

Is It Discrimination to Pay Foreign Workers from Poorer Countries Less?



Policies that appear neutral on their face may have discriminatory effects.

Canada is in the throes of a severe labour shortage. Without enough Canadians available to do the jobs that must be done, employers are increasingly turning to foreign workers. In addition to immigration challenges, hiring foreign workers raises issues of discrimination. This is particularly true when you base compensation on the worker's country of origin. Consider the following scenario.

SITUATION

Glow Bull Worming (GBW), a tunnel construction firm, has a policy of paying foreign workers a blended rate based on wages at their last project and the labour rates for equivalent work in the market where the project takes place. The policy also guarantees that foreign workers will make no less than what Canadians would earn for the same work. Because it can't find any Canadians to do the job, GBW hires 2 foreign workers for a tunnel construction in Vancouver where the local rate is \$20 per hour. Pierre Lefranc last worked in his native France for \$30 per hour; so he gets \$25 per hour. Juan Lapeso last worked in his home country of Mexico for \$18 per hour. His average: \$19. Juan is bumped up to the Vancouver rate of \$20 under the GBW policy. Pierre and Juan have the same skills and experience and do the exact same work.

QUESTION

Is paying Juan less than Pierre for the same work nationality discrimination?

1. No because Juan gets paid what a Canadian would.
2. No because GBW didn't *deliberately* pay Juan less just because he's from Mexico.
3. Yes because all workers must be paid the Canadian rate regardless of where they're from.
4. Yes because the policy has the *effect* of discrimination.

ANSWER

1. **The GBW policy is discriminatory because it has the *effect* of treating workers from lower-wage countries less favourably.**

EXPLANATION

Human rights laws ban employers from treating workers less favourably because of the

country they're from. Deliberately paying Europeans more than Mexicans for equal work is a form of direct discrimination the law clearly bans. But this scenario, which is very loosely based on a case from BC, raises a more subtle issue: policies that are neutral on their face but have the effect of discriminating. Such policies are just as illegal as policies that discriminate deliberately.

The GBW compensation policy for foreign workers isn't intended to give workers from poorer countries a raw deal. In fact, it guarantees all workers the local Canadian rate. But by averaging the Canadian wage rate with the worker's rate from previous jobs, the policy has the effect of discriminating against workers who come from lower-wage countries like Mexico [[C.S.W.U. Local 1611 v. SELI Canada and others \(No. 8\)](#), 2008 BCHRT 436 (CanLII)].

WHY WRONG ANSWERS ARE WRONG

A is wrong because the basis of comparison isn't what a Canadian would have earned but what Pierre and Juan *do* earn for the same work since those 2 are the only ones doing the job.

B is wrong because even a policy that's neutral on its face and not deliberately discriminatory may be illegal if it has discriminatory effects. As the human rights tribunal explained in the *SELI* case, it's not just the intentions but the consequences of the policy that matter.

C is wrong because the ban on discrimination doesn't require completely equal treatment. There may be legitimate, non-discriminatory reasons for paying workers from different countries different amounts for the same work, such as their experience or skill level. But Juan and Pierre have the same skills and experience and the difference in their wages is based solely on the fact that Pierre comes from France and Juan from Mexico.