



Promoting Gender Equality: The Gender Equality Law and Your Business

CHAMBER OF COMMERCE

FEBRUARY 27, 2012

Objectives

By the end of this session, we will have covered the following:

- The Making of the Gender Equality Law & Its International Context
- Definitions of Sex, Gender, Gender Equality & Sexual Harassment
- Discrimination & Offences Related to the Gender Equality Law, 2011
- The Gender Equality Tribunal
- Best Practice Principles and Policies to Promote Gender Equality for Businesses

The Making of the Gender Equality Law, 2011

- September 2008 - November 2009: Legislation drafting were instructed to craft legislation to address gender discrimination issues and uphold the principles of CEDAW.
- December 2009 - January 2010: Discussion Draft of The Prevention of Gender Discrimination Bill, 2010 was out for public consultation.
- March 2011: Further discussions with legal society & other stakeholders on the Bill.
- May 2011: Gender Equality Bill, 2011 approved in Cabinet
- September 2011: Gender Equality Bill, 2011 passed in the Legislative Assembly with amendments.
- October 2011: Gender Equality Law is assented to by Governor and gazetted.
- 31st January 2012: Commencement date for Law.

Why Do We Need a Gender Equality Law?

- By addressing these issues, we have the ability to potentially create a more **positive and equitable future for our sons and daughters.**
- The Cayman Islands must **compete with the wider world** for business and its workforce.
- In order for the United Kingdom to extend the Convention for the Elimination of All Forms of Discrimination Against Women to the Cayman Islands (CEDAW), we need to have in place **relevant local legislation that supports the principals of CEDAW.**

About CEDAW

- A cornerstone of CEDAW is the **principle of equality between men and women**. As such it mandates the prohibition of discrimination of the rights of men and women.
- CEDAW is the only **core international human rights treaty** still to be signed by the Cayman Islands.
- As such, the United Kingdom (UK) has for some time actively encouraged all of its Overseas Territories to adopt the convention.
- At the present time, the **only British Overseas Territories in the Caribbean that have CEDAW** extended to them are the **British Virgin Islands** and **Turks and Caicos Islands**; this extension occurred in 1986 in both countries.

Sex & Gender- There is a Difference

- ♦ **Sex and Gender** are not interchangeable terms. They **do not** mean the same thing.
- ♦ **Sex** refers to **biology- male or female** (i.e. the physical differences between women and men that are permanent).

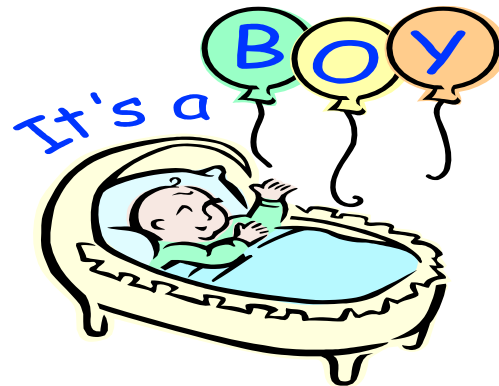


- ♦ **Gender** refers to **social science- masculinity and femininity** (i.e. masculine and feminine characteristics shaped through the history of social relations and interaction).

What is Gender?

- The Gender Equality Law defines gender as:

“the cultural, economic, social, and political characteristics, roles and opportunities through which women and men are socially constructed and valued”



Why Is Gender Important?

It is used in societies to create a gender division of labour.



Gender Division of Labour:

“The allocation of tasks and responsibilities to women and men. Those assigned to men are usually accorded more value and prestige than those accorded to women.”

~ Dr. Rhoda Reddock, Professor of Gender, Social Change and Development at UWI

What Is Gender Equality?

- Gender Equality refers to the right of women and men and boys and girls to have the **same opportunities** for the achievement of important goals in society such as education, employment and income and **to contribute** to political, social, and cultural development at **all levels**.





Main Areas of the GEL



- Provides protection from discrimination in employment, training, and hiring for both sexes.
- Stipulates women and men receive equal pay for work of equal value.
- Prohibits sexual harassment in the workplace.
- Calls for equal treatment in related matters such as the provision of goods, services, and facilities.

What are the grounds of discrimination in the GEL?

Section 3.2

- Sex, marital status, or pregnancy; or
- Any characteristic based upon gender which appertains generally or is generally imputed to persons of a particular sex or marital status or pregnant state.



How is discrimination defined in the GEL?

- A person discriminates against another person by “any **distinction, exclusion or preference** [with] the intent or effect of which is to **nullify or impair equality of opportunity** in any employment or occupation.” (Section 3.1)
- Any act, practice or policy that directly or indirectly results in discrimination against a person is an act of discrimination regardless of whether the person responsible intended to discriminate. (Section 3.3)

Prohibited Discrimination in Employment

Section 4

- “A person who is an employer, shall not in relation to the recruitment, selection or employment of any other person, discriminate against another person”
 - a) In an advertisement of a job;
 - b) In an interview or other arrangements made for the purpose of determining who should be offered employment
 - c) In determining who should be offered employment
 - d) In the terms and conditions on which employment is offered; or
 - e) In the creation, classification or abolition of jobs

Prohibited Discrimination in Employment Continued...

An employer shall not discriminate against an employee on any ground specified in section 3(2) –

- (a) in the terms or conditions of employment
- (b) in conditions of work or occupational safety and health measures;
- (c) in the provision of facilities related to or connected with employment;
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
- (e) by retrenching or dismissing the employee; or
- (f) by subjecting the employee to any other disadvantage.

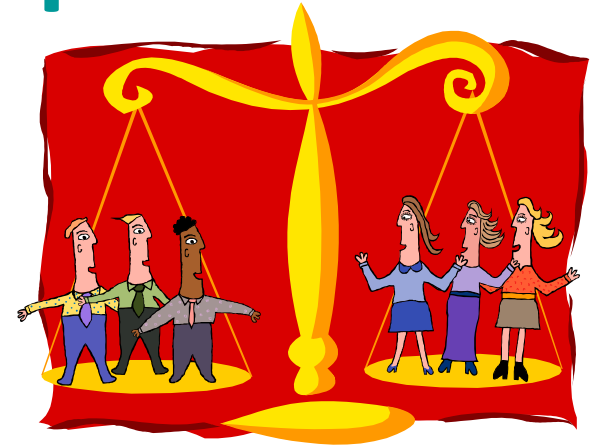
Are exceptions allowed? Yes.

- It is not considered discrimination if a genuine occupational qualification exists. See **Section 5.2** of the Law which outlines the **exceptions for genuine occupational qualifications**.
- Examples: A foster home requires the manager to be a married couple; the nature or establishment requires the job be held by persons of a particular sex for example at a prison or hospital.

Equal Pay for Work of Equal Value

Equal Remuneration-Section 8

- An employer shall not pay unequal remuneration to men and women performing work of equal value for such employer.
- The burden of proof to establish that equal remuneration has been paid rests on the **employer**.



Sexual Harassment

Section 7.4

“unwanted conduct of a sexual nature against an employee by an employer or another employee –

(a) in the workplace; or

(b) in connection with the performance of, or recruitment for work,

which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee, being conduct which has the purpose or effect of violating the dignity of the employee or intimidating, degrading, humiliating or offending the employee.”

Sexual Harassment

In deciding whether conduct has the effect referred in section 7(4) the following must be taken into account -

- (a) the perception of the person against whom the sexual harassment is alleged to have been committed;
- (b) the other circumstances of the case; and
- (c) whether it is reasonable for the conduct to have that effect.

Goods, Services and Facilities

Section 13

“A person who, **whether for payment or not**, provides goods and services or makes facilities available, shall not discriminate against another person on any ground specified in section 3(2) -

- (a) by refusing to provide that person with those goods or services or to make those facilities available; or
- (b) in the manner in which or in the terms and conditions on which those goods or services are provided or those facilities are made available to that person.”

Specific Organizational Structures or Entities

Sections 9-12

The following organizational structures or bodies are specifically mentioned in the Law:

- Professional Partnerships (e.g. law or accounting firms)
- Qualifying Bodies (e.g. electrical qualifying board)
- Vocational Training Bodies
- Employment Agencies

Exceptions to the GEL

Sections 18-19

- **Charities:** Nothing in Part 2 of the Law affects providing charitable benefits or enabling charitable benefits to be given to persons on any of the grounds specified in section 3(2).
- **Religious bodies:** Nothing in Part 2 of the Law affects the ordination, training, education, selection or appointment of priests, ministers or members of a religious order.

Offences Relating to Gender Discrimination

Sections 21 and 22:

Pressure to Discriminate and Victimization

- It is an offence to induce, bribe or threaten a person to discriminate against another person **or** threaten someone who proposes to make a complaint or provides information, evidence or testimony under this Law.
- Liable for a summary conviction of \$5,000.

Real World Examples of Discrimination

- Asking female applicants about future pregnancy possibilities during a job interview.
- Male and female employees holding the same position receive different pay, even when other factors such as experience, education level, etc. are similar.
- Denying pregnant school girls access to an education that is equal to their peers.
- Making sexual comments or commenting on physical appearance as a part of the hiring process.
- Passing up men or women for promotion because of their marital status.
- Restricting one sex access to certain 'work meetings' that are held away from the office, e.g. the golf course or the rugby club.
- A vocational training body refuses to provide access to cosmetology training to a male.

Gender Equality Tribunal (GET)

- 5 Person Tribunal was appointed by Governor in Cabinet on 31st January 2012 to hear and determine complaints under the Gender Equality Law (2011).
- Gender Equality Tribunal Chairperson- Sheridan Books, attorney at law. Other GET Members: Karie Bergstrom, Shaun Cockle, Andre' Ebanks, and Tammy Ebanks.

Complaints

Section 33

- A complaint may be filed with the Tribunal on the form approved by the Tribunal.
- A complaint may be made **within 6 months** of the date of the alleged acts.
- Tribunal may accept a complaint after that time if the reasons for the delayed filing are reasonable.

Complaints

On receiving the complaint the Tribunal shall-

- Record the complaint and furnish to the complainant and the alleged offender a copy of that record signed by the person receiving the complaint.
- Furnish to the complainant and the alleged offender a prescribed statement setting out the procedures that will be followed respecting the complaint and the rights of the complainant.

What Can The Tribunal Do?

For the purpose of fulfilling its functions under the Law, the Tribunal has the power to-

- Compel the production of documents or other things from any person who is reasonably suspected of breaching the Law
- Issue summons to compel the attendance of witnesses at the hearing
- Examine witnesses on oath, affirmation or otherwise at the hearing.

Findings of the Tribunal

Section 35

- If complainant's allegations are substantiated, the Tribunal may do the following:
 - Notify the complainant and the person against whom the complaint was made in writing.
 - Shall **issue directions to stop the discrimination** and **take remedial action** within a specified time period OR require the accused person to **pay compensation** (not exceeding **\$20,000**) to the aggrieved person.
 - May make an **award for costs**.
- Failing to comply with the Tribunal findings is an offense liable for a **\$5,000** fine.

Frivolous or Vexatious Claims

If the complaint is found to be frivolous or vexatious or its suspicions are incorrect, the Tribunal shall-

- Notify the complainant and the person against whom the complaint was made, in writing, and **order the complainant to pay the cost** incurred by the Tribunal **and** the person against whom the complaint was made.

Why Promoting Gender Equality Makes Good Business Sense?

In Mexico, a Gender Equity Model or “GEM 2003” was developed and tested by 57 firms with around 250,000 employees, the results....

- improved labor environment within the firm (31 % of the firms)
- better communication between management and workers (23% of the firms)
- an increased number of women in managerial positions (9% of the firms)
- increased productivity (8% of the firms)
- reduction in salary gap (8% of the firms)
- reduction in maternity-related discrimination (8% of the firms)

Deloitte's Research

- Research showed the top 500 multi-national firms, which had **at least three women on their boards, saw a 16.7% return on equity;** average companies saw just 11.5%.
- The greater the number of women the greater the difference; **those with the greatest number of women on their boards had 53% greater return on equity than those with the fewest.**

Best Practice Principles & Policies to Promote Gender Equality

- As an employer or provider of goods, services or facilities ensure that you are **committed to encouraging diversity and gender equality** and eliminating discrimination.
- Create an environment in which **individual differences and the contributions** of all employees and volunteers **are recognised and valued**.
- Create a working environment that **promotes dignity and respect for all**. No form of intimidation or harassment will be tolerated.

Best Practice Principles & Policies to Promote Gender Equality

- Ensure training, development and progression opportunities are available to all.
- Promote gender equality in the workplace not only because it is good management practice but because it makes sound business sense.
- Regularly review provision of goods, services and facilities to ensure they are accessible and appropriate to all groups outlined in the Gender Equality Law.

Best Practice Principles & Policies to Promote Gender Equality

- Regularly review all employment and volunteering practices and procedures and ensure that policies developed are fully supported by the executive board or chief decision maker(s).
- Monitor and review internal policies annually.
- Treat breaches of the Gender Equality Law or internal policies seriously and take disciplinary action when required.
- Provide information and training to all employees and volunteers so that they are fully aware of the issues relating to the Gender Equality Law and/or internal policies and their responsibilities relating to it.

Best Practice Principles & Policies to Promote Gender Equality

- Create written policies, procedures and practices that support gender equality such as **sexual harassment policies** and **family friendly policies**.
- Family friendly policies would outline practices in relation to the following areas:
 - **maternity and paternity leave**
 - **adoption leave**
 - **parental leave**
 - **time off for dependents**
 - **compassionate leave**
 - **flexible work hours**
 - **temporary or permanent switch to part-time**
 - **job sharing**
 - **flexible emergency leave**

Why Should Businesses Care About Creating Family Friendly Policies?

- It contributes positively to the social development of a society and the future employees that businesses will have to choose from 20 + years from now.
- In the Future of Cayman Forum, the principle of family friendly policies is supported by the Chamber as an action step to one of the objectives (increase focus on education, family and public safety) outlined in order to enhance the quality of life in Cayman.
- Looking broadly, businesses could consider the long-term advantages for family friendly policies that may keep children above the poverty line: less welfare dependence, criminal behavior, and prison time.

www.genderequality.gov.ky

- **Resource articles and links on the website such as:**
 - ✓ How can you and your organization institute policies and practices that facilitate equal opportunities for men and women?
 - ✓ Creating a Better Workplace: A Tool For Promoting Equality in Your Workplace
 - ✓ Why Men Should Promote Gender Equality
 - ✓ Deloitte's Research on Advancing Women in Government
 - ✓ Gender Equality Poll: Take a global poll and see what people in the Cayman Islands think about gender equality.
 - ✓ Global Gender Gap Reports



Take the Gender Equality Pledge

The screenshot shows a web browser window displaying the Gender Equality Cayman Islands website. The browser's address bar shows the URL <http://www.genderequality.gov.ky/pledge>. The website features a navigation menu with links for home, about, legislation, resources, news, pledge, and contact. The main content area is titled "Take the Gender Equality Pledge" and contains the following text:

Are you prepared to embrace this new way of thinking and doing business which will help the Cayman Islands take its place in the 21st century global marketplace? **Sign the Gender Equality Pledge and tell us how your company will commit to ensuring equal opportunity for all workers.**

We pledge to ensure that all male and female employees will receive equal pay for work of equal value and will be afforded equal opportunities, regardless of their sex, gender, marital status or pregnancy.

Your pledge will be made public

Below the text, there is a form with a "Title" dropdown menu set to "None" and a "Name" field with an asterisk indicating it is required. To the right of the main content, there is a sidebar with a search bar and a "Pledge" section containing the following questions:

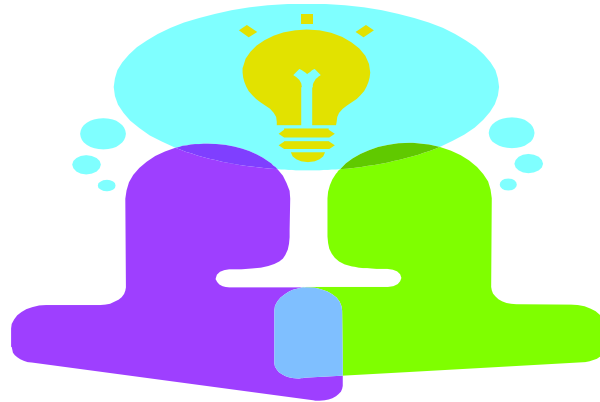
- Why Is Gender Equality Important?
- Who should take this pledge?
- What can your organization do to support the spirit and principles of the Gender Equality Law, 2011?
- How can you and your organization institute policies and practices that facilitate equal opportunities for men and women?

At the bottom of the sidebar, there is a banner with the text "Together We Can Achieve!" and an image of two people working together.

Who Should Take The Pledge?

Employers, trainers, qualifying bodies and providers of goods and services who are committed to taking tangible action to improve gender equality within their organization and within the Cayman Islands are all eligible to take this pledge.

QUESTIONS?



THANK YOU FOR YOUR TIME AND ATTENTION!
PLEASE COMPLETE AND RETURN
EVALUATION SHEET.

GENDEREQUALITY@GOV.KY