

# Equality and non-discrimination

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## Key selected international labour standards

### Fundamental Conventions on equality of opportunity and treatment (and related Recommendations)

- C100** the Equal Remuneration Convention, 1951 (No. 100)
- R090** the Equal Remuneration Recommendation, 1951 (No. 90)
- C111** the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- R111** Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

### Workers with family responsibilities

- C156** the Workers with Family Responsibilities Convention, 1981 (No. 156)
- R165** the Workers with Family Responsibilities Recommendation, 1981 (No. 165)

### Violence and harassment in the world of work

- C190** the Violence and Harassment Convention, 2019 (No. 190) \*not yet in force at the time of publication
- R206** the Violence and Harassment Recommendation, 2019 (No. 206)



# Introduction

There is no society free of discrimination. When it comes to discrimination in employment and occupation, millions of workers around the world are deprived of equal employment opportunities, fair remuneration or on-job training because of their race, colour, sex, religion, political opinion, national extraction, social origin or any other distinction, exclusion or preference. Allowing workers to freely choose their employment, leads not only to a full development of their potential and skills, but also results in an improved quality of the workforce, leading to broader economic development.

Equality of opportunity and treatment in employment and occupation has been one of the fundamental objectives of the ILO since its foundation. Being essential to the ILO mandate, the elimination of discrimination in respect of employment and occupation is one of the four fundamental principles and rights at work and, therefore, creates an obligation for member States, whether or not they have ratified the fundamental conventions to promote, realize and respect these rights arising out of their membership in the Organization. There are two ILO fundamental Conventions on non-discrimination: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Equal Remuneration Convention, 1951 (No. 100). Each Convention has an accompanying Recommendation and other related instruments.



# ► Guidance from International Labour Standards

## C111 - the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

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### Definition of discrimination

Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

The definition contains three elements:

1. *a factual element* – the existence of a distinction, exclusion or preference which constitutes any different treatment;
2. *a criterion* on which this difference is based – it is a ground of discrimination; the Convention lists seven, but this minimum can be expanded nationally;
3. *objective result* of this difference in treatment – negative effect, which nullifies or impairs equality of opportunity and treatment in employment and occupation.

Discrimination at work thus refers to a difference in treatment based on the personal characteristics of an individual, such as race or sex, irrespective of whether that individual's profile matches the requirements of a particular job. This difference in treatment puts him or her at a disadvantage or limits his or her access to benefits and opportunities available to other members of society <sup>1</sup>.

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<sup>1</sup> Discrimination and equality at work: A review of the concepts, *International Labour Review*, Vol. 2003) 142), No. 4

Countries ratifying the Convention can extend the list of prohibited grounds after consultation with representative workers' and employers' organizations, and relevant bodies. Other grounds that have been included in different national legislation are: age, disability, gender identity, genetic disposition, HIV Status, migration status, physical appearance, sexual orientation, trade union membership (or lack thereof), among others.

## Direct and indirect discrimination

The broad definition covers all discrimination affecting equality of opportunity and treatment, while distinctions, exclusions or preferences may have their origin in law or in practice.

### *Examples of discrimination in practice*

#### **Legal provisions prohibiting women's employment in certain occupations**

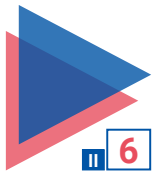
Historically, prohibitions of women's employment in certain occupations were intended to be designed and adopted as a special protective measure for women's health. However, in practice this may lead to reduced employment opportunities for women. The guarantee of equal opportunities and equal protection of health and safety for both men and women is often not observed as it results in the specific protective measures excluding women from certain occupations through the lists of occupations prohibited to women. Such limitations often include, for example, weight limits for manual lifting and moving by women some of which extend to the operation of weightlifting machines and bulldozer machines. It is important though that protective measures on women's employment are limited to maternity protection in the strict sense and are not based on stereotypes regarding women's professional abilities and role in society and the family.

### *Examples of discrimination in law*

#### **Women's concentration in a limited range of occupations**

In all countries of the world women and men are concentrated in certain jobs and occupations. Such divisions are due to what is considered to be a suitable job for either a man or a woman, what is typically viewed as "men's jobs" or "women's jobs". Such job segregation by sex limits the choice of occupation for both for women and men, and leads to inefficiencies in labour markets. Generally, women have a narrow choice of types of jobs and occupations available to them in comparison to men. This concentration of women in a limited range of occupations usually at the lower levels of the job hierarchy constitutes sex discrimination in practice. For instance, in a number of countries, social norms reinforce the roles of women as caregivers and men as breadwinners. This often translates into a practice of women being predominantly employed in care sectors (education and health and social work) and those sectors where care work is performed, such as domestic worker and non-care work in care sectors, supporting care service provision.

This results in the persistence of some forms of practices, traditions and patriarchal attitudes, which are deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society, in particular those portraying women as caregivers.



### **Examples of discrimination in practice**

#### **Legal regulations prohibiting employment of HIV positive persons in office jobs**

This is an example of direct discrimination in law based on HIV status (similarly, other grounds of discrimination not interfering with job requirements and constituting a case of exclusion in legal regulations could be encountered). In this case, HIV infection cannot be transmitted through regular workplace contact in office work, so there is no justification for the exclusion of HIV positive persons from these kinds of jobs.

#### **Legal provision, which previews unreasonable language requirements for civil service jobs and results in difficulties to pass the language test by persons belonging to the linguistic minorities**

While linguistic proficiency can constitute an inherent requirement of the job in civil service, it is not a general rule for all positions. If proficiency in the official language is not a genuine inherent requirement of the job, language requirements may be viewed as discrimination against qualified ethnic minority applicants, whose command of the majority language may be less complete than the majority population. Should the language requirement be unreasonable, it constitutes indirect discrimination in law based on ethnicity.

### **Examples of discrimination in law**

#### **Concentration of persons with disabilities in self-employment and micro-enterprises**

Such concentration of persons with disabilities (or other specific groups of workers) in self-employment and micro-enterprises often indicates that these persons lack access to other types of employment. It is, therefore, a sign of discrimination in practice based on disability.

#### **Job advertisements setting irrelevant height and weight requirements**

It often happens that specific parameters – given they are not inherent to the job – exclude certain groups of workers. Data on average height and weight of women and men shows that women are significantly less likely to meet the requirements. Similarly, such requirements may have the effect of excluding members of ethnic minorities whose average height tends to be below the overall national average. If height and weight is of arbitrary nature and is not necessary to perform the job, this is an example of indirect discrimination in practice.

The difference in treatment can vary from an explicit exclusion to rather neutral practices. Using the criterion of an objective consequence, the Convention covers both direct and indirect discrimination.

**Direct discrimination** – expressly stated exclusions or less favourable treatment of certain individuals because they belong to a particular

group. For example, a job announcement that explicitly indicates whether it is men or women an employer is looking for, without sex being an inherent requirement of the job, such as female assistant manager/director – a role that can be done by a man as well. Another example of direct discrimination in employment and occupation is mandatory pregnancy testing or imposed testing to establish HIV status.

**Indirect discrimination** – apparently neutral situations, regulations, norms or practices, which result in unequal treatment of a person with certain characteristics. They happen when the same conditions, treatment or criterion is applied to everyone, but the results have a disproportionately negative or harsh effect on some persons who have certain characteristics or belong to a specific group. An example of indirect discrimination would be a training at the workplace, which goes along with possibilities of promotion, conducted after working hours and offered to all employees that would result in exclusion of workers with families responsibilities and, as a consequence, would become an obstacle for them to climb the career ladder.

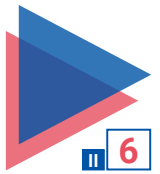
The Convention No. 111 covers equally discrimination in relation to access to education and vocational training, and access to employment and to particular occupations, as well as terms and conditions of employment.

## What is not discrimination?

### *Inherent requirements of the job*

Not all distinctions based on personal characteristics are considered discriminatory. Differential treatment motivated by the inherent requirements of a job is accepted as fair and efficient. For example, being male or being female is often considered a legitimate qualification for jobs entailing physical intimacy or for the performing arts. A job announcement for a leading female role in a movie or a theatre play will be addressed to women and this requirement will be considered inherent for this particular job. Similarly, some jobs associated with a particular religious institution may contain restrictions for workers of a different faith. While practicing a particular faith is often viewed as an essential requirement to teach in religious educational establishments, it should not exclude other employment opportunities: e.g. a Muslim could be





employed in an Orthodox Christian school as a mathematics teacher but not necessarily as a religion teacher.

### ***Measures affecting individuals suspected of or engaged in activities prejudicial to the security of the State***

- i. Measures taken in respect of activities of which an individual is justifiably suspected or convicted with the exclusion of mere membership of a particular group;
- ii. Activities which may be qualified as prejudicial to the security of the State, whether such activities are proven or whether consistent and precise elements justify suspicion of such activities;
- iii. Measures intended to safeguard the security of the State must be sufficiently well defined and delimited to ensure that they do not become discrimination based on political opinion or religion.

### ***Special measures of protection or assistance***

- i. Measures provided for in ILS, such as special measures taken on behalf of indigenous peoples, persons with disabilities or older persons or specific measures to protect the maternity and health of women;

For example, maternity protection, in the form of leave before and after confinement as well as protection from dismissal, is necessary. While in practice, maternity often remains subject to discrimination, whether directly or indirectly, at times, for instance, of the recruitment process and consideration for employment or as grounds for termination of employment relations. In order to achieve genuine equality, maternity requires differentiated treatment. Thus, special maternity protection measures<sup>2</sup> are needed to enable women to fulfil their maternal role without being marginalized in the labour market<sup>3</sup>.

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**2** To learn more about special protection measures, consult ITC/ILO Maternity Protection Resource Package, Module 9. Employment protection and non-discrimination. Box 9.4 contains country-specific examples of special provisions. <http://mprp.itcilo.org/allegati/en/m9.pdf>;

**3** Legal issues and trajectories in equality and non-discrimination. A comparative overview, M. Fasani, ITCILO, 2019

- ii. Measures designed to meet the particular requirements of a specific group, which generally are recognized on a national level to be necessary for reasons such as age, disablement, family responsibilities or social or cultural status. It is to avoid conflicts between these special measures and the general policy to eliminate discrimination; and to allow special measures to secure equality of opportunity and treatment in practice, taking into account the diversity of situations of certain categories of persons

Examples of such measures include the provision of language classes at the workplace for recently immigrated workers and the use of workplace changing rooms by workers from minority religious groups to facilitate the fulfilment of their religious obligations.

Laws prohibiting women from engaging in underground work or night work have traditionally been seen as special protective measures, although the tendency today is to pursue the protection of women workers within the broader framework of improving working conditions and promoting equal opportunity for all workers, irrespective of their sex.



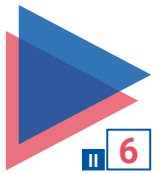
**NB!** It is to be underlined that in all cases such exceptions from the general rule must be applied under limited circumstances and based on unquestionable evidence that the special treatment is essential to the work involved.

Discrimination in employment and occupation, based on a country context, generally leads to wider social and economic implications, such as imbalances on labour markets and accentuation of social tensions and inequalities.

### **Pay discrimination:**

#### ***Direct discrimination in wage setting***

- ▶ Sex a criterion for determining wage rates
- ▶ Same job, different titles



### **Indirect pay discrimination**

- ▶ Female workers in a typically female job earn a lower salary than workers in a male job, even though both jobs have the same value (comparable skills/experience/responsibility...)

Male job title	Female job title
Salesman	Shop Assistant
Assistant manager	Manager's Assistant
Technician	Operator
Information manager	Librarian
Office Manager	Typing Supervisor
Tailor	Seamstress
Flight attendant	Stewardess
Personal Assistant	Secretary
Administrator	Secretary
Chef	Cook
Janitor	Cleaner

Source: *Equal Pay: an introductory guide*, ILO, 2013

## **C100 - the Equal Remuneration Convention, 1951 (No. 100)**

For the purpose of the Convention, the term “equal remuneration for men and women workers for work of equal value” refers to rates of remuneration established without discrimination based, - directly or indirectly, - on sex.

### **Principle of “equal pay for work of equal value”**

- ▶ Women and men should obtain equal remuneration not only for same, equal or similar work but also for work of equal value

### **Definition of “work of equal value”:**

- ▶ When men and women perform work that is different in content, involving different **responsibilities**, requiring different **skills** or

**qualifications**, and is performed under different **conditions**, but is overall of **equal value**<sup>4</sup>.

- ▶ different works or jobs, which based on objective criteria
- ▶ goes beyond equal work (same or similar work)
- ▶ beyond same employer or sector

### What does remuneration include?

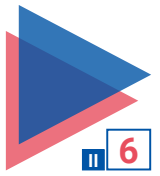
- ▶ Basic, ordinary or minimum wage or salary
- ▶ Any other additional emoluments
  - Paid directly or indirectly by the employer
  - In cash or in kind
  - Arising out of the worker's employment

Additional emoluments could be any increments based on seniority or marital status, cost-of-living allowances, housing or residential allowances, annual bonuses, family allowances, uniform and laundering services of working clothes provided by the employer. Indirect additional emoluments, arising out of employment, could be allowances paid out of a common fund managed by employers or workers or allowances under social security systems financed by the undertaking or industries concerned but not those financed by public funds only.

**Pay equity** is not about ensuring that men and women earn the same, nor changing the work that women do. Pay equity means **fairness** to recognize the value of women's jobs and reward them according to their value.

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**4** To have a better understanding of the practical application of the concept "equal pay for work of equal value", learn more about key issues, policy mechanisms and international evidence with respect to closing the gender pay gap in different countries (i.e. Sweden, Canada, United Kingdom, Netherlands, Switzerland and France), consulting the ILO report "Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence", 2016 - [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_decl\\_wp\\_27\\_en.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_decl_wp_27_en.pdf)



To provide guidance in determining the ‘value’ of a job, the ILO has developed a step-by-step guide using objective job evaluation method, learn more: [Promoting Equity: gender-neutral job evaluation for equal pay. A step-by-step guide](#)

### Equal Pay International Coalition (EPIC)

Equal Pay International Coalition (EPIC), led by the ILO, UN Women, and the OECD, is currently the only multi-stakeholder partnership working to reduce the gender pay gap at the global, regional and national levels. The Coalition’s goal is to achieve equal pay for women and men everywhere. By bringing together a diverse set of actors with different areas of focus and expertise, EPIC supports governments, employers, workers, and their organizations to make concrete and coordinated progress towards this goal.

Learn more: <https://www.equalpayinternationalcoalition.org/>

## Related instruments

There are two Recommendations accompanying the ILO fundamental Conventions on equality of opportunity and treatment:

**R090** the Equal Remuneration Recommendation, 1951 (No. 90)

**R111** the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

Many other ILO instruments incorporate the principle of equality and non-discrimination. For instance, the HIV and AIDS Recommendation, 2010 (No. 200), recognizes that stigmatization and discrimination based on a person’s real or presumed HIV status presents an obstacle to universal access, prevention, and treatment and to the provision of care.

## Workers with family responsibilities

**C156** the Workers with Family Responsibilities Convention, 1981 (No. 156)

**R165** the Workers with Family Responsibilities Recommendation, 1981 (No. 165)

Each State party to the Convention must have the objective of enabling persons with family responsibilities to engage in employment without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

As defined in the Convention No. 156, **workers with family responsibilities** are

*men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.*

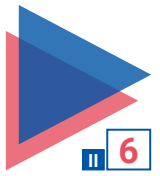
## Violence and harassment in the world of work

**C190** the Violence and Harassment Convention, 2019 (No. 190) \*not yet in force at the time of publication

**R206** the Violence and Harassment Recommendation, 2019 (No. 206)

According to the newly adopted ILO Convention No. 190, the term “violence and harassment” in the world of work refers to

*a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.*



The Convention No. 190 along with the Recommendation No. 206 call for adopting and implementing an inclusive, integrated and gender responsive approach to address violence and harassment in the world of work.

To learn more, visit the ILO's portal on Eliminating Violence and Harassment in the World of Work: <https://www.ilo.org/global/topics/violence-harassment/lang--en/index.htm>

# Sample session 1:

## Grounds of discrimination



### OBJECTIVES

- 📌 To recognize various grounds of discrimination at the workplace.



### SETTING

- 📌 Working in small groups (ideally seven, but other variations are possible); using post-its and/or flipchart/writing board for mapping and analysis.

### DURATION

- 📌 20 minutes to exchange views in groups.
- 📌 10 minutes for all groups to exchange on the results in plenary.
- 📌 10 minutes for drawing lessons learnt.



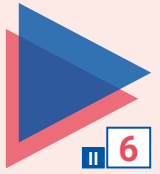
### TASK

1. Each group is assigned to work on one of the seven grounds of discrimination:



- i. *race*
- ii. *colour*
- iii. *sex*
- iv. *religion*
- v. *political opinion*
- vi. *national extraction*
- vii. *social origin*





2. Each group is invited to begin the work by brainstorming examples of discrimination (in accordance with the assigned ground) encountered in the workplace. Participants are to describe examples of situations or actions they deem to be discriminatory. The analysis could be potentially extended to determination of cases of direct/indirect discrimination and discrimination in law/in practice. For each example provided, participants are to list those measures that have been taken on the institutional or national levels to address the given cases of discrimination. In the absence of such measures, participants are invited to brainstorm and list those measures, which they think are appropriate and need to be taken to address workplace discrimination.
3. A designated spokesperson from each group is to present the results of the discussion in plenary; other participants are invited to comment, complement and expand on the suggested measures.



### TIPS FOR TRAINERS:

- 📌 Make available or write on a flipchart/board all seven grounds of discrimination to be visible throughout the exercise.
- 📌 Bear in mind the possible variations of the groups composition: lower number of groups, each working on two or three grounds of discrimination with an eventual overlap of grounds of discrimination covered by each group; greater number of grounds of discrimination if additional grounds are recognized by national legislation and/or suggested for discussion.
- 📌 Explain the concept of discrimination in line with the ILO Convention No. 111, making sure that three elements contained in the definition are clear to all participants.
- 📌 Prepare examples of discrimination consulting ILO publications.

- 📌 Consult the comments of the ILO Committee of Experts on Application of Conventions and Recommendations to become familiar with areas of concern and non-compliance your country may have vis-à-vis the application in law and in practice of the Convention No. 111.
- 📌 Recall that the Convention does not only call for action against discrimination but requires promotional action towards equal opportunity and treatment at work.

# Sample session 2:

## Non-discriminatory job advertisement



### OBJECTIVES

- 📌 To better understand and be able to address discrimination in access to employment.



### SETTING

- 📌 Working in small groups or pairs; distribute or display the handout below ; stationary and paper for notes to be made available.



### DURATION

- 📌 10 minutes for individual work (familiarizing with the case study and preparing notes); 30 minutes for work in groups/ pairs; 20 minutes for plenary discussion.



### TASK

1. Each participant examines the job advertisement and lists criteria, which are – in his/her opinion – effectively required for the job and those that could be considered as discriminatory.
2. Participants then exchange their views in groups, discuss similarities and/or divergences of opinions, and consolidate the lists of identified criteria: discriminatory and non-discriminatory.

3. Participants are then asked to re-write the job announcement, transforming it into a non-discriminatory announcement.

### **Job announcement**

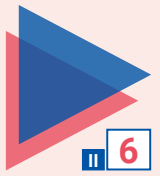
A farm is looking for a male live-in permanent worker, aged 40-35, in good physical shape without disabilities. Responsibilities include recruitment and supervision of seasonal workers as well as performance of tasks related to soil preparation, planting, irrigation, weeding and harvesting of crops grown on the farm, other tasks to be performed upon request of the farmer. Driving licence category B is required, with at least 6 years of prior safe driving experience. Full time work, with occasional overtime. The candidate may be required to undergo a medical examination. The salary is negotiable, a possibility to move in with a wife.

In plenary, participants share and discuss their non-discriminatory job announcements and the criterion used to determine which requirements are inherent to the job and which are discriminatory.



### **TIPS FOR TRAINERS:**

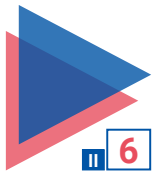
- 📌 Ensure that all participants have an understanding of what constitutes an 'inherent requirement of a job'.
- 📌 Lead the discussion in a way that participants understand what the employer had in mind when writing the job advertisement.
- 📌 When discussing the objective requirements for the job, lead the discussion from the perspective of skills and abilities; make assumptions about a person who could perform this type of work: could it potentially be a woman? Could it be a younger/older person? Etc.



- ✚ Explore whether the description of job contents and conditions of work is exhaustive; and how can it be complemented.
- ✚ There is a potential to link this exercise with other subject areas covered in previous modules, such as fair recruitment, decent working conditions, working time, fair remuneration, social security.
- ✚ Consult and make available the texts of relevant international labour standards.

## Further references

- ▶ ILO Centenary Chapters : Chapter 3. Equality and non-discrimination (ILO, 2019)  
<https://www.ilo.org/100/en/story/equality>
- ▶ ILO Infostories : Tackling sex discrimination through pay equity (ILO, 2016)  
<https://www.ilo.org/infostories/en-GB/Stories/discrimination/tackling-sex-discrimination-through-pay-equity>
- ▶ ILO Infostories: The gender gap in employment: What's holding women back? (ILO, 2018)  
<https://www.ilo.org/infostories/en-GB/Stories/Employment/barriers-women>
- ▶ ILO Infostories: Beyond the glass ceiling: why businesses need women at the top? (ILO, 2019)  
<https://www.ilo.org/infostories/en-GB/Stories/Employment/beyond-the-glass-ceiling>
- ▶ ILO Gender Pay Gap tool: How big is the gender pay gap in your country? (ILO, 2019)  
[https://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/enhanced/WCMS\\_650829/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/enhanced/WCMS_650829/lang-en/index.htm)
- ▶ Equal pay – An introductory guide (ILO, 2013)  
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[https://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS\\_122372/lang-en/index.htm](https://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS_122372/lang-en/index.htm)
- ▶ A quantum leap for gender equality: For a better future of work for all (ILO, 2019)  
[https://www.ilo.org/global/publications/books/WCMS\\_674831/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_674831/lang-en/index.htm)
- ▶ Global Reports regarding the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work:



- Equality at work: The continuing challenge - Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (ILO, 2011)  
[https://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS\\_166583/lang--en/index.htm](https://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS_166583/lang--en/index.htm)
- Equality at work: Tackling the challenges. Global report under the follow-up to the ILO Declaration on fundamental principles and rights at work. Report of the Director-General (ILO, 2007)  
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