration must be determined without reference to gender.

Regardless of whether a State has ratified the core ILO Conventions on non-discrimination, the countries in which IFC operates have committed to their implementation. This is because the principles are one of the four “core” labor standards contained in the ILO’s Declaration on Fundamental Rights and Principles at Work, which all members of the ILO have agreed to promote.

The **ILO Maternity Protection Convention, 2000 (No. 183)** requires ratifying member States to adopt measures to protect the health of pregnant and breastfeeding women at work. It includes provisions concerning their entitlement to maternity leave (not less than 14 weeks) and benefits. Member States are also explicitly required to ensure that maternity does not become a source of discrimination in employment, including access to employment and protection against dismissal.

The **Workers with Family Responsibility Convention, 1981 (No. 156)** aims to promote equality of opportunity and treatment between men and women workers with family responsibilities and between workers with family responsibilities and other workers who do not have such responsibilities. With a view to creating effective equality, member States shall make it an aim of national policy to enable workers with family responsibilities to engage in employment without

discrimination and, to the extent possible, without conflict between their work and family responsibilities.

The **United Nations International Convention on the Elimination of All Forms of Racial Discrimination (1965)** defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The **United Nations Convention on the Elimination of Discrimination Against Women (1979)**, in addition to enumerating the equal rights that women should enjoy in the workplace, emphasizes the steps that government should take to “prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work.” These measures include: protection from dismissal on the grounds of pregnancy, maternity leave, or marital status, as well as special protections for women during pregnancy in types of work proved to be harmful to them; maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; and provision of the necessary supporting social services, in particular through promoting the establishment and development of a network of child care facilities.

The **Universal Declaration of Human Rights** and the **International Covenant on Economic, Social and Cultural Rights** also provide general protection against discrimination.

## Provision of Crèche Facilities in Kenya

The Alltex garment factory in Kenya provides an example of good practice in the provision of child care facilities. The factory is a joint venture between Industrial Promotion Services (Kenya) Limited (IPS) and Global Readymade Garments Industry LLC of Qatar. IFC is a 15% shareholder in IPS, the majority shareholder being the Aga Khan Fund for Economic Development. The state-of-the-art factory, which opened at the end of 2003, employs about 2,000 people, the majority of them women. Seeing the challenge facing working mothers, Alltex decided to establish and run a crèche for children of its staff. Employers in Kenya are not compelled by law to run a crèche, but the management of this factory believes that the crèche has been responsible for making employees happier and more comfortable at work because they know that their children are safe and happy. According to the management, this, in turn, leads to greater productivity, which equals increased profits. The crèche has a kitchen, sleeping area, sick bay, ablution block, washing and drying area and indoor play area. The crèche, which can accommodate up to 80 children, caters meals and snacks. The staff also wash and iron any clothes that the children may soil during the day.

Source: Aga Khan Foundation, [www.akdn.org](http://www.akdn.org)

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The **United Nations General Recommendation 19 to The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** defines sexual harassment as including:

*“such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography, and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”*

The International Labor Organization has addressed sexual harassment as a prohibited form of sex discrimination under **Convention No. 111**.

There are a number of international instruments that are aimed at protecting the rights of migrant workers. The **International Convention on the**

**Protection of the Rights of All Migrant Workers and Their Families** was adopted by the UN in 1990 and came into effect in 2003. The Convention makes it clear that many of the traditional civil and political rights found in the more general human rights instruments apply to all persons, including migrant workers and their families. The Convention also clarifies that basic economic, social, and cultural rights apply to both regular and irregular migrant workers. However, there are some instances in which the Convention permits States to limit the rights of certain specific categories of temporary migrants, such as seasonal workers, project-tied workers, or specified-employment workers. The ILO has Conventions relating to migrant workers: **Convention No. 97 on Migration for Employment** and **Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers**. Convention 97 says that migrant workers should be entitled to equal treatment with national workers regarding working conditions, trade union membership and enjoyment of the benefits of

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*Some employers choose to allow employees of a particular religion time off on important religious holidays, while others provide for prayer facilities within the workplace.*

collective bargaining, accommodation, social security, employment taxes and enforcement of employment rights.

## ► *Emerging Private Sector Good Practice*

There are a number of examples of voluntary initiatives on labor standards which also cover discrimination. For example, the tripartite **Ethical Trading Initiative's** base code provides that ETI members should ensure, in respect of the suppliers to which the code applies, that there should be "no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation."

Similarly, the **Electronic Industry's Supply Chain Code of Conduct (EICC)** provides that participants should be committed to a workforce free of harassment and unlawful discrimination. Companies shall not engage in discrimination based on race, color, age, gender, sexual orientation, ethnicity, disability, pregnancy, religion, political affiliation, union membership or marital status in hiring and employment practices such as promotions, rewards, and access to training. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way. (See also, [www.eicc.info](http://www.eicc.info))

## Types of Discrimination

There are, as previously mentioned, a number of forms of discrimination that are considered to be internationally unacceptable. Some of the key areas

are highlighted briefly below, followed by a more detailed discussion of thematic areas where, in practice, businesses may be less aware of the discriminatory impact of certain policies and procedures.

## ► *Religion*

It is important for employers to ensure that no work practices discriminate directly against individuals on the basis of their religion. There may also be indirect discrimination arising from particular requirements placed on workers which have a disproportionate effect on account of their religion. So, for example, if a company has a policy that employees cannot wear a beard or headdress, this may affect certain religious groups. Or if an employer requires employees to remain at their workstation throughout the day with no choice over the timing of their breaks, this might affect those who wish to pray. Both rules could be justified, but the company should be able to show sound business reasons for sticking to an absolute rule. Some employers choose to allow employees of a particular religion time off on important religious holidays, while others provide for prayer facilities within the workplace.

## ► *Disability*

While certain jobs will have requirements which would make it difficult or impossible for an individual with a particular disability or defined health problem to do them, there may often be ways in which the job can be adjusted to facilitate that individual. An employer may find that preconceptions about particular illnesses or disabilities overstate the effect on an individual's

ability to work. Employers should look carefully at any such preconceptions and seek to make accommodations where appropriate.

► **Gender**

As discussed in various parts of this Note, there are many ways in which discrimination on the grounds of gender may occur. Good practice employers will always look to eliminate both direct and indirect discrimination on the grounds of gender, whether this is in the form of recruitment decisions or payment and promotion systems which unduly favor men. Good practice calls for a regular review of all forms of employment policy and practice to determine how they affect women and also how they may be moderated in order to remove gender bias and discrimination. Issues to consider include equal remuneration for men and women workers for work of equal value. (See also *Maternity and Other Family Rights*, p. 12.)

► **Sexual Orientation**

Increasingly, good practice employers acknowledge that distinctions made upon the basis of an individual's sexual orientation are both inappropriate and irrelevant to running an efficient and merit-based business. Often such employers will also adopt measures to prevent workplace harassment on the basis of sexual orientation.

► **Age**

While in many countries age still remains a difficult question in terms of non-discrimination practice and legislation, emerging good practice seeks to eliminate it as a criterion for making decisions which have an adverse impact on employees. This is not to say that certain benefits such as retirement pensions and the like should be removed, but rather that individuals who are otherwise obviously suited for a job should not be discounted merely because of either their age or unfounded perceptions related to their age.

*In many countries age still remains a difficult question in terms of non-discrimination practice and legislation.*

**Religious Sensitivity in Malaysia**

Mattel's Global Manufacturing Principles enforce non-discrimination practices and promote understanding of religious freedoms. The company respects not only the cultural, ethical, and philosophical differences of the many countries in which it operates, but also the needs of distinct employee groups within its manufacturing facilities. For example, at its die-cast plant in Penang, Malaysia, a country recognized as one of the most ethnically diverse in the world, Mattel has provided a Hindu shrine, a Buddhist shrine and an Islamic *musholla* to address varying prayer needs. Mattel also operates two plants in Indonesia that combined employ roughly 10,000 people, about 90% of whom are Muslims. When developing a collective labor agreement on behalf of its employees, Mattel established an employee-elected committee to

determine policies that would best accommodate religious practices. These included two prayer rooms or *mushollas* (one for men and one for women), flexible schedules to accommodate Friday prayer, and Muslim-sensitive menus in company cafeterias. During the fasting month, employees who fast during their shift are entitled to make other arrangements for their meals. In addition to recognizing all state holidays, Mattel gives its workers paid leave for religious activities and state obligations, with written proof from appropriate institutions. In addition, Muslim employees who have three years of service at Mattel are permitted to make a pilgrimage to Mecca, entitling them to 45 days leave of absence with full pay.

Source: [www.bsr.org](http://www.bsr.org)

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*Wherever possible, provision should be made to enable women who work to continue breastfeeding their children.*

## ▶ *Race, Nationality, Ethnic Origin*

Employers should seek not to discriminate on the basis of race or ethnicity. This is of particular importance where either there is a mixture of different races within a country's national population or there are defined groups of migrants or immigrants. It is important that an employer considers the potential for both direct and indirect discrimination in this regard and, in line with some of the examples given in this Good Practice Note, seeks to implement policies and procedures to reduce the possibility of discrimination.

## Maternity and Other Family Rights

An area which can often give rise to controversial and difficult issues relates to the rights of women to both reproductive health services and continued work before, during and after pregnancy.

## ▶ *Pregnancy Testing*

Throughout the world there are employers who submit their female employees to pregnancy tests before and during employment. This is a discriminatory procedure and questionable from a legal standpoint. Many large-scale multinational organizations that have discovered that their suppliers have been applying such procedures have asked them to stop doing so under the terms either of corporate codes of conduct or national legislation.

While some employers believe they have a right to know for business purposes whether an employee

is pregnant, forced testing involves a gross invasion of privacy and therefore constitutes an inappropriate business practice. Similarly, requirements upon women to take contraceptive pills as a condition of their employment is also unacceptable, as are intrusive questions about an individual's intentions with regard to having children. Dismissal of workers because they are pregnant is, likewise, internationally recognized to be an inappropriate course of action.

## ▶ *Maternity leave*

The amount of maternity leave and payments during leave varies according to the relevant national law and/ or collective agreements. Employers should inform employees of their rights with regard to maternity and other parental leave when an employee informs them of her pregnancy. Further, the employer should be sure to comply with all relevant payments and leave entitlements.

## ▶ *Breastfeeding*

Wherever possible, provisions should be made to enable women who work to continue breastfeeding their children, either by way of areas where children may be brought during breaks or through breaks to allow women to express milk and keep it refrigerated. Some companies provide child care facilities and lactation rooms for their employees.

## ▶ *Other Family Rights*

Women normally, though not always, constitute the main caregivers, and, as such, it is important for employers to understand that they may sometimes

## Pregnancy Testing and Outsourced Work in a Free Trade Zone

Novartis is a major pharmaceutical and consumer healthcare company with 360 independent affiliates in 140 countries. The company signed the UN Global Compact in 2000.

A survey to determine particular areas of concern for the company suggested that third-party activities were potentially problematic. One clear example was the existence of pregnancy testing at a sub-contracting production facility in a developing country free trade zone.

The management of the plant was pregnancy-testing job applicants during a pre-employment physical without the applicants' knowledge, and denying employment to pregnant women. Before the company started emphasizing human and labor rights, pregnancy testing had never surfaced as a part of Novartis' anti-discrimination policy.

As with many labor rights issues, there were a number of complicating factors. The production facility was owned and managed by the local government, as was the whole free trade zone; undisclosed pregnancy testing was not against the national law; moreover, it was policy across the free trade zone that a condition of employment should be that the worker be unmarried and not pregnant.

The senior plant management believed they were making an important contribution to the applicant by providing a physical examination, perhaps for the first time in her life. It was argued, since most of these applicants were migrant workers from remote villages, they should know about their pregnancy in time to return home for the birth and for the nurturing environment of the extended family, an environment that could not be replicated at the plant site. The management of the plant and that of the free trade zone were convinced their policy was the best for the applicants, for the free trade zone, and for their society.

The counterargument, based on the dignity of the applicant, was that since pregnancy is such a central and unique component of a woman's identity, even though others may treat the issue with great respect,

the woman herself should decide whether to reveal her pregnancy and determine what would be best for herself and her child. Pregnancy testing can be viewed as both a form of sex discrimination and a violation of a woman's right to privacy. While sex discrimination is prohibited by relevant ILO Conventions, these do not explicitly address pregnancy testing.

Denying employment on the basis of pregnancy can, in many countries, pit local practice against global norms. Is this an area where global society should, and has, the right to overrule local practice?

Local Novartis management argued that pregnancy testing was an accepted practice in the country, as shown by the government-owned facility's insisting that a change would jeopardize the relationship with the plant, which had demonstrated acceptable overall standards for labor practices over an extended period of time and was a model plant for its environment (as confirmed by an on-site monitoring visit). Beyond the pregnancy testing issue, insisting on a change of policy could have a negative effect across a broad range of other interactions between Novartis and the government.

This issue found its way to the Novartis Executive Committee, consisting of the top eight executives in the company. The Committee, with CEO Daniel Vasella as chairman, judged that the practice was indeed discriminatory and would be immediately stopped. The current policy is that pregnancy testing is offered cost-free as part of the application physical, but is not a condition of employment.

Source: Novartis, UN Global Compact, BLIHR

*Dismissal of workers because they are pregnant is internationally recognized to be an inappropriate course of action.*

# Non-Discrimination and Equal Opportunity

*Employees subjected to harassment should have confidential means of placing a grievance or seeking support.*

need time off to deal with emergency issues related to children or elderly relatives. While there are obvious limitations on the amount of time workers can have off for this purpose, it is generally good practice to allow sufficient time for employees to make alternative arrangements for care.

## Harassment

Sometimes there may be workplace conflicts where an employee or group of employees seek sexual favors or uses sexual language, imagery or behavior in such a way as to distress and disturb another employee. While women are most commonly subjected to sexual harassment, men may experience it as well. Employees are also often harassed on the basis of their sexual orientation, ethnicity, or union membership.

Even if senior management is not directly involved in this kind of behavior, an employer has responsibility for what goes on in the workplace. It is in every employer's interests to promote a safe,

healthy environment in which people can work. Changing behavior and attitudes is one of the most effective ways of ensuring a harassment-free workplace. This includes having a clear anti-harassment policy coupled with anti-harassment training for all staff. If harassment is alleged, the people involved should know their rights and responsibilities. Employees who commit acts of bullying or harassment should be dealt with appropriately, while employees subjected to harassment should have confidential means of placing a grievance or seeking support. With such policies in place, harassment can be dealt with promptly, efficiently, and with the least disruption and cost possible.

If unchecked or badly handled, bullying and harassment can create serious problems for an organization, including:

- ▶ poor morale and poor employee relations
- ▶ loss of respect for managers and supervisors
- ▶ absenteeism and resignations
- ▶ damage to company reputation
- ▶ court cases and awards of damages

## Dealing with Harassment in the Supply Chain

During an internal audit of suppliers conducted by Chiquita in 2002, cases of sexual harassment were discovered in one location in Latin America. Information was received from union representatives at a farm level and also from workers. Action taken by the company following the audit report included:

- ▶ Dismissal of involved supervisors after investigation.
- ▶ Training of all women workers at the location concerning sexual harassment, their rights, and the duties of supervisors and management.
- ▶ Training of all management, administrative and supervisory personnel at the location concerning

the criminal nature of sexual harassment, the action to be taken in the event of detection, and the penalties applicable.

- ▶ Training of all employees worldwide on respect in the workplace and sexual harassment.
- ▶ During the following internal audit in 2003, no cases of sexual harassment were found in this (or any other) location, despite careful inquiries.

Source: *Chiquita Annual Report to the Ethical Trading Initiative 2003* (Feb. 2004 - <http://www.chiquita.com/chiquita/corpres/ETI2003.pdf>)

## BTC - Building Local Capacity and Creating Employment Opportunities

The BTC Pipeline has been built along a 1,768 km corridor through Azerbaijan, Georgia and Turkey and represents one of the world's largest construction projects. At its peak, in 2004, the construction of the pipeline involved over 20,000 workers. The project team was made up of skilled staff, semi-skilled workers and laborers. Total IFC investment in the BTC project is around \$250 million.

BTC corporate policy states that the company will generate "economic benefits and opportunities for an enhanced quality of life for those whom our business impacts." Local employment was identified as one of the main benefits that the project could directly bring to people living in the settlements affected by the construction of the pipeline and associated facilities. Commitments were subsequently made to optimize local employment and to ensure direct benefits to those living in settlements in the immediate vicinity of pipeline construction. In addition, it was hoped control of the employment process by prioritizing local employment and discouraging informal immigration would help minimize socio-cultural tensions and improve the relationship between the project and pipeline-affected communities. Three major objectives were identified.

### Objective 1: Maximize local employment in skilled, semi-skilled and unskilled categories during construction.

In order to achieve this objective the following approaches were taken:

- ▶ Targets for the percentage of national workers employed were specified in the contracts between BTC and the Contractors.

- ▶ Priority for unskilled job opportunities was given to project-affected communities.
- ▶ To maximize the spread of benefits, the unskilled workforce would change as the contractor moved construction camps.

### Objective 2: Provide a fair and transparent recruitment process.

In order to achieve this objective, an employment strategy was developed in all three countries, including protocols on:

- ▶ recruitment principles, explaining how they contribute to the BTC Project Objectives of maximizing local employment
- ▶ mechanisms by which all directly affected settlements would be able to access the recruitment process
- ▶ mechanisms to ensure that the recruitment procedure is transparent and that there is no discrimination
- ▶ procedures to monitor the compliance of the construction contractor with employment principles
- ▶ mechanisms for preferential recruitment of local workers
- ▶ internal and external monitoring of the process to seek to ensure that the targets set out above were met.

### Objective 3: Enhance the local skills base through training provided on the project.

Commitments were also made to enhance the skills of national employees through the Project Employee Training Plan (developed by the contractors and approved by BTC).

Training was also provided to all staff on camp management rules and overall discipline and cultural awareness. This included a briefing on camp rules and a

community relations orientation. The objective of this orientation was to increase awareness about the local area, cultural sensibilities and the Code of Conduct, as well as awareness raising on health issues such as communicable diseases.

### Results

The employment strategy with regard to distribution of the workforce has generally worked well. In Azerbaijan the establishment of recruitment centers in each district crossed by the pipeline ensured a regional spread in hiring. In Georgia, random selection helped prevent instances of preferred individuals being hired and provided an air of transparency, resulting in the recruitment of unskilled workers being spread along the pipeline right-of-way. In Turkey, the strategy to promote local employment worked across the project, with all contractors achieving compliance with overall employment targets, although in some cases local employment targets were difficult to achieve owing to the timing of recruitment coinciding with the peak agricultural period, resulting in a lower demand for jobs.

The levels of local employment have to date consistently exceeded the targets, most notably at Ceyhan Marine Terminal in Turkey. In Azerbaijan, the target for local employment has been comfortably met, with the percentage of local employees exceeding 70% for the pipeline and 90% at the facilities. In Georgia the percentage of local employees was above 70% for the pipeline and always in excess of 60% at the facilities.

Source: BTC Environmental and Social Team.  
For more information, go to [www.caspiandevlopmentandexport.com](http://www.caspiandevlopmentandexport.com)

# Non-Discrimination and Equal Opportunity

*Migrants are often stigmatized as being different and “foreign” and treated differently than national workers.*

## Migrant Workers

One particular area where discrimination is likely to occur is in relation to migrant workers. Migrants are often stigmatized as being different and “foreign” and treated differently than national workers. It is not unusual to see labor legislation and workplace rules which provide for preferential treatment and higher payment for workers of the national country than for migrant workers. Migrant workers often will not be given proper contracts, will have to live in substandard accommodations, and will have inferior social security and other benefit entitlements. The same may apply to internal migrants, who have come from another region within the same country.

Efforts to treat migrant workers on the same footing as other workers may be difficult and controversial. Although there may be practical difficulties in affording migrant workers exactly the same terms and conditions as other workers, due to relevant national legislation, collective bargaining agreements or other rules, it is good practice for employers to try to ensure that two workers doing the same job are not treated or paid differently merely because of arbitrary or discriminatory criteria. This principle also applies to other benefits provided during the course of the contract by the employer such as housing, medical care and other support—which is often the case, for example, during the construction phase of infrastructure projects. Where there are sound, non-discriminatory business criteria for treating them differently, this is acceptable; as a general principle,

however, good practice urges treating migrant workers equally and fairly and without creating a situation of dependency.

Export Processing Zones (EPZ) are another area where migrant workers are often at risk of ill treatment. The growing importance of such zones in global trade can further compound discriminatory conditions that migrant workers face because in many countries, EPZs are exempt from national labor laws altogether or the enforcement of labor laws inside the zones is weak.

In the case of higher-paid expatriate workers coming into a country, it may often be that their higher pay is justified by a combination of skill, responsibility and ability. However, it may not always be prudent for a company to rely too heavily on expensive expatriate workers, not just because it will give rise to feelings of discrimination, but also because it may not be, in the long term, sustainable and cost-effective compared to training local workers and developing national capacity. Good practice companies operating in emerging markets often set specific targets for creating local employment opportunities, building local capacity through training, and advancing country nationals to replace expatriates in management positions. (See also Box on p. 15 on *BTC Pipeline Building Local Capacity and Creating Employment Opportunities.*)

## Ethiopia: A Private Employment Agency's Efforts to Protect Women Migrant Workers

Under Ethiopian legislation on migrant labor passed in 1998, private employment agencies and brokers must register with the Government before sending Ethiopian agency staff to work abroad. Only those workers able to produce a letter stating that they have gone through the agency are issued exit visas by the authorities.

The Meskerem Employment Agency is one such registered agency and is the only one licensed to recruit Ethiopians for employment in Lebanon. The Ethiopian workers employed by the agency work in domestic roles, and all are women. Above and beyond its obligations under the law, Meskerem has taken several proactive measures to better protect migrant women workers.

Firstly, it has implemented a policy to recruit only high school graduates, since it believes that its agency staff require a certain level of education to assert their rights and to be able to write home to their families. (It should be noted, though, that returnees in a focus group interview questioned the desirability of this measure, as they did not feel that women needed high school qualifications to work as domestic staff, and it was felt that this policy could, in fact, leave those without such qualifications at the mercy of traffickers.)

The agency also assists all migrant workers sent to Lebanon in obtaining exit visas and checking the reliability of their prospective employers through its representative in Lebanon, irrespective of whether they have themselves been recruited by the agency. Once the conditions of employment have been confirmed, the agency provides non-Meskerem employees with the same training as it provides to its own staff.

Meskerem provides its staff with an ID card written in Amharic (the Ethiopian official language) before they leave for their destination. The card contains the name of the employee, her file number with the agency, the address and phone number of the agency in Ethiopia as well as the contact details for the agency's representative in Lebanon. It also contains information on Meskerem's 24-hour assistance service for Ethiopian staff in Lebanon: whenever a migrant worker is in trouble, she needs only to call and mention her file name and the people at the agency will identify her address and go to her. The agency has a van with a driver that is available 24 hours a day.

Meskerem also keeps records of employees, and any concerned citizen can go to the agency's offices and look at the records to find out the whereabouts of the migrant workers sent through the agency. The record contains information on the file number of the migrants, their full name and telephone number, their passport number, their employer's full name and telephone number, their date of departure from their country and their date of return to the country.

The agency contacts all its employees twice a month to check on their well-being as well as to find out whether the employer is satisfied with their work. Where there are complaints or misgivings on either side, the agency attempts to reconcile the differences. If reconciliation is not possible, the agency undertakes to return the migrant worker to Ethiopia. Where this means that the employee returns before her contract of employment has come to term, the agency pays the migrant compensation of US \$1,500. If a migrant has been abused in her employment, the agency immediately takes her out of the abusive situation, pays her salary if the employer refuses to do so, and repatriates her. Meskerem then takes legal action against the employer.

Source: E. Kebede, *Ethiopia: An Assessment of the International Labour Migration Situation. The Case of Female Labour Migrants* (Geneva, ILO GENPROM Series on Women and Migration, 2002), pp. 22-36.

*The agency contacts all its employees twice a month to check on their well-being.*

# Non-Discrimination and Equal Opportunity

*Companies have often found that fear of discrimination or harassment is the primary factor preventing employees from learning their HIV status.*

## HIV/AIDS

A crucial issue for employers seeking to promote equality of opportunity in emerging markets is the question of how employees who are affected by HIV and AIDS are treated. Given the stigma associated with the disease in many societies, employees may be actively discriminated against as a result of their perceived HIV status. As a consequence, it is essential that both employees and managers understand how an organization intends to deal with employees who either are, or

become, infected with HIV or AIDS or are otherwise affected by the pandemic.

In order to address this issue, an official company policy or policy statement is a useful tool that can serve a number of purposes, including: educating employees about HIV/AIDS including transmission and prevention; informing workers of their rights and responsibilities; making clear the commitment of management; setting forth the principles of zero tolerance for discrimination and respect for the confidentiality of HIV status; and, in certain cases, protecting a company from liability. As well as being

## Heineken NV: Company Policy on HIV/AIDS Discrimination

Companies have often found that fear of discrimination or harassment is the primary factor preventing employees from learning their HIV status and taking proactive steps to improve their health.

Companies which are active in regions with a high incidence of infected employees—such as Heineken NV, the Dutch brewer with operations in 160 countries worldwide—have attempted to address the fear of discrimination through policies that prohibit discrimination against potential employment candidates based on HIV status and also discrimination against HIV-positive employees.

These policies are often the result of broad consultation within the company and with external parties (such as unions, NGOs and international agencies), and as a means of successfully implementing them, companies have made senior managers, including Board members, responsible for them.

Below is a summary of a company policy, implemented by Heineken NV. Heineken is a member of the Global Business Coalition on HIV/AIDS, and has had an HIV prevention program in operation for over ten years in central Africa, with regular reviews and updates by the General Manager Group for the region.

### Basic principles of Heineken's HIV/AIDS non-discrimination policy:

- ▶ Heineken is firmly opposed to discrimination in general, including discrimination of employees with HIV, and will make every effort to ensure that employees are not stigmatized. Their HIV status will not affect job security, terms of employment or any other elements of HR policy. They will be treated in the same way as employees suffering from any other chronic disease with regard to absenteeism, assessment, transfer to a less demanding position or working environment. HIV status will not be a criterion in redundancy selection.
- ▶ Given the nature and development of the disease and its effect on business, Heineken focuses primarily on prevention and on health support for HIV and AIDS patients.
- ▶ Heineken will not oblige anyone to undergo an HIV test or treatment, whether employees, potential employees, their families, or third parties.
- ▶ Personal medical information including a request for and the result of voluntary HIV tests, will be treated in the strictest confidence.
- ▶ Heineken will co-operate where possible with relevant organizations and institutions. Heineken will do its utmost to allow local communities to benefit from the spin-off of preventive activities which Heineken organizes for its employees.

Source: Global Business Coalition on HIV/AIDS, F&C Asset Management and UBS HIV/AIDS Beyond Africa: Managing the Financial Impacts

readily accessible and visible in many locations, the company HIV and AIDS policy should be communicated to employees in a manner that explains the significance of the policy's terms. Staff should feel confident that the company is dedicated to maintaining employee privacy and to taking reasonable steps to safeguard the health of the workforce. Many employers also seek to develop programs that assist families and communities in coming to terms with the devastating impacts that can be wrought by the disease. (See also IFC's Good Practice Note on Addressing HIV/AIDS in the Workplace, December 2002, available at [www.ifc.org/enviropublications](http://www.ifc.org/enviropublications))

One of the most controversial issues in this area is whether an employer should screen potential or existing employees for HIV. From a non-discrimination standpoint, HIV status should not be used as a basis for employment decisions. The ILO Code of Practice states that "HIV/AIDS screening should not be required of job applicants or persons in employment." Forced testing risks ethical, legal and reputational liabilities for the employer. From a business perspective, there are also a number of practical reasons why such a measure is inappropriate and ineffective. First, the fluidity of the situation and the spread of the virus mean that an

*From a non-discrimination standpoint, HIV status should not be used as a basis for employment decisions.*

### ILO Checklist for Planning and Implementing a Workplace Policy on HIV/AIDS

Employers, workers and their organizations should cooperate in a positive, caring manner to develop a policy on HIV/AIDS that responds to, and balances the needs of, employers and workers. Backed by commitment at the highest level, the policy should offer an example to the community in general of how to manage HIV/AIDS. The core elements of this policy include information about HIV/AIDS and how it is transmitted; educational measures to enhance understanding of personal risk and promote enabling strategies; practical prevention measures which encourage and support behavioral change; measures for the care and support of affected workers, whether it is they or a family member who is living with HIV/AIDS; and the principle of zero tolerance for any form of stigmatization or discrimination in the workplace.

The following steps may be used as a checklist for developing a policy and program:

- ▶ HIV/AIDS committee is set up with representatives of top management, supervisors, workers, trade unions, human resources department, training department, industrial relations unit, occupational health unit, health and safety committee, and persons living with AIDS, if they agree.
- ▶ Committee decides its terms of reference and decision-making powers and responsibilities.
- ▶ National laws and their implications for the enterprise are reviewed.

- ▶ Committee assesses the impact of the HIV epidemic on the workplace and the needs of workers infected and affected by HIV/AIDS by carrying out a confidential baseline study.
- ▶ Committee establishes what health and information services are already available both at the workplace and in the local community.
- ▶ Committee formulates a draft policy; draft is circulated for comment, then revised and adopted.
- ▶ Committee draws up a budget, seeking funds from outside the enterprise if necessary, and identifies existing resources in the local community.
- ▶ Committee establishes a plan of action, with timetable and lines of responsibility, to implement policy.
- ▶ Policy and plan of action are widely disseminated through, for example, notice boards, mailings, pay slip inserts, special meetings, induction courses, training sessions.
- ▶ Committee monitors the impact of the policy.
- ▶ Committee regularly reviews the policy in the light of internal monitoring and external information about the virus and its workplace implications.

Every step described above should be integrated into a comprehensive enterprise policy that is planned, implemented and monitored in a sustained and ongoing manner.

*Source: ILO Code of Practice on HIV/AIDS and the World of Work*

# Non-Discrimination and Equal Opportunity

*Some companies actively seek to give marginalized groups opportunities to work in jobs in which they have been underrepresented.*

individual who is HIV negative on the day of the test, may not be so the day after the test. Second, an HIV-positive status does not necessarily have a bearing on the employee's ability to continue in his or her job. Furthermore, where the level of infection has reached pandemic proportions, testing and rejecting HIV-positive applicants who are otherwise qualified for the job may leave the employer with a very small potential labor pool.

A widespread AIDS pandemic also opens up a host of issues around the ability of caregivers to support their families and also earn a living, which companies must consider if they are to be supportive and effective employers. The IFC Against AIDS program is aimed at improving understanding and developing tools to tackle issues concerning HIV/AIDS in both the workplace and the community. The program works with client companies to develop specifically tailored tools and advice to address workforce and community-related concerns stemming from the disease. For more information go to <http://www.ifc.org/ifcagainstaids>

## How Companies Can Make a Difference

As a general rule, addressing discrimination and increasing diversity do not mean a company needs to overhaul its workforce to employ certain groups in certain numbers to reflect the overall gender or ethnic makeup of society. At a minimum, companies need to be aware of and respect all relevant local and national laws pertaining to non-discrimination in the country of operation. Next, a company should review its policies and

employment practices to identify where the biggest risk of discrimination as well as the biggest opportunity to make a real difference exist. Employers who are serious about promoting equality examine the effect of their existing practices and develop revised policies and procedures to address gaps and shortcomings. They also recognize the need to raise awareness and to train their managers and employees. In addition, some companies actively seek to give marginalized groups opportunities to work in jobs in which they have been underrepresented.

### ▶ Eliminating Discrimination

Any company wanting to create a workplace environment in which discriminatory practices or behavior are not tolerated can take a number of good practice steps towards the achievement of this objective. For example:

- ▶ **Institute company policies which make qualifications, skill and experience the basis for the recruitment, training, and advancement of staff at all levels.** Clear and well-explained procedures have the effect of both minimizing the occurrence of discrimination and providing the employer with protections against any legal actions that could arise.
- ▶ **Assign responsibility for equal employment issues at a high level.**
- ▶ **Raise awareness and train staff within the company.** All staff, but managers and supervisory staff in particular, should have an understanding of the different types of discrimination and how it can affect the workforce.
- ▶ **Promote transparency and consistency.** There are many situations when an employer will

differentiate between employees on perfectly acceptable grounds such as performance, ability, or market requirements. However, managers must be able to explain the reasons why one member of staff was treated a certain way, not only to protect against discrimination but also to make sure they are making the right decisions and preserving good employee relations.

- ▶ **Link advancement of supervisory staff to performance in this area.** Managers should be able to demonstrate adherence to company policies and procedures on non-discrimination and equal employment in their area of operation.

- ▶ **Provide access to skills development training to all employees where relevant.**
- ▶ **Avoid systematic applications of job requirements that would disadvantage certain groups.** Work on a case-by-case basis to evaluate whether certain requirements are necessary for the job.
- ▶ **Keep up-to-date records on recruitment, training and promotion.** To be useful, such records should provide a way to track opportunities available to employees and their progression within the organization.

*It is important that a diversity strategy be a part of the overall corporate vision and not an optional extra.*

## Establishing a Diversity Strategy: Key Components

**Ensure diversity as part of the overall core strategy for the organization.** It is important that a diversity strategy be a part of the overall corporate vision and not an optional extra.

**Top management commitment.** Support for diversity initiatives at all levels of the organization is important, but senior-level support is critical.

**Auditing and assessment of needs.** Determine the needs of your organization in the area of diversity. Merely taking an “off the shelf” program will only lead to the development of a plan and targets that are inappropriate to the business and as a result are less likely to be achieved.

**Clarity of objectives.** A strategy to promote diversity should be based on clear, quantifiable objectives within defined time scales. Look to develop indicators for the various aspects of the plan and regularly check progress.

**Promotion of accountability.** Transparent and fully understood processes on diversity will lead to a more successful outcome, and will also help to avoid any misunderstandings or feeling that there is more favorable treatment of one group.

**Establishment of a diversity team.** There should be more than one or two staff members, but too many members can be counterproductive. It is

important to remember that inclusion is better than exclusion. Find a way for willing individuals to participate. Encourage a broad base of participation.

**Communication.** Information regarding the progress and purpose of a diversity strategy should be spread throughout the organization. Further, seeking feedback from employees is an important way of developing the strategy and heading off any discontent. Diversity training and education are critical for the success of initiatives.

**Individual understanding.** While it is important to create plans for the overall organization, individuals need to understand their specific role in the success of the strategy. As part of this process, try to set appropriate goals for managers.

**Diversity champions.** One measure of success is the number of individuals who have seamlessly integrated the goals of the diversity strategy into the work plan for their own departments/divisions. As these “champions” emerge, the success of the diversity strategy stabilizes and grows.

**Evaluation.** Any workplace change initiative should be evaluated with reference to the vision, objectives and indicators established at the start of the process. The same goes for a diversity strategy.

# Non-Discrimination and Equal Opportunity

*Any company introducing measures to promote equality needs to be aware of the diversities of language, culture, and family circumstance that may exist in the workforce.*

- ▶ **Develop grievance procedures to address complaints, handle appeals, and provide recourse for employees.** Be aware of formal structures and informal cultural issues that can prevent employees from raising concerns and grievances.
- ▶ **Accommodate disability.** Provide staff training on disability awareness and reasonably adjust the physical environment to ensure health and safety for employees, customers and other visitors with disabilities.
- ▶ **Work with trade unions.** Reach agreements to promote equality and non-discrimination.

## ▶ *Monitoring Diversity in the Workforce*

In order to determine whether discrimination exists or whether any remedial measures that have been adopted are having any effect, businesses should consider monitoring the composition of the workforce and how this changes over time. So, for example, an employer who wants to improve the representation of minorities within its workforce may consider monitoring the ethnic origin not only of those individuals who are actually appointed, but also those who applied for work with the employer. Similarly, a company that has implemented a management training program for women should monitor whether the proportion of women within management grades increases over time.

Monitoring of this nature should be carried out on the basis of anonymity, and the data arising from it should be kept separate from personnel records.

## ▶ *Promoting Equal Opportunity*

As a matter of good practice, companies should develop and promote an equal opportunity policy, both in terms of hiring and on the job. This means that once hired, individuals are accorded equal opportunities to develop the knowledge, skills and competence that are relevant to their job. Any company introducing measures to promote equality needs to be aware of the diversities of language, culture, and family circumstance that may exist in the workforce.

Some socially responsible companies seek to go a step further, sponsoring outreach programs with those members of the community who have been historically discriminated against in order to enhance their ability to take up meaningful employment. While positive discrimination or affirmative action programs can be controversial (and in some countries unlawful) the kinds of capacity building and other helpful actions undertaken by companies featured in this Note can lead to real results and have genuine benefits for the businesses concerned.

Outside the workplace, companies can also play a role in promoting opportunity. They may support community efforts to foster a climate of tolerance and equal access to occupational development opportunities. This could take the form of sponsorship of awareness campaigns, adult education programs, or child care services, for example. Companies may need to accommodate cultural traditions and engage worker representatives and government authorities to improve equal access to employment by women and minorities.

## Promoting Women's Employment in Mining

Programa Mujer is an innovative example of how to break with tradition that excludes women from mining operations. The program was an initiative of IFC client Minera Escondida, the world's largest copper-producing mining company, located in the Atacama Desert in the north of Chile. It was supported by Chile's Ministry for Women's Affairs.

In light of the high unemployment rate for women in Chile and the company's role in the local economy and as a job creation source, it was important for Minera Escondida to take special steps to include women in its labor force.

Programa Mujer marked the company's first attempt to integrate women into the operation of heavy mining equipment since production started in 1990. The name and image of Minera Escondida were used country-wide to promote and disseminate the emerging role that women are playing in the Chilean mining industry. After recruiting a small number of women with existing experience, Escondida management approved

the concept of hiring women with no experience. The recruitment ads generated a flood of responses. The company received 936 applications from women with no prior experience, of whom 238 were invited to participate in the recruitment process. The applicants came from a variety of backgrounds; teachers, secretaries, train operators, security guards and fork-lift truck operators.

The applicants underwent a series of evaluations and a rigorous 3-month-long selection process. The final group of applicants attended a 3-month training period that included technical, mechanical and practical matters as well as a focus on safety and corporate values. The next step was a training and evaluation period during which the women operated equipment at the Escondida Norte Mine. The women who were hired on a permanent basis are today part of the mine operations team, operating 360-ton haul trucks, graders, and 90-ton water trucks. While it was not easy to integrate women into shifts where only men had worked previously,

the women's determination meant that they gained acceptance among their workmates by demonstrating that their technical work was safe, of a high quality and productivity. The workforce of Minera Escondida became more inclusive, and the women's presence generated a positive impact on workplace attitudes and behaviors. Early results indicated that high productivity rates and attention to maintenance detail made this a sound business decision as well as the right thing to do.

The project generated excellent PR for the company, challenging the notion of workplace stereotypes. The women were able to gain the respect and recognition of their co-workers, challenging the belief that only men can perform heavy equipment operations.

Source: "Promoting Gender Equality in the Private Sector - Hiring Women in Mining Production Jobs." IFC (2005).  
[www.ifc.org/ifcext/enviro.nsf/content/GEM](http://www.ifc.org/ifcext/enviro.nsf/content/GEM)

## "Going Beyond": Women's Empowerment Program in Sri Lanka and India

MAS Holdings launched a women's empowerment program in November 2003 entitled Go Beyond, focusing on women both at MAS' apparel manufacturing units and within the rural communities in which they operate.

Over 90% of the employees at MAS' apparel manufacturing plants are women. A large majority of these women are from predominantly rural backgrounds, and while some may have high levels of literacy, many would have had limited access to enhance their education and skillbase.

The program has four main areas of concentration: Training for Career Development; Rewarding Excellence; Initiatives on Work-Life Balance; and Rewarding Excellence of Women in the Communities.

Recognizing the importance of English language skills, MAS subsidiary MAS Intimate Fashions, located in Chennai, India, has introduced English-language instruction to its employees, regardless of whether English was directly applicable to their present positions.

In 2004 an MAS Go Beyond "Empowered Woman of the Year" competition was launched group-wide. The only requirements for applying were that the lady be an MAS employee for at least one year and that she be nominated by a peer/supervisor.

A panel of six judges comprising four members of the MAS Corporate Social Responsibility Advisory Committee, the National Coordinator of the ILO-International Program to Eliminate Child Labor (ILO-IPEC) and the Strategic Director of a Local Advertising Company did the final round of judging. Fourteen winners representing 14 business units were chosen.

As a result, 14 inspiring women have been identified and rewarded as "Empowered Women" who have battled and overcome many challenges, both personal and professional. These women serve as spokespersons for empowered women within their respective work units. Many of them began within the apparel industry at the bottom-most rung as Helpers or Machine Operators, and have over a period of years risen into responsible posts such as Assistant Production Managers and Quality Executives.

Their stories also have the power to inspire women at a macro level. As such, these winners' life stories are being published in a monthly national newsletter (entitled "Women @ Work").

Source: MAS Holdings, UN Global Compact

# Non-Discrimination and Equal Opportunity

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## Useful References

**International Labor Organization**  
[www.ilo.org](http://www.ilo.org)

**UN Global Compact**  
[www.unglobalcompact.org](http://www.unglobalcompact.org)

**Business for Social Responsibility**  
[www.bsr.org](http://www.bsr.org)

**Ethical Trading Initiative**  
<http://www.ethicaltrade.org/Z/resrcs/subj/7-discr/index.shtml#more>

**ILO - Business and Decent Work: Non-discrimination Facts & Figures**  
<http://www.ilo.org/public/english/comp/business/info/discrim.htm>

**ILO Global Report: Time for Equality at Work**  
[http://www.ilo.org/dyn/declaris/DECLARATIONWEB.GLOBALREPORTDETAILS?var\\_language=EN&var\\_PublicationsID=116&var\\_ReportType=Report#](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.GLOBALREPORTDETAILS?var_language=EN&var_PublicationsID=116&var_ReportType=Report#)

**Good Practices in the Workplace - The Business Case for Diversity**  
[http://www.conference-board.org/pdf\\_free/goodPracticeWorkplaceDiversity.pdf](http://www.conference-board.org/pdf_free/goodPracticeWorkplaceDiversity.pdf)

**Business & Diversity - Helping Business Score Higher in Managing Diversity**  
[http://www.csreurope.org/uploadstore/cms/docs/CSRE\\_pub\\_diversityDec2002.pdf](http://www.csreurope.org/uploadstore/cms/docs/CSRE_pub_diversityDec2002.pdf)

**IFC Gender Entrepreneurship Markets - QuickNotes**  
<http://www.ifc.org/ifcext/enviro.nsf/Content/GEM-QuickNotes>

**IFC Against AIDS**  
[www.ifc.org/ifcagainstaids](http://www.ifc.org/ifcagainstaids)

**UNAIDS**  
[www.unaids.org/en/in+focus/hiv\\_aids\\_human\\_rights/unaids+activities+hr.asp](http://www.unaids.org/en/in+focus/hiv_aids_human_rights/unaids+activities+hr.asp)

**ILO Code of Practice on HIV/AIDS and the World of Work**  
[http://www.ilo.org/public/english/comp/infocentres/general\\_reports/aids/cop\\_aids.pdf](http://www.ilo.org/public/english/comp/infocentres/general_reports/aids/cop_aids.pdf)

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