



Eighth Edition

HUMAN RESOURCE MANAGEMENT

A CONTEMPORARY APPROACH



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the appointment panel used to choose between candidates was gender or race, then most people would call it ‘discrimination’. So this chapter will adopt the commonly understood meaning of the term ‘discrimination’ to describe situations where there is less favourable treatment that cannot be justified.

Where can discrimination occur?

In all of the chapters in this book, you will have encountered issues where people (usually managers) are making choices that affect the lives of others in the workplace. It is at these decision points where judgements might be made that are unfairly discriminatory. In other words, there are numerous sites of potential discrimination that you have already encountered. To illustrate, the following list shows some human resource management issues where equal opportunities must be considered unless an organisation wants to run the risk of legal action being taken against it by disgruntled employees (or prospective employees) who have been unfairly treated:

- Advertising of posts
- Recruitment procedures
- Selection techniques
- Contractual terms and conditions of employment
- Pay
- Dress codes
- Working hours
- Workplace disciplinary procedures
- Appraisal interviews
- Allowances and bonus payments
- Dismissal procedures
- Occupational pensions
- Employee involvement arrangements
- Training opportunities
- Workplace culture and norms
- Custom and practice arrangements
- Promotion procedures
- Selection for redundancy

Explore

Consider the list of HRM issues above. Select five of these and in each case give an example of how equal opportunity considerations need to be taken into account. (For instance, in considering the advertising of posts, managers might want to bear in mind the demographics of the readership of the newspaper, magazine or website where the advert is placed.)

Legal protection against unfair discrimination

In Europe, there has been a move towards a common platform of human rights in relation to equality and fairness. One of the key developments has been the attempt to harmonise the protection against discrimination at work. Within each country there have been changes in national legislation – either amendments to existing laws or the introduction of new laws – in compliance with European Union (EU) directives. The basic principle behind the directives is a right to equal treatment irrespective of sex/gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In other words, if someone considers they have been unfairly treated because of their sex, age, religion and so forth, they have a legal right to challenge their employer and seek compensation. Within the UK, the Equality Act 2010 uses the term ‘protected characteristics’ to denote those aspects where there is legal protection:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;

- race (includes, colour, nationality, ethnic or national origins);
- religion or belief (covers philosophical belief, and includes a lack of religion or belief);
- sex;
- sexual orientation.

Of course, there are other characteristics that could be added to this list, such as size (both height and weight), appearance (haircut, tattoos, piercings and norms of attractiveness), health, class (socio-economic group), accent, schooling or university. None of these other characteristics is covered directly by European law or UK legislation, so it is often lawful for an employer to discriminate against someone on any of these grounds, although in some instances there might be some protection for the individual through laws that cover indirect discrimination (see below), or the violation of human rights.

Explore

On the basis of the preceding discussion reflect on your own experiences by identifying the ways you might have been disadvantaged personally in your past or current employment (or in any other aspect of your life). You do not need to think of dramatic examples of discrimination (although you might have experienced these) but think of instances where characteristics that are part of your identity have influenced a person's decision, behaviour or attitude towards you. Remember you can consider the unprotected characteristics as well as the protected ones.

Key controversy

You can be lawfully denied a job because you have a visible tattoo but not because of your skin colour. Is that fair?

The forms of legal protection

In many countries, legislation sets limits to lawful managerial action and places obligations on managers to act in accordance with principles of fairness. In other words, some equality and diversity practices are the result of a legal obligation, rather than management choice. Bearing this general point in mind, you should also note the following:

- The type and extent of this legislation varies from country to country, so it is important to read about the specific legislation in your own national context.
- Opinion varies as to whether state regulation is necessary or the extent to which it is legitimate or practical to legislate to prevent discrimination and promote equality of opportunity.
- Even when legislation is in place there is no guarantee that this will ensure equality of opportunity. This might be because the legislation is ignored (unlawfully) or because it is ineffective (too weak, too many loopholes, difficult to enforce and so on).

Within European workplaces EU directives have provided a shared platform of protection and established common legal definitions of four forms of discrimination (although, of course, interpretation of the meaning and the application might still vary in different national contexts). The descriptions and examples below are taken from the UK's application of the directives through the Equality Act 2010.

1. *Direct discrimination* occurs when a person is treated less favourably than another is, has been or would be treated in a comparable situation on one of the protected grounds (sex/gender, racial or ethnic origin, etc.) (see Box 6.1). **Example** (HMSO, 2010: 18): 'If an employer

recruits a man rather than a woman because she assumes that women do not have the strength to do the job, this would be direct sex discrimination.'

In addition to protection against less favourable treatment due to the possession of one of the characteristics, the UK's Equality Act 2010 also covers cases where a person is treated less favourably because (a) they are wrongly assumed to have a protected characteristic, or (b) they are associated with someone who has one of the protected characteristics (except marriage and civil partnership). **Example of (a)** (HMSO, 2010: 19): 'If an employer rejects a job application form from a white man whom he wrongly thinks is black, because the applicant has an African-sounding name, this would constitute direct race discrimination based on the employer's mistaken perception.' **Example of (b)** (HMSO, 2010: 18): 'If a Muslim shopkeeper refuses to serve a Muslim woman because she is married to a Christian, this would be direct religious or belief-related discrimination on the basis of her association with her husband.'

2. *Indirect discrimination* occurs where a policy, provision, criterion or practice that applies in the same way for everyone has an effect that disadvantages a group of people because of their age, disability, gender reassignment, marital/civil partnership status, race, sex or sexual orientation. Someone from that group can then claim they have been indirectly discriminated against. It will be deemed indirect discrimination unless the employer can justify the policy or action as a proportionate means of achieving a legitimate aim (see Box 6.1). **Example** (HMSO, 2010: 24): 'An observant Jewish engineer who is seeking an advanced diploma decides (even though he is sufficiently qualified to do so) not to apply to a specialist training company because it invariably undertakes the selection exercises for the relevant course on Saturdays. The company will have indirectly discriminated against the engineer unless the practice can be justified.'
3. *An instruction to discriminate* is where one person obliges another to act in a discriminatory manner against a third party covered by one of the protected grounds. In such situations, it is the employee being told to act in a discriminatory manner who can make a claim for direct discrimination against his or her employer. **Example** (HMSO, 2010: 19): 'If the manager of a nightclub is disciplined for refusing to carry out an instruction to exclude older customers from the club, this would be direct age discrimination against the manager unless the instruction could be justified.'

Box 6.1 Direct and indirect discrimination

A Muslim woman applied for a job as a stylist in a hair salon in London, but she was rejected because she wore a headscarf and the salon owner argued that all the stylist had display their own hair.

In this case, there is no *direct discrimination* on the ground of her religion, because the owner of the salon would have rejected a non-Muslim who permanently wore a headscarf or other head covering.

Potentially, there is *indirect discrimination* because the salon owner's rule of no headscarves would affect Muslim women more than non-Muslims, as it is a dress code observed in the main by Muslim women.

Explore

The key issue in Box 6.1 is whether the requirement that stylists display their hair is a 'proportionate means of achieving a legitimate aim'. If it is, then a claim of indirect discrimination would fail. If it is not, then the salon owner is indirectly discriminating.

- What do you think?
- Using the same reasoning as above, consider the following situation and explain the grounds on which a claim of discrimination might be made: The managers of a tourist attraction in Glasgow advertised for a worker no taller than 1.7 metres (5 ft 7 in) to fit into a costume for an exhibition.

4. *Harassment* is where unwanted conduct related to the protected grounds of discrimination takes place with the *purpose or effect* of violating someone's dignity and of creating an intimidating, hostile, degrading, humiliating or offensive environment. **Examples** (HMSO, 2010: 29): 'An employer who displayed any material of a sexual nature, such as a topless calendar, may be harassing employees where this makes the workplace an offensive place to work for any employee, female or male. A shopkeeper propositions one of his shop assistants. She rejects his advances and then is turned down for promotion which she believes she would have got if she had accepted her boss's advances. The shop assistant would have a claim of harassment.'

Differences between and within social groups

One of the assumptions sometimes made is that all discrimination is the same, irrespective of whether it is based on sex, race/ethnicity, disability and so forth. While it is certainly the case that the consequences of discrimination (the disadvantage suffered) are the same (or very similar) for the victims, the reactions and attitudes of the members of the social groups affected can differ. The term 'social group' refers to people who share similar characteristics; for example, it is possible to refer to women as a social group, or people with a disability as a social group. Of course, it would also be possible to break these social groups down even further – for instance, white women; or Muslim men with a disability; or even white, partially sighted, lesbian atheists under 25 years old. For our purposes at this stage, the social group is defined by one of the key characteristics (sex, age, ethnicity, etc.), although shortly we shall explore why this is an over-simplification.

It is important to acknowledge differences *between* social groups. They may all be victims of discrimination, but it would be inaccurate to assume the experience of being discriminated against because you are a woman is the same as that of being discriminated against on the grounds of sexual orientation; or that the discrimination experienced by disabled employees is the same as that endured by ethnic minority employees. For example, someone's social group might be identifiable because of visible characteristics, such as sex, race/ethnicity, some forms of disability, and religions that require certain codes of dress. Other characteristics, such as sexual orientation and some religions or beliefs, can be hidden, enabling potential victims to avoid disadvantage and discrimination through behaviour that disguises their true identities.

A further issue to consider is that some people experience discrimination because of more than one characteristic they possess. This has been discussed by researchers in two ways:

- *Multiple discrimination*. This refers to situations where a person suffers unfair treatment due to two or more characteristics – for example, their sex and their age. The conclusion drawn by some researchers (e.g. Berthoud, 2003) is that there is some sort of additive effect. In other words, for example, in terms of getting a job, there is a disadvantage associated with being a woman to which is added the disadvantage of being an older worker. It is sometimes referred to as 'double jeopardy'.
- *Intersectionality*. This term is also used to describe situations of multiple discrimination. However, there is an important distinction. Researchers conclude that the disadvantages caused by two or more characteristics are not simply additive because they produce a totally different experience for the person (see e.g. Acker, 2006; Bradley and Healy, 2008). For instance, the experience of being from an ethnic minority background and also a woman is not just the sum of the two disadvantages (ethnicity and sex) but rather the product of the interaction between these two characteristics. It can be described as producing a new and potentially greater disadvantage that is distinct from the specific category (the intersection). For example, an employee might be discriminated against because she is both a woman and Asian, and might therefore not share the same concerns about, or experiences of, discrimination as her white women colleagues or black male colleagues. Researchers argue that for this reason it is important to study the intersections between the various characteristics, because these are categories in their own right.

Finally, it is important to recognise differences *within* social groups, rather than consider each group to be homogeneous. For instance, Reynolds *et al.* (2001) point out how disability can be a diverse and wide-ranging categorisation. People may move into a state of disability from ill-health, work accidents or ageing, and so, while some people are ‘born disabled’, there is an increasing proportion of employees who ‘become disabled’. Moreover, the needs of those with different ‘disabilities’ are so wide-ranging that it might be suggested there is very little meaning in such a broad category as ‘disability’. The same conclusion might be reached for race/ethnicity. Commentators (e.g. Modood *et al.*, 1997; Pilkington, 2001; Nazroo and Karlsen, 2003) argue that research evidence suggests there is so much ethnic diversity that to describe discrimination as being the same across different ethnic groups fails to take into account its differential impact. This means it is essential to recognise the differences between ethnic groups not only in terms of their experiences of discrimination, but also in their varied requirements for redressing the discrimination.

Key controversy

Are some protected characteristics more important than others? Or should all protected characteristics be treated equally?

What are the implications for managers?

The overall situation is that managers must operate within a legal context that has established rights for individuals that protect employees and job applicants. Of course, this does not stop some managers from ignoring or flouting these laws, but this carries both a pecuniary and a reputational risk for the organisation. Within this legal framework, managers must also be aware of the differences in the needs of the various groups and individuals that experience discrimination. These are important issues because it means:

- Managers should not assume that discrimination means the same thing irrespective of the social group concerned.
- Managers should not assume that a solution to rectify disadvantage for one social group (e.g. women) will be appropriate or welcomed by a different social group (e.g. disabled people).
- Managers should expect that attitudes will differ within social groups (e.g. Asian employees and black employees).

The recognition of this diversity has led some commentators to argue that, rather than defining people by their similarities to others, managers should see all employees as individuals with unique skills and needs. This is an issue that we return to later in the chapter.

Why is inequality a problem and why should managers be concerned with it?

A key question that needs to be addressed is why managers should care whether some people are disadvantaged and suffer unfair treatment. In answering this question, it is useful to distinguish between two different sets of arguments, which can be labelled ‘the social justice case’ and ‘the business case’.

The social justice case

The social justice case is that managers have a moral obligation to treat employees with fairness and dignity. Part of this involves ensuring that decisions are made without resorting to prejudice and stereotypes (for definitions of these terms, see Box 6.2) because then there is a lower risk of any particular group being disadvantaged and therefore less chance of an individual feeling that he or she has been discriminated against.

Social justice arguments are typically based on one or more of the following points.

Equality of opportunity

The 'level playing field' argument is that managers have a responsibility to ensure that everyone is given the same opportunity to access jobs and promotion opportunities, and that what separates the winners from the losers are the skills and abilities they possess. Managers might therefore need to intervene to ensure that such equality of opportunity is provided, otherwise factors other than skills and abilities will determine success. The particular objective is ensuring procedural justice so that the processes at key decision points are free from bias and distortion.

Equality of outcome

The focus is on the outcome of any process. Are the rewards (jobs, pay, bonuses, training opportunities, etc.) distributed in a manner that truly takes into account skill and abilities or, put more prosaically, does everyone get 'a fair share of the cake'? While procedures are essential, it is vital not to overlook the outcomes, so there also needs to be a concern with distributive justice. Importantly, this approach can help draw attention to how individuals from some groups can enter a 'level playing field', yet they do so from a position of prior disadvantage, which is rarely taken into account. As we saw in Case Study about women on company boards, some people argue

Box 6.2 Prejudice and stereotyping

The following definitions come from a dictionary of HRM.

Prejudice – this means holding negative attitudes towards a particular group, and viewing all members of that group in a negative light, irrespective of their individual qualities and attributes. Typically we think of prejudice as being against a particular group based on gender, race/ethnicity, religion, disability, age and sexual orientation. However, prejudice extends much further and is frequently directed at other groups based on features such as accent, height, weight, hair colour, beards, body piercings, tattoos and clothes. It is extremely rare to find a person who is not prejudiced against any group – although most of us are reluctant to admit to our prejudices.

Source: Heery and Noon, 2008: 359.

Stereotyping – this is the act of judging people according to our assumptions about the group to which they belong. It is based on the belief that people from a specific group share similar traits and behave in a similar manner. Rather than looking at a person's individual qualities, stereotyping leads us to jump to conclusions about what someone is like. This might act against the person concerned (negative stereotype) or in their favour (positive stereotype). For example, the negative stereotype of an accountant is someone who is dull, uninteresting and shy – which, of course, is a slur on all the exciting, adventurous accountants in the world. A positive stereotype is that accountants are intelligent, conscientious and trustworthy – which is an equally inaccurate description of some of the accountants you are likely to encounter. The problem with stereotypes is that they are generalisations (so there are always exceptions) and can be based on ignorance and prejudice (so are often inaccurate). It is vital for managers to resist resorting to stereotyping when managing people; otherwise, they run the risk of treating employees unfairly and making poor-quality decisions that are detrimental to the organisation.

Source: Heery and Noon (2008: 443–4).