



尋道會

Unitarian Universalists Hong Kong

Submission to the
Subcommittee on
Race Discrimination (Formal Investigation) Rules,
Race Discrimination (Investigation and Conciliation) Rules and
Code of Practice on Employment under the
Race Discrimination Ordinance

We welcome the revised Code of Practice (COP) on Employment with changes that adopted the comments from various organizations. We still have some concerns over indirect discrimination, however, especially in the form of language requirement.

Indirect Discrimination: Language Requirement

In the present COP on Employment, 6.1.1(2) (a), (c) states that indirect discrimination occurs when a person applies an apparently non-discriminatory requirement or condition to everyone of all racial groups, but (a) only a considerably smaller proportion of people from a particular racial group can meet the requirement or condition than the proportion of people not from that racial group, or (c) the requirement or condition is to the detriment of a person of that particular racial group because he or she cannot meet it.

Further, 6.1.1(2)(v) states that reference case law also indicates that requirement or condition in relation to academic or language standard can lead to claims of indirect discrimination.

We were expecting the COP to illustrate how language requirement could be a form of indirect discrimination. Instead, we read Illustration 13 on a 1985 case with the UK administration justifying a standard public exam language result. In Illustration 13, it is not clear how a requirement of dealing with inquiries from the public in person and by telephone could justify the requirement of a pass in “O” Level English Language. Wouldn't a test of oral and written English which tests a candidate for his or her proficiency of the language be sufficient to meet the job requirement?

We are concerned that Illustration 13 would wrongly suggest that an open exam language subject performance could be used in recruitment without considering the job nature and actual job language requirement. 5.3.5(2) on Shortlisting gives an example that command of a language or previous experience should reflect the requirements of the job and be consistently applied regardless of race.

Worse still, we worry that the illustration would make employers aware that they can put a passing grade in Chinese language subject in public exam as a shortlist criterion if they want to deter ethnic minority applicants.

We suggest either putting an illustration to demonstrate how language requirement could be considered indirect discrimination or deleting Illustration 13 from the Code so that a standard

language requirement could not be easily used as an excuse for screening out ethnic minorities or justifying indirect discrimination.

Other Suggestions

We urge the administration to produce a Code of Practice on Education and another code of practice on the provision of services. These will further help implement racial equality and demonstrate how the Race Discrimination Ordinance could be implemented.

We further suggest adding a page of contact information of the Equal Opportunities Commission, as there might be enquires regarding the use of the Code of Practice.

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