



**Communications
Workers' Union**



**MANDATE
ORGANISING &
TRAINING CENTRE**

Mainstreaming Equality

Equality Handbook For Trade Union Representatives

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Disclaimer: This document does not provide a legal interpretation for any of the referenced Acts. It is a summary of the main provisions of the legislation. It is not legal text or legal advice.

Dear Representative

Welcome to this Equality Handbook for Union Representatives.

This handbook is intended for Union Representatives or Members who want to become more involved with equality issues at work, or who are called upon to act as Representatives in equality-related matters.

This handbook is part of a suite of resources developed and produced with the financial support of the Equality Mainstreaming Unit in the Equality Authority. It covers a range of equality issues, including an introduction to the equality legislation and the equality institutions of the state.

This handbook is not and could not be comprehensive on all aspects of equality issues. It is meant to act as a resource which Representatives can use in their workplaces and is part of suite of tools developed to support Representatives in their role of mainstreaming equality at work. We have also developed a model 'Equality Policy for Trade Unions' which is available in hard-copy or may be downloaded from your union's website.

Remember that as a representative you will have the support of other representatives and your union officials.

We hope that you find this handbook useful and if you are interested in developing your equality role further talk to your union official about our Mainstreaming Equality training course.

PLEASE NOTE: Throughout the handbook we use the term 'Representative'. This is done for expediency as different unions use different titles, for example, Shop Steward, Branch Secretary, Equality Representative, etc.

You can read the full report of the Case Studies which are listed throughout the booklet on the equality tribunal website. Please see <http://www.equalitytribunal.ie/Database-of-Decisions/>

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We would like to acknowledge the ICTU, individual trade unions and the Equality Authority for their extensive work to date on equality issues. We have drawn on that work in producing this Equality Handbook. We would also like to acknowledge Anne Casey's work in developing this handbook.



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Equality and the Role of the Trade Union Movement

A row of colorful silhouettes of people of various shapes and sizes, representing diversity, walking from left to right across the top of the page.

The trade union movement has a long and established history of promoting equality and fairness at work. We want to build on this work and as part of our commitment to mainstreaming equality we have produced this Equality Handbook.

Equality is a core value of the trade union movement. Building on the movement's principal of solidarity, the challenge is to tackle issues of discrimination not just within workplaces but in wider society.

Developing a trade union equality perspective is about organising around different needs, for example work-life balance, disability, cultural awareness etc. An equality perspective, therefore, requires us to develop union representation on various equality issues and with a diverse range of employees.

Notwithstanding advances made by the trade union movement in Ireland, the ICTU has noted in its publication *'Equality in the Workplace - Ireland, Europe and Beyond'* that "indicators point to the emergence of a more unequal society". They cite as evidence:

- The low educational attainment of hundreds of thousands of workers limiting their potential to access better quality job opportunities
- Poor levels of participation of people with disabilities
- The barriers that deny the vast majority of lone parents the chance to work or to receive further education
- The unacceptably high levels of unemployment among members of the Traveller Community
- The denial of rights and benefits to same-sex couples
- The experience of those facing long-term economic disadvantage, including their exclusion and marginalisation
- The continued inequality of women manifested by their absence in senior roles and positions of power and their over-representation in low-paid, part-time work, and in jobs with poor advancement prospects
- The 14% gender pay gap
- The absence of comprehensive childcare provisions and supports in Ireland
- The emergence of a migrant worker pay gap of 18%, which rises to 31% for those coming from non-English speaking backgrounds

Why this handbook?

This handbook sets out to give representatives an introduction to the equality legislation and how workers are protected from discrimination.

It focuses on building a strong union equality ethos which fosters a collective approach when dealing with workplace issues.

It also outlines how members' issues can be best addressed and how to draw up an Equality Action Plan.

Why mainstream equality?

Mainstreaming equality in trade union activities and in the workplace means more than implementing specific programmes for women or migrant workers, or including reference to the nine grounds of equality in our publications.

The starting point for trade unions and Union Representatives is accepting the reality and consequences of inequality for individuals and for the trade union movement. Integrating an equality perspective means challenging and changing attitudes, bearing in mind different points of view and concerns, and making these evident in all aspects of our work. By doing this, trade union activities become a vehicle for achieving real equality.

It is important that trade unions work with employers and employees to make their workplaces free from discrimination. This is reflected in workplace equality policies and workplace activities that promote equality.

What do I need to know about the law?

There are two distinct pieces of legislation in place in Ireland which set out important rights for people and which specifically outlaw discrimination. These are the Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2011.

These Acts outlaw discrimination in employment, vocational training, advertising, collective agreements and in the provision of goods and services.

CASE STUDY: FAMILY STATUS

Case Number DEC-E2006-007

This dispute concerned a claim by the complainant that she was discriminated against by the respondent on grounds of gender and family status when she was not permitted to return to the post she occupied before she commenced maternity leave, when she resumed work after that absence.

The Equality Officer found that the respondent discriminated against the complainant on grounds of gender and family status. He ordered the respondent to pay her €15,000 by way of compensation for the distress suffered by her as a result of the discrimination. He also ordered the respondent to put in place a mechanism to ensure employees who are absent from work on statutory leave, but particularly maternity leave, are advised of any issues which have a potential impact on their employment with the respondent.

Source: www.equalitytribunal.ie

Discrimination at work is covered by the Employment Equality Acts. If an individual is an employee or trying to get a job and believes they have been discriminated against unlawfully on any of the nine prohibited grounds, they can make a claim under these Acts. The legislation covers all aspects of work including recruitment and promotion, the right to equal pay, conditions of employment, training or experience.

The legislation prohibits discrimination on the following nine distinct grounds:

- The civil status ground: this is currently defined as single, married, separated, divorced or widowed, in a civil partnership, or being a former civil partner in a civil partnership that has ended by death or being dissolved
- The gender ground: a man, a woman or a transsexual person
- The family status ground: a parent of a person under 18 years or the resident primary carer or a parent of a person with a disability
- The sexual orientation ground: gay, lesbian, bisexual or heterosexual
- The religion ground: different religious beliefs, background, outlook or none

- The age ground: this applies to all ages above the maximum age at which a person is statutorily obliged to attend school
- The race ground: a particular race, skin colour, nationality or ethnic origin
- The Traveller Community ground: people who are commonly called Travellers, who are identified both by Travellers and others as people with a shared history, culture and traditions identified historically as a nomadic way of life on the island of Ireland
- The disability ground: this is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions

Discrimination outside the workplace is covered by the Equal Status Acts. If you feel you are discriminated against unlawfully through the provision of goods and services, on any of the nine prohibited grounds, you can take a claim under these Acts. The legislation covers the provision of many different goods and services.

What is discrimination?

Direct Discrimination is defined as less favourable treatment than another person is, has been or would be treated in a comparable situation on any of the nine grounds which exists, existed but no longer exists, may exist in the future, or is imputed to the person concerned. An instruction to discriminate is also prohibited.

Indirect Discrimination occurs where there is less favourable treatment by impact or effect. If a provision, practice or requirement puts people who belong to one of the grounds covered by the Acts at a particular disadvantage, then the employer will have indirectly discriminated, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Aspects of employment that are covered include:

- unequal pay
- advertising
- access to employment
- vocational training & work experience

- terms & conditions of employment
- promotion
- classification of posts
- dismissal
- collective agreements

In this handbook there are examples of equality cases taken to the Tribunal. It is important to note however that not all equality cases succeed.

Who are the relevant Equality Bodies?

Currently there are two main institutions involved:

- The Equality Tribunal
- The Equality Authority

The Equality Tribunal and the Equality Authority have separate and distinct roles.

CASE STUDY: RACE

Case Number DEC-E/2007-018

The claimant claimed that he was discriminated against on the ground of race, contrary to the provisions of the Employment Equality Acts 1998 and 2004, when he was harassed by co-workers. He claimed further that he was subjected to discriminatory dismissal because of his complaints to management.

The Equality Officer found that the "respondent discriminated against the complainant contrary to the provisions of the Employment Equality Acts 1998-2004, when he was harassed by fellow employees and in its failure to prevent his isolation within the workplace. I find that the complainant's dismissal is outside my jurisdiction to investigate. I hereby order that the respondent pay the complainant the sum of €7,500 in compensation for the effects of the discrimination and carry out a review of all of its employment procedures and ensure that its harassment and bullying policies are formally and adequately disseminated among its employees"

Source: www.equalitytribunal.ie

The function of the Equality Tribunal is to investigate, hear and decide claims of discrimination under the Employment Equality Acts (EEA) 1998-2011 and the Equal Status Acts (ESA) 2000-2011. The Labour Court hears and decides appeals of determination of the Equality Tribunal under the EEA 1998-2011.

The Equality Authority does not hear and decide claims of discrimination. It is a specialised equality body which promotes equality and seeks to eliminate discrimination. It is important to understand that if you contact the Equality Authority, you have not made a complaint of discrimination under the EEA 1998-2011. With the exception of gender claims which have the option of going to the Circuit Court, only the Equality Tribunal has jurisdiction to adjudicate on claims of discrimination (and the Labour Court on appeal).

The Equality Authority has no role or function in relation to receiving claims of discrimination or the management of claims before the Equality Tribunal.

Time Limits

The ICTU Guide states “It is difficult to overestimate the importance and significance of time limits. A complaint must be referred within six months of the date of the discrimination. If a claim is not lodged in time then the employee will not be able to pursue the claim. Time limits can be extended to up to twelve months for ‘reasonable cause’ but it is not safe to rely on this. You cannot assume that a time limit will be extended because an employee for example is invoking a grievance procedure or trying to resolve the matter informally. An application has to be made to extend the time limit.”

[Equality How? An ICTU guide to taking cases under the Employment Equality Acts, 1998- 2011]

Union policy on Taking Cases

Check what your union policy is on dealing with equality complaints. You can call on your full-time Officials for advice. In some unions it is the full-time Officials who handle equality cases under the legislation.

Remember a case can be lodged for hearing with the Tribunal and if it is subsequently resolved in the workplace, it can be withdrawn from the Tribunal.

Role of the Representative

Union Representatives can play a central and unique role in promoting equality in workplaces. Some trade unions have Equality Representatives who work with other Union Representatives and Officials and the Equality Committee, if there is one.

Representatives are the first point of contact when members want to make a complaint or discuss an equality related matter.

The Representative can also encourage diverse members to become active in the union. It is important that Representatives are seen to support members, including dealing with complaints of discrimination. We need to ensure that equality is at the core of trade union activities and functions and not something that is specialised, or an afterthought to policies and procedures or is an item on the end of a meeting agenda.

REPRESENTATIVE CHECKLIST:

- ✓ Become familiar with your union's Equality Policy
- ✓ Check your union website for information on equality
- ✓ Keep a copy of your company policy on equality
- ✓ Seek that all employees are treated fairly in terms of practices in employment and promotion
- ✓ Involve members and seek that the union provides equal opportunity to everyone to be active within its different structures and activities
- ✓ Enforce agreements with employers that promote equal treatment for all workers
- ✓ Seek that equality is at the core of activities and functions and not left as a specialist activity
- ✓ Be pro-active in the recruitment of diverse members

CASE STUDY: DISABILITY Case Number DEC-E2012-011

This dispute concerns a claim by An Employee that he was subjected to discriminatory treatment, including a failure to provide reasonable accommodation, victimisation and dismissal by A Logistics Company on the grounds of his disability. The date of dismissal was 30 March 2009.

The Equality Officer found that the complainant had not established a prima facie case of discrimination on the disability ground. Therefore, this complaint fails but had established a prima facie case of discriminatory dismissal on the disability ground. This has not been rebutted by the respondent.

"In accordance with the Acts I award the complainant €5,000, approximately 2 months gross salary. This relatively low amount reflects the fact that I am satisfied that the complainant exasperated the situation by failing to notify the respondent of his disability in a timely manner".

Source: www.equalitytribunal.ie

The role of the Representative is also about ensuring fair practices in employment, and about involving members and ensuring that the union provides equal opportunity to everyone to be active within its different structures and activities.

How do I address members' issues?

If a member comes to with you with an issue, it is important that you take action as quickly as possible.

You must first establish the facts and keep notes of your meetings with the member.

MEMBERS' ISSUES CHECKLIST:

- ✓ Establish the facts
- ✓ Get the member to make a note of any incidents, including date and time
- ✓ Were there any witnesses?
- ✓ Is it an individual issue or is there more than one person affected?
- ✓ Check your policies and procedures
- ✓ Remember there are time limits for taking an equality case to the Equality Tribunal
- ✓ Inform your full-time Officials immediately as they may advise the member to register the case with the Tribunal – if the case is then settled in the workplace, it can be withdrawn
- ✓ Be supportive to your member

Encourage the member to keep a record of any incidents and the date/time of when the incident occurred, what was said or done, and if there were any witnesses.

Find out if there is any evidence of similar incidents against other employees occurring in the past. Is it an individual issue or is there evidence that a group of employees is being put at a disadvantage by a particular policy or practice?

Check to see what your policy/ procedures say about raising an issue and see that the member gets a copy of the policy/ procedures. Support the member in raising the issue with the appropriate manager or the HR department.

If they feel unable to raise the matter themselves, then they may wish you to raise it

on their behalf. If it is an issue that cannot be resolved informally then support the member in raising a grievance through formal workplace procedures.

If it looks likely that the issue is not going to be resolved within the workplace, seek the advice of your union head office if you have not done so already.

Remember that there are time limits for bringing tribunal claims as outlined previously in this handbook.

How do we mainstream equality?

The culture of an organisation is formed by the actions and behaviours of all employees and not only by management. A key strategy in mainstreaming equality is through a partnership approach, involving management, employees and Union Representatives.

The majority of employers will have a policy on equal opportunities in the workplace. Many of these policies are aimed at protecting employees from discrimination and the focus is on promoting the diversity of the workforce. The equality policy reflects the commitment to equal opportunities in any given organisation. It is the commitment to treat all employees, and potential employees, fairly and considerately and with dignity and respect.

Involving Members

On general equality issues, talk to other Representatives, members and potential members. Get their view or ideas on what they think the union can do to make improvements.

Try and encourage them to become involved in the union campaign for raising equality. You could consider:

- Are there any issues that the union needs to focus on?
- Are all members kept informed of union activity?
- Are minority groups/individuals active in union affairs?
- How do you currently engage with your membership and how could you do so better in the future?

How do I draw up an Equality Action Plan?

An Equality Action Plan will assist you to identify issues in your own workplace. Begin with something small and that way you won't feel overwhelmed. Don't forget to seek advice and support from your union while you draw up your plan.

The starting point is for Union Representatives to agree on the actions they are going to take. Include actions that you hope to achieve within realistic time scales. Don't forget to take your own union's rules and priorities into

consideration. Get some guidance from your Officials. Build on your strengths, for example, if you have a good network of activists include them in drafting and implementing the Equality Action Plan.

It is important to remember that you adopt an approach that is proportionate to the size of your workplace and the resources available to you.

Priorities

Agree your priorities. Some examples of what your plan could include:

- Reading and discussing your equality opportunities policy
- Identifying the bargaining priorities and needs for different groups of your members
- Increasing participation by minority workers in union activities
- Including and discussing the Equality Action Plan with your union's Equality Officer and seeking their input to the plan
- Reviewing your plan on a regular basis

CASE STUDY: AGE **Case Number DEC-E/2007-048**

This dispute concerns a claim of discrimination on the ground of age, contrary to the provisions of the Employment Equality Acts 1998 and 2007, when the claimant was asked his date of birth at an interview.

The Equality Officer stated "I do not find that the complainant would have been successful at interview if he had not been asked about his age. The respondent adduced evidence, undisputed by the complainant, that the successful candidate was a well qualified native German speaker. I accept the respondent's explanation that the complainant's age was referred to solely in the context of trying to engage him in German-language conversation, but the respondent should consider drawing up some standard format questions to ensure discriminatory remarks or questions do not inadvertently arise. Based on the foregoing, I find that the respondent discriminated against the complainant on the ground of age, contrary to the provisions of the Employment Equality Acts 1998 to 2007. I hereby order that the respondent pay the complainant the sum of €1,000 in compensation for the effects of the discrimination.

Source: www.equalitytribunal.ie

Glossary of Terms

Direct Discrimination is defined as less favourable treatment. Direct discrimination occurs when a person is treated in a less favourable way than another person is, has been or would be treated, in a comparable situation on any of the nine grounds which exists, existed, may exist in the future or is imputed to the person concerned.

Indirect Discrimination occurs where there is less favourable treatment by impact or effect. It may involve no intention to discriminate whatsoever and can occur where practices or policy, which may appear to be non-discriminatory, puts a particular group or class of persons at a particular disadvantage.

Discrimination by Association happens where a person associated with another person (belonging to a discriminatory ground) is treated less favourably because of that association.

Positive Action involves taking specific steps to redress imbalances and to give employees with disadvantages linked to any of the discriminatory grounds full equal opportunities.

Harassment is generally defined not necessarily by its intention but by the impact of the behaviour on the recipient. Equality legislation defines harassment "as any form of unwanted conduct related to any of the nine discriminatory grounds, and such conduct may consist of acts, requests, spoken words, gestures, or the production, display or circulation of written words, pictures or other material which may have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person".

Sexual Harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person and such conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Vicarious Liability means that employers are liable for acts of harassment by employees, whether or not these acts were done with the employer's knowledge. Employers are also responsible for the actions of agents of the company.

Victimisation is the unlawful penalisation of an individual for taking an action pursuant to the enforcement of the legislation.

Contacts

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MANDATE
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Dublin 1
(01) 874 6321/ 2/ 3
www.mandate.ie

The Equality Authority Dublin
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Dublin 2
(01) 417 3336
info@equality.ie

The Equality Tribunal
2 Clonmel Street
Dublin 2
(01) 477 4100
www.equalitytribunal.ie



Publications

Barry, Eilis. 'Equality How? An ICTU Guide to Taking Cases Under The Employment Equality Acts, 1998–2011'

ICTU 2011

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ICTU

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ICTU

Watson Dorothy, Lunn Pete, Quinn Emma and Russell Helen. 'Multiple Disadvantage in Ireland: An Equality Analysis of Census 2006'

Equality Authority/ Economic and Social Research Institute Report, Dublin 2011

International Organisation for Migration, (2006) 'Managing Migration in Ireland: A Social and Economic Analysis'

Dublin: NESC Report No.116

'Your Equal status Rights Explained'

Guide to the Equal Status Acts 2000–2008, Equality Authority

'Your employment equality rights explained'

Equality Authority

Note These publications can be downloaded free from ICTU and the Equality Authority websites.

This handbook was drawn up by CWU, IBOA and Mandate as part of the Mainstreaming Equality Project funded by the Equality Mainstreaming Unit which is jointly funded by the European Social Fund 2007-2013 and by the Equality Authority. It is for use by all Trade Unions in supporting equality and diversity for all our members and employees.

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