



# How to avoid workplace discrimination

**Recommendations for employers**

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1. For details, see The most frequent cases of workplace discrimination and how to avoid them: practical guide for employers regarding equal treatment, File No. 68/2021/DIS.

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# What is and what is not discrimination

Discrimination is **prohibited unequal (less favourable) treatment** of people. Your intention is irrelevant; it is the result that matters, not whether you intended to discriminate.

**Prohibited grounds of discrimination, corresponding to protected characteristics, are set out in the Anti-Discrimination Act.** These include: race, ethnic origin, nationality (in the sense of “national origin”; in Czech: “národnost”), sex/gender, sexual orientation, age, disability, religion, belief or worldview, and in some cases nationality (in the sense of “state citizenship”; in Czech: “státní příslušnost”).

**Discrimination is also prohibited by the Labour Code and the Employment Act.** Moreover, these acts set out other protected characteristics [e.g. social origin, property (non-existence of debts), marital (family) status, language, political or other opinion, membership and activity in political parties, political movements and trade union organisations].

However, you may treat employees differently in exceptional cases. Such cases represent **permissible different treatment**. This is true, for example, in cases **where this is justified by the nature of the work performed**. However, the requirements on employees must always be reasonable.

✓ An air traffic controller has a lot of responsibility. The stress of the job cannot be completely eliminated, so an employer may reject a job seeker with a mental disability who cannot cope well with stressful situations. **This is not a case of discrimination.**

✗ The employer is looking for a new wellness receptionist. The employer prefers female job seekers aged between 25 and 40 because the employer believes that the position is suitable for women, but those at younger ages seem volatile. However, as younger women or men could also do the job well, this **constitutes discrimination on the grounds of age and gender.**

# Selection of a new employee

**You can choose** who you employ, but **you must not discriminate**. Therefore, you must not (with some exceptions) reject someone only on the grounds of a prohibited characteristic.

Assess each job seeker **on the basis of his/her professional knowledge, skills and experience**.

**Do not attribute to him/her the characteristics of other people** (group of people determined by a protected characteristic).

- › Don't be influenced by prejudices and stereotypes.
- › Draw up a list of evaluation criteria in advance.
- › Involve more people with various life experiences in the selection of new employees
- › When choosing, talk about the reason why you propose to hire or not hire the job seeker. Don't give in to first impressions.

## 1. Protected characteristics

### 1.1 Race and ethnic origin

**Save for certain exceptions**, you must not reject a job seeker because of his/her race or ethnic origin.

- › The fear that an employee of a different ethnicity would put off customers cannot be a reason for rejection either.
- › An exception might be, for example, that you are selecting an actor for a specific role.

✘ In a city with a large Roma community, an employer has previously dismissed several Roma because of their frequent unexcused absences. The employer decided that they will no longer employ such unreliable employees and now automatically exclude applications of all Roma people. **However, this constitutes discrimination.**

### 1.2 Nationality (in the sense of "state citizenship")

You may not reject a job seeker on the grounds of his/her nationality (i.e. state citizenship), unless the law lays down a condition that he/she does not meet. For example, citizens of countries other than EU Member States (and Iceland, Norway, Liechtenstein and Switzerland) sometimes need a **work permit**.

### 1.3 Nationality (in the sense of "national origin")

National origin expresses a sense of belonging to a particular nation. It is typically based on the place of birth, ancestry or affiliation to a particular culture.

- › If the job requires knowledge and skills that are usually associated with a certain nationality (language, traditions or cultural practices), you can require them of job seekers. But you cannot reject anyone solely on the basis of their nationality.

✘ A multinational company is looking for an employee for its Prague branch, who will mainly work with German and Austrian clients. The employer rejects Pavel on the grounds that as a Czech national, he would not understand the clients well. However, Pavel has studied and worked in Germany for years and he has a native-speaker level of German. **The employer therefore discriminated against Pavel.** If the employer had evaluated Pavel's level of communication in German, he probably would not have been turned down.

### 1.4 Age

**If necessary for the proper performance of the job**, you may also set a **minimum age, professional experience or length of employment**.

- › You must not do so where this is not required by the nature of the work (i.e. for light manual or unprofessional work). In that case, you would be discriminating mainly against young job seekers who are yet to gain the required experience.

### 1.5 Sex/gender (pregnancy, parenthood, gender identification)

Save for certain exceptions, the **sex/gender** of a job seeker should not play any role in the selection process.

✘ When seeking a new job, Karel comes across an advertisement for the position of "a (female) assistant to the director" (in Czech: asistentka ředitele). He decides to call the employer to find out the details. However, the HR officer tells him point-blank that the employer prefers to fill the position with a woman, as, in his experience, women are more detail-oriented.

- › If the work requires strength or physical stamina, assess these qualifications instead of sex/gender.

✘ An employer is looking for a garden centre worker. Because the job is physically demanding, the employer eliminates all women. **However, this constitutes discrimination.**

Moreover, the employer discriminates on the grounds of sex/gender if they put someone at a disadvantage due to **pregnancy and parenthood** (motherhood or fatherhood).

## 1.6 Disability

A disability can be physical, sensory, mental or other. It can be noticeable at first sight or hidden. It is irrelevant whether or not the disabled person received a disability pension or a disability card (ZTP card).

- › The employee must be medically fit to perform the job.

As the employer, you therefore need to know whether the job seeker will be able to perform his/her working tasks. However, information on medical condition is sensitive information, so you should not ask for it. **Medical fitness is assessed by a physician** during the initial occupational medical examination.

If a job seeker is medically unfit because of his/her disability, you cannot hire him/her. Such cases represent permissible different treatment.

However, sometimes you are required to provide a **“reasonable accommodation”** so that a person with a disability can:

- » apply for the job;
- » perform the work;
- » be promoted or otherwise improve his/her position;
- » participate in professional education, training or counselling.

A reasonable accommodation can take different forms depending on the needs of the disabled person, for example:

- » modification of the workplace (e.g. barrier-free access)
- » purchase of special aids (special software for a person with visual impairment);
- » purchase of other equipment (a reclining desk for an employee with back problems);
- » modification of working hours or regime (working from home for an employee who cannot commute regularly due to health reasons).
- › You may refuse to provide a reasonable accommodation if this would place an unreasonable burden on you. However, do not get discouraged by the cost of disability aids. The Labour Office may provide a contribution.

## 1.7 Faith, religion, worldview, sexual orientation

**Do not ask** job seekers about their faith, religious beliefs, worldview or sexual orientation. If you are aware of the above, this must not be a reason for placing these people at a disadvantage.

**A worldview** means the sum of ideas, opinions, and values regarding fundamental philosophical, ethical and political issues. The Defender believes that worldview does not include, for example, an opinion on vaccination or membership in a political party.

**However, it does not amount to discrimination** if a church or religious society requires a job seeker to be of a particular religion, belief or worldview, as far as this is reasonable in light of the nature of the work offered.

✘ The headteacher of a bishopric academic secondary school is looking for an accountant. During the interviews, she asks the job seekers if they are members of the Church. She then prefers a job seeker who shares the religious values of the school. However, such a requirement is not justified in the case of an accountant. If the headteacher selects the new employee solely on the basis of his/her religion, she **commits discrimination**.

## 1.8 Non-existence of debt and clean criminal record

Generally, the employer cannot ask a job seeker to prove that he/she has a clean criminal record. By way of exception, this does not apply to cases where this is required by the law or where there is an objective ground given by the nature of the work.

You may request that a job seeker be debt-free if the employee will, for example, handle your property (a mortgage specialist at a bank).

In respect of a clean criminal record, the nature of the crime and its seriousness or recurrence also needs to be considered.

✓ In the search for new public bus drivers, an employer finds out that a job seeker has a history of driving under influence. **If the employer rejects the job seeker, this cannot be considered discrimination.**

## 2. Positive actions

You can **prioritise job seekers who are disadvantaged in the labour market** on the basis of a protected characteristic. This will promote equal opportunities by compensating for the disadvantage. This is an exception to the prohibition of discrimination: **“affirmative action”** or **“positive action”**.

**However, you must not favour an inferior job seeker.**

✓ A headteacher is looking for a teacher. Karel and Marie apply. If they were of approximately equal quality and there were significantly more women in the teaching staff, the headteacher might give preference to Karel. **This would not constitute discrimination.**

## 3. Indirect discrimination

**Direct discrimination** is an act or omission where a person is treated worse than others in a comparable situation on the basis of a protected characteristic.

However, **indirect discrimination**, where the disadvantage is caused by an apparently neutral provision, criterion or measure that is less favourable for a group of persons defined by a protected characteristic (e.g. people with disabilities or parents of small children), is also prohibited.

✘ An employer requires that an employee be flexible in terms of time. This is understandable for many positions. However, parents of small children can hardly adapt to this requirement, as the kindergartens' opening hours are limited. A non-negotiable requirement of time flexibility may therefore put parent employees at a disadvantage.

- › Request flexibility only from job seekers for positions where employees really have to adapt to your needs (e.g. positions where it is not always possible to schedule regular shifts without overtime).

## 4. Job advertisements and interviews

**An employer may discriminate even when writing a job offer.** Sometimes, the advertisement implies that the employer does not want to employ a certain group of people protected by the prohibition of discrimination. However, such conduct constitutes an administrative infraction.

Examples of inappropriate wording in advertisements:

✘ "We are looking for a receptionist aged 20-40."

✘ "The position is only suitable for men because of the greater physical demands."

✘ "We're looking for a cashier. Requirements: Czech citizenship, clean criminal record, excellent medical condition."

- › **Request from job seekers** or other persons (for example, when asking for a reference from a previous employer) **only such information that is directly relevant to the conclusion of the employment contract.**
- › Do not ask for information about the job seeker's ethnic origin, religious beliefs, political views or sexual orientation. Do not ask about private matters (e.g. family circumstances, pregnancy, medical condition). The law protects job seekers from unjustified disadvantage.

# Conditions in employment

The prohibition of discrimination does not end with the employee's selection. **You must treat employees equally throughout the entire work process.** If you treat people differently, you must do so on grounds that are not discriminatory.

## 5. Job negotiations

You enter with an employee into a contract on which you both agree. However, you must not offer the employee a less favourable contract on the basis of any of the protected characteristics.

✘ An employer automatically offers young men an indefinite-term contract, while young women are only offered fixed-term contracts. The employer expects them to go on maternity leave soon anyway. **This constitutes discrimination.**

✘ An employer pushes a disabled employee, unlike other employees, to conclude an agreement to complete a job. This abuses the disabled employee's vulnerable position in the labour market. **That is discrimination.**

## 6. Remuneration

**Employees should receive the same remuneration (salary, pay) for the same work (work of equal value).** The differences in remuneration must therefore relate to the quantity and quality of the work performed. Non-discriminatory rules must also be set in relation to other benefits (meal vouchers, cultural allowance, etc.).

### 6.1 What (and nothing else) should affect the amount of the remuneration?

- » complexity and difficulty of the work, and the associated responsibility;

- » difficulty of working conditions;
- » performance and results of work.

Inequality in pay can already arise during **salary negotiation** at a job interview. The salary must depend on the work performed, not on what the job seeker can negotiate.

- » Transparency in pay is now also required by Directive 2023/970 of the European Parliament and of the Council of 10 May 2023.

## 6.2 Returning to work after maternity or parental leave

**Parents returning after maternity or parental leave** sometimes face unequal pay if other employees' salaries have increased in the meantime.

✘ An employee returned to work after five years of maternity and parental leave. She received the same salary as five years earlier, even though her colleagues were now earning several thousand more (including less experienced colleagues who had been hired recently). **This is at variance with the "equal pay for equal work" principle and would probably constitute discrimination.**

## 6.3 Simultaneity with old-age and invalidity pensions

Older employees and employees with disabilities also often complain about unequal remuneration, as they do not receive certain components of their salary or benefits because they simultaneously receive a pension.

✘ After becoming entitled to old-age pension, an employee lost his annual bonuses, even though he continued working in the same position and performed the working tasks necessary to qualify for the bonus. **The employer was directly discriminating against him on the grounds of age.**

## 7. Work-life balance

The employer has special obligations towards employees who are pregnant or on maternity leave and towards all parents who are on parental leave or taking care of children under a certain age.

For example, **you cannot order a pregnant employee or a parent caring for a child under one year of age to work overtime.** You can only send a pregnant employee or a parent caring for a child under 8 years of age on a business trip if they agree to it. In addition, during pregnancy and maternity or parental leave, employees are **subject to a protection period where you cannot give them a notice of termination.**

You must (save for certain exceptions) enable an employee who returns to work immediately after a maternity leave to return to her original position. After parental leave, employees "only" have the right to be assigned work according to the job description given in their employment contract.

### 7.1 Adjustment of working hours

You must **allow** pregnant employees and employees with children under 15 years of age to **adjust their working hours.** This usually includes shorter working hours (part-time work), adjusting the start and end of working hours (e.g. to pick up a child from kindergarten) or flexible scheduling of working hours.

- » You may only reject a request for part-time work made by a pregnant employee or employees with children under 15 years of age if this is prevented by **serious operational reasons.** For example, if the employee's shorter working hours would prevent, disrupt or seriously jeopardise the proper operation of the workplace.



- › You can adopt a range of practices to help employees improve work-life balance, such as telecommuting, a children's group at the workplace, and the possibility of gradual return of a parent on parental leave under an agreement to complete a job or an agreement to perform work.

## 8. Bullying and harassment

Employers must ensure equal treatment at the workplace and create a safe working environment. They are therefore required to prevent bullying and deal with any such conduct as soon as they learn about it.

Bullying at work usually manifests itself as psychological violence (undervaluation of work performance, assignment of meaningless tasks, ridiculing, etc.). If the bully is a supervisor, this is called **bossing**. Bullying in a team of similarly situated employees is called **mobbing**.

**Harassment also equals discrimination if it relates to a protected characteristic** and is intended to intimidate, humiliate or offend. This means that if someone bullies a colleague because of their skin colour, for example, this may constitute discrimination.

### 8.1 Sexual harassment

Harassment can also be sexual in nature (e.g. inappropriate comments, sending erotic pictures, unsolicited touches).

✘ A municipal police employee was making inappropriate and obscene comments towards a female colleague. He even started touching her intimate parts. She objected and eventually contacted her employer. The employer assessed the matter as a possible criminal offence and handed it over to the Police. The court then convicted the perpetrator of rape.

- › A company ombudsman can help to protect employees against harassment.
- › You can emphasise a policy of zero tolerance to workplace harassment in your internal regulations.

## 9. When an employee speaks up (victimisation)

An employee should speak up against conduct that he/she considers undesirable. If an employee draws attention to discrimination, the employer cannot punish him/her for this; otherwise the employer commits **discrimination** in the form of victimisation. It is irrelevant whether the employee makes a mere informal statement, files a complaint with the employer, contacts a labour inspectorate or lodges an action against the employer.

- › If an employee files a complaint, you must discuss it with him/her, or else you will commit an administrative infraction. It is not enough to address a complaint only in formal terms. **You must inform the employee of what you have found on the basis of his/her complaint, how you have evaluated the findings and what the next steps will be.**
- › A complaint may not be investigated by the employee against whom the complaint is directed. However, he/she should be given the opportunity to comment on the criticised conduct.

# Termination of employment

The Labour Code protects employees from losing their jobs suddenly or without a valid reason.

## 10. Termination of employment during the trial period

The prohibition of discrimination also applies during the **trial period**. If you are not satisfied with the employee's work, you may terminate his/her employment immediately, but you must not make your decision on the basis of a ground of discrimination.

✘ During the trial period, an employer finds out that a female employee is caring for a small child. If her employment is terminated because of this fact, such a step **is discriminatory**.

## 11. Termination of a fixed-term employment

An **employment relationship terminates at the end of the period** agreed in the contract. The employee is not entitled to an extension (renewal) of the contract.

- › Protected characteristics may not influence your decision-making as to which employees will be offered an extension.

✘ The employer did not renew the employment contract of a pregnant employee. The HR manager told her that the termination of co-operation was unrelated to her work performance, and that the employer was looking for "long-term co-operation and stability". The employer then posted an advertisement for the job. If the employer does not renew an employee's contract because of her pregnancy and her expected absence from the workplace, such conduct is **discriminatory**.

## 12. Notice of termination

Both the employee and the employer may terminate the employment **by notice**. However, the employer must have a reason for termination set out in the Labour Code.

However, if the reason for termination disclosed conceals the real discriminatory reason, this constitutes discrimination. You must apply the reasons for termination equally in respect of all employees (not reproach only one employee for his/her breaches if several employees are committing the same breach).

✘ After a car accident, an employee has back problems that require him to see a doctor more often during working hours. The employer therefore no longer wants to employ him. The employer repeatedly sends the employee warning letters, in which they point out his shortcomings (e.g. reproach him for not completing a task the employee was not assigned). The employer then gives notice to the employee on the grounds of unsatisfactory results of work. **That is discrimination.**

### 12.1 Termination for redundancy

The employer may dismiss an employee if he/she has become redundant due to an organisational change (to increase work efficiency). However, this must be the **real reason for the dismissal**.

✘ An employee was made redundant after returning from parental leave. During her absence, the employer had hired a new employee and no longer had enough work for both of them. By doing so, the employer **violated the Labour Code** because the redundancy was not caused by an organisational change. The employer should have prevented the situation (e.g. by offering the new employee only a contract for the necessary period of time).

If you immediately hire someone else to replace a dismissed employee, there was no redundancy. However, in case of an organisational change, you can create a new position with a different job description if you need it.

If you are cancelling positions held by more than one employee due to an organisational change, you can choose who to **dismiss**, but not on the basis of a protected characteristic.

✘ Due to reorganisation, the employer terminated the employment contract of a female employee of retirement age. Her younger colleagues working in the same position stayed. The employer assumed that the employee would still have income in the form of an old-age pension. **In doing so, the employer discriminated against her on the grounds of age.**

## 13. Agreement

An employment relationship may also be terminated by agreement of both parties. If you propose to terminate employment by agreement, give the employee enough time to think about it or to consult someone.

# What happens if an employer commits discrimination

You can be **fined by the labour inspectorate** for discrimination. Labour inspectorates monitor whether employers treat employees equally. They can carry out an inspection, for example, on the basis of an employee's complaint.

The **court** may order you to **refrain from the discrimination, apologise or compensate for non-material damage in money**. An employee may defend himself/herself against discrimination by means of an anti-discrimination action, but also in other ways (e.g. by filing an action for **declaring termination of employment void**).

## 14. Shared burden of proof

In discrimination disputes, the employee and the employer (the plaintiff and the defendant) share the **burden of proof**, because otherwise the victim of discrimination would not be able to prove that he/she was treated worse precisely because of the protected characteristic. For example, an HR officer cancels a job interview once she finds out that the job seeker is Roma.

In this case, the victim of discrimination only has to prove that the defendant treated him/her worse than others. The defendant then has to prove that they acted on grounds other than the prohibited grounds of discrimination.

- › Try to resolve any disputes by agreement (out of court). This is usually faster and also cheaper than court proceedings.



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