



# UNIT-9

## Equal Opportunity and Diversity

### Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ Understand what discrimination is.
- ✓ Understand the difference between direct and indirect discrimination.
- ✓ Explore policies and procedures for managing equal opportunities and diversity.

## Unit 9

### Equal Opportunity and Diversity

Discrimination occurs when people are judged according to particular criteria. For example, when selecting someone for a teaching post, the school panel might discriminate in favour of a candidate who answers the questions clearly and concisely and discriminate against a candidate who mutters and strays from the point of the question. This is logical but 'discrimination' usually tends to mean unfair discrimination. It usually means that the criteria used to judge someone are unjust. The example above would be a form of unfair discrimination if the panel were to give the job to a candidate based only on race or gender.

It is important to note that discrimination, in itself, is not always entirely negative. The dictionary defines 'discriminating' as 'showing good taste and judgement.' Everyone discriminates daily in what food they eat, what clothes they wear, what interests they have. It is when we discriminate against people for unfair reasons that the practice becomes damaging. Discriminating on the grounds of race, orientation or religious preferences can, unfortunately, lead to violence and crime and in some cases cause turmoil in nations as was the case in places such as the former Yugoslavia, Rwanda, and Northern Ireland.

A more subtle act of discrimination is based on gender, age or disability. Although subtle, it is just as dangerous and has serious effects on society. It is also a huge waste of skills and abilities. Discrimination is defined in the Sex Discrimination Act and the Race Relations Act. It can take three forms:

**Direct Discrimination:** This occurs when companies advertise for a 'Girl Friday', for example, and use different criteria when selecting candidates for promotion. This would be considered sex or gender discrimination. Racial discrimination occurs when employers specify that that they do not want any black workers, for example. Turning down a deaf or partially blind individual based on their perceived disabilities is also a form of discrimination. In all the above cases, one group of people are treated less favourably than another based on sex, race or disability. There is no defence for this behaviour even if employers think that they are doing the right thing for their business. The motives are not relevant.

**Indirect Discrimination:** This occurs when an organisation treats all employees equally but a particular practice or policy affects one gender or race more than another or negatively affects the disabled more than the non-disabled. There are laws in place that make it illegal to discriminate on the grounds of:

- Gender
- Marital status
- Race
- National origin

- Ethnicity
- Disability
- Sexual orientation
- Religion or belief
- Age
- Union membership or non-membership
- Part-time workers
- Individuals who are fixed-term workers
- Ex-offenders who have served their time.

The law works differently in each case above and provides more protection for those who are being discriminated against on the grounds of race, gender, union membership, or being an ex-offender. The law does, however, allow certain grounds for discrimination as long as the employers' actions can be impartially justified. There are limits, however, to the extent to which most of the cases can be defended. In the UK, anti-discrimination laws have been amended and expanded to comply with EU directives. All member states in the EU must adhere to a common framework of laws. Most of the UK's discrimination laws now fall within the boundaries of European competence, the European Court of Justice being the final court of appeal.

## Discrimination on Grounds of Sex or Marital Status

### The Equal Pay Act 1970

The Equal Pay Act 1970 was the first legislation advocating equality at work between men and women. It was passed in 1970 but only came into force in December 1975. It has subsequently been amended and its scope extended by the Equal Pay (Amendment) Regulations 1983 and by the Sex Discrimination Act 1986. The Act is exclusively concerned with eliminating unjustifiable differences between the treatment of men and women. These differences include unequal rates of pay and other conditions of employment.

The Act was amended in 1983 and specifies three types of claims that can be brought. These clearly define the circumstances in which pay and other conditions between men and women should be equal:

- **Work:** when women and men are doing work which is the same or broadly similar. For example, a female assembly worker sits next to a male assembly worker, carrying out the same range of duties.
- **Work rated as equivalent:** when men and women do work that is different in nature but has been rated as being equivalent in the job evaluation process.
- **Work of equal value:** where men and women do different tasks but it can be shown that the two jobs are equal in terms of their demands, i.e. in terms of skill, effort and type of decision-making.

If an employee brings a case against a company, there must be someone of the opposite gender with whom he/she can be compared. The other person, or comparator, must work for the same organisation,

under the same terms and conditions of employment. If a tribunal upholds a case before it is well founded, an independent expert may be brought in to make a job evaluation and determine whether the two jobs being compared are equal in terms of their demands on the employees.

There are usually two forms of defence open to employers if they are taken to the tribunal: they can try to demonstrate that the jobs are different and not equal in their demands or they can attempt to prove that there is a sound business reason for treating the person unequally and it is not because of sex discrimination.

Below are some examples of authentic material factors that have been accepted by the courts:

- different qualifications (e.g., where a man has a degree and a woman does not)
- performance (e.g., a man is paid more than a woman because he works faster or has received a higher appraisal rating than she has)
- seniority (the man is paid more because he has been employed for longer than the woman)
- regional allowances (a man is paid a London weighting; thus, his pay is at a higher rate than that of a woman doing the same job in the Manchester branch).

### **The Sex Discrimination Act 1975**

The Sex Discrimination Act 1975 was intended to complement the Equal Pay Act of 1970. It sought to deal with non-contractual forms of sex discrimination such as selection of employees, availability of training opportunities, promotions, equal benefits, facilities, and terms of dismissal. It covers all workers, including those who don't work under contract, and all job applicants. Certain people are not covered, these being religious ministers, people who are employed to work abroad and soldiers on the front line. In cases where employees are hired to work abroad, the situation must be taken into account. For example, a firm that sends people to Saudi Arabia must hire only men for certain jobs. This Act is intended not only to apply to men and women but also to protect employees from unfair discrimination based on their marital status.

### **Direct Discrimination**

Direct discrimination occurs when an employer treats an employee badly or unfairly because of their gender or the fact that they are married. This type of discrimination is clear-cut. If these cases come to court, the judges will use the 'but for' test which determines whether a woman would have received the same treatment as a man (or vice versa) but for her gender. A clear example of obvious sex discrimination is when a company advertises for a man to fill a position that could be done equally well by a woman. Not promoting women because they may be pregnant or dismissing a woman because she has a working husband and retaining her single colleague are also clear cases of sex discrimination.

There is absolutely no defence for an employer who has been found to have clearly discriminated on the grounds of gender. There is one exception, however. It is possible for employers to argue that certain

jobs must be reserved for either men or women and that these jobs require a genuine occupational qualification.

These claims can be made under:

- **authenticity** (e.g., acting or modelling jobs)
- **decency** (e.g., lavatory or changing room attendants)
- **personal services** (e.g., a counsellor engaged to work in a rape crisis centre).

Direct discrimination based on pregnancy or maternity is automatically considered to be unlawful sex discrimination. In such cases there is no reasonable defence. As such, there is no reason to turn down an eight-months-pregnant woman who is well-qualified, despite the fact that she will have to take maternity leave.

### **Indirect Discrimination**

This type of discrimination occurs when a particular organisational practice or provision disadvantages a large proportion of one sex over another. For example, a job advertisement might specify that candidates must be taller than 5 feet 10 inches. This is considered indirect discrimination because more women than men will be affected. In indirect discrimination cases, one defence that is to claim that the discriminatory policy or practice is required because of 'set grounds other than gender.' This is one way in which it may be considered lawful. An example of this would be a job which requires the employee to lift heavy loads. It would then be considered lawful for the company to restrict candidates to those who have the required physical capabilities and to include a test of strength in the selection procedure. In these circumstances, more men than women would be able to demonstrate these capabilities; therefore, it would be considered not unlawful but, in fact, quite genuine.

### **Sex or Sexual Harassment**

Sex or sexual harassment occurs when there is unwanted behaviour of a sexual nature based on a specific sex (gender), which affects the dignity of women and men in the workplace. This type of inappropriate behaviour may be physical or verbal and it leads to material disadvantage such as loss of a promotion, pay or access to training. It also includes the creation of an intimidating or humiliating work environment. Most cases of this nature have been brought by women although men can also be affected.

### **Victimisation**

Victimisation occurs when an employer victimises employees by disadvantaging them in some way because they (the employees) have exercised their legal rights or helped other employees to do so. A case can be brought to a tribunal if the employee has been overlooked for a promotion, for example, after successfully fighting for and winning an equal pay claim. It is important to note here that victimisation also covers any situation where an employer threatens, but hasn't actually taken, a certain action.

**Race Discrimination**

The Race Relations Act 1976 governs the UK's race discrimination laws. The principles are almost exactly the same as the Sex Discrimination Act as mentioned above, and the Act became one of European competence in 2003. This law applies to all workers except those who are hired to work overseas or in private households. Both 'direct' and 'indirect' forms of discrimination are defined in the same way as in the Sex Discrimination Act.

They too contain the terms 'victimisation, positive discrimination, and harassment.' This Act also includes protection against discrimination on ethnic, national origin or nationality grounds. This means an employer is being unlawful if they discriminate against someone because he/she is Spanish or Danish, for example. It is also unlawful to treat someone negatively because of their racial origins.

**Disability Discrimination**

In December 1996 the Disability Discrimination Act (1995) came into force. It replaced the Disabled Persons (Employment) Act 1944, which had been criticised for being ineffective. Since 1996 when the new Act came into force, thousands of cases have been brought before employment tribunals. In 2006, the Commission for Equality and Human Rights replaced the Disability Rights Commission. The Commission for Equality and Human Rights now promotes the interests of disabled people and polices employer actions. Its role is to prevent employers from directly discriminating against people (be they workers or applicants for a job) who have a disability. Specifying in a job advert that applicants must have a 'good record of health' cannot be considered unlawful under the Act. Organisations are brought to a tribunal because they have actually discriminated against an individual.

**Discrimination on Grounds of Sexual Orientation**

In the EU today, the Equality (Sexual Orientation) Regulations 2003 have been prepared to protect people from being discriminated against because of their sexual orientation. All workers and applicants for jobs are covered by this. Former employees of a company are also included and this ensures that discriminatory job references cannot be written. Four types of discrimination claims can be brought and they are the same as under the sex discrimination law. These are:

- direct discrimination,
- indirect discrimination,
- harassment, and
- victimisation.

Under the 2003 regulations, harassment claims are very common and this is the main form of discrimination suffered by gay and lesbian people. For this reason, organisations must ensure that relevant policies are in place and strong action is taken with any staff member who engages in this type of harassment.

### **Discrimination on Grounds of Religion or Belief**

In December 2003, the Equality (Religion and Belief) Regulations came into force. They stem from the European Union's Equal Treatment Framework Directive. These regulations are the same as those for sexual orientation even though certain practical issues that they include are different. Any religious groups that do not share a common ethnicity are also protected from unlawful discrimination under these regulations.

### **Age Discrimination Law**

Legislation to protect and combat age discrimination was introduced in October and December of 2006. Age discrimination law is similar to the other types of discrimination laws that are within the European competence (sex, sexual orientation, disability, and religion or beliefs) but this extends to other organisations such as trade unions, professional bodies and institutions for further and higher education.

### **Trade Union Discrimination**

The option to join a trade union and take part in its activities is considered a basic human right and is included in the European Convention on Human Rights and the International Labour Organisation. It is difficult for any employer in the UK to lawfully discriminate against employees because they are members of a trade union, even though the language in the Convention is not expressed as the language of positive rights. These rights were established many years ago and are found today in the Trade Union and Labour Relations (Consolidation) Act 1992. Equivalent rights were given in 1990 to people who don't want to join a union or partake in its activities. There are three basic rights:

- the right not to be dismissed for a trade union reason
- the right not to suffer action short of dismissal for a trade union reason
- the right not to be refused a job on trade union grounds..

### **Part-Time Workers**

Most part-time workers are female and, as such, indirect sex discrimination cases have been taken to court over a long period of time. From 2000 onwards, however, these workers have not used the sex discrimination laws. The (Part-Time Workers Prevention of Less Favourable Treatment) Regulations 2000 now cover these part-timers, be they women or men. These regulations were introduced in 2000 as a way for the UK to comply with the European Union's Part-Time Workers Directive. This is to ensure that part-time workers, not just employees, are treated the same as full-time workers in every aspect of work. The main features are as follows:

- Part-time workers who feel they are being treated less favourably than a comparable full-time worker can write to their employer asking for an explanation.
- This must be given in writing within 14 days.

- Where the employer's explanation is considered unsatisfactory, the part-time worker can ask an employment tribunal to ensure the employer affirms the right to equal treatment.
- Under the regulations, employers must review their terms and conditions and give part-timers the same pro rata rights as those of comparable full-timers.
- Employees have a right not to be victimised because they have enforced their rights under the Part-time Workers Regulations.
- Any term or condition of employment is covered by the regulations, as is any detriment caused as a result of not being promoted or given access to training. It is also now unlawful to select someone for redundancy simply because he or she works part-time.

## Fixed-Term Workers

The EU has a Fixed-term Work Directive (brought into UK law via the Employment Act 2002) which includes many important provisions to improve the position of people employed on temporary contracts. The requirement stipulates that a fixed-term employee should not be treated less favourably than a comparable permanent employee except if the less favourable treatment can be clearly justified. Fixed-term employees can ask employers for reasons (in writing) why they are being treated unfairly and request that their contracts be made permanent after four years. Complaints can be brought before a tribunal if employers fail to award these rights or at least give acceptable explanations.

## Managing Diversity

The CIPD (2005b) states that:

Diversity is an inclusive term that recognises all kinds of differences. It is about 'valuing everyone as an individual.' It recognises that people from different backgrounds can bring fresh ideas and perceptions... which can make the work more efficient and products and services better... Diversity is an inclusive concept that covers all kinds of differences that go beyond the traditional understanding of what equal opportunity is about.

Managing diversity means making sure that all people have the chance to maximise their potential and their contribution to an organisation. It means valuing diversity, valuing the differences between people and acknowledging that the individual qualities they bring to their jobs can lead to the development of a more rewarding and productive environment. Kandola and Fullerton state that the most successful initiatives adopted by organisations are practising diversity policies.

These are:

- I. introducing equal rights and benefits for part-time workers (comparable with full-time workers)
- II. The use of the MOSAIC model to describe the characteristics of a diversity-oriented organisation. MOSAIC stands: for Mission, Objective, Skills, Activity, Individual, and Culture.

**Mission and values** must be strong and positive and include successful diversity management as this is a necessary long-term goal.

**Objective and fair processes** must exist within the organisation and be audited regularly to ensure that power does not sit within informal networks, and no one group of employees dominates at any level.

**Skilled workforces** who are aware of the effects of biases on their decision-making are necessary as well as managers who manage diversity effectively while emphasising excellence in individual and team performances.

**Active flexibility** means that the diversity-oriented organisation will show more flexibility in its working patterns and in its practices, policies and procedures.

**Individual focus** means that organisations must guard against averaging out group differences or similarities by creating segregated groups.

**Culture that empowers** should be achieved through openness and by engendering trust between all individuals. It must also include an absence of prejudice and discrimination.

### **Generating and Communicating EO Strategy and Policies**

It is important that the policy statement includes these features:

- Commitment to equal treatment throughout the organisation.
- Justification of why it is important for the organisation and its employees.
- Assignment of organisational responsibility (somebody with the authority and ability to achieve results).
- Incorporation of EO objectives into the competency framework (if one exists) or individual performance objectives.
- A framework for the nature of training initiatives to assist the achievement of the objectives.
- Framework for recruitment, promotion and other key EO initiatives and practices.
- Processes with which grievances can be dealt with quickly and effectively.
- The way in which monitoring will take place.

### **Disability Requirements**

The Disability Discrimination Act (DDA) explains the need for 'reasonable adjustments' that can be made to employment arrangements to balance out the practical problems faced by disabled people. This can include things like wheelchair access, flexible working times, time off for treatment, Braille equipment provision, and specialised training. The 'reasonable' adjustments relate to the cost of adjustments with respect to the company's resources, the situation with regard to the employment of disabled people in

the company and the ease (or otherwise) of making these adjustments. Two situations are emphasised: for existing disabled employees or those who were working but had a serious accident, and where an employer receives an application from an existing employee. Greater onus is on the employer regarding the existing employee. However, if the organisation has few disabled people the onus is on making more reasonable provisions.

### **Health and Safety**

Health and safety is important and includes the need for multi-language safety signs, training and testing, and documents and any other necessary adjustments, specifically for disabled employees. It is also important to include the Manual Handling Operations Regulations 1992 and to ensure that warehousing and operations can be managed by both sexes.

### **Handling Harassment and Bullying**

Prevention is the main aim with regard to harassment and bullying. Policy statements must clearly explain what forms harassment and bullying may take and exactly what they comprise. They must also clearly explain the damage and cost to the organisation and all its employees. The policies must always emphasise the need for respect for everyone within the organisation and ensure that all staff feel valued. The processes of dealing with any allegations of harassment or bullying must also be clearly defined; they must be speedy, fair and confidential. They must also assure protection from victimisation for the person making the complaint. It must be made clear that anyone engaging in such behaviour is liable to pay compensation to any victims and they may also lose their jobs. Opportunities for discussion and for questions to be asked and answered must be provided.

### **Procedure for Handling Harassment**

Many organisations are providing independent counsellors to whom victims of harassment or bullying can turn for advice. All conversations are strictly confidential and without pressure. These counsellors' advice can help victims decide whether or not to take action and what form that action should take. It will probably be necessary to produce evidence. Complainants should keep written notes with dates and witnesses, etc. Action must be taken; otherwise, the unacceptable behaviour is unlikely to stop.

### **Equal Pay Issues**

The EOC Code of Practice on equal pay suggests that there are opportunities for discrimination on all aspects of pay:

- On the basic rate, women can be on lower grades because the jobs in which they predominate have not been evaluated fairly.
- Women may not have been represented properly on the job evaluation committee, or the factors chosen in the scheme may favour men (supervision, strength required and technical skills).
- They may also be appointed at lower starting points on the pay scale.

- They may also move more slowly to the top of the scale if movement depends on achieving competencies or performance. This may be due to the unfair rating system which is skewed against women.
- On performance pay, women may have targets which are too demanding compared to men, or the assessments made by managers (still mainly men) may be unfair towards women.
- Women may have reduced access to benefits, such as allowances and company cars, because of the way their jobs are graded or because decisions are taken in a discriminatory way by management.

It is necessary to ensure that any problems that may arise in regard to pay systems or evaluation of existing ones are open to investigation and rectification. Having an accessible and transparent appeal system is necessary to assist women who have any problems before they turn to any legal processes.

## Age Discrimination

It is estimated that 46% of the workforce will be over 45 by 2021 and, within Europe as a whole, the number of people aged 50–64 will have risen by 20% in two decades. Despite these growing numbers of older employees in the workforce, ageism remains rooted in society and workplaces. Usually, age discrimination appears at recruitment when age limits are often overtly or covertly used in describing the ideal candidate in an advertisement as ‘between 25 and 35’ or using more indirect descriptions as ‘a recent graduate’ or ‘with 1–3 years’ experience.’ People are protected from age discrimination by law in areas of redundancy and unfair dismissal. Here, no claims can be successful if the employee is over 65 years of age and all employees have a fixed retirement age. This may need to change to meet the requirements of the EU Directive.

Direct discrimination in job adverts will become illegal, as will making decisions about promotion based on an employee’s age. Interview questions such as, “When do you intend to retire?” will be considered discriminatory. Saying things such as, ‘we went for the younger person – they have more enthusiasm and are less of a health risk,’ is also unacceptable although Article 6 of the Directive allows for some different treatment based on age if it is reasonably and objectively justified. For example:

- Maximum age limits for recruitment based on training needs of the job or the need for a reasonable period before retirement. This will apply, presumably, to jobs such as airline pilots.
- Protection of young workers, such as restricting their employment on night work or on dangerous machinery.
- Encouraging or rewarding loyalty by paying long-service awards.
- Allowing employment planning to ensure that a workforce is age-balanced, at least to a reasonable degree.

### Further Reading:

- ✓ Michael Armstrong (2006), *A Handbook of Human Resource Management Practice*
- ✓ John Stredwick (2005), *An Introduction to Human Resource Management*
- ✓ Barbara Bagilhole (2009), *Understanding Equal Opportunities and Diversity*