



Republic of Trinidad and Tobago



Equal Opportunity Commission

*Promoting Equality*



**GUIDELINES**

for **EMPLOYERS**  
in TRINIDAD AND TOBAGO

# **Benefits of EQUAL OPPORTUNITY Employment PRACTICES**

- **Higher staff morale and retention**
- **Increased productivity and creativity**
- **Less conflict and fewer complaints within the workplace**
- **Superior company reputation and public image**
- **Lower absenteeism rates**
- **Greater pool of persons for job selection**
- **Assurance that the most suitable applicant is offered the job**
- **Access to opportunity for development to full potential for all workers**

**Employers should take all reasonable steps to guard against discrimination.**

# **GUIDELINES** for **EMPLOYERS** IN TRINIDAD AND TOBAGO

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# **Vision and Mission** STATEMENT

of the



**Equal Opportunity Commission**  
*Promoting Equality*

*To achieve mutual respect among groups based on understanding and appreciation of diversity and on shared respect for equality and human rights.*

## **Vision and Mission Statements**

### **Vision**

The Equal Opportunity Commission (EOC) envisages an informed and responsible society where the objective is to ensure just, fair and equal opportunity for all.

### **Mission**

The Equal Opportunity Commission (EOC) seeks to discourage and prevent acts of discrimination and promote equality of opportunity so that each individual can contribute to the development of the society.

# 1

# INTRODUCTION

## INTRODUCTION

The Equal Opportunity Commission ('the Commission'), which was established by the Equal Opportunity Act, Chapter 22:03<sup>1</sup> ('the Act'), officially came into operation in 2008.

The Commission's functions are outlined under section 27 of the Act. The key functions include the following:

- *to work towards the elimination of discrimination*
- *to promote equality of opportunity and good relations between persons of different status*
- *to receive, investigate and, as far as possible, conciliate allegations of discrimination and*
- *to prepare and to publish appropriate guidelines for the avoidance of discrimination.*

In pursuance of its functions, the Commission has prepared and published these Guidelines for Employers, with the intention of informing employers and prospective employers about:

- *Anti-discrimination law in the specific area of employment*
- *Prohibited practices in employment*
- *Ways in which to avoid the practice of discrimination and actions contrary to the Act*
- *What to expect if a complaint is made against one as an employer.*

It is noteworthy that, for each calendar year over the period 2010 to 2013, complaints of discrimination in the area of employment have outweighed complaints in all other categories and have consistently accounted for seventy percent (70%) or more of all matters lodged with the Commission.

The Commission has prepared these guidelines to assist both the public and private sectors to be more informed in their employment practices and the potential consequences that follow when, knowingly or unknowingly, discrimination has occurred.

One should bear in mind that the **Guidelines for Employers** is not an exhaustive publication; it does not contain every employment scenario that may be covered by the Act. Further, each matter that comes before the Commission is dealt with on a case-by-case basis, as the facts related thereto or surrounding circumstances may vary. Consequently, any examples or outcomes outlined in this document are solely hypothetical and ought to be viewed in that context.

# 2

## **WHO** is CONSIDERED an **“EMPLOYER”**?

## WHO IS CONSIDERED AN “EMPLOYER”?

An employer would be any individual or entity that engages a person to perform work or services for which compensation is given (for example, salary or wages). It does not matter whether the person is engaged as an apprentice or trainee or as an independent contractor.<sup>2</sup>

There is often much discussion as to whether a person is an employee or an independent contractor. The former performs under a contract of service, whereas the latter performs under a contract for services. While this may be relevant for the purposes of an employer’s obligations under income tax law, national insurance law or industrial relations law, the Equal Opportunity Act is not concerned about this. For the purposes of this Act, ‘employment’ is defined under section 2 to mean, “employment under a contract of service or apprenticeship or a contract personally to execute any work or labour and includes the employment of an independent contractor”.

### Do ‘employers’ include private sector employers as well?

The Constitution enshrines the right of the individual to equality before the law, equal protection of the law and equality of treatment by a public authority; however, these rights exist between the State and the individual. Simply put, the non-discrimination provisions of the Constitution would apply to public sector employers (such as the Service Commissions and the Ministries). However, the Equal Opportunity Act applies to BOTH public and private sector employers.

### What is meant by “Private Sector”?

The ‘private sector’ refers to that part of the economy that is not owned or controlled by or on behalf of the State (which would be the ‘public sector’). The private sector encompasses any corporation, business, association, partnership and charity that is privately owned and controlled, and does not fall within the ‘public sector’, even if the entity has a public or welfare purpose. By definition, this would include non-governmental, community-based and faith-based organisations. It is to be noted that the private sector would also include individuals who are employers.

<sup>2</sup>The definition of “employee” under the Equal Opportunity Act, Chapter 22:03 is wider than under other pieces of legislation, for example, The Industrial Relations Act, Chapter 88:01

# 3

**WHEN** is the EMPLOYER  
**RESPONSIBLE** for the  
ACTIONS of **OTHERS**?

## WHEN IS THE EMPLOYER RESPONSIBLE FOR THE ACTIONS OF OTHERS?

As an employer, you may be held legally responsible in the following three (3) settings:

- (i) You are **primarily responsible** for your actions and omissions. You are also responsible for the actions and omissions of persons acting through you or on your behalf, that is, officers or managers to whom you have delegated all or part of your authority and who may be considered as your representatives (for example, the Chief Executive Officer and the Human Resource Manager).
- (ii) You may be **liable vicariously** for acts of discrimination and victimisation by workers employed by you carried out in the course of their employment.
- (iii) You are also legally responsible, as the **'principal', for the acts of your 'agents'**, once such acts have been carried out with your authorisation. Your agent is someone you have instructed to do something on your behalf, but who is not employed by you. It does not matter whether or not you have a formal contract with him/her.

Therefore, as an employer, it is not just a question of how you behave, personally, that matters. If another person who is employed by you, or who is carrying out your instructions does something that can be considered discrimination or victimisation, you can be held legally responsible for that person's actions, as long as:

- the worker was acting in the course of his/her employment – in other words, while he/she was doing his/her job; or
- your agent was acting within the general scope of your authority – in other words, while he/she was carrying out your instructions, and
- there is a connection between the actions that were taken and what they were authorised or expected to do as part of their employment with you.

However, you may be absolved of liability, if you can show that you took **all reasonable steps** to ensure that discrimination or victimisation or offensive behaviour would not occur. There is no standard definition of *'all reasonable steps'*, as what is reasonable for a large enterprise may not be reasonable for a small business. Rather, *'all reasonable steps'* may be determined on a case-by-case basis, having regard to factors such as the size and resources of an organisation, the industry and the operating environment.

Reasonable steps would include the following, which are discussed in greater detail in section 6 of this publication:

Employers should develop and document –

- An equal opportunity policy
- A code of conduct
- An anti-bullying and an anti-harassment policy
- Guidance for managers on harassment and discrimination
- An internal complaints procedure, among others, so that all persons may know what is and is not acceptable and what are their rights and responsibilities.

These policies should be clearly communicated and consistently enforced. All staff should receive training on these subjects as may be appropriate.

For example-

- new in-coming staff, periodically, should be made aware of these documents as part of their orientation
- existing staff should undergo sensitisation training and refresher training, at a later point
- Human Resource staff and other managers should be trained in monitoring compliance and in handling complaints.

All actions with respect to compliance and enforcement should be documented and should be reviewed, periodically, to determine what, if any, modifications ought to be made.

Employers must actively implement precautionary measures to minimise the risk of the occurrence of discrimination or victimisation or offensive behaviour.



# 4

**WHAT** does the  
EQUAL OPPORTUNITY ACT  
**PROHIBIT** with respect to  
EMPLOYMENT?

## WHAT DOES THE EQUAL OPPORTUNITY ACT PROHIBIT WITH RESPECT TO EMPLOYMENT?

Section 4 of the Equal Opportunity Act, Chapter 22:03, provides as follows:

“This Act applies to -

- (a) discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is –
  - (i) discrimination on the ground of status as defined in section 5; or
  - (ii) discrimination by victimisation as defined in section 6;
- (b) offensive behaviour referred to in section 7.”

Complaints covered by the Act are as described below



This document seeks to clarify, subsequently, several terms used in the Act, and referenced in the following questions:

- What is meant by discrimination in relation to employment?<sup>3</sup>
- What constitutes discrimination on the ground of status?
- What is discrimination by victimisation?
- What is offensive behaviour?

<sup>3</sup>For the purposes of this publication, focus is placed solely on 'employment' and not on the other three (3) categories (namely, education, the provision of goods and services and the provision of accommodation).

## **What is meant by discrimination in employment?**

Sections 8, 9 and 10 of the Act cover three (3) categories of relationships:

### ***(i) Relations with prospective employees***

Unlike other areas of law, where there must actually be a relationship of employer and employee, the protection afforded under the Equal Opportunity Act extends to those who are not hired by an employer, (that is, persons who are not shortlisted for an interview or who are not offered employment).

Section 8 of the Act provides that an employer or prospective employer shall not discriminate against a person who seeks employment in respect of -

- the arrangements the employer makes in determining who should be offered employment
- the terms or conditions on which employment is offered
- refusing or deliberately omitting to offer employment.

### ***(ii) Relations with existing employees***

Under the provisions of Section 9 of the Act, where a person is actually employed, an employer is prohibited from discriminating against that person in respect of -

- the terms or conditions of employment that the employer affords the person;
- the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment or by refusing or deliberately omitting to afford the person access to such;
- dismissing the person or subjecting the person to any other detriment.

### ***(iii) Relations with prospective and existing trainees or apprentices***

The Act also protects persons who are seeking to undergo and/or who are currently undergoing training for employment. Such persons may be present in the organisation but would not be considered as actual 'employees'. According to the provisions of section 10 of the Act, an employer shall not discriminate against such a person in respect of-

- the terms or conditions on which that person is afforded access to any training course or other facilities concerned with such training; or
- terminating that person's training or subjecting that person to any detriment during the course of training.

## What constitutes discrimination on the grounds of status?

A status is a particular characteristic of an individual that is protected under the Act. The Act protects the seven (7) status grounds identified hereunder:

- (i) sex
- (ii) race
- (iii) ethnicity
- (iv) origin (including geographical origin)
- (v) religion
- (vi) marital status and
- (vii) disability.

Where the employer treats the employee less favourably than another employee in similar circumstances, and this less favourable treatment is due to a person's status, this would be considered discrimination on the ground of status.

**Very briefly, these status grounds can be explained as follows:**

Sex	Sex refers to the biological and physiological characteristics that define males and females, for example, different reproductive organs, different levels of certain hormones (higher testosterone in males, higher oestrogen in females). What the Act seeks to prohibit is differential treatment being given to men and women (for example, men receiving a higher salary for performing the same job as women). According to the Act, sex does not include sexual orientation or preference.
Race	Anthropologists see race as biological; it is defined by physical characteristics which result from genetic ancestry, for example, skin, hair, eye colour, bone and jaw structure, the tendency towards certain diseases, among other things.
Ethnicity	Whereas anthropologists see race as biological, they see ethnicity as social and cultural. It is based on identity with a group that is defined by similar traits, such as a common language, common heritage, common culture, common geographic origin, common foods and diets, and perhaps, a common faith. Ethnicity derives from tradition, learned behaviour and customs.
Origin	Human Rights legislation and declarations around the world seek to prohibit discrimination on the basis of 'national origin'. The Equal Opportunity Act speaks simply of origin and states that it includes geographic origin; as such, it is wider than geographic or national origin. It can include one's family, social background or ancestry.

<p>Religion</p>	<p>The Act does not define what a religion is. Courts have held that it is not necessary that a person’s belief conform to existing orthodoxy or dogmas to be considered a ‘religion’ but his/her beliefs must not be fanciful or trivial. The English House of Lords said in <i>ex parte Williamson [2005] UKHL 15</i>, that the beliefs that the person holds:</p> <ul style="list-style-type: none"> <li>- Should be genuinely held and made in good faith; they should be neither fictitious, nor capricious;</li> <li>- Must be consistent with basic standards of human dignity or integrity;</li> <li>- Must relate to matters more than merely trivial; must possess an adequate degree of seriousness and importance, and must be based on a fundamental problem;</li> <li>- Must also be coherent in the sense of being intelligible and capable of being understood.</li> </ul>
<p>Marital Status</p>	<p>According to the provisions of the Act, this means the status or condition of being one of the following:</p> <ul style="list-style-type: none"> <li>- single;</li> <li>- married;</li> <li>- married, but living separately and apart from one’s spouse;</li> <li>- divorced; or</li> <li>- widowed.</li> </ul>
<p>Disability</p>	<p>According to the provisions of the Act, disability means:</p> <ol style="list-style-type: none"> <li>(a) total or partial loss of a bodily function;</li> <li>(b) total or partial loss of a part of the body;</li> <li>(c) malfunction of a part of the body, including a mental or psychological disease or disorder; or</li> <li>(d) malformation or disfigurement of part of the body.</li> </ol> <p>The Act places a duty on employers to make <b>reasonable adjustments</b> for staff to help them overcome disadvantages resulting from impairment (for example, by providing assistive technologies to help a visually-impaired person use computers effectively). The adjustments must be reasonable in that they should not impose a disproportionate or undue financial burden (that is, an <b>‘unjustifiable hardship’</b>) to the employer.</p>

Examples of complaints that the Commission has received include those described below:

- An employee ('complainant') claims that he has not been promoted by his employer on account of his race.
- A prospective applicant ('complainant') claims that she was not hired by an employer because she is from a certain geographic location.

## **What is discrimination by Victimisation?**

Victimisation has a specific meaning under the Act. It involves less favourable treatment by the employer (but does not have to be based on the employee's status).

Victimisation is commonly used to mean any treatment which a person thinks is unfair or unequal and makes him/her feel like a victim. However, victimisation as it is defined in the Act is very specific.

Examples of victimisation may include instances where an individual is treated less favourably:

- (i) by his employer, because the individual has brought proceedings or given evidence in a Court of law against his employer (or another person) or
- (ii) by his service provider, because the consumer has alleged that the service provider is in breach of some relevant law.

However, this less favourable treatment has to originate from something that the person said or did to enforce his/her rights or the rights of others.

These actions or perceived actions include the following situations:

- (i) The employee has lodged a complaint with the Commission or has brought proceedings under any other relevant law (or has indicated that he/she intends to do so)
- (ii) The employee has given information or evidence in any such proceedings (or has indicated that he/she intends to do so)
- (iii) The employee has made allegations that the employer has undertaken actions which would amount to a contravention of the Act or any other relevant law (or has indicated that he/she intends to do so).

If, for instance:

- the employer is before the Court on an allegation of discrimination, and the complainant (who is an employee) has given evidence against the said employer, and the employer chooses to deny the complainant training, promotion or overtime, or even dismisses the complainant, the complainant may be able to lodge a complaint of discrimination by victimisation

- a complainant lodges a complaint with the Commission claiming he/she is not being promoted because of his/her religion and, subsequent to the Commission commencing its investigation, the employer terminates the complainant's employment, a second complaint may be lodged claiming discrimination by victimisation.

## What is Offensive Behaviour?

Offensive behaviour occurs when a person says or does something publicly:

- (i) which is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of persons;
- (ii) because of the gender, race, ethnicity, origin, or religion of the other person or of some or all of the persons in the group; and
- (iii) with the intention of inciting gender, racial or religious hatred.

Offensive behaviour is not limited to the following four (4) areas of discrimination:

- (i) employment
- (ii) education
- (iii) the provision of goods and services and
- (iv) the provision of accommodation.

## Exceptions

It is to be noted that there are certain instances where the provisions of the Act do not strictly apply in regard to status. On the basis of these instances, the Commission in its investigation would consider:

- ***Genuine occupational qualification***<sup>4</sup> - where there is a need for an employee of a particular sex to carry out a particular job, for example, a female Counsellor needed in a women's shelter.
- ***Employment in a religious shop***<sup>5</sup> - the owners of such a shop would be free to require that employees be of a particular religion.
- ***Domestic services***<sup>6</sup> - the Act would not apply to an individual hiring three (3) persons or less to carry out domestic services in his/her home.

- **Family businesses**<sup>7</sup> - the owner of such a business may employ relatives in favour of non-relatives.
- **Unjustifiable hardship**<sup>8</sup> - an employer is not expected to make reasonable accommodations for disabled persons if the disabled person is not able to discharge the fundamental duties required for the position in question. The financial hardship to be incurred by the employer and the risks to the health and safety of the individual and others around would also be considered.

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<sup>4</sup>Section 11 of the Act<sup>5</sup>Section 12<sup>6</sup>Section 13<sup>7</sup>Ibid<sup>8</sup>Section 14

# 5

**WHAT** are some  
AREAS where **PROHIBITED**  
**PRACTICES** OCCUR?

## WHAT ARE SOME AREAS WHERE PROHIBITED PRACTICES OCCUR?

Intentionally or unintentionally, issues may arise with respect to any of the following areas:

- Employment advertisements
- Enquiries made of prospective employees
- Terms and conditions
- Training
- Provision of references
- Recommendations for assignments and promotions
- Disciplinary action and termination
- Reasonable accommodation.

The following are general guidelines an employer or prospective employer may use when addressing some of these issues.

### Employment advertisements

An employer should refrain from requiring that applicants possess certain characteristics, such as the status grounds identified earlier (race, ethnicity, religion, sex, marital status, disability and origin including geographical origin).

For example, an advertisement stating, “Now hiring manual labourers, only male applicants would be considered” would be contrary to the Act, unless the employer could demonstrate that the job requirements fall within one of the exceptions identified in the preceding section.

### Enquiries made of prospective employees

It is common for certain pre-employment enquiries to be made, such as, the earliest date on which an applicant could assume duties. However, enquiries that relate to the status grounds covered in the Act are to be avoided.

For instance, an enquiry of a female applicant as to her future marital plans could be considered a breach of the Act.

### Terms and Conditions

Terms and conditions offered should not be dependent upon the status of an individual employee.

For example, where an organisation employs a married person and a single person who are equally qualified to carry out the same tasks, it would be illegal to offer a more lucrative salary/benefits package to the single person as opposed to the married person.

## **Training**

Training and apprenticeship opportunities are usually offered on the basis of the internal policies of an organisation and may be based on institutional/departmental needs. However, these opportunities ought not to hinge upon the specific status of an individual.

For example, it would be an infringement of the Act to only offer training to employees of a particular race, or to deny training to an employee because he/she had previously lodged a complaint with the Commission.

## **Provision of references**

An employer's decision to provide references should not be based on the status ground of the individual; and it should give a fair and accurate account of the employee's performance.

## **Recommendations for assignments and promotions**

Distribution of job assignments and considerations for promotion must not be determined by an employee's status or must not be motivated by 'victimisation'. The employer may be guided by the internal policies governing assignments and promotions, but these must be implemented within the confines of the Act.

For example, the decision to only roster employees of a particular religion for overtime could be considered illegal.

## **Disciplinary action**

An organisation's disciplinary policy and procedure should be based on good industrial relations principles and practices and should not be determined by an employee's status or motivated by victimisation.

For example, two (2) employees are caught consuming alcohol on the job and the employer decides to issue a verbal warning to one (1) while suspending the other. This could be in breach of the Act, if the employee who was suspended had previously lodged a complaint against the employer or had given evidence in proceedings against the employer.

## **Reasonable Accommodation**

Although an employer is not required to undertake workplace adjustments that would lead to an unjustifiable hardship, the employer is nonetheless expected to make reasonable accommodation to staff in workplace operations.

Examples of such accommodation include modifying the infrastructure for differently-abled persons and providing flexible working hours to facilitate childcare, or for religious reasons.

# 6

WHAT **ACTIONS** can an  
**EMPLOYER** take to **GUARD**  
AGAINST **the** OCCURRENCE  
of **DISCRIMINATION** ?

## WHAT ACTIONS CAN AN EMPLOYER TAKE TO GUARD AGAINST THE OCCURRENCE OF DISCRIMINATION?

Discrimination in the workplace can occur in various forms. When an employer fails to take proper steps to prevent discrimination in the workplace:

- the general workplace atmosphere and culture could be affected adversely
- employees feel uncomfortable and demotivated and
- he/she could be held liable for breaching the Act, should a complaint be lodged against him/her.

Conversely, equal opportunity practices can benefit an employer by facilitating:

- Higher staff morale and retention
- Increased productivity and creativity
- Less conflict and fewer complaints within the workplace
- Superior company reputation and public image
- Lower absenteeism rates
- Greater pool of persons for job selection
- Assurance that the most suitable applicant is offered the job
- Access to opportunity for development to full potential for all workers.

As noted, previously, employers should take all reasonable steps to guard against discrimination. What is reasonable would vary, depending on factors such as:

- the size and structure of the business
- resources available
- nature of the industry
- workplace environment and culture
- working hours
- number of customers and staff
- any history of discrimination in the workplace.

It must be pointed out that certain enterprises may, in fact, be a collection of different work environments and a “one-size-fits-all” approach may not be appropriate.

For example, an energy company may undertake drilling operations in one location where the environment is more of a ‘blue-collar’ or ‘industrial’ nature and the same company may have offices in another location where the environment is more of a ‘white-collar’ or ‘corporate’ nature.

Some of the initiatives an employer could implement to avoid or minimise discrimination in the workplace include the following:

- **Establish very clear and specific rules with respect to the types of questions asked at interviews.** Interview questions should seek to obtain only the information relevant to evaluating an applicant's qualifications for employment. Data on issues which are not valid indicators of whether an applicant can successfully execute the duties related to the job, (marital status, race, number and age of children and religion) should not be sought at the interview.

While each scenario would differ and there may be instances where it is necessary to direct questions that would not normally be asked at an interview, what must always be borne in mind is whether the employer could identify a job or task related need for asking the question.

Some examples of prohibited questions include:

- Are you pregnant?
  - Are you married or intend to become married?
  - What is your race?
  - Have you ever undergone psychiatric evaluation?
  - What religion are you?
  - Do you have any disabilities?
  - Do you have any children?
  - How old are your children?
  - Describe your family life?
  - Do you have any dependents?
  - Who looks after your children?
  - How often do you go to church/mandir/mosque?
  - Are you a religious person?
  - Where are you from?
  - How do you balance your family, professional and personal commitments?
  - How are you related to "X or Y"?
  - Where are your parents from?
- **Develop an unambiguous written workplace policy stating that discrimination will not be tolerated.** An effective equal opportunity policy should set out in clear and simple terms what is and is not acceptable workplace behaviour, so as to minimise confusion and uncertainty among staff and managers. This policy should be comprehensive enough to cover potential, current and even past employees.

An equal opportunity policy that helps staff understand their rights and responsibilities can also reduce the risk of an employer's liability for acts of discrimination in the workplace.

- **Make the policy accessible to all staff members and ensure that they understand what the equal opportunity policy requires of them.** The policy could be shared at staff meetings or at formal training sessions. Employers should make it clear that employees could contribute towards creating an equal opportunity environment by the way in which they interact with each other.
- **Establish a Joint Committee consisting of both management and employee representatives to conduct ongoing reviews of the organisation's equal opportunity policy.**
- **Review selection, recruitment, promotion and training procedures** to ensure that the company is delivering on its equal opportunity policy.
- **Provide staff training on discrimination, equality and diversity within the workplace.**
- **Provide additional, structured training** on equal opportunity practices for staff members who select, recruit and train employees.
- **Comply with standards set for layout, design and accessibility for differently-abled persons.**
- **Establish a process for hearing complaints confidentially.** This may be included in the organisation's grievance handling process.
- **Respond quickly, seriously and effectively to any complaints** – establish a process for resolving complaints.
- **Introduce the equal opportunity policy and complaints procedures, after consultation with employees.** Policies to create and maintain a diverse working environment are more likely to be effective when they are jointly agreed.
- **Comply with and make reasonable adjustments for persons with disabilities** by providing special equipment and assistance.
- **Consider developing a separate sexual harassment policy.**
- **Consider flexible working policies,** to help employees meet family and other obligations.

# 7

**WHAT** can an  
EMPLOYER EXPECT if a  
**COMPLAINT** has been  
lodged **AGAINST** him/her?

This section gives an outline of the complaints handling process. The Commission is mandated to receive, investigate and, as far as possible, conciliate complaints lodged with it by members of the public. If a complaint has been lodged against an employer any one or more of the following may apply:

**The employer may not be contacted at all**

When a complaint is lodged, the matter is assigned to the Commission's staff, who will review it and contact the person who lodged same (the 'complainant') and seek further clarification and information and documents as may be needed.

Based on this initial investigation, the following may emerge:

- The complainant has informed the Commission that the matter has been resolved, or that for whatever reason, he/she does not wish to pursue it further
- It is apparent that the matter is also being dealt with by another body (for example, an Attorney-at-law or a Trade Union) and no further action is required by the Commission
- The matter, more appropriately, ought to be dealt with by another body (for example, a Trade Union) or through another channel (for example, the employer's internal grievance process)
- The matter does not point in any way to any issue of discrimination or victimisation or offensive behaviour.

*At this point the matter would be closed.*

If it is decided to investigate the matter further (for example, if none of the above listed situations apply), usually the next step would be to write to the employer against whom the allegations have been made (the 'respondent') and

- inform him/her of the complaint that has been made
- summarise the allegations
- request information from him/her that may be both general and specific
- give him/her a date by which to provide same.

**The employer may receive a section 33 Notice to furnish information by a specified date**

The request is made pursuant to the provisions of section 33 of the Act, which empowers the Commission to request any party to furnish specified information by a specified date<sup>9</sup>. By that same section, the Commission can also request that the party attend before it at a specified date, time and place, and provide oral evidence and documents as the case might be.

<sup>9</sup>Section 33 reads:

"The Commission may by notice in writing –  
(a) require any person to furnish such information as may be described in the notice;  
(b) specify the time in which the required information is to be furnished; and  
(c) require the person to attend at such time and place specified in the notice and to give oral evidence about and produce all documents in his possession or control relating to, any matter specified in the notice".

The employer may receive a Second Notice or a Supplemental Notice

**Second Notice:** If, for whatever reason the respondent/ employer does not comply with the Section 33 Notice sent to him/her, in that:

- (i) He/she failed to provide the requested information by the stipulated date (and did not ask for an extension of time) or
- (ii) He/she provided some but not all of the information

then a Second Notice may be sent to him/her, further to section 33, asking that he/she provide the information by a given date.

**Supplemental Notice:** If the information is provided, the Commission would contact the complainant and

- (a) either the complainant would be asked to come in and view the information (unless there are parts of it that the respondent/ employer has asked to be kept confidential)
- (b) or the complainant would be provided with a summary of the response.

The complainant would be asked to comment or respond or provide more information as the case might be. Further questions or issues may arise out of this, in which case, a Supplemental Notice may be sent to the respondent further to section 33, asking that he/she provide additional information by a given date. When the response is received, the process would be repeated and arising out of this, another Supplemental Notice may be sent to the respondent.

If the respondent/ employer does not comply with the stipulations of the Section 33 Notice (or any Supplemental Notices) and if a Second Notice is sent to him/her and he/she still does not comply, then, further to section 36 of the Act<sup>10</sup>, the Commission may lay a complaint before a Summary Justice or Magistrate, and the respondent/employer may be summoned to Court. If he/she cannot advance a reasonable excuse for his/her failure or omission, he/she can be convicted and subjected to a fine of -

- One thousand dollars (\$1,000.00) per day, in the case of a respondent who is an individual or
- Five thousand dollars (\$5,000.00) per day, in the case of a respondent that is a body corporate

for each and every day when there was failure or refusal to comply. It is to be noted that this sanction also applies if the respondent/employer does not comply with a section 35 Notice to attend conciliation.

The employer may receive a Summons to attend before the Magistrates Court

<sup>10</sup>Section 36 reads:  
A person who, without reasonable excuse, refuses or fails to comply with any requirement of a notice under sections 33 and 35(2), is liable on summary conviction—  
(a) in the case of an individual, to a fine of one thousand dollars;  
(b) in the case of a body corporate, to a fine of five thousand dollars, for every day that the individual or body corporate refuses or fails to comply with any requirement of a notice.

**The employer may receive a Section 35 Notice to attend conciliation**

If as a result of the investigation, the Commission finds that the complaint may be resolved by conciliation, section 35 of the Act empowers the Commission to refer the matter to conciliation. A Notice would be issued to the complainant, the respondent and any other relevant persons to attend a conciliation session at a specified date, time and place.

Conciliation is a voluntary process whereby a neutral third party facilitates discussions between the parties, with the aim of them coming to an amicable solution. Conciliation may take place in one session or may be adjourned to future dates to allow the parties an opportunity to formulate and to respond to proposals. The conciliation session would be held in private. If the matter is resolved by conciliation, an agreement would be drawn up, and after the parties have signed the agreement, it would be registered with the Equal Opportunity Tribunal and would be binding as if it were an order of that Court.

It should be made clear that if a respondent does not comply with a section 35 Notice to attend conciliation, a summary complaint can be laid under section 36 and the respondent could be summoned to the Magistrates Court and subjected to the sanctions mentioned above.

- (i) If attempts to resolve the matter by conciliation do not prove successful, or
- (ii) If after the completion of the investigation by the Commission and the matter could not have been resolved by conciliation,

the complaint could be referred to the Equal Opportunity Tribunal.

If the Commission is satisfied that there was likely a breach of the Act, the Commission will with the consent of the complainant:

- prepare a report relating to the investigation with its recommendations
- send a copy of the report to the parties to the complaint
- publish the report and
- make said report available for inspection by the public.

**The employer may receive a Report from the Commission**

The Commission would then refer the matter to the Equal Opportunity Tribunal for adjudication.

If after publication of the report the matter still remains unresolved, the Commission will inquire from the complainant whether he/she wishes to proceed to the Equal Opportunity Tribunal ('the Tribunal') and if he/she consents, the matter will be referred to the Tribunal. The Tribunal is created by the provisions of section 41 of the Act as a superior Court of Record. It consists of a Chairman, who enjoys status equal to that of a Judge of the High Court of Justice and who may be assisted by two (2) Lay-Assessors.

The Tribunal has jurisdiction –

- (i) to hear and determine complaints referred to it by the Commission
- (ii) to require persons to attend before it for the purpose of giving evidence and producing documents and
- (iii) to make declarations, orders and awards of compensation.

Normally, when a matter is referred to the Tribunal, the Registrar issues a Notice to the complainant and the respondent to attend a Case Management Hearing on a specified date and time. It is to be emphasised that the Tribunal is independent from the Commission and once a matter is referred to the Tribunal, it is no longer the responsibility of the Commission.

**The employer may receive a Summons or Notice to attend before the Equal opportunity Tribunal**

## QUESTIONS ABOUT THE COMPLAINTS PROCESS

Respondents regularly ask the following questions:

**Would the process identified above be applicable to all complaints (that is, will all complaints go to conciliation and/or the Tribunal)?**



**A**

No, since a complaint may be terminated prior to reaching either stage:

- (i) as noted above, a matter may be brought to an end even before a section 33 Notice is sent to a respondent, in which case, the respondent will not be contacted.
- (ii) if a section 33 Notice is sent (including any Second Notices and Supplemental Notices), the information submitted in response by a respondent would be considered and –
  - (a) the complainant may decide to withdraw the complaint (for example, this may happen if the complainant is of the view that the response has clarified his/her concerns or has provided an acceptable way forward); or
  - (b) the Commission may find that there is no evidence to support any issue of discrimination or victimisation or offensive behaviour; in this case, the Commission would inform the complainant of the finding, and based on the response (if any), no further action would be taken.

**If the Commission sends a section 33 Notice to a respondent does that mean that the Commission has found that the respondent has committed a breach of the Act?**



**A**

Sending a section 33 Notice (including any Supplemental Notices) is merely a part of the investigative process and does not mean that the Commission has made any findings or determinations against a respondent. The Commission's mandate is to receive, investigate and, as far as possible, conciliate complaints lodged with it. The Act directs that the Commission shall investigate all complaints lodged with it. The Commission is not a representative or agent or advocate for the complainant (or for the respondent), as it is an impartial fact-finding body.

**What if a respondent cannot meet the deadline given in the section 33 Notice (including any Supplemental Notices) to provide all of the information?**

**Q**

**A**

The respondent is free to request in writing an extension of time, indicating:

- the length of the extension required and
- the reasons he/she cannot comply with the initial deadline.

The Commission may grant the extension, may give a shorter or an even longer time frame within which to respond or may decline to give the extension, based on the existing circumstances.

**Can a respondent provide information further and/or additional to what is asked for in a section 33 Notice (including any Supplemental Notices)?**

**Q**

**A**

In addition to providing the requisite information, the respondent is free to rebut the allegations made by the complainant as outlined in the Notice and to furnish any additional information that would assist the Commission in determining whether or not discrimination (or victimisation or offensive behaviour) has occurred.

**What happens to the information that a respondent has provided to the Commission?**

**Q**

**A**

Once the requested information and/or documents have been submitted:

- (i) either the complainant is invited to view the response and make notes
- (ii) or if for some reason the complainant is unavailable, he/she may be provided with a summary of the response,

and he/she is asked to respond with his/her comments and provide any further information.

In viewing the response, the complainant may be accompanied by a representative or assistant, such as, an Attorney-at-Law, a Trade Union representative, an Industrial Relations Consultant, a reader (in the case of a visually-impaired person), or a sign-language interpreter (in the case of a hearing/speech-impaired person). Neither the complainant nor the representative/ assistant is allowed to either make copies or take pictures of the response.

**What are the costs or fees involved in having a matter before the Commission?**

**Q**  
**A**

There are no costs or fees to either the complainant or respondent. Even conciliation is **free of charge**. However, parties may choose, at their own cost, to seek the services of a representative or an assistant. While it is not mandatory that parties be represented by an Attorney-at-Law when a matter has been referred to the Equal Opportunity Tribunal, it is in their best interest that they seek the services of a proper and competent advisor, as the Tribunal is a superior Court of Record just as the High Court of Justice or Industrial Court.

## **The following case study (which is entirely fictional) briefly illustrates the Commission's processes and how an employer should treat with a matter:**

### **Complaint lodged by Ms Mild against Company Ltd.**

#### **Complaint Lodged:**

Ms Mild has lodged a complaint against her employer Company Ltd. She said that she is a senior officer in her current position and has been eligible for promotion to Team Leader for the past three (3) years. However the employer has consistently been promoting a series of Ms Mild's male colleagues ahead of her to the position of Team Leader.

#### **Commission contacts Ms Mild:**

The Commission's staff contacted Ms Mild and sought further information from her. She provided a copy of her degree certificate and she identified the colleagues that were promoted ahead of her: Mr. X, Mr. Y and Mr. Z. She said that only one of her male colleagues is actually qualified for the position.

#### **Section 33 Notice sent to Company Ltd:**

The Commission issued a Notice to the employer and asked that the Company furnish the following, by a specified date:

- (i) A copy of the job description ( including the qualifications required for the position of Team Leader);
- (ii) Documentation in respect of the qualifications, experience and performance appraisals for the past five (5) years in respect of Ms Mild, as well as Mr. X, Mr. Y and Mr. Z;
- (iii) An explanation of the promotion process in the subject matter, and what factors were taken into account in the decision to promote the individuals promoted; and
- (iv) Copies of any interview score sheets and of any reports recommending the persons for promotion.

#### **Company Ltd asks for extension:**

Prior to the deadline date, Company Ltd wrote to the Commission and requested an extension of one (1) week. It indicated that its Human Resource Department had recently moved offices and that the files relative to the matter needed to be located. The extension was granted.

#### **Company Ltd responds:**

Company Ltd indicated that the position of Team Leader requires a degree and that the complainant did not reveal to the employer that she had attained the qualification. Owing to the omission, the Human Resource Department did not have, on file, a copy of Ms Mild's updated certificates. The Company also stated that Ms Mild was misinformed when she claimed that Messrs. X, Y and Z did not possess the required qualifications (and provided copies of the respective certificates). In addition to the information that was specifically requested, the employer further pointed out that the Company has an equal opportunity promotion policy (a copy of the policy document was included), and that throughout the organisation, there were more female Team Leaders than male (as evidenced by a list of all Team Leaders that was provided).



**The Equal Opportunity Commission is located at:  
1st Floor, Ceramic (Trinidad) Building  
#37 Wrightson Road  
Port-of- Spain**

**Opening hours: Monday- Friday (except Public Holidays) 8 a.m. to 4:00 p.m.**

**We are available to facilitate presentations on the Equal Opportunity Act tailored to your organisation with the aim of raising awareness and eliminating discrimination.**

**Please feel free to contact us at:**

**Telephone: (868) 625-5815**

**Fax: (868) 623-4319**

**E-mail: [eoc.gov.tt](mailto:eoc.gov.tt)**

**Website: [www.equalopportunity.gov.tt](http://www.equalopportunity.gov.tt)**

## GUIDELINES FOR EMPLOYERS IN TRINIDAD AND TOBAGO FEEDBACK FORM

We are interested in your comments and suggestions. The results of this evaluation will be used to improve the content and format of our next publication. Please indicate your rating in the categories below by circling the appropriate number, using a scale of 1 (low) through 5 (high).

Please fill out both sides of this form and return to:  
1st Floor, Ceramic (Trinidad) Building, #37 Wrightson Road, Port of Spain  
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**IN GENERAL**

Do you plan to implement these guidelines in your organisation?

Have you ever visited the EOC's website?

Did you have previous knowledge of the work of the EOC?

If yes, though what medium?

Brochure

Newspaper

Radio

Television

Website

Colleague

Billboards

Other (state) \_\_\_\_\_

Suggestions/Areas of improvement:

**THANK YOU FOR YOUR FEEDBACK**









**Equal Opportunity Commission**

*Promoting Equality*

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