

COVID-19 CORONAVIRUS GUIDANCE FOR EMPLOYERS

INTRODUCTION

Employers and workers are faced with unique and challenging circumstances in responding to coronavirus (COVID-19) due to the recent measures, which continue to impact organisations nationwide.

As places of work re-open, employers will be faced with difficult decisions including changes to the way employees work.

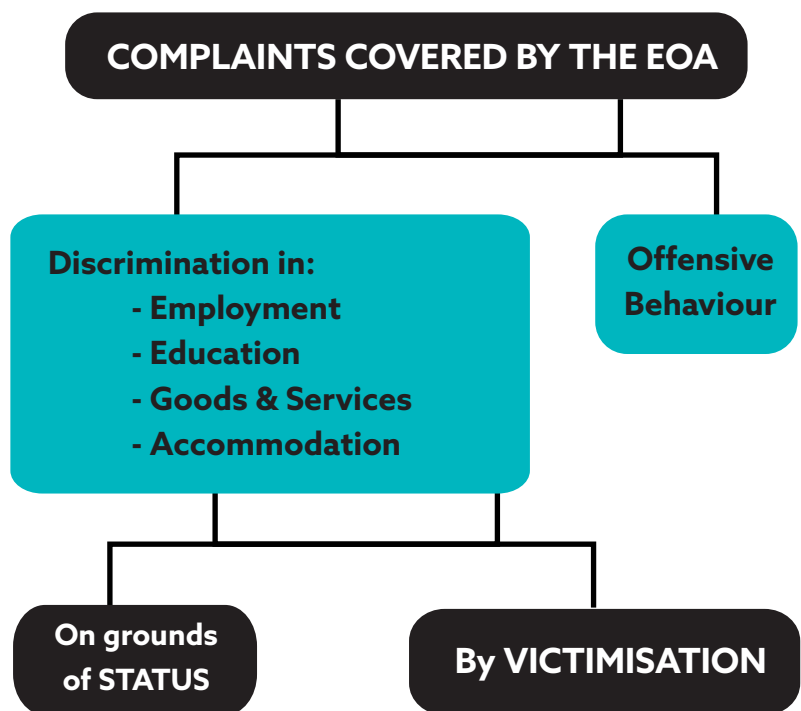
Despite these unprecedented circumstances, employers are still under a legal obligation to ensure that decisions made in response to COVID-19 do not discriminate against employees pursuant to the Equal Opportunity Act (hereinafter "the EOA" Chap 22:03).

The Equal Opportunity Commission (hereinafter "the EOC") wants to ensure that these obligations are understood so that inclusive decisions can be made to support employees through the challenges.

The EOA seeks to prohibit certain kinds of discrimination and to promote equality of opportunity between persons of different status.

The EOA created the EOC with a mandate to receive, investigate and where possible conciliate complaints.

It provides for the protection against discrimination in four categories - Employment, Education, the Provision of Goods and Services and the Provision of Accommodation and on specified status grounds based on sex, race, ethnicity, origin, religion, marital status and disability. The Act also applies to discrimination by victimisation and offensive behaviour.



If the complaint cannot be resolved, the Act created the Equal Opportunity Tribunal (hereinafter "the EOT"), a Court of Law whose mandate is to hear and adjudicate on these unresolved matters.



WHY IS THIS IMPORTANT

Employers must ensure that the current challenges faced by employees are not compounded by engaging in discriminatory practices. Discrimination in employment can happen in areas such as:



Terminating an employee (firing, redundancy, laying-off and such like).



Not re-engaging persons who work on shift or are temporary or casual.



Reducing the number of shifts or call-out days of a shift or casual employee.



Paying one employee less than the other or offering a benefit to one when they both do the same job.

If an employer makes decisions that are discriminatory against employees, employers may be at risk of:

- Having a complaint brought against them at the EOC.
- Having a claim brought against them at the EOT.
- Costly compensation fees.
- Damage to the reputation of the organisation.

IMPORTANT POINTS TO CONSIDER

Employers need to protect themselves from allegations of discrimination. Employers have a duty to ensure that their employees are aware of these guidelines and that they monitor its compliance.

Some issues to consider are:

Ensure decisions regarding extra hours, less hours, redundancy, salary cuts are not based on any of the employee's status grounds for example their sex, race religion etc.

Involve employees in the decision-making process in a manner that would consider their protected characteristic for example communicating in accessible ways to employees with disabilities.

Ensure employees are not disadvantaged based on their protected characteristics such as employees with disabilities, women or pregnant workers, when setting up work options.

Ensure that employees selected to work from home or to work reduced hours, are chosen based on organisational requirements and not on a particular protected characteristic.

Ensure that employees are not treated less-favourably because they, or a person they were in contact with, either had COVID-19 or were suspected to have had it.

EXAMPLES OF DIFFERENT FORMS OF DISCRIMINATION

Employers must ensure they do not directly discriminate, this means that one employee must not be treated less favourably than another based on any of the status grounds, for example:

01

Making a female member of staff redundant because she is pregnant instead of making adaptations to her role as a result of risks to her health and safety or Selecting an employee with a disability for leave or reduced hours to evade making reasonable adjustments for them.

02

A Manager/Supervisor requesting a female member of staff who is working from home to report to him/her more often than is requested of a male employee based on a stereotypical assumption.

03

Refusing to engage an employee who previously had COVID-19, or had close contact with a person who had COVID-19, even though that person has been cleared by the Ministry of Health.

Employers must also ensure they do not indirectly discriminate, that is adopting a work policy or practice that applies equally to all employees, but would put employees who share a protected characteristic at a disadvantage, and the practice or policy is not reasonably necessary or is not implemented in an appropriate manner, for example:

04

Requiring all employees to continue to work in front line, key worker roles. This would have a greater impact on those who need to self-isolate or follow the social distancing guidelines more strictly, such as employees with medical conditions or who may be pregnant. If the employer cannot objectively justify this approach, it is likely to be unlawful indirect discrimination against those employees.

EXAMPLES OF DIFFERENT FORMS OF DISCRIMINATION cont'd

Employers must not treat employees with a disability unfavourably where it cannot be objectively justified. This only applies if the employer knows or could reasonably have been expected to know that the person has a disability. For example:

05

An employer rejects an employee's appeal against redundancy because it is submitted a few days later than the deadline. The deadline was only missed because the employee had a learning disability and needed some assistance in understanding the decision and how it should be appealed. In such an instance, the employee is therefore being treated unfavourably because of something that has arisen due to his/her disability (rather than the disability itself). It is for the employer to justify the actions and explain why the deadline could not be extended for the employee to appeal the decision. If this cannot be done, the employer may have unlawfully discriminated against the employee.

REASONABLE ADJUSTMENTS

Employers must consider all relevant circumstances when deciding whether it would be reasonable to make any adjustments that an employee has requested, these may include:

- Reducing or removing the disadvantage experienced by the employee;
- the practicality of the adjustment;
- the cost;
- The employer's resources and size;
- What effect, if any, accommodating that employee's request would have on other employees.

Reasonable adjustments are not only applicable to persons with a disability, but can extend to persons who are affected by someone with a disability such as a carer or a parent of a child.

WHAT TO DO IF YOU CANNOT MAKE REASONABLE ADJUSTMENTS

In some circumstances, attempts to reduce the risk presented by COVID-19 may not be reasonable. In such circumstances, employers should consider whether it is reasonable to offer paid leave or to allow the employee to work from home until it is safe for them to resume working in house.

WORK AND SAFETY PROTOCOLS

Employers should be guided in their duty to provide a safe working environment in accordance with the Ministry of Health's COVID-19 Guidelines. Provisions should be applied equitably, as far as possible, across all Units and Divisions of the organisation.

SERVICES OFFERED BY THE EOC



STRUGGLING WITH ISSUES OF DISCRIMINATION?
THE EQUAL OPPORTUNITY COMMISSION IS HERE TO HELP !

FREE VIRTUAL
PUBLIC OUTREACH SESSIONS AND CONCILIATION SERVICES

SESSIONS WILL INCLUDE:

- DISCRIMINATION IN EMPLOYMENT
- SEX DISCRIMINATION
- ACCOMMODATING PERSONS WITH DISABILITIES
- DISCRIMINATION IN EDUCATION / ACCOMMODATION / GOODS & SERVICES

Lodge a complaint online at:
www.equalopportunity.gov.tt

Send your request for an outreach session to:
communications@eoc.gov.tt

 (868)672-0928 & (868)314-4992

The mandate of the Equal Opportunity Commission pursuant to the Equal Opportunity Act (Chapter 22:02) is to prohibit certain kinds of discrimination and to promote equality of opportunity between persons of different status. We are here to assist with providing guidance, to investigate your complaints and through our free public outreach programme offer sessions to public and private sector organisations.

CONTACT US

Address:

Equal Opportunity Commission
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Chaguanas
500621

Telephone Numbers:

(868) 672-0928 | (868) 314- 4992

FIND ALL EOC GUIDELINES Via our website at:

equalopportunity.gov.tt

Disability Guidelines

Guidelines for Employers

Guidelines on Sexual Harassment