



ISSUE DESCRIPTION

COMMITTEE United Nations Entity for Gender Equality and the Empowerment of Women

ISSUE Assessing the effect of positive discrimination on the position of women in the workforce

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## Introduction

Whilst the Equality Act 2010 does not provide a definition of positive discrimination, this is essentially the automatic favouring, regardless of merit, of under-represented persons from minority groups over persons from majority groups. In other words, it concerns the preferential treatment of one group of persons over another because they possess a protected characteristic. Various such legislative and self-regulatory initiatives have taken place over the past decade, most of them focusing on selecting female candidates over male candidates as a form of positive discrimination.

Among the nine protected characteristics defined in the 2010 Act are: age; disability; gender reassignment; marriage and partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

Dealing more favourably with one person than another solely on the basis of having a protected characteristic is generally prohibited, unless a strict occupational requirement applies, for instance, where a women's refuge requires all staff members to be women. Positive discrimination based on a person's disability is also permitted when an employer is obliged to make reasonable accommodation to remove any disadvantage that a disabled job applicant or employee may have.

## Definition of Key Terms

**CEO:** The chief executive officer (CEO) is the highest-ranking person in a company. While every company differs, CEOs are often responsible for expanding the company, driving profitability, and, in the case of public companies, improving share prices. CEOs manage the overall operations of a company.

**Positive discrimination:** Positive discrimination means making sure that people such as women, members of smaller racial groups, and people with disabilities get a fair share of the opportunities available. It is generally prohibited under the Equality Act 2010, unless an occupational requirement applies.

**Equality act 2010:** The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations.

**Positive action:** Positive action, different from positive discrimination, is about taking specific steps to improve equality in your workplace. For example, to increase the number of disabled people in senior roles in which they are currently under-represented

**PTSS:** Post-traumatic stress syndrome is a psychiatric disorder that some people develop after experiencing or witnessing a traumatic event, such as combat, a natural disaster, a serious accident or sexual assault.

**Lobbying:** Any attempt by individuals or private interest groups to influence the decisions of the government.

## General Overview

### POSITIVE DISCRIMINATION AT WORK

Positive discrimination is in many cases an unlawful procedure that favours current or future employees from a group of protected characteristics. Such a situation usually occurs when a job applicant or employee is given preferential treatment because they possess a protected characteristic, or is hired or promoted specifically because of that characteristic, irrespective of their individual merits. The result may be that an employer automatically favours applications from, for example, women or ethnic minorities, based solely on the fact that they are women or non-white, rather than because they are the most qualified or best candidates for a particular job.

Likewise, quotas or benchmarks may be set in the recruitment process to recruit a proportion of people from a group of protected characteristics, or to promote a specific number of people within a minority group, in some cases overlooking an applicant's aptitude and ability. In the case, for

example, where two people are interviewed for a post and one of the applicants is a woman or from a minority ethnic group, but is much less qualified than the other candidate, it would be illegal to employ that person, regardless of the need to employ more women or people from non-white backgrounds.

It would be considered discriminatory to automatically treat all job applicants or employees who share a protected characteristic, or to guarantee them hiring or promotion because of that characteristic.

Clearly, such phenomena exist nowadays within the workplace in European countries such as the United Kingdom, for instance.

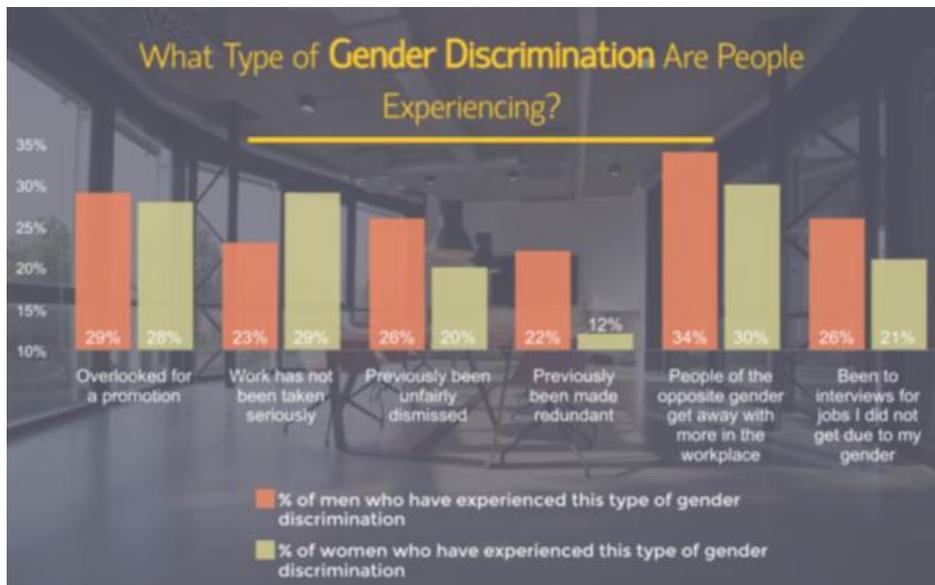
Surveys show that more than 8.2 million workers in the UK feel discriminated against on the basis of their gender. Indeed, the survey below, which polled 2,000 UK employees on this issue, shows this to be the case. This, of course, includes all kinds of discrimination.



Gender discrimination, in its many forms, continues to be a major problem for employees across the country in many companies, as latest surveys show.

A substantial 26% of all workers surveyed feel discriminated against because of their gender at work. Moreover, in an unexpected twist, the survey revealed that more men feel they are victims of gender discrimination than women.

Among those who felt that they had been victims of discrimination, different types of discrimination predominated:



In the group of those who had experienced discrimination on the basis of gender, 32.4% said that they believed that people of the opposite sex got their way at work.

For 28.7% of those who have been discriminated against on the basis of gender, they have not been considered for a promotion based on their gender.

26.5% of this group feel that their work is not taken seriously because of their gender.

24% believe that they have attended interviews where they have not been given the job because of their gender.

23.4% believe they have been unfairly dismissed because of their gender.

17.7% believe they have been dismissed because of their gender. Discrimination influences the number of people who want to set up a business.

While such studies provide us with valuable data, it is important to keep in mind that such self-reported studies may not always be fully reliable so we must think critically when considering them.

#### CONSEQUENCES OF POSITIVE DISCRIMINATION

An employer treating a job applicant or employee more favourably on the basis of a protected characteristic may result in a claim of unlawful discrimination. The claim may be brought by a

person who has been passed over for a job or promotion, especially when that person was more qualified or more suitable for the job, or has been treated less favourably in the job.

This situation is well exemplified in the case of *Mr M Furlong v The Chief Constable of Cheshire Police* (2018), where the claimant, a white, heterosexual male, was unsuccessful in his application to join the force, despite interviewing better than other female candidates among them, while several under-represented minorities were successful.

The employment tribunal held in this case that, in an effort to boost the diversity of its workforce, Cheshire Constabulary had acted unlawfully in treating less qualified candidates with protected characteristics more favourably. In considering discrimination cases, it is also worth remembering that there is no length of service that allows a person to claim unlawful discrimination, and that there is no limit to the award of damages.

On the other hand, this type of discrimination too can be significant and have a detrimental impact on morale. Indeed, existing employees may become dissatisfied if they feel that hiring and promotion decisions are unfairly based on protected characteristics rather than on skills and experience. There is also a risk that unsuccessful job applicants may bring a discrimination claim before an employment tribunal. This occurs if they feel that they have been unfairly overlooked in favour of someone else because of a protected characteristic. In order to avoid this outcome, it is necessary to understand that, although there is a difference between positive and negative discrimination, they are both unlawful, only for different reasons. To prevent positive discrimination from occurring, it is important that we base hiring and promotion decisions on predetermined criteria rather than protected characteristics. If an employer finds it difficult to differentiate between candidates during the recruitment phase, a scoring system may be useful to compare the suitability of individuals.

It is also important to highlight that at its core positive discrimination had a good purpose, but its effects can in many cases be negative. Because of the backlash towards such initiatives they can even take the focus away from the issue of negative discrimination and shed negative light even on those who are favoured by positive discrimination.

## POSITIVE DISCRIMINATION AND TALENT MANAGEMENT

Discrimination should not be used to recruit or promote people who possess a protected characteristic, even when legitimately seeking to diversify the workforce. Indeed, if positive discrimination were permitted and it were possible to recruit someone, for example, solely on the basis of their sex or race, there could be a risk of recruiting or promoting people who are unsuitable for the job, bypassing more qualified candidates.

Nevertheless, affirmative action can be used to legally boost the participation of under-represented groups, or to remove barriers and obstacles for those who are disadvantaged by possessing a protected characteristic. Thus, by taking legal steps to reduce any disadvantage suffered, or to encourage greater participation, you will benefit from a larger pool of talented workers from which to recruit and promote without discriminating against others.

Yet, in taking steps to ensure equal opportunities for minority groups in your workplace, you should still be cautious about hiring new talent or promoting existing employees to more senior positions to avoid accusations of positive discrimination.

Despite the advantages of using positive action in the workplace, whether in deciding which candidate to hire or promote, or in providing support and training to increase the participation of people with a particular protected characteristic, there is a risk of accusations of favouritism.

For candidates or employees who do not get a job or promotion it may seem unfair, even when due process has been applied. It is therefore good practice, wherever possible, to try to distinguish between candidates on the basis of their general attributes, ability and experience, together with relevant qualifications, rather than on the basis of a protected characteristic.

An example of a celebrity addressing feminist issues in the media could be Emma Watson's speech she gave on gender equality delivered in the UN in September to launch the HeForShe campaign, which went viral and has over six million views. Many male celebrities supported the campaign and began actively promoting it in the wake of Watson's speech, including musicians such as Jared Leto and Harry Styles and actors Tom Hiddleston and Simon Pegg.

Barack Obama also contributed to the dialogue by saying: "Elevating women elevates our economy and elevates our country... we have to make sure that... somebody stands up for them." It is clear that representation of the issue in the media and the support of celebrities towards disadvantaged groups can help the solution of the problem and raise awareness among the public.

## Major Parties Involved

**United Kingdom:** Positive discrimination is generally unlawful in the UK. For example, an employer recruiting a person because he or she has a relevant protected characteristic or is a woman rather than because he or she is the best candidate would be committing discrimination under the Equality Act 2010.

**India:** The positive discrimination programme in India was created to ensure the participation of women and disadvantaged groups in mainstream society. In addition to scheduled castes and scheduled tribes, this programme also includes Muslims, as they are equally representative of minorities in India.

**Kazakhstan and Bhutan:** These two countries are in the top half of the countries examined, and the female share of the labor force in these countries roughly matches or exceeds the female share in the U.S. Like the U.S., Canada (47.3%) has a relatively high proportion of women in the workforce.

**Women's Right and Gender Unit of the Human Rights Office of the High Commissioner:**  
"Through the Women's Rights and Gender Unit, furthers the struggle against discrimination against women. The unit builds national capacity to eliminate gender discrimination through advisory services, conducts research and analysis, services intergovernmental and expert mechanisms addressing the situation of discrimination of women, and engages with the Human Rights Council and the wider community forging partnerships, raising awareness, and mobilizing support for anti-discrimination measures, such as legislation, policies, and programmes."

#### Timeline of Previous Attempts to Solve the Issue

**1872** - Belva Ann Lockwood, an attorney, persuaded the U.S. Congress to pass a law guaranteeing equal pay for women employed as federal employees.

**1963** - The Equal Pay Act is passed in the United States, making it law to pay equal wages to men and women in all workplaces.

**1964** - The Civil Rights Act granted equal rights to women in all areas of employment. This was amended in 1991 to allow women to sue employers for sexual harassment.

**1975** - The Convention to end all forms of Discrimination Against Women (CEDAW) was adopted which permits the positive discrimination of women. It was accepted as an attempt to create advantages for women in places where they were majorly discriminated against.

**2008** - In March the Women's Right and Gender Unit published a commissioned report on laws that discriminate against women.

**2010** - In the UK the Equality Act was passed which condemns all discrimination, including positive discrimination, in the workplace and society. Nevertheless, it permits positive action when a person possesses one of the 9 protected characteristics.

**2011** - The provisions on positive action in the 2010 Equality Act come into force.

**2015** - The Sustainable Development Goals (SDG) were established by the UN. The 10th goal aims to reduce inequalities based on income, sex, age, disability, sexual orientation, race, class, ethnicity, religion and opportunity by 2030.

## Possible Solutions and Approaches

When addressing the question of positive discrimination there are several, fundamentally different paths to take:

- ✓ **Allowing positive discrimination** – even though positive discrimination clearly has its negative effects, the core idea to it is to counter the effects of negative discrimination. One option when discussing the question is to decide that the positives of such initiatives outweigh the negatives, this positive discrimination should be allowed and encouraged until negative discrimination disappears completely, rendering positive discrimination unnecessary.
- ✓ **Prohibiting positive discrimination** – as we know, as a form of discrimination, positive discrimination is unlawful as of now, and further measures could be taken to rule it out completely. What we must be cautious of in this case is that focusing too much on the eradication of positive discrimination might take focus away from, or even contribute to negative discrimination, so the issue must be addressed firmly but carefully.
- ✓ **Promoting positive action** – promoting positive action can be part of the steps taken regardless of whether it is decided that positive discrimination should be allowed or not, but in the case positive discrimination is decided to remain prohibited it can be a good substitute as a different approach to remedy negative discrimination. In any case, it is crucial to take specific steps that promote equality in the workplace for all.

When discussing the issue during the debate, make sure to pay special attention to addressing the effects positive discrimination has specifically on women in the workforce.

## Bibliography, Useful Websites:

About celebrities addressing the issue:

<https://jobs.personneltoday.com/article/women-in-business-is-positive-discrimination-the-right-decision->

Positive discrimination in the UK:

<https://www.peninsulagrouplimited.com/topic/discrimination/positive/>

About the difference between positive discrimination and positive action:

<https://www.dundee.ac.uk/guides/positive-action-or-positive-discrimination-whats-difference>

An article about gender discrimination in the workplace:

<https://www.smeloans.co.uk/blog/gender-discrimination-in-the-workplace/>

Sources about Previous Attempts:

<https://www.theweek.co.uk/99791/what-is-positive-discrimination-and-does-it-solve-inequality>

<https://brittontime.com/2021/03/15/what-is-positive-discrimination-and-is-it-legal-what-you-need-to-know/>

<https://codes.co.uk/blog/positive-discrimination-and-positive-action-why-employers-need-to-know-the-difference/>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85014/positive-action-recruitment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85014/positive-action-recruitment.pdf)

<https://www.jstor.org/stable/45148567>

<https://www.un.org/womenwatch/daw/cedaw/>

<https://www.womenalliance.org/the-convention-to-end-all-forms-of-discrimination-against-women-cedaw/>