



Equality at Work and Discrimination in Employment and Occupation

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Abstract

The aim of this paper is to give some general views on international labour standards, regarding equality of opportunity and treatment. It is important to mention that respecting freedom from discrimination, as a fundamental human right, places a great importance in guaranteeing other rights for workers. Equality standards applied by ILO provide methods which aim to fight against discrimination in society and in the workplace of the employers. One part of this paper is focused in analyzing the term "discrimination", focusing in different forms that can occur at work, the target group which it can affect and measures that can be taken in order to provide equality at work. This paper analyses the scope and the obligations under ILO instruments, such as three fundamental conventions. One of the most important conventions is the convention concerning discrimination regarding occupation and employment, "Discrimination Employment and Occupation" Convention nr. 111. This fundamental convention represents discrimination as every different treatment which has effect on equality of creating same possibilities for everyone in occupation or employment. According to this legal act, it is mandatory the implementation of a national legislation which promotes equality of treatment and opportunity, regarding occupation and employment in general, designed to eliminate all types of different treatment in these fields. This paper is focused especially on analyzing the "Workers with Family Responsibilities" Convention, 1981, which refers to standards on equal treatment and opportunities for both women and men workers. "Workers with Family Responsibilities" Convention, applies to workers with such responsibilities, which restrict their possibilities to involve in an economic activity. The purpose is to provide an effective implementation of standards related to equality of treatment and opportunity for both women and men workers, in order to guarantee free choice of employment to help workers which have family responsibilities and to take into consideration their needs. Furthermore in this paper will be identified the methods that governments should apply, which aim to provide the application of the standard of equal compensation for workers, according to "Equal Remuneration" Convention, 1951 (No. 100).

Keywords: Equality of opportunity and treatment, discrimination, International labour standards, Equal Remuneration.

1. Introduction

One of the most important International Labour Conference goals is to set out standards which serve as a particular legislation, in order to strengthen conditions of work worldwide. ILO standards include Recommendations and Conventions adopted by the International Labour Conference, which to date, consists of 185 Conventions and 195 Recommendations. International labour standards represent legal principles and instruments elaborated by International Labour Organization, such as representatives of governments, workers and employers, which aim to guarantee the implementation of fundamental rights, standards and principles at work. First of all, these legal instruments can be legally binding instruments, such as

different Conventions, especially international treaties or agreements, which should be ratified from member states. Secondly these legal instruments can be other legal acts, such as recommendations, as well as other non-binding legal acts. In general, a Convention elaborates basic principles, for which each member state has the obligation to implement and adopt them, whereas a recommendation is an instrument which completes the Convention by promoting more specific methods and regulations, regarding the procedures through which member states can implement and adopt different Conventions, but except this, the recommendation may not be associated with any convention.

2. International Labour Standards

It should be noted that representatives of workers, employers and governments developed recommendations and conventions, so further they can be adopted at the ILO's annual International Labour Conference. There are 7,246 ratifications of these Conventions by member States of the ILO. Each Convention represents a legal act which arranges issues related to human rights, workers fundamental rights and labour administration. The process of ratification includes two obligations for a member State, first of all ratification means a formal engagement and obligation to adopt the standards of the Convention and also, ratification represents an indicator which shows that member state is willing to accept an international supervision. Member States are not obliged to ratify International Labour Recommendations, but these legal acts set out basic principles and general guidelines that should be adopted and implemented at the national level. International Labour Recommendations often consists of very detailed and technical guidelines which complete the objectives and rules set out in specific Conventions, or they contribute by setting out additional instructions on issues which are not covered by these Conventions. Both Conventions and Recommendations develop standards and ensure a stimulus component for national legislation.

International Labour Organization standards evolve labour and also social aspects, which includes issues related to fundamental human rights, such as elimination of child labour, forced labour and of any type of different treatment in occupation and employment. Most of Conventions and Recommendations are applied to both women and men workers; nevertheless there is a considerable number of Conventions which of special effect to women workers. ILO has developed basic standards, which serve as a catalyst for new legal acts, including the following issues: discrimination in occupation and employment, special measures regarding work in special conditions, such as part-time, night and underground work, equality of compensation, workers with family responsibilities, maternity protection and also issues related to health. The international standards adopted by the ILO in its early years were focused basically in protecting women from extremely difficult conditions of work and protecting their human function, such as reproductive function.

Since the mid-1960s, attention has centered increasingly on improving standards related to discrimination for workers through the adoption of practices that enable women to achieve their full potential in social and economic development. Important among the standards adopted, are those which aim to balance work and family responsibilities, which recognize joint responsibility of both women and men for the family. It is evident from the pattern of international labour standards adopted, application of standards of fighting discrimination and providing equality for women and men workers has continued to broaden with the realization that equality in one area can only be achieved through attainment of equality, dignity and respect in all aspects of life. In addition to consider them as legal and binding acts, standards developed from International Labor Organization can be a strong promoter in respecting and defending women's rights in social and working life, related to equal treatment and opportunity and fighting discrimination. Representatives of employers, governments and workers organizations, as well as other organizations which are focused on civil society issues, are obliged and encouraged to work, in order to provide women's participation in decision-making processes as well as in public development programmes and planning, in order to further apply and adopt the standards developed by International Labor Organization (Gender Issues and International Labour Standards, 2006). (Gender Issues and International Labour Standards, 2006)

3. "Discrimination Employment and Occupation" Convention, 1958 (No. 111)

Regarding "*Discrimination Employment and Occupation*" Convention, "*discrimination*" means first of all, any preference or exclusion, made on the basis of color, race, political views, religion, sex, social origin or, any preference or exclusion which leads to disadvantages and differences of treatment and opportunities in occupation or employment. Secondly, referring to this Convention, discrimination also includes all other preferences, distinctions or exclusions, which has an effect in creating different conditions and difference in treatment or opportunity in employment, as may be concluded by *respective representatives of member states*, after discussion with workers and employer's organizations and other

subjects involved. Furthermore, terms occupation and employment means access to particular professions and employment access to terms and conditions of employment and approach to vocational training.

Regarding article 2 of "*Discrimination Employment and Occupation*" Convention, each Member State which has ratified this Convention, is obliged to implement a methodology which aims to improve equality in treatment and opportunity regarding occupation and employment, in order to fight all the types of discriminations that can occur. According to article 3 of the "*Discrimination Employment and Occupation*" Convention, each member state shall implement right and adequate methods, with the purpose to:

- a. to pursue partnership between workers and employers organizations and other subjects involved, in developing observance and the acceptance of this approach;
- b. to adopt the appropriate legal framework and to implement educational and social programmes which promote the observance and acceptance of this approach;
- c. to revoke any legal provisions and adapt any legal methodologies or legal framework which are contradictory with this approach;
- d. to activate direct observation of a national competent authority;
- e. to secure the observation of the competent authorities, in implementation of standards in the activities which are focused in vocational training and guidance, as well as in employment services;
- f. to include in its periodic reports which are published for the purpose of analyzing the implementation of the Convention's standards, every measures taken in order to implement this standards, as well as the conclusions reached by such action.

"*Employment and Occupation*" Convention, 1958 (No. 111) sets out principles which intend promoting equality in treatment, opportunities, as well as in possibilities regarding the employment and work, occupation, prohibition and precluding discrimination in work and employment, particularly any exclusion, preference or distinction based on color, race, religion, political opinion, social origin sex or which leads to some conditions and situations where equality is not guaranteed in treatment and opportunity, professional training, also in access to eight ILO Conventions on Gender Equality. The basic objective of Convention No. 111 is to adopt national measures and methodologies in order to eliminate differences in treatment, possibilities, opportunity, occupation, employment, abrogate or modify any laws which are not consistent with this policy. In addition the Convention requires the consultations between government and workers representatives, with the purpose to promote goals as well as principles of the Convention. On the other hand, according to the "*Employment and Occupation*" Recommendation, 1958, nr. 111, member states are obliged to implement a non-discriminatory policy and take all the applicable policies, with the purpose to guarantee that no employers' organization will allow any form of discrimination.

It is found that different treatment at work can appear in vary ways and forms. Discrimination can include women or men workers, because of some characteristics, such as skin color, social origin, sex orientation, political opinions or religion. In order to eliminate discrimination, governments should implement such policies, which aim to destroy obstacles and guarantee the same opportunities related to education and training, using resources and working in the same conditions. Also, eliminating discrimination includes adapting conditions for establishing companies of all sizes, types, practices and policies connected to fulfilling the obligations, conditions of work, promotions, remunerations, compensations, hiring and expiry of work contract, lay-offs and pay.

Discrimination in occupation or employment may be indirect or direct, which can occur when practices, rules or laws, clearly characteristic, race, sex orientations, skin color etc., leads to situations which aim to impair equality. Indirect discrimination exists where practices, rules or law, seems not to be discriminative but actually lead to distinctions. It is found that in the case of self-employed workers, direct and indirect discrimination in occupation and remuneration depends on equal opportunities to access education and training, before entering and accessing labour market. Especially it takes a great importance in cases where the target group consists of girls, women or other disadvantaged subjects. The competent authorities are required to implement appropriate policies, which will establish appropriate conditions to facilitate them in fulfilling both family and work responsibilities. It is very important for member states to implement relevant methods, in order to solve different challenges and problems that can eventually occur. International Labor Organization has elaborated basic standards and principles, while national laws may include a wide range of standards and principles and create a broader legal framework, which will guarantee the elimination of all the forms of discrimination at work. (Elimination of discrimination in respect of employment and occupation).

4. C100 - Equal Remuneration Convention, 1951 (No. 100)

The International Labor Organization aims to set standards and principles regarding equal remuneration, which consists of two fundamental aspects and aims. First of all the purpose is to ensure and guarantee the elimination of discrimination in terms of treatment, opportunities, employment, training, organization, decision-making and guaranteeing elimination of discrimination in terms of compensation, remunerations, welfare services in relation with employment. Secondly, ILO standards aim to secure *women employees with law enforcement*, basically in conditions, terms of work contract, professional aspects, health and safety. There are four main ILO Conventions, which develop the basic standards and principles that promote equality between workers and prohibit all the forms of discrimination: The “*Employment and Occupation*” Convention, nr. 111, “*Equal Remuneration*” Convention, nr. 100, “*Protection Convention*”, nr. 183, “*Maternity Protection*” Convention, nr. 183 and “*Workers with Family Responsibilities*” Convention.

Regarding the scope of “*Equal Remuneration*” Convention, nr. 100, which is a fundamental convention, remuneration includes minimum standard or ordinary salary or remuneration and any additional financial compensation, which are paid indirectly or directly from the employer to the employer and which is a result of the work carried out by this employer, engaged in a specific work contract. On the other hand, equal remuneration for both men and women workers at work, includes the rates of compensation provided in conditions where there is not permitted any of the forms of discrimination. Referring to article 2 of this Convention, every member state is obliged, by using the appropriate methods, to promote the standard of equal compensation for both women and men workers, in case they carried out work of equal value. This crucial standard may be adopted through the legal framework of member states, regulations or laws, collective agreements between workers and employers, legally recognized or established instrument for wage determination or through a combination of the above mentioned methods. Each member state is obliged to cooperate with the representatives of employers and workers organizations, which are involved in fulfilling the obligations of “*Equal Remuneration*” Convention, nr. 100.

“*Equal Remuneration*” Convention, nr. 100, sets out the fundamental principles, such as the standard that for the same work, the works should take the same remuneration, which includes an amount of pay which is determined without any discrimination based on sex. This Convention treats remuneration as all emoluments, compensations and payments whether in kind or cash. Also this fundamental Convention elaborates the concept that all the jobs should be evaluated in terms the content of the work. On the other hand, Equal Remuneration Recommendation, 1951 (No. 90) recommends that member states shall secure that both workers and employers have the complete information about the legal requirements. The equal compensation principle can be effective and implemented by: The implementation of relevant methods which analyze the work that needs to be done, by guaranteeing equal conditions for both sexes for professional guidance, social services and welfare in order to fulfill women’s needs, by promoting the elimination of any type of discrimination between employers, regarding their opportunities in entering the labor market, also by promoting in public the meaning and the importance of the equality standard, investing in studies and researches in this field.

It is important to mention that “*Equal Remuneration*” Convention, nr. 100 allow differences regarding payment and compensation, only where there is reasonable justification, regarding the value of the work. In order to implement the standard of equal remuneration, which means that for the same work, the worker should take the same remuneration, it is required to compare different works of different characteristics on the basis of some specific criteria such as the requested commitment, skills, effort, responsibilities, working conditions, qualifications, background etc. After comparing different works with different characteristics, the result is the application of the principle of equal remuneration, required from the Convention. After realizing the process of job assessment or appraisal, we can concept job and work without any type of discrimination, but it is mandatory to take into consideration, differences between some jobs which have different values, in levels of payment and compensation.

Job assessment is different from performance evaluation, because job assessment or appraisal intends to give the value of jobs on the basis of the work in general, that the employer is required to perform. Nonetheless, performance evaluation, which aims at making an assessment of the achievements and performance of each worker, has a direct effect on the payment and compensation. If the worker is paid extra, based on his performance and achievements in general, this is not a type of discrimination, because extra benefits based on this criteria, justify the differences in monthly compensation. In this case, it is also mandatory to provide that these criteria’s are not themselves discriminatory or lead to differences in remuneration, and every worker has the possibility to profit from these benefits. Equal Remuneration Recommendation, 1951 (No. 90) gives special attention to the influence of social partners, regarding the methods of job assessment and evaluation that member states should implement and improve, in cooperation with workers’ and employers’ organizations involved (Oelz, Olney, & Tomei, 2013).

International Labour Organization has emphasized the great influence of the process of job assessment. In this context, it is important to establish and improve some methods of evaluating the relative value of jobs with different characteristics, in order to respect the principle of equal value. It is necessary to make a general analyze of the corresponding tasks and duties, defined on the basis of absolutely non-discriminatory and objective criteria, in order to not allow any type of discrimination, especially the discrimination based on the gender of workers. *Equal Remuneration* Convention, nr. 100 does not define any particular mechanism or approach for such analyze or examination, but article 3 requires the application of proper and necessary mechanism for realizing a real objective process of job assessment, by analyzing components such as responsibilities, effort, engagement required, qualifications, working conditions and skills. Job assessment means a formal and precise procedure which consists of a process of analyzing and evaluating jobs, in order to define a numerical value for each job evaluated. Numerical and detailed methods used in evaluating jobs, are considered the most adequate and efficient methods, because they aim at eliminating discrimination based on workers gender, regarding compensation and remuneration. Regardless the methods used for jobs assessment, it is important to pay attention to provide that these methods are free from gender stereotypes. In this context it is mandatory to provide that components for comparison, the influence of each of them and the concrete process, are not themselves discriminatory. (Committee of Experts, general observation on Convention No. 100, 2007).

It is founded that there are some evaluation methods, which are free from gender stereotypes (Harriman & Holm, 2001):

1. First of all "*Steps to Pay Equity*" method. This method is established by the Equal Opportunities Ombudsman of Sweden, for the purpose to improve equality in compensation and remuneration. It is considered as a very effective method, a quick and easy method for defining the requirements and level of difficulty related to specific jobs. This mechanism can be applied, in order to achieve different aims such as: to compare different jobs with different characteristics; to highlight work of equal value depending on the general level of wages, to decide if it is required the application of any job assessment method, estimating different jobs and improve criteria for evaluating the workers skills and performance.
2. ABAKABA and EVALFRI methods. The Analytical Evaluation of Jobs (ABAKABA) was developed in Switzerland in 1996. ABAKABA should be used with a specific mechanism known as VIWIV, which elaborates the concept whether the worker is paid depending of what he deserves. ABAKABA method is focused especially in women who are concerned about their wage and who think that their remuneration is less than a male worker in a job of the same value. ABAKABA and VIWIV methods can be used for all works job types regardless the content or the level of the job.
3. The EVALFRI method, which is considered as another version of ABAKABA method.
4. ISOS method. This method was developed in 2003 by the Polytechnic University of Cataluña in cooperation with several European universities at the request of the Women's Bureau of the Ministry of Labour and Social Affairs of Spain. This system applies to all occupations within an organization and is points-based.

5. Workers with Family Responsibilities Convention, 1981 (No. 156)

"*Workers with Family Responsibilities*" Convention, which entered into force in 1981, also known as (WFRC), deals with this important issue of human rights. The WFRC takes the position that commitment related to dependent children and upbringing them, should be a shared responsibility for women and man as well as society as a whole (Langley, 1999).

This Convention is applicable to those women and men workers which, except working responsibilities, has also family responsibilities, which includes responsibilities for dependent children, where this kind of responsibilities reduces the possibilities for advancing or participating in economic and social activities. Also the provisions of this Convention cover the situation of women and men which have family responsibilities in their immediate families, for the member of their families who certainly need their care, providing that this kind of commitment reduces their opportunities for advancing or getting involved in economic and social activities. In order to create and establish a system which guarantees the elimination of all types of discrimination for workers, each competent authority is obliged to adopt a national policy which create the opportunities for persons with family responsibilities, to be employed and to realize the right to work, without being discriminated and certainly without causing any possible conflict between these two kind of responsibilities, specifically their family and employment and responsibilities. With the purpose to implement the principles of equality in opportunity and treatment for all workers, all measures taken from member states, shall guarantee that workers committed in fulfilling family responsibilities, can realize their rights regarding free choice of occupation or employment and also member states are obliged to take into consideration all their requirements related to employment and occupation.

Referring to the article 5 of “*Workers with Family Responsibilities*” Convention, nr. 156, all methods and actions consistent with national legal framework, law and conditions, shall be implemented only if all requirements and needs of workers with family responsibilities are taken into consideration. This can be achieved by establishing private or public service centers or, family and child-care services. The competent authority of each country shall apply applicable and convenient measures in order to inform the broader community about the rights related to the standard of equality of treatment and possibility for workers which have family responsibilities. It is important to mention that all actions and methods consistent with national legal framework, law and conditions, including actions and policies related to training and professional management, shall be implemented with the aim to involve workers with family responsibilities to labor market, and also to enable them to enter again in labor market after an absence, which was caused exactly because of those responsibilities. In this regard, engagements in family issues shall not be treated reasonable motive for termination of employment contract.

On the other hand, “*Workers with Family Responsibilities*” Recommendation, nr. 165, requires special methods and measures to be implemented, in order to preclude indirect or direct discrimination in occupation and employment based on workers marital status. This instrument recommends some specific recommendations that should be implemented, with the purpose to assist participation, advancement and access in employment as follows:

1. The continuous reduction of required overtime and working hours.
2. The recognition of flexible aspects in rest periods, holidays working and agenda.
3. The establishment of similar working conditions between temporary and part-time workers and full-time or permanent workers.
4. The establishment of free of charge child-care centers, or child-care centers in which workers can pay, according to their possibilities to pay.
5. The establishment of supply of energy and public transport, as community services, near in the workers housing.

6. Conclusions

- Every country should take all necessary and appropriate actions in order to eliminate all types of discrimination.
- “*Discrimination Employment and Occupation*” Convention, nr. 111 also include all other preferences, distinctions or exclusions, which has an effect in creating different conditions and difference in treatment or opportunity in employment.
- “*Workers with Family Responsibilities*” Convention, nr. 156, applies to workers with such responsibilities, which restrict their possibilities to involve in an economic activity.
- Governments should provide the implementation of the standard of equal pay for workers, according to “*Equal Remuneration*” Convention, 1951 (No. 100).
- Each member state is obliged to cooperate with the representatives of employers and workers organizations, which are involved in fulfilling the obligations of “*Equal Remuneration*” Convention, nr. 100.
- “*Equal Remuneration Convention*” nr. 100, sets out the standard of equal remuneration for equal value work, which includes an amount of pay which is determined without any discrimination based on sex
- The 1981 Convention applies to workers with family responsibilities.
- Family responsibilities include responsibilities for dependent children, where this kind of responsibilities reduces their possibilities for advancing or participating in economic and social activities.

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