

Workplace discrimination: Greater clarity needed

While the latest government efforts to ensure locals get a fair chance at jobs and promotions are laudable, there are grey areas that need to be addressed.

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In his National Day Rally speech, Prime Minister Lee Hsien Loong spoke at length about the anxieties that Singaporeans had over foreigners. PM Lee noted that while most companies comply with the guidelines on fair treatment laid out by the Tripartite Alliance for Fair and Progressive Employment Practices (Tafep), not every company does so. "A few have not been fair employers. They hire from their own countries, using familiar links and old boys' networks, rather than on merit. And they give foreigners the jobs and opportunities, and only make token gestures with locals. That naturally causes problems."

PM Lee announced that to deal with workplace discrimination based on nationality, Tafep guidelines will soon be enshrined in law. This means that companies found to be discriminating against Singaporeans can now be sanctioned through legal penalties.

Other types of discrimination, including gender, race, religion, and disability, covered by Tafep, will also be banned by law.

The move is a major shift worth celebrating because it sends a strong signal to employers that workplace discrimination is wrong and will not be tolerated.

ALLEGATIONS OF DISCRIMINATION TRICKY

Yet, we need to be careful in handling potential claims about discrimination because allegations about discrimination can be tricky.

In economics, discrimination is said to exist if someone is treated differently based on a certain attribute, which could be nationality, race, religion, gender or disability.

In the case of discrimination based on nationality, an absence of discrimination means that



Writing the Tripartite Alliance for Fair and Progressive Employment Practices into law is a good step towards minimising discrimination, says the writer. But several questions and challenges remain, such as how to reliably detect discrimination in practice and punish firms which do so accordingly. ST PHOTO: KUA CHEE SIONG

applicants who are identical in all ways except for their nationality should be equally likely to be considered for employment and to be given similar opportunities for promotion and career development.

Conceptually, the best way to figure out if an employer is discriminating based on nationality is to present him with two job candidates – a Singaporean and a foreigner, but who are otherwise identical. They have exactly the same education, same demonstrated competency, same work experience, same work ethic and same productivity.

If the employer systematically prefers hiring, promoting, developing, or rewarding the non-Singaporean candidate, then this would indicate that the employer is unfairly discriminating based on nationality. An employer may prefer a non-Singaporean to an otherwise identical Singaporean because of preference for workers from his own country or because of an unfounded bias against Singaporeans. This is the discrimination we want to avoid.

DISCRIMINATION? PERHAPS NOT

However, often, it can appear as if employers are discriminating based on nationality when no discrimination is actually taking place.

For instance, some employers hire many foreign work pass holders. And this may draw irate reactions because locals feel that they have been discriminated against. But the real underlying reason may be because the company serves many clients from a particular country. And if employees are also from that country, then they may be better able to understand the requirements of clients and communicate better.

In other words, employers may hire foreigners not because of nationality considerations per se but because of underlying language, communication skills and reasons of cultural congruence which they believe will translate to higher worker productivity.

Once sat on a hiring committee tasked to search for lecturers. After much deliberation, we shortlisted two candidates, one

who happened to be Singaporean and the other foreign. Both looked equally good on paper: They earned their PhDs from reputable universities and had good teaching and research records. In the end, we chose the Singaporean. Not so much because the person was Singaporean per se, but because she exhibited more drive and creativity and possessed much better communication skills during our interviews.

But it's clear that the opposite could well have happened and the foreign candidate would have been chosen. To most people, that would certainly have looked like discrimination. But it wasn't. Hiring was based on merit.

The same goes for allegations of age discrimination. If a company rejects many applications from older applicants, does it mean that it is discriminating against older workers? It's hard to say. Again, the company could be doing so because it is catering to a young clientele or because the job requires manual work which younger workers could better handle. If this is the case, then the company is hiring based on

productivity considerations and not really discriminating against older workers.

OTHER LESS OBVIOUS CONSIDERATIONS

The bottom line is that allegations of workplace discrimination are often tricky and have to be carefully investigated before reliable conclusions can be reached. Is a company unfairly showing favouritism to non-Singaporean workers for the sake of it or is there a less-obvious reason – one that is related to considerations of worker productivity? It is often unclear.

Employers care not just about worker productivity but also costs. This brings me to a second point: Salary.

It may be possible for employers to prefer foreigners over similarly qualified Singaporeans because of salary considerations. Foreigners may be more willing to accept lower salaries for the same job because they hail from countries where average pays are lower. In these cases, policymakers would need to provide more clarity.

Would employers who prefer foreigners due to their willingness to accept lower pay be viewed as discriminating?

Understandably, it would be difficult for Singaporeans to compete with foreigners based on salary alone because there will almost always be someone out there in the world who would accept the same job for a lower salary.

Of course, this concern can be partly mitigated through the qualifying salaries for Employment Pass (EP) and Short-Term Employment Pass (S Pass) holders. PM Lee has promised as well that these qualifying salaries would be raised in step as Singaporean wages increase.

Having a qualifying salary of, say, \$4,500 monthly ensures that someone looking to be hired on an EP cannot enter the company because he/she is willing to accept a salary below \$4,500.

But a similar scenario will not apply if we are considering salaries above the cut-off amounts. For instance, an employer may prefer a foreign applicant over a similarly qualified Singaporean because the Singaporean may be asking for a monthly salary of \$6,000, while the foreign applicant may be asking for only \$5,000.

Some of these concerns about discrimination may be somewhat alleviated by the Fair Consideration Framework and job advertising requirements compelling employers to advertise jobs on MyCareersFuture for at least 28 consecutive days before they can submit EP/S Pass applications. However, this presupposes that such advertisements are not merely token gestures and that employers have not already made up their mind to fill the position with a foreign employee because they anticipate that foreign applicants will ask for lower salaries.

CAN DISCRIMINATION BE RELIABLY DETECTED?

Writing Tafep into law is a good step towards minimising discrimination at the workplace. But several questions and challenges remain.

Can we reliably detect discrimination in practice and punish firms which do so accordingly? What exactly constitutes discrimination? A formal definition would be helpful. It helps job applicants and employees understand when they have been unfairly treated and whether they should seek redress.

As noted by PM Lee, while workers have recourse to the law, workplace disputes should ideally be resolved informally and amicably, with legal redress as the last resort. Knowing exactly what constitutes discrimination and whether they have been discriminated against will play a key role in helping people decide on the best course of action.

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