

# **STRENGTHENING YOUR BUSINESS THROUGH**

**AN INCREASED AWARENESS OF  
EQUALITY & DIVERSITY**



**The Private Sector Case**

# WHAT IS EQUALITY & DIVERSITY?

*Equality and Diversity is the valuing of all cultures and people, their similarities and their differences, equally and without discrimination, in today's society.*

# EQUALITY IN THE WORKPLACE.

The Employment Equality Act 1998 prohibits discrimination in the workplace across the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller community.

The Equal Status Act 2000 prohibits discrimination in the provision of goods and services, accommodation and educational establishments across the same nine grounds.

# WHAT IS EQUALITY?

Workplace Equality can be defined in terms of organisations that:

- ✔ Are free from discrimination, sexual harassment and harassment and victimisation, and are taking steps to prevent such experiences for employees and customers

## WHAT IS EQUALITY (contd)?

- ✓ Acknowledge, value and accommodate diversity, making adjustments and providing facilities to take account of the practical implications of difference, and, in particular, meeting their obligation to make reasonable accommodation for employees and customer with customers with disabilities
- ✓ Are proactive in their pursuit of equality, seeking and realising tangible outcomes, including through positive action as allowed under the legislation<sup>[1]</sup>

✓ <sup>[1]</sup> Pg 29, Building an Inclusive Workplace, Equality Authority, 2004

## **WHAT IS DIVERSITY?**

Diversity focuses on the individual and the accommodation of differences across the nine grounds laid out in the EEA 98. It is about valuing and harnessing the potential of all individuals for business as well as social and moral reasons.

# Minimum Requirement to Comply with EEA 98 and with ESA00

- Both Acts:
- Prohibit direct and indirect discrimination ( and discrimination by association under the Equal Status Act).
- Prohibit sexual harassment and harassment on the discriminatory grounds.
- Prohibit victimisation
- Require employers and service providers to provide reasonable accommodation for people with disabilities unless it costs more than a nominal cost.

# Minimum Requirement to Comply with EEA 98 and with ESA00 (contd)

- Allow positive action measures (in relation to the gender ground, people over fifty, people with disabilities and members of the Traveller community under the Employment Equality Act and in relation to disadvantaged groups or measures which cater for the special needs of persons under the Equal Status Act).
- Impose vicarious liability on employers and service providers in relation to discriminatory acts of employees and agents unless the employer or service provider took reasonably practical steps to prevent the discrimination.

# WHAT IS DISCRIMINATION?

**Direct Discrimination** is the treatment of a person in a less favourable way than another person is, has been or would be treated on any of the nine grounds.

**Indirect Discrimination** is where an employer imposes a provision or requirement which on the face of it applies equally to all persons but may in fact produce a disproportionate disadvantage for one group.

# WHY RAISE AWARENESS OF EQUALITY & DIVERSITY?

*Awareness of Equality & Diversity is a key way of ensuring that all policies and practises within society have equally beneficial effects on all its members.*

# Compelling Arguments Exist for Implementing Equality & Diversity within the Workplace

1. Fulfils legal obligations.
2. Increases the efficiency and effectiveness of your business.
3. Saves your company time and money.
4. Progresses social justice (Equality & Fairness).

# 1. Fulfils legal obligations.

- ☞ There are a number of requirements, both EU and domestic, which policy makers and employers are obliged to fulfil.
- ☞ It is the employer's responsibility to ensure all staff are aware of their responsibilities under the legislation and thus avoid costly and divisive court cases.
- ☞ Employers have a Vicarious Liability towards the actions of their employees.

## **Vicarious Liability**

‘Anything done by a person in the course of his or her employment shall...be treated for the purposes of this Act as done also by that person’s employer, whether or not it was done with the employer’s knowledge or approval.’

## 2. Increases the efficiency and effectiveness of your business.

- ☞ Equality proofing policies and practices, can improve an organisation's efficiency and effectiveness. It can maximise human resource potential internally and local needs can be identified and addressed more effectively.
- ☞ Through the provision of a good working environment which is fair and equitable organisations can attract and retain staff, including those from minority or underrepresented groups.
- ☞ By making the business case for equal opportunities and/or managing diversity policies management can integrate HR policies into business plans.
- ☞ Raising awareness of Equality & Diversity issues increases the workforce's knowledge of large numbers of potential customers/service users.
- ☞ Staff morale can be improved and it can be ensured that all staff feel they are all valued and respected members of the team that makes up the organisation.

### 3. SAVES YOUR COMPANY TIME & MONEY

If a claim of discrimination is made against your company then the following may occur;

- ☛ An awards payment may be made to the complainant as well as the legal costs. If a complaint is upheld, compensation of up to €12,697, two years pay or equal pay plus arrears can be awarded.
- ☛ As the burden of evidence is on the respondent time will be spent preparing cases, attending hearings, dealing with associated correspondence.
- ☛ Your company's name is usually published whilst the complainants may be kept secret.

### **3. SAVES YOUR COMPANY TIME & MONEY (contd.)**

- ❏ Confidential info can be released with the judgement into public domain.
- ❏ After the judgement time may have to be spent reviewing policies, work practises and procedures.
- ❏ Your company may be asked to discontinue particular work practises and implement new ones.
- ❏ An order may be made against your company requiring staff to undergo training.

# EQUALITY TRIBUNAL STATISTICS FOR 2003

## OVERVIEW \*

- The no. of individual claims to the Tribunal have decreased by 16% to 1078 compared to 1289 in 2002.
- Individual claims relating to EEA have increased by 20% from 300 to 361.
- Individual claims relating to ESA decreased by 28% with 717 individual claims compared to 989 in 2002.
- Mediation of both EEA and ESA claims resolved almost twice as many cases in 2003 as in 2002 (64 compared to 33).
- In 2003 61% of all cases resolved were resolved through mediation.

# EQUALITY TRIBUNAL STATISTICS FOR 2003 OVERVIEW \* (Continued)

- 144 cases were decided by the tribunal in 2003. This compares to 120 in 2002.
- €100,668 was awarded by the Equality Tribunal compared to €184,120 in 2002.

\*

*As of 13/2/04 these figures are still provisional*

# CLAIMS ON A SECTOR BY SECTOR BASIS (Jan – Sept 2003)

EEA

ESA

Public Sector	95 out of 258	58 out of 581*
Private Sector	146 out of 258	455 out of 581**
Comm & Volu Sector	(not categorised)	

\* *Excludes Health & Education*

\*\* *Comprised of insurance (12), Licensed Premises (420) & Shops (23)*

# CLAIMS DECIDED BY EQUALITY TRIBUNAL IN Jan – Sept 2003

	<b>EEA</b>	<b>ESA</b>
<b>For Complainant</b>	8 out of 41(20%)	24 out of 58 (42%)
<b>For Respondent</b>	31 out of 41(76%)	33 out of 58 (57%)
<b>No Jurisdiction</b>	2 out of 41 (4%)	1 out of 58 (1%)

# TOTAL AMOUNT OF AWARDS MADE IN Jan – Sept 2003

	<b>EEA</b>	<b>ESA</b>
<b>Total Awards made</b>	€75,000	€25,168
<b>Average Award</b>	€1,936	€740
<b>Range of Awards</b>	€0 - €40,000	€1 - €2,500

## **What kind of Discrimination Occurred & What Issues Need to be Considered?**

In a real life case (E2003-054) an individual who had applied for a vacant position with a company claimed discrimination after he was unsuccessful in securing the job. The individual had been called for two medical exams as part of the application process. During the medical examinations the complainant told the medical examiner that he had suffered from depression but that it was under control.

## EXAMPLES OF EEA 98 CASE LAW & JUDGEMENTS – Private Sector (1)

- **E2003-024.** An individual claimed that a private firm discriminated against him because of his age when they did not call him for interview. He had responded to an job advert looking for 'young, confident, enthusiastic' salespeople. The Equality Officer determined that the advert did constitute prima facia evidence of an intention to dicriminate based on age but accepted evidence presented by the company that the individual's application was not considered due to a lack of recent sales experience. The claim was not upheld.

## **EXAMPLES OF EEA 98 CASE LAW & JUDGEMENTS – Private Sector (2)**

**E2003-058.** A female employee of a large supermarket chain was found to have been discriminated against on the ground of gender when she was paid less than two male colleagues doing like work. The Equality Officer ordered The Supermarket chain to pay the individual the same rate of pay as that of her male colleagues from 13 February 2001 plus arrears of such payment for three years prior to the referral of the claim.

## **EXAMPLES OF ESA CASE LAW & JUDGEMENTS – Private Sector (1)**

- **S2003-121.** A wheelchair user, was found to have been discriminated against on the disability ground by a Dublin located hair stylist. The individual was denied access to its hairdressing services. The individual had attended the Salon previously and had been treated very well. However, when attending the salon subsequently the individual was advised that unless they could get out of their wheelchair and use one of the salon chairs they could not have the required treatment.

## **EXAMPLES OF ESA CASE LAW & JUDGEMENTS – Private Sector (1 contd.)**

The Equality Officer found that the Salon had provided no evidence to show that any effort was made to facilitate the complainant or that any special facility would have entailed more than minimal cost. She ordered the Salon to pay EUR1,000 to the complainant and to arrange immediate training for all staff in the Salon in matters of service provision in compliance with the Equal Status Act 2000.

## 4. Progresses social justice (Equality & Fairness)

In the context of democracy and fair play there is a moral imperative, which demands that proactive measures to ensure equality between all members of society are pursued.

- To lessen discrimination within the organisation and increase understanding of equality and diversity.
- To reinforce to all staff that everybody is an individual part of a larger group. (There is a benefit to companies internally in recognising the individuality and equality of all their staff.)
- Training allows companies/organisations flesh out internal policies and procedures on equality, equal opportunities and/or managing diversity for their staff. Equality and Diversity initiatives are seen as dynamic, not just new rules and regulations.
- It is unfair and wrong to discriminate whether intentional or unintentional. Training gets the message across that this is not how the company conducts itself.
- To promote the ethos of equality in the workplace and ensure all staff treat each other with dignity and respect



**HOW WOULD YOU RAISE  
AWARENESS OF EQUALITY &  
DIVERSITY IN YOUR  
ORGANISATION?**

Brainstorm your ideas.



# Suggested Methods for Raising Awareness

- ✔ Appoint an equality/diversity officer from within staff.
- ✔ Coaching sessions - peer to peer.
- ✔ Cultural sensitivity and recognition of religious/cultural holidays.
- ✔ Discussion and arguments amongst staff.
- ✔ Discovery - research.
- ✔ Developing equality policies in consultation with staff.
- ✔ 'Zero tolerance' for offensive behaviour. Clear policy.
- ✔ Distribution of printed materials.
- ✔ Diversity awareness week.
- ✔ Use examples/case studies.
- ✔ Film & Videos.
- ✔ Games and/or Role Plays.
- ✔ Group Projects.
- ✔ Info for staff on rights (should be accessible and in different languages if necessary).
- ✔ Include equality/diversity as an item on agendas of all staff meetings.
- ✔ Employee Attitude Surveys.

# More Suggested Methods for Raising Awareness

- ☞ Lectures or talks - could be given by people who experience exclusion.
- ☞ Monitoring of company policies.
- ☞ Mentoring - where existing staff members volunteer to help and welcome a new staff member.
- ☞ Posters/visual aids - publicity campaign.
- ☞ Publications/websites to display diverse images.
- ☞ Providing materials in different formats.
- ☞ Question and answer sessions.
- ☞ Altered recruitment policies.
- ☞ Staff handbook with information on rights, tax, how to access services, etc, for all new staff.
- ☞ Supportive training such as language skills, literacy.
- ☞ Staff training at all levels.
- ☞ Theme days.
- ☞ Use of all company printed materials to achieve widest possible impact.

## **Areas Where Practical Next-Steps in Promoting Equality & Diversity Can be Introduced**

- Advertising, Recruitment & Selection of Staff
- Training & Development of Staff
- In-House Policies & Procedures

# Advertising, Recruitment & Selection of Staff

- ✓ Selection Procedures
- ✓ Selection Criteria
- ✓ Job Descriptions/Person Specification
- ✓ Medical Screenings
- ✓ Job Advertisements
- ✓ Intake Assessments

# Training & Development of Staff

- ☞ Induction Training
- ☞ Performance Management & Staff Development
- ☞ Rewards and Recognition
- ☞ Adapting Equality & Diversity Training to suit different levels of information need within company.
- ☞ Target training to tackle specific issues by using 'issue expert' trainers.

# Training & Development of Staff (continued)

- Develop Strategy for evaluating the success and benefits accruing from Equality & Diversity training.
- Conduct cost-benefit analysis of introducing Equality & Diversity policies and training.
- Develop customer service skills of staff.

# In-House Policies & Procedures

- ✔ Secure Senior Management buy-in.
- ✔ Equality and Diversity Management
- ✔ Allocation of Resources.
- ✔ Equality audit of existing policies and procedures.
- ✔ Equality proofing policies and procedures.
- ✔ Equal pay and benefits
- ✔ Promotion Procedures
- ✔ Harassment and Dignity at Work.
- ✔ Work-Life balance.
- ✔ Family Friendly.
- ✔ Provision for Staff Leave.

# Examples of Good Practise in Private Sector Companies Operating in Ireland

## **Eircom**

Eircom have developed a handbook for their staff entitled 'Assisting Customers with a Disability'. It is a user friendly booklet which helps staff to understand the feelings and preferences of customers with a disability as well as giving guidance on language and behaviours which may give rise to offence.

## **Dairygold**

An interpreter is available at all times to any worker who wishes to make a complaint or initiate a procedure. In the case of disciplinary action the entire procedure can be conducted in the worker's native language.