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Article 42 of The Constitution

WORKPLACE DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY



WE WANT TO WORK IN
AN EQUAL ENVIRONMENT

Tbilisi 2015



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The presented policy document was created by the non-governmental organization “Article 42 of the Constitution” in cooperation with Georgian Trade Unions Confederation (GTUC) within the framework of the project: “Promotion of Gender Equality in Employment.”

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CONTENTS

Summary	5
Principle of Equality at Workplace	6
Improved recruiting practices	9
Retention of talent	7
Parental leave	7
Keep in touch program	8
Flexible working hours	8
What role can workplace flexibility play in business success?	9
Benefits of collective agreement	12
Conclusion	14

SUMMARY

The following document is developing policies which promote workplace equal opportunities and ways of implementing it in practice. Equal opportunities in the workplace guarantee diversity and increase financial performance of the business. Policy which is directed to establish parity in promotion, salaries and bonuses increases employability of the staff. The large business which provides equal opportunities for each employee increases percentage of retention of qualified employees, which directly reflects on the financial performance. Providing workplace equality for each applicant increases number and quality of professionals seeking employability and promotes retention of existing talents in your company. Implementing flexible and alternative policies for working schedule guarantees increase of performance and employees' loyalty to the team.

PRINCIPLE OF EQUALITY AT WORKPLACE

The vast majority of successful large businesses have special chapter about equal opportunities in their code of conducts. Introducing principle of equality in employment increases trust of the qualified staff and represents business as socially responsible among the society. On the other hand, business one of the core principle of which is equality, including parity between sexes, is prevented from negative feedback from governmental authorities.

Principle of equality in employment is guaranteed by Convention No. 111 of the International Labor Organization (ILO). ILO Convention No. 111 is concerning discrimination in respect of employment and occupation. Georgia ratified No. 111 convention in 1993.¹ The ILO convention on discrimination is establishing the general principle of equality in employment, which is reflected in Georgian domestic legislation.²

Establishing principle of equality in employment complies not only with the international labor principles, but promotes involvement of top qualified workforce as well. It guarantees safety of employees and protects them from creating hostile environment at workplace. Not tolerating any form of conduct of sexual nature, with the purpose or effect of violating the dignity of the person,

1 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102639

2 Constitution of Georgia article 14; Labour Code of Georgia article 2; Law on Gender Equality of Georgia; Law on Elimination of All Forms of Discrimination of Georgia.

in particular when creating an intimidating, hostile, degrading, humiliating or degrading environment.

Code of conducts of leading company such as “BP” can be taken as a good example:

Equal opportunity is a matter of fairness, respect and dignity:

We treat everyone with fairness, respect and dignity. We expect those we work with to act in a way that is consistent with our sense of fairness and equal opportunity.

- Base your work-related decisions on merit – not on race, color, national origin, religion, gender, age, sexual orientation, gender identity, marital status, disability, or any other characteristic protected by applicable laws.
- Offensive messages, derogatory remarks and inappropriate jokes are never acceptable.³

Another illustration of equality principle in code of conducts is an example of “Apple”:

³ http://www.bp.com/content/dam/bp/pdf/code-of-conduct/bp_code_of_conduct_en.pdf

Antidiscrimination

Supplier shall not discriminate against any worker based on age, disability, ethnicity, gender, marital status, national origin, political affiliation, race, religion, sexual orientation, or union membership, in hiring and other employment practices. Supplier shall not require pregnancy or medical tests, except where required by applicable laws or regulations or prudent for workplace safety, and shall not improperly discriminate based on test results.⁴

Inclusion of the principle of workplace gender equality will promote prevention of discrimination on the basis of gender. Particularly on the basis of family and caring responsibilities for both women and men.⁵ Principle of equality will drive a culture where rewards will be directly linked to employee's qualification, contributions and performance.

Employers should take into consideration principle of equality to attract quality human resources while recruiting. Another crucial benefit of eliminating discrimination in employment is retention of qualified employees and deserve their loyalty towards the company.

⁴ https://www.apple.com/supplier-responsibility/pdfs/supplier_code_of_conduct.pdf

⁵ Developing a Workplace Gender Equality Policy; Workplace Gender Equality Agency, September 2014.

IMPROVED RECRUITING PRACTICES

In the “war for the talent” it is increasingly important for companies to attract and retain qualified and talented employees and to be the “employer of choice”.⁶ There are several options of improving recruiting practices and retention of talent in the company, which is closely linked to the matter of gender balance in employment.

Using gender neutral language in advertisements is one of the first tools to increase diversity in the team and create positive reputation. Advertisement creates first impression for the potential employee and strongly influences societal opinion about the company. Thus, Georgian labor code forbids discrimination based on age, sex, family status and other circumstances in contractual and pre-contractual relations.⁷ There are other legislative tools which can be used against the business if it uses discriminatory language in the job announcement. According to the Law of Georgia on the Elimination of all Forms of Discrimination, in order to exercise the powers under the Georgian legislation, the Public Defender shall examine acts of discrimination based on applications or complaints, as well as on his/her own initiative and make appropriate recommendations⁸ or prepare and forward general proposals to the relevant institutions or persons on the issue of preventing and combating discrimination.⁹

6 UNECE Discussion Paper Series, No.2009.4 December 2009; page 4.

7 Labor Code of Georgia, Article 2 (3).

8 Law of Georgia on the Elimination of all Forms of Discrimination, Article 6 (2) (b)

9 Law of Georgia on the Elimination of all Forms of Discrimination, Article 6 (2) (c)

Based on the experimental research¹⁰ the Public Defender issued general proposal for the private entity “Jobs.Ge” for preventing and combating discrimination in 2015. The research covered the period from 2010 to October 2014. During this period, the web page jobs.ge published 71 360 and hr.gov.ge – 14 376 job announcements.¹¹ 10.01% of the announcement used terms related to the female gender and 24.02% referred to male candidates. To be more specific, the keyword “man” was used 1 088 times on jobs.ge and 394 times on hr.gov.ge. The keyword “pleasant appearance” was found in 1 589 announcements (2.235) and the word “stable” in 780 announcements.¹²

Pre-employment standards which are in compliance with Georgian legislation will avoid lawsuits or rumors, which might cause losing the customers and effect profit. On the other hand guaranteeing principle of equality on every stage of employment promotes loyalty towards the company and retention of talent.

RETENTION OF TALENT

Better recruitment and retention have been found to be the key motivation for the employers to offer family- friendly policies and flexible working options.¹³ There are several ways to improve

10 The research was prepared by Article 42 of the Constitution in cooperation with Jumpstart Georgia.

11 A list of words which could prove signs of discrimination in job announcements was pre-determined for the application. The search was conducted using words: woman, lady, man, gentleman, pleasant-looking woman, handsome man, pretty woman, married, single, unmarried, stabile.

12 Gender Discrimination in Labour Relations, 2014 pp17.

13 UNECE Discussion Paper Series, No.2009.4 December 2009; page 4.

retention of talent in the team, which is in compliance with the Georgian labor legislation.

PARENTAL LEAVE

According to the Georgian legislation both parents are entitled to parental leave. At employees' request, they shall be granted parental leave of absence of 730 calendar days.¹⁴ 183 calendar days of parental leave of absence shall be paid up to 1000 Gel from the State Budget of Georgia as determined by the legislation of Georgia. Employers and employees may agree on extra pays.¹⁵

Policy which supports equality in parental leave is one of the most vivid for employees. Gender equality in employment is not only making working environment female friendly, but it is about men as well. Giving male employees possibility to use their legal rights to use parental leave is not only the subject of law, but it is a driver to be more committed to the work. Fathers increasingly see their active role in parenting. Companies which have family friendly policies in Germany receive 31% more application than family unfriendly firms. Companies which have flexible policies for families have 12% higher customer loyalty in Germany. Having flexible parental leave policy increases diversity and productivity at workplace. As a result, employees tend to be loyal to their firms and it affects financial performance of the company as well.¹⁶

¹⁴ Labor Code of Georgia, Article 27.

¹⁵ Labor Code of Georgia, Article 27, and 29.

¹⁶ UNECE Discussion Paper Series, No.2009.4 December 2009; page 4-5.

KEEP IN TOUCH PROGRAM

Retention of talent and quality performance are the key goals for the firms. Keep in touch program is one of the widely used methods, to preserve skills of the employees during their parental leave. Keep in touch program is widely used to reduce costs of maternity leave for the firms.

Keeping in touch days allow an employee who is still on unpaid parental leave to go back to work for a few days. This is a flexible way for employees who are caring for a baby or newly adopted child to stay up to date with their workplace, refresh their skills and assist their return to work.¹⁷ Keep in touch days can be paid as well, it is negotiable between the employer and employee. In cases where the whole office is having trainings or attending a conference, the employee can be invited to participate in the activity during the unpaid parental leave. Generally, keep in touch days are regulated by the legislation, but in Georgian case it can be negotiated by the employee and employer beforehand. Keep in touch program is a good opportunity to refresh skills and is profitable for both sides.

¹⁷ Official web-page of Fair Work Ombudsmen of Australia : <http://www.fairwork.gov.au/leave/maternity-and-parental-leave/when-on-parental-leave/keeping-in-touch-days>

FLEXIBLE WORKING HOURS

Flexible working hours are also an important tool for companies to be able to cope with surges in demand and to increase productivity. They are important for reducing overtime in a way that supports employment, and for safeguarding and creating jobs. ¹⁸ Taking European experiences in to consideration and offering the option of part time work possibility to the parents who have children younger than 7 years old (Germany 2001, Austria 2004), introducing part time schemes and alternatives for the employees - increases chance of talent retention as well. This means that male and female qualified employees who can only pursue part-time employment because of the life situations have an opportunity to contribute to the company's work.

Flexible working is a way of achieving more equal opportunities for men and women in business life, a better reconciliation of work and family life and improving individual control over working hours.

Another pro of the employers using flexible working schemes is that the usage of non-standard work arrangements has shifted the responsibility of training and development from organizations to individual workers.¹⁹ In general, the greater the proportion of

¹⁸ Council of Europe Family Policy Database, Last updated: 30 April 2009, pp 15

¹⁹ Gurus, Hired Guns, and Warm Bodies: Itinerant Experts in a Knowledge Economy
Stephen R. Barley & Gideon Kunda. Available at : <http://press.princeton.edu/titles/7847.html>

non-standard workers in an organization, the less the organization will invest in these workers' training. The organizations have the freedom to choose the best professionals from the market and the responsibility of improving the skills are more on the individuals' side. Another important circumstance is that when organizations offer employees the opportunity to shift from full-time to part-time employment, the presence of these "retention of part time workers" has positive spillover effect on standard co-workers of them and raises competitiveness.²⁰

The survey, which questioned UK mothers about their careers revealed that flexible working was seen as the most important factor in career progression for 58% of working mothers in 2014. More than 20% leaving a company when a flexible working request was turned down. The study has confirmed that it is cheaper to think creatively and be flexible, than to lose qualified staff.²¹

WHAT ROLE CAN WORKPLACE FLEXIBILITY PLAY IN BUSINESS SUCCESS?

According to the survey that questioned 1087 people in the USA in 2015, among them HR professionals, employees and job

20 Non-standard forms of employment (Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment), paragraph 65,66. ILO, 2015. Available at : http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/meetingdocument/wcms_336934.pdf

21 Mums forced to leave jobs due to lack of flexible working. Available at : <http://www.workingmums.co.uk/mums-forced-to-leave-jobs-due-to-lack-of-flexible-working/>

seekers, 72% of HR, 79% of employees and 74% of job seekers proved that paid and unpaid time off is of great importance to them. The main results that employers got from their flexible working arrangements were improved employee satisfaction (87%), increased productivity (71%), and that they retained current talent (65%).²²

On the other hand, the wide use of flexible working hours may be challenging, in the way it may make it difficult to balance employer-determined changeable working hours with workers' capability to choose or have some kind of influence on their working hours. In this regard, the evidence shows that if efficiently arranged, flexible working time can satisfy individual workers' needs and meet the employers' business requirements at the same time and can be beneficial to the both parties.²³

Here are some main reasons why it is so important for businesses to promote workplace flexibility in their companies:

- Enhanced Recruitment

Employers who offer various forms of workplace flexibility may find it much easier to hire and retain a talented staff, than one

²² The 2015 Workplace Flexibility Study, See: <https://workplacetrends.com/the-2015-workplace-flexibility-study/>

²³ Working time in the twenty-first century (Report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements) pg.66. ILO, 2011, See: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_161734.pdf

who doesn't provide a chance to balance work and family life and thus have stressful working environment.

- Improved performance and Productivity

Flexibly structured working hours give employees the opportunity to choose the shift they wish, thus they are more concentrated on their work that increases their productivity and performance.

Marriott International which operates in 79 countries implemented flexible working hours that gave great results. Productivity increased significantly though the employees worked fewer hours. The company chose "efficiency and effectiveness" in its employees over strictly facing time. The employees were reported to have worked an average of 5 hours less a week. Apart from it the company discovered that with flexible work time, "low-value work had dropped to 6.8 hours a week" which significantly differs from 11.7 hours without it.²⁴

Deloitte, a global company providing audit and financial services, in 150 countries admits that 4.2 billion hours of traffic jams in urban areas in US can be changed into productive time by flexible employees.²⁵

24 The Sloan Center on Aging & Work at Boston College, Employees Need >> Improved Performance and Productivity, case example of Marriott International, Inc., See: http://workplaceflexibility.bc.edu/need/need_employers_performance

25 Workplace Flexibility, Deloitte, 2015, See: <http://www2.deloitte.com/us/en/pages/human-capital/solutions/workplace-flexibility-services.html>

- Reduced Turnover

Employees who enjoy flexible working hours are more satisfied and committed to their jobs and are less likely to leave their current working place. Further, promoting work-life balance helps to retain valuable employee even after a birth of a child or other crucial life events. As a result, companies with workplace flexibility won't face a loss of knowledgeable employees, thus saving recruitment and training costs.²⁶

- Increased Cost Savings and Profits

Firms often claim that limited finance doesn't allow them use flexible working hours. But benefits of implementing such management are of great importance. They lower truancy and turnover, improve workers' health condition and increase productivity of their work. A larger research of over 700 firms in the United States, United Kingdom, France and Germany showed serious positive link between work-life balance practices and total productivity. The researchers claim that well-managed firms enjoy higher productivity and are inclined to adopt flexible work time arrangement.²⁷

26 The Sloan Center on Aging & Work at Boston College, Employees Need >> Increased Retention and Reduced Turnover, See: http://workplaceflexibility.bc.edu/need/need_employers_retention

27 Work-Life Balance and the Economics of Workplace Flexibility, pg.3. The Council of Economic Advisers - Executive Office of the President of the United States, 2014, See: https://www.whitehouse.gov/sites/default/files/docs/updated_workplace_flex_report_final_0.pdf

Dell, One of the largest PC vendors in the world says that flexible workplace management has saved the company \$21 million since 2013 and helped maintain happiness and productivity among workers.²⁸

As a conclusion, employees of organizations with flexible working hours are less stressed, more productive and dedicated to work, which finally leads to customer satisfaction, higher profits and successful business. Such organizations are more likely to retain valuable employees and save money of recruitment and training of a new employee. Besides, policies that promote female participation tend to make economies stronger and safer to avoid economic growth slowdowns. Such policies may include promoting work-life balance, such as availability of more flexible working-time arrangements, maternity and parental leave.²⁹

BENEFITS OF COLLECTIVE AGREEMENT

Collective agreement is a bilateral agreement achieved through collective bargaining to determine terms and conditions of employment and regulate relations between employers or their representatives and workers and their representative

²⁸ Corporate Social Responsibility Report, Dell, 2015, See: <http://www.dell.com/learn/us/en/uscorp1/corp-comm/cr-report-workplace>

²⁹ World Employment Social Outlook (Trends 2015), pg. 59. ILO, 2015, See: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_337069.pdf

organizations (trade union).³⁰ It is proven that the issues can be better and sustainably solved through collective agreements that requires social dialogue and consensus, than through conflict and confrontation.³¹ For example Georgia has good practice of collective bargains when it comes to JSC Telasi³² or JSC Georgian railway,³³ Tbilisi Metro and Georgian Post. For example, collective agreement that was signed between Tbilisi Transport Company and Tbilisi Metro Workers Trade Union establishes loyal approach to women workers and defines that in case of child birth, Tbilisi Transport Company gives 750 gel to the employee and moreover the company is ready to pay 2 months average salary. This is an example how the company can go even beyond what is requested by the legislation, be loyal in cases of using the parental leave and by these means, contributing to the preservation of the experienced workforce.

It must be noted that collective agreement is a very important tool for the business as it is the product of social dialogue, which can bring stability and high productivity for business. To use social dialogue effectively, business needs collective bargaining and agreement that is a tool for future long-term success.

30 Collective Agreements Recommendation, 1951 (No. 91)

see: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312429

31 Q&As on business and collective bargaining,

see: http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm

32 Collective agreement between JSC Telasi and Service sector, utilities and banks Workers' Trade Union.

33 Collective agreement between JSC Georgian railway and Georgian railway workers new trade union.

Furthermore, collective bargaining helps avoid lengthy and costly litigations in the courts as issues get solved by social dialogue. According to the nature of collective agreement parties put every clause in a very clear way, which means that every detail of labor relations is clearly given to be enforced in a relevant time. For example, in the collective agreement the parties can foresee the annual increase of the salary³⁴ that can be a guarantee for the employees that they can have expectation of increased pay, which can possibly lead to the increased motivation.

Collective bargaining is widely used in such companies as LTD “Georgian manganese,”³⁵ LTD “Heidelberg cement Georgia”³⁶ and JSC “Mina”.³⁷ These Enterprises are working in Social dialog system that leads to their stability and experienced workforce.

It should also be noted that collective agreement is the main key to success of JSC Georgian railway.³⁸ Parties usually discuss every issue in terms of social dialogue which is the key of eliminating strikes from the employees. Collective agreement is a mutual gains bargaining³⁹ where both parties (employer and trade union) can benefit. The main point of collective agreement is that in this case

34 Eurofound, Opening clauses increase in branch-level collective agreements, p4. see: <http://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations-working-conditions/opening-clauses-increase-in-branch-level-collective-agreements>

35 Collective bargaining process between ltd “Georgian Manganese“ and Metallurgy, Mining and Chemical Industry Workers' Trade Union

36 Collective bargaining process between ltd „Heidelbergcement Georgia“ and Independent Trade Union of Builders and Forest Workers

37 Collective bargaining process between JSC „Mina“ and Metallurgy, Mining and Chemical Industry Workers' Trade Union.

38 Collective agreement between JSC Georgian railway and Georgian railway workers new trade union

39 Strategic collective bargaining, an introduction for employers, p 4.

agreement is signed by both parties which means that they wrote it together. So far there is less chance of misinterpretation of the clauses. Moreover, the enterprises will not deal with individual workers for regarding the issues raised, instead, they will have social dialogue with workers through their respective organization that - can bring collective demands to the negotiating table and seek for consensus through meaningful and good-faith bargaining. Collective bargaining is an essential feature in the terms of social partnership towards which labor relations should strive.⁴⁰

In most of the cases, the use of collective agreements is more effective and flexible than regulations of the law. Collective bargain helps to solve current problems as well as the future ones and can be a good foundation of peaceful mechanisms for dealing with issues. Agreement is the result which makes sure that priorities and needs of both employers and employees are taken into consideration. Collective agreements are beneficial for both parties of employment and contributes to peace and social justice for the society in general.⁴¹

According to the all above mentioned, it is crystal clear that the collective agreement is an extremely helpful tool for management-worker cooperation the result of which is a relationship with a win-win outcome.⁴²

40 Collective Bargaining Negotiations, International Labour Organisation Act/Emp Publications, Sriyan de Silva, 1996, p 6.

see: <http://www.ilo.org/public/english/dialogue/actemp/downloads/publications/srscbarg.pdf>

41 Q&As on business and collective bargaining, see: http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm#Q1

42 Strategic collective bargaining, an introduction for employers, p 77.

see: http://www.ilo.org/wcmsp5/groups/public/@arabstates/@ro-beirut/documents/meetingdocument/wcms_304046.pdf

CONCLUSION

Principle of Equality at Workplace guarantees safety of employees and protects them from creating hostile environment at workplace. Avoids lawsuits or rumors, which might cause losing the customers and positively effects profit.

Improved recruiting practices attract quality human resources while recruiting and becoming “employer of choice”.

Developing family- friendly policies and flexible working options promotes **retention of talent** and employees’ loyalty toward the company. Policy promoting equal opportunities for parental leave, alternative ways of qualification retention, such as ‘Keep in touch program’ or offering Flexible working hours schemes increases effectiveness and notably saves employer’s resources.

Providing **flexible working conditions** is beneficial, both, for employer and employee. Though it may be challenging to implement such policies, but if properly managed, it saves important costs of the company, leads to higher productivity of employees and helps to hire and retain the best talent in the market.

Collective agreement is a tool for better mutual understanding of the parties through social partnership. The above mechanism helps avoiding strikes and resolves the issues (if risen) by peaceful means.