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USAID საბარტლის უზენაესი ტვის პროგრამა
USAID RULE OF LAW PROGRAM



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■ INTRODUCTION

The Labor Code requires all employers to avoid discrimination in labor relations. This requirement equally applies to all stages of labor relations, including to job posting and hiring.

Despite the prohibition, employers often use discriminatory language in their job postings, illegally preventing certain groups of people from accessing the job. Adherence to the anti-discrimination principle by employers creates an equal environment and ensures the hiring of the best candidates, which is also in the interests of employers.

The present guidelines will be helpful for employers looking to announce a vacancy. The guidelines, which are based on local and international standards and offer practical examples, will help employers in avoiding the risks of violating the principle of equality in job postings.

GENERAL RECOMMENDATIONS FOR PREVENTING DISCRIMINATION IN JOB POSTINGS

Drafting and publishing a job posting is a very important process. It should be easily accessible to all interested individuals and it should not prevent, without proper justification, certain groups of individuals from accessing the job.

Discriminatory treatment can be unintentional and a result of wrongfully constructed job posting that unknowingly encourages discriminatory treatment against a certain group or reinforces common stereotypes. It is therefore important to carefully draft a vacancy posting, as it publicly represents the views of your company/organization. The use of discriminatory phrases is not only illegal, but may also cause irreparable reputational harm to your company/organization and qualified candidates may no longer be interested in working with you.



A simple anti-discrimination principle applies to job posting, which entails the adherence of employers to the following preconditions:



Job posting text should clearly provide a job description and the criteria for the selection of candidates that reflect the essence and specific nature of the position in question, and it should not result in automatic exclusion of any particular group of individuals.



The text should not provide any requirements regarding age, gender, race, marital status or other personal characteristics (except when absolutely necessary due to the specific job requirements).



The text should be free from any stereotypical phrases or phrases that imply that the employer is interested only in candidates of a certain group, or create an obstacle in the application process for any particular group.



Job postings should be disseminated in a setting equally accessible for everyone.

In addition, in job postings employers should pay attention not only to the text but also to ancillary materials. For example, when sharing a job posting on social media, any accompanying photos should be neutral and should not imply that the employer is interested only in a particular group or reflect discriminatory and/or stereotypical opinions about a particular profession. Try not to choose a photo that only shows a person of a certain age or gender (e.g., do not use a photo that sexually objectifies women in a job posting for secretary).

NOT ALLOWED 	ALLOWED 
A company is looking for girls between the ages of 18 and 30, with a pleasant appearance and without any complexes.	A company is looking for candidates for the position of secretary.

DRAFTING A VACANCY TEXT

To avoid discrimination in job postings, it is important to prepare a correct job description for the position in question. The employer should be especially careful in this regard, in order to allow all potential candidates to apply.

The employer should accurately represent the necessary skills and duties and obligations of a potential employee, which is essential for avoiding discrimination. The criteria provided in the job posting should relate only to the performance of job-related duties and responsibilities. The job posting should also distinguish between essential and desirable qualifications of the best candidate. In addition, employers should refrain from using any stereotypical phrases or phrases implying that the employer is interested in a particular group, including when using humor or informal language.

The final goal of all job postings is to choose the best candidate. Although there is no universal model for achieving this goal, this process begins with drafting the correct text and clearly formulating the qualification requirements. It is the responsibility of the employer to describe the expectations for a potential candidate in a language that all interested individuals understand.

A job posting should include only those qualifications that a candidate will need for the successful performance of job-related responsibilities. It should not include any requirements related to gender, age or other personal characteristics of a candidate that in the employer's mind make a candidate a good fit.

NOT ALLOWED 	ALLOWED 
<p>We are looking for attractive, energetic girls with a youthful attitude and between the ages of 18 and 30, who will sell the company's products to young people.</p>	<p>We are looking for a sales manager to work with the target group (youth), for targeted marketing and sales.</p> <p>Desirable requirements for a candidate:</p> <p>Experience in sales targeting the youth age group and/or knowledge of specific issues related to working with the selected target group.</p>

■ GENDER

Do not provide a requirement about gender in a job posting, except when candidate's gender is an essential requirement for fulfillment of job responsibilities.

NOT ALLOWED ❌	ALLOWED ✅
A TV company is looking for a female producer to work on a news program.	A TV company is looking for an elderly actress to play the role of a grandmother on a TV show.



A job posting should be free from gender-specific terminology (“woman,” “man,” “representative of female gender,” etc.) and it should not use gender-specific job titles (e.g., “an office is looking for a cleaning lady”). In addition, it should not include any requirements with regard to pregnancy and/or marital status.

In postings for jobs that are associated with a certain gender in the view of widely-held stereotypes (e.g., kindergarten teachers, nannies, security officers, etc.), it is recommended that the employer include an equal employment opportunity statement specifying that all applicants will be considered without regard to gender.

■ AGE

Requirements for potential candidates should not specify age, unless job responsibilities objectively justify such limitation. For example, the law prohibits hiring individuals under the age of 18 in gambling businesses or nightlife establishments. The law also provides certain restrictions pertaining to pilots over the age of 60, etc.



Job postings should be free from age-specific terminology that prevents representatives of a certain age group from applying for the position, for example:

- ❌ “We are looking for young and energetic candidates”
- ❌ “This is an excellent opportunity for students” (unless the vacancy aims to promote student employment)
- ❌ “We need a youthful attitude”
- ❌ “Elderly should not apply”
- ❌ “We need candidates with wisdom from age”
- ❌ “We are looking for a new member of our youth team”
- ❌ “We will hire recent graduates”
- ❌ “Students should not apply”

In addition, application documents should not require candidates to provide their date of birth unless absolutely necessary to assess fitness of a candidate for a particular job.

■ DISABILITY

Employers are required to ensure equal opportunities for all candidates, including for persons with disabilities by providing a reasonable accommodation, unless such measures would impose a disproportionate burden on the employer.

Job postings should be free from terminology about a candidate's physical characteristics or health and/or requirements that are not related to the essence of a job, unless absolutely necessary because these characteristics are related to the fulfillment of specific job responsibilities.

Do not request health certificates from candidates/employees unless absolutely necessary in view of specific job responsibilities and/or requirements of law.



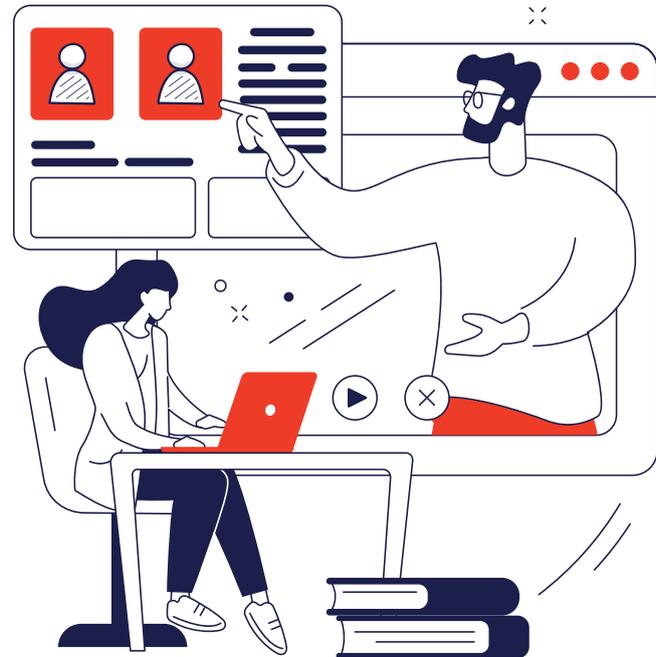
■ APPEARANCE AND OTHER CHARACTERISTICS

Job postings should be free from phrases related to the appearance of candidates, their marital status, astrological sign, lifestyle or other personal characteristics, which are objectively irrelevant for the selection of qualified candidates and reinforce widely held stereotypes and discriminatory views.

It is completely unacceptable to use the following phrases in the text:

- ✘ “We need a tall, handsome man”
- ✘ “We are looking for attractive girls”
- ✘ “Candidate should not be married”
- ✘ “Candidate should be free from complexes, religious or moral dogmas”
- ✘ “Chubby people should not apply”
- ✘ “We are looking for a single girl that likes to have fun”

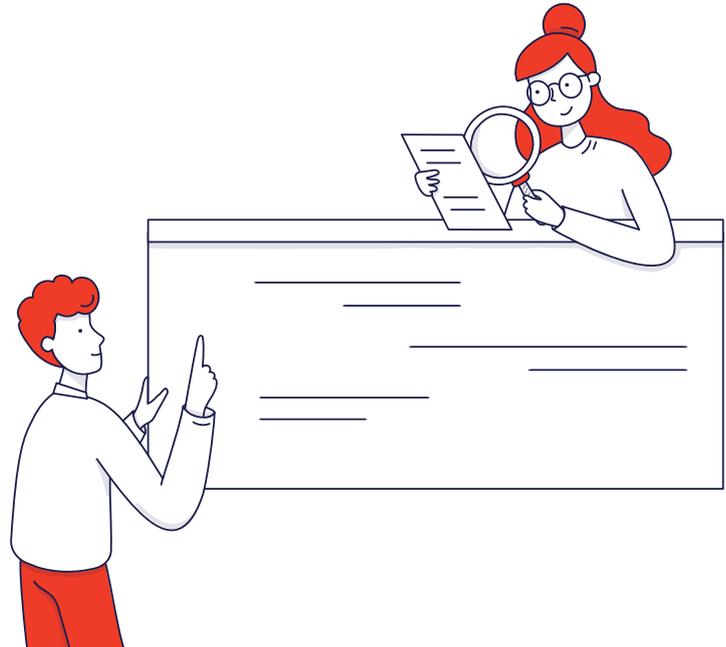
Employers should refrain from requesting types of information/documents that are irrelevant for the selection of candidates for a concrete position and can serve as the basis for creating additional bias against some candidates. For example, you should not request photos from candidates unless absolutely necessary to assess the fitness of a candidate for a particular position (e.g., a modelling agency looking for models).



CRIMINAL RECORD AND HEALTH

Information about an individual's criminal record and health are special categories of personal data. The law prohibits requesting such information from candidates unless the data is absolutely necessary in view of the specific nature of the job responsibilities and labor relations, including for assessing the fitness of candidates for a particular position and making a hiring decision. For example, requesting a certificate of absence of a criminal record for economic crimes may be required if a company is looking for a financial manager or an accountant. Similarly, requesting a certificate of good health can be reasonably justified for hiring lifeguards.

Similar standards apply to drug/substance abuse testing and requesting a certificate of absence of registration in the drug offender registry database, or other types of certificates that are not relevant for the position in question.





Please note:

Do not request from candidates a certificate of absence of criminal record or a certificate of good health, drug testing and other similar categories of information unless absolutely necessary to assess the fitness of a candidate for the position in question.

Employers should provide a reasonable justification for requesting such information, which can be based on legal requirements that exist about a particular position and/or other legitimate reasons.

For example:



According to the law, an employee of a private security organization should not have a prior record for a premeditated criminal offence.



Sex offenders should not be hired as teachers in kindergartens and higher educational institutions.



The law provides a number of restrictions for hiring individuals with a criminal record in public or private schools.

Health information can be requested during the recruitment process only if relevant for assessing the fitness of a candidate for a particular position, for occupational safety and preventive medical reasons, for work capability assessment, and social security reasons.

■ VACANCY ACCESSIBILITY

In an open and public competition, equal access to the vacancy should be ensured for all groups of individuals to prevent discrimination.

Avoid disseminating job postings on platforms that are accessible only for representatives of a certain group. For example, a job advertisement for a financial manager position should not be published only in a magazine for men or a men's Facebook group, only accessible to men.

Employers are advised to use platforms that are as neutral as possible and suitable for the position in question. For example, if computer literacy is not among the qualification requirements (e.g., position of a cleaning person), it is recommended to disseminate information about the vacancy using offline sources that will ensure the accessibility of the information for all interested individuals.

Consider the following issues to ensure vacancy accessibility:

-  Make sure that information is disseminated through online platforms that are accessible and easy to navigate;
-  Try to simplify the job application procedure, do not use excessive procedures that are not relevant for selection of the best candidate;
-  The procedure for submission of applications should be appropriate in view of the essential recruitment criteria (e.g., do not require motivation letters for the position of a cleaning person);
-  Do not request excessive information from candidates (e.g., a certificate of absence of criminal record or language certificate for a job that does not involve the use of a foreign language);

Public job platforms/websites where any employer can post a vacancy play an important role in ensuring vacancy accessibility for all interested individuals and preventing discrimination.

These platforms have a legal obligation not to encourage discrimination in job postings by allowing discriminatory job advertisements on their websites. To avoid discriminatory job postings, these companies are recommended to prepare internal regulations that they will use to strictly control the use of discriminatory language in job postings and help employers eliminate such language, if identified.



■ EXCEPTIONS TO THE PRINCIPLE OF EQUALITY

SPECIFIC JOB REQUIREMENTS (BONA FIDE OCCUPATIONAL QUALIFICATIONS [BFOQ])

Differentiating individuals and including special characteristics in qualification requirements does not amount to discrimination, provided that this is based on the specific nature or essence of a particular job. Differentiating individuals based on their personal characteristics (gender, religion, age, etc.) that would otherwise be considered discrimination may be permissible as an exception based on the essence of a specific job. In these cases, the employer should be able to provide proper justification for such differentiation as a necessary and proportionate measure to ensure job fulfillment.



Examples of specific job requirements:

-  A director is looking for a dark man between the ages of 20 and 30 for a specific movie role;
-  A men's fashion store is looking for a male model;
-  A gym is looking for a cleaning lady for women's lockers;
-  A shelter for female victims of domestic violence is looking for a female administrator;
-  An educational space within a mosque is looking for a Muslim teacher for teaching the Quran;
-  A shopping mall is looking for a male candidate for the position of Santa Claus.

The employer's motivation as to what are the needs and the arguments for accepting applications only from a particular group should be clearly visible in the job posting.

NOT ALLOWED 	ALLOWED 
<p>A non-profit organization “A” is looking for female social workers.</p>	<p>A non-profit organization for the elimination of violence against women, “A,” is looking for social workers who will work with female victims of sexual violence.</p> <p>To avoid retraumatization of beneficiaries and create a safe and comfortable environment for them, priority will be given to female social workers.</p>

VULNERABLE PEOPLE JOBS

Vacancies that have been announced specifically for hiring individuals that require special protection and support due to their personal characteristic (age, gender, disability, domestic responsibility, social or cultural status) will not be considered discriminatory.

For example, if you have a social enterprise and/or implement a project that aims to support the employment of vulnerable groups that usually face a range of difficulties in employment (persons with disabilities, elderly people, victims of domestic violence, socially vulnerable people, etc.), the job posting should specifically indicate that the employment opportunity is only for representatives of a special group.

Further, temporary measures used to promote gender equality will not be considered discriminatory. For example, to ensure a diversity of opinions and gender balance, banks are required by law to guarantee at least 20% representation (1 member mini-



mum) of the minority gender on their boards. To fulfill this requirement, any bank will be allowed to announce a vacancy for its board membership for representatives of the minority gender and it will not amount to discrimination.

The employer's social objective to hire representatives of a particular group should be substantiated with relevant evidence (e.g., goals stipulated in the law, project documentation, etc.). Otherwise, such measures will be viewed as a tool for covering up discrimination. To that end, a job posting should provide an explanation as to why the job is for the representatives of a particular group.

NOT ALLOWED 	ALLOWED 
NGO "A" is looking for single mothers for the position of an accountant.	In framework of a project for social inclusion and economic empowerment of single mothers, NGO "A" is looking for an accountant. Priority will be given to women with the status of a single mother.

SANCTIONS THAT CAN BE IMPOSED ON EMPLOYERS FOR FAILING TO ADHERE TO THE PRINCIPLE OF EQUALITY IN JOB POSTINGS/ PRE-CONTRACTUAL RELATIONS

In addition to a prohibition on discrimination during vacancy posting, the Labor Law also envisages a number of different measures for sanctioning employers that fail to adhere to the principle of equality in job postings. The form and content of these measures vary according to the public institution that provides oversight over anti-discrimination and labor rights. In an event of discrimination, an employer can be ordered to pay a fine or compensate the victim of discrimination. In addition, a mandatory warning or recommendations can be issued for such employers, and the Public Defender of Georgia can issue a general proposal about the issue.



LABOR INSPECTION SERVICE

The legal entity of public law “Labor Inspection Service” (labor inspectorate) is a specialized public agency that provides oversight over the protection of labor rights and has the authority to impose an administrative responsibility. A labor inspector can, without giving prior notice to the employer, at any time of the day and night, based on its own initiative or an interested person’s complaint, conduct a workplace inspection to identify any possible violations of labor rights, including to



evaluate adherence to the principle of equality in job postings.

In the case of a violation of the anti-discrimination principle, including discrimination in the job posting stage, **the labor inspectorate can issue a warning or impose a fine on the employer.**

Sanctions:



Warning.



Fine - the amount of fine for discrimination in job postings depends on the employer's yearly turnover and can range from **600 to 3,000 GEL**, while commission of the same act within one year will result in a fine of double the original amount.



Labor Code of Georgia, art. 78

Remember, a warning or fine does not relieve the employer of the responsibility to remedy the violation. In the event of a failure to do so within the time prescribed by the labor inspectorate, the employer may be subject to additional sanctions.



PUBLIC DEFENDER OF GEORGIA

The Public Defender of Georgia is a national human rights institution that oversees equality and the elimination of discrimination. Unlike the labor inspectorate, which examines violations in labor relations only, the Public Defender has the power to examine discrimination in labor and other relations. Also, unlike the labor inspectorate, the Public Defender can issue only a recommendation for the elimination of discrimination by the employer or a general proposal about the issue concerned.

The Public Defender can examine cases of possible discrimination in labor relations, including in

the job posting stage, based on applications/complaints of interested individuals, as well as based on its own initiative.

If the Public Defender establishes discriminatory treatment in a job posting or use of formulation that encourages a discriminatory treatment, they can issue **a recommendation** for the employer or **a general proposal** for combating discrimination and avoiding it in the future.¹

¹ Recommendations adopted by the Public Defender of Georgia about discrimination cases are available on the PDO website: <https://www.ombudsman.ge/geo/gadatsqvetilebebi>

Remember: decisions made by the Public Defender on discrimination are not binding, but the employer is required to examine the recommendation/general proposal and inform the Public Defender within 20 days about the results.

In addition, the Public Defender can file a complaint in court requesting implementation of the recommendation by the employer if the Public Defender believes that the discriminatory act in question has been committed and the employer did not respond to or implement the recommendation.



The Law of Georgia on Elimination of All Forms of Discrimination



COMMON COURTS

Any individual/candidate that believes he or she was subject to discriminatory treatment at the job posting stage can file a complaint against the employer in court.

Remember: imposition of a sanction by the labor inspectorate and/or the Public Defender for discrimination in a job posting does not rule out the imposition of a sanction on the employer by a court for the same issue.

If a court finds discrimination, it can order the employer to:

-  Stop the discriminatory act and/or eliminate its results
-  Compensate moral and/or material damages

 (Civil Procedure Code, Title VII)



For additional questions regarding prevention of discrimination in job postings, you can consult with the following agencies:



Labor Inspection Service

Address: 15a Tamarashvili Str., Tbilisi, 0186

Hotline: 15 75

Email: info@moh.gov.ge

Facebook: https://www.facebook.com/Labourinspection/?ref=page_internal



Public Defender of Georgia

Address: 80 D. Agmashenebeli Str, Tbilisi, 0102

Hotline: 1481

Email: info@ombudsman.ge

Web: <https://www.ombudsman.ge/geo/sakhalkho-damtsvelistvis-gantskhadebit-sachivrit-mimartva>

Facebook: <https://www.fb.com/OmbudsmanofGeorgia/>

Disclaimer:

The present document has been prepared for educational purposes and it is based on practices that exist in Georgia for prevention of discrimination in job postings and decisions made by relevant agencies. Please be advised that this document does not have any legal force and you should consult with relevant agencies and professionals about individual cases.

