

Ethical & Legal Considerations in Occupational Psychology

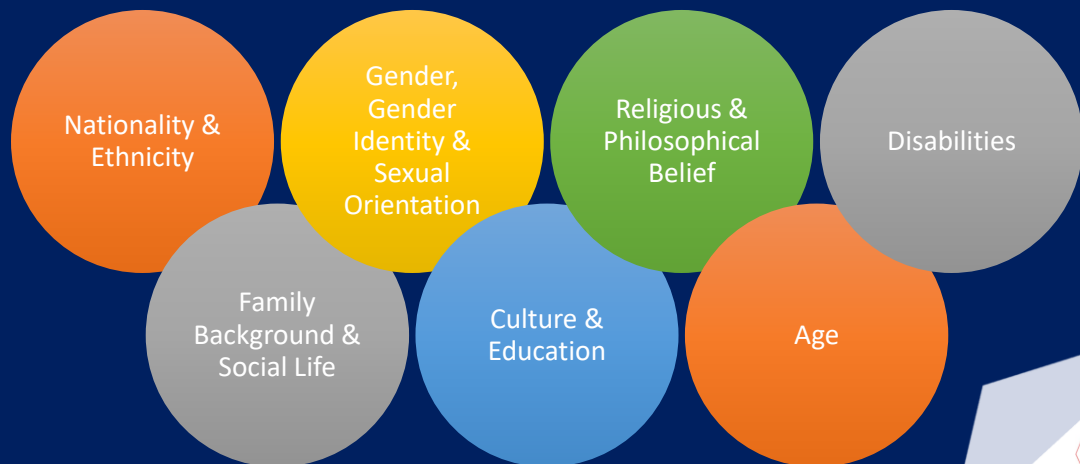
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What makes us different:



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What does 'diversity' mean to you?

Would you say that you work in a diverse work environment?



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Diversity

*Diversity is the **range** of people in your workforce. For example, this might mean people with different ages, religions, ethnicities, people with disabilities, and both men and women. It also means **valuing** those differences.*

ACAS [<https://www.acas.org.uk/improving-equality-diversity-and-inclusion>]



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Managing Diversity

- **Accept:** don't dismiss persons on the basis of different characteristics
- **Encourage:** ensure that your workforce accepts differences and implement facilitating techniques
- **Respond:** ensure that you reasonably cater for all differences
- **React:** take action against discriminatory behaviour

Does your work environment comply with these principles?



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Diversity & You

How can workplace diversity help **you**?

- Satisfied staff members (and therefore less staff turnover and less administration costs)
- Better capability to adapt to and overcome changing circumstances
- Positive employer and brand image
- Wider market scope
- Reflective diversity encourages customer satisfaction



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The Employment and Industrial Relations Act (EIRA)

*“discriminatory treatment” means any **distinction, exclusion or restriction** which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association*

Article 2



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The Employment and Industrial Relations Act (EIRA)

- The EIRA extends its protection across:
 - Potential recruits (including advertising and calls for applications)
 - Existing employees (even upon termination)
- Equal pay for work of equal value
- Discriminatory arrangement and management of work
- EXCEPTION: where discrimination is based on *“a genuine and determining occupational requirement”*



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The Equal Treatment in Employment Regulations

- These regulations are enacted by virtue of the EIRA
- The grounds these regulations cover are religion or religious belief, disability, age, sex, sexual orientation, and racial or ethnic origin – however, nationality is excluded
- The regulations apply to:
 - Access to employment (recruitment)
 - Training
 - Employment
 - Union association



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The Equal Treatment in Employment Regulations

- Direct discrimination: *“where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation”*
- Indirect discrimination: *“where an apparently neutral provision, criterion or practice would put persons ... at a disadvantage when compared with other persons”*
 - Certain exceptions apply



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Some examples

- Su, a beautician who moved to Malta from China a few years ago, was fired from her job for poor performance. A few weeks later, a colleague of hers told her that she heard a client tell their boss, "Thanks for firing that Asian girl, I only like to be served by Maltese workers".
- Jane, a lawyer with three degrees and significant specialist experience, applies for a job at a law firm. She is not called back for a second interview, unlike her friend Maria who only has the minimum degrees. Jane remembers that during her interview, she was asked if she intended to start a family, answering in the affirmative. Maria always maintains that she wants to remain single.



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Some examples

- A company refuses to hire two media content managers who graduated with university degrees in Malta, but hires a younger, less experienced recruit with no formal qualifications instead. The other two men were both born in Ghana.
- An investment bank has a policy to totally refuse reduced hours arrangements under any circumstances.



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Discrimination by Association

- Discrimination by association is separate from direct or indirect discrimination as it is not exactly attached to the person who alleges discrimination
- This occurs when a person claims that they are being discriminated against not because of a protected characteristic they possess, but because of such characteristic possessed by another person with whom they are associated



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Discrimination by Association

- *CHEZ Razpredelenie Bulgaria:*
 - A Bulgarian electric supplier installed meters at 6m heights in Roma areas, and at 1.7m height in non-Roma areas, claiming Roma persons would tamper with it. A non-Roma shop-owner in a Roma district claimed associative discrimination
- *Coleman vs. Attridge Law:*
 - It was concluded that an employee who was not disabled but who was the primary carer of a disabled person (ex. child) could be discriminated against by association



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The Equality for Men and Women Act

- What's the difference from the EIRA's definition of discrimination?

*“discrimination” means discrimination based on sex or because of **family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity, gender expression or sex characteristics** and includes the treatment of a person in a less favourable manner than another person is, has been or would be treated on these grounds*



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The Equality for Men and Women Act

What protection does the Act afford to employees?

- Discriminatory treatment/management of work
- Educational opportunities
- Sexual harassment
- Discriminatory recruitment practices



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National Commission for the Promotion of Equality (NCPE)

- The NCPE is appointed by the Equality for Men and Women Act
- The NCPE is the main governmental authority tasked with directing local policy on equality and identifying pitfalls to address in this regard
- The Commissioner is also obliged to investigate issues (including workplace issues) where an equality issue arises, particularly where this affects gender equality



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The Equality Bill

- This law has been a point of contention for years, and was tabled before Parliament in 2019:



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The Equality Act's Protected Characteristics

- Age
- Belief, creed or religion
- Disability
- Family responsibilities
- Family or marital status
- Gender expression or gender identity
- HIV status
- Maternity
- Pregnancy
- Race, colour or ethnic origin;
- Sex or sex characteristics;
- Sexual orientation



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Ordinary vs. Intersectional Discrimination

- Ordinary Discrimination:
“discrimination on the basis of only one of the protected characteristics”
- Intersectional discrimination (to be introduced in the new law):
“when a person is discriminated against on the basis of two or more of the protected characteristics”



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Intersectional Discrimination

- Also known as dual discrimination, this form of discrimination has come to light in recent years and requires some thought – some examples can include:
 - A headscarf ban would discriminate against **Muslim (1) women (2)** – it would make no difference to other women and Muslim men
- A recent UK case saw a woman who was dismissed claiming age and sex discrimination. Her claim was only upheld insofar as her age discrimination was concerned. Regarding her gender, the Tribunal commented that men of her age were also similarly terminated.



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The Equality Bill & Employers

- Employers will be required to provide prospective employees, upon request, information about the employer's selection criteria
- The parameters of the new law would also cover employment agencies and trade unions, who would be subject to the same restrictions against discrimination.
- This law aims to repeal and replace the Equality for Men and Women Act (Chapter 456 of the Laws of Malta), which currently regulates discrimination & harassment at the workplace.



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The Equality Bill & Employers

- Employers are obliged to take steps to:
 - Prevent discrimination
 - Prevent, more specifically, harassment and sexual harassment
- Employees or the NCPE have the right to request a report (within 10 days) about an allegation of such



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The Equality Bill & Employers

How can an employer be prepared?

- Foster a common-ground environment where diversity is encouraged
- Train employees on acceptance, tolerance and equality
- Implement policies and equality and diversity and the workplace and ensure these are thoroughly explained
- Set out processes to ensure that equality is maintained throughout all stages of employment, including recruitment



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The Equality Bill - Penalties

- Persons or entities guilty of infringements can be liable to a fine of up to €10,000
- However, the bill specifies that the action available under the EIRA against acts of discrimination may still be made use of



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Employer Safety Nets

- One of the easiest, safest and most traceable ways in which you can ensure that your staff members are introduced to the topics of diversity and equality is by implementing a **written policy**.
- It is essential that:
 - You ensure that employees have read the policy (for example, by having them sign a confirmation to that effect)
 - You provide explanations and/or training where necessary
- Written policies shouldn't form part of employment contracts, to allow the company to change them unilaterally.



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The Equality Policy

- The Equality policy is there to:
 - Inform
 - Explain
 - Define
 - Guide
 - Warn



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The Equality Policy - Basic Contents

- Company's vision/mission statement
- The protected characteristics
- An explanation of the different types of discrimination and harassment which exist
- The company's guarantee to recruit and select persons without any preconceived prejudice or bias in terms of the protected characteristics
- Guarantee that actions during employment (including discipline and termination) are applied indiscriminately



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The Equality Policy - Action

- Your policy must clearly indicate that you are committed to take action against any behaviour of a discriminate nature
- Invite disgruntled employees to submit a formal grievance
 - Do you have a policy for this?
- Investigate and take disciplinary action against such incidents
 - Do you have a disciplinary procedure



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Training

- Keep in mind that having written policies may not always be enough
- Training may be required, and certain types of workforces may require different styles of training depending on:
 - The industry
 - The work carried out
 - The size of the working environment
 - Employees' background and education
 - The differences among departments/sections
- Very often, policies might need to be explained in detail



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Data Privacy or Data Protection



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Data Privacy

- GDPR - The General Data Protection Regulation 2016/679 is a regulation in EU law on data protection and privacy in the European Union and the European Economic Area. It also addresses the transfer of personal data outside the EU and EEA areas.
- Data Protection Act - Formerly CAP 440 Data Protection Act, repealed by Act XX of 2018 the applicable laws in Malta regulating Data processing procedures have been updated and are now found under CAP 586. Intended to implement the GDPR.



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The Data Protection Act

- Processing of ID Documents

Art 8 - An identity document shall only be processed when such processing is clearly justified having regard to the purpose of the processing and –

- (a) the importance of a secure identification; or
- (b) any other valid reason as may be provided by law:

Provided that the national identity number or any other identifier of general application shall be used only under appropriate safeguards for the rights and freedoms of the data subject pursuant to the Regulation.



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The Data Protection Act



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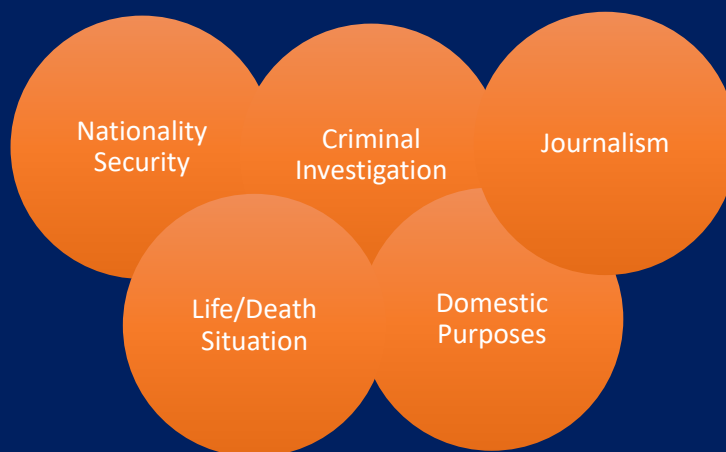
The Data Protection Act

- Administrative Fines and Penalties
- Damages - including Moral Damages
- No Special Rules on processing in the context of employment
- Subsidiary Legislation



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Exemptions



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Personal Data

It means information or data that relates to a living person who can be identified from that data.

For example info such as names, addresses, warnings, employment details.



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[A] Special Categories Sensitive

- racial or ethnic origin,
- political opinions,
- religious or philosophical beliefs,
- trade union membership,
- the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person
- data concerning health
- data concerning a natural person's sex life or sexual orientation



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[B] Special Categories Sensitive

- Criminal convictions and offences

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Your turn...

Give us some examples of why an employer processes personal data.

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Some examples...

- For payroll
- For benefits
- For insurance
- For background checks
- For training
- For legal reasons
- For disciplinary matters
- For performance reviews
- For security purposes



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Your turn...

Give us some examples of personal data an employer processes.



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ADVISORY

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Some examples...

- Contact Details
- Financial
- Health
- CCTV
- Files notes
- Criminal?



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Data Privacy - Principles

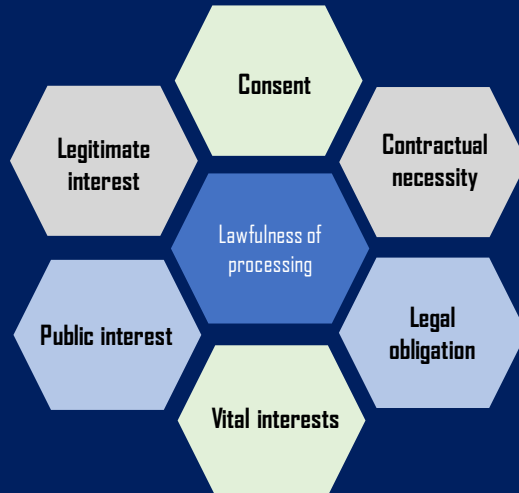
1	lawful, fair and transparent
2	specific, explicit and legitimate purpose
3	adequate, relevant and limited to what is necessary
4	accurate & up to date
5	storage limitation
6	integrity and confidentiality

Accountable



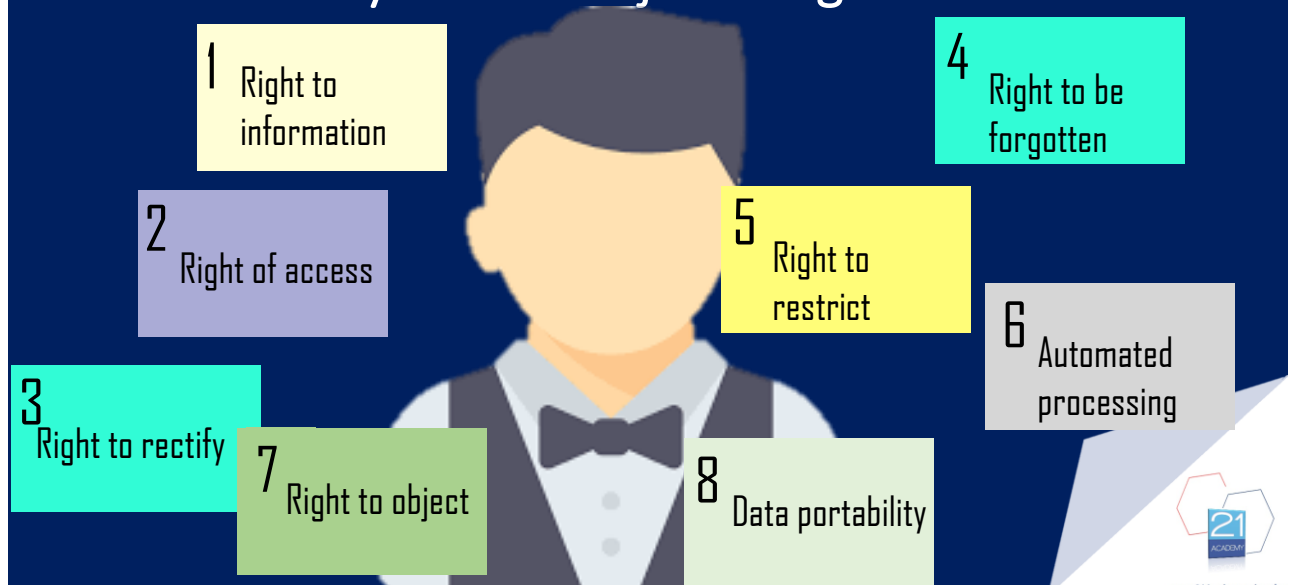
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Data Privacy - Legal Grounds



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Data Privacy - Data Subjects' Rights



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Information to be given to employee

- The identity of the data controller (employer) and any DPO
- The purpose of the processing and the lawful basis you are relying on.
- If a legitimate interest is being relied upon you need to specify that interest.
- The source and category of the data (unless it has come from the employee themselves).
- Who will receive the personal data – does not need to be the names of people, for example the payroll department.
- The period the data will be stored for.



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Information to be given to employee

- You need to inform them of their data subject rights
- You must tell the employee that they have the right to withdraw consent, if consent is being relied upon as a legal basis for processing.
- You must also inform the employee of the right to complain to IDPC
- If the data is going to be transferred outside the EU, you must tell the employee the legal basis for this transfer and the safeguards in place.
- You must also tell them about any automated decision making or profiling.



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Training

- General Awareness Sessions
- Phishing Risks
- Specific Training
 - Management
 - HR
 - IT
 - Marketing



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2 years plus in Malta

IDPC publishing decisions

Breaches caused by employees

Employees exerting their rights

Issues - CCTV and SAR



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CCTV

- This sign is affixed in an office. It is informing employees & visitors that monitoring is being carried out



Is this enough? Why?



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CCTV



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CCTV



What is missing in this notice from an HR perspective?



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Subject Access Request

What is a SAR?

- A right granted and regulated by the GDPR
- A data subject has the right to obtain all personal data pertaining to them which is held and/or processed by an organisation
- The requested organisation must comply with such a request within a period of 1 month (which may be extended up to a maximum of a further 2 months if the situation so warrants)



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Subject Access Request

- Form
- Procedure
- Policy



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Subject Access Request

You must let them know:

- what category of data you hold
- what it is being used for
- where you got it from
- who it has been disclosed to
- how long you will keep it for
- how it is being kept safe
- details of any automated decision making



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Suggested Further Reading

- CAP 586 - Data Protection Act, Laws of Malta, 2018
- CAP 456 - Equality for Men and Women Act, Laws of Malta, 2003
- CAP 424 - Occupational Health and Safety Authority Act, Laws of Malta, 2000
- LN 85/2007 Equal Treatment of Persons Order
- LN 181/2008 Access to Goods and Services and their Supply (Equal Treatment) Regulations
- Altman, Andrew, "Discrimination", *The Stanford Encyclopedia of Philosophy* (Winter 2020 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2020/entries/discrimination>
- Heckman, James J. 1998. "Detecting Discrimination." *Journal of Economic Perspectives*, 12 (2): 101-116.DOI: 10.1257/jep.12.2.101
- Equality Act Bill:
https://meae.gov.mt/en/Public_Consultations/MSDC/Documents/2015%20HREC%20Final/Bill%20-%20Equality%20Act.pdf
- NCPE: https://ncpe.gov.mt/en/Pages/NCPE_Home.aspx

