

Act relating to a prohibition against discrimination on the basis of sexual orientation, gender identity and gender expression (the Sexual Orientation Anti-Discrimination Act)

Chapter 1. Purpose and scope

Section 1. *Purpose*

The purpose of this Act is to promote equality irrespective of sexual orientation, gender identity and gender expression. Equality shall mean:

- a) equal status,
- b) equal opportunities and rights,
- c) accessibility, and
- d) accommodation.

Section 2. *Factual scope of this Act*

This Act shall apply in all sectors of society, with the exception of family life and other purely personal relationships.

Section 3. *Geographical scope of this Act*

This Act shall apply throughout the country, including on Svalbard and Jan Mayen. This Act shall also apply on fixed and mobile installations in operation on the Norwegian continental shelf and aboard Norwegian ships and Norwegian aircraft.

The King shall issue regulations on the application of this Act to posted workers; see section 1-7 of the Working Environment Act.

Section 4. *Invariability*

The provisions of this Act may not be varied by agreement.

Chapter 2. Prohibition against discrimination

Section 5. *General rule regarding the prohibition against discrimination*

Discrimination on the basis of sexual orientation, gender identity or gender expression shall be prohibited. The prohibition shall apply to discrimination on the basis of actual, assumed, former or future sexual orientation, gender identity or gender expression. The prohibition shall also apply to discrimination on the basis of the sexual orientation, gender identity or gender expression of a person with whom the person who is discriminated against has a connection.

“Discrimination” shall mean direct and indirect differential treatment that is not lawful pursuant to section 6 or section 7. “Direct differential treatment” shall mean an act or omission that has the purpose or effect that a person is treated worse than others

in the same situation, and that is due to sexual orientation, gender identity or gender expression. “Indirect differential treatment” shall mean any apparently neutral provision, condition, practice, act or omission that results in persons being put in a worse position than others, and that occurs on the basis of sexual orientation, gender identity or gender expression.

Section 6. *Lawful differential treatment*

Differential treatment shall not breach the prohibition in section 5 if:

- a) it has an objective purpose,
- b) it is necessary to achieve the purpose, and
- c) the negative impact of the differential treatment on the person or persons whose position will worsen is reasonably proportionate in view of the intended result.

Section 7. *Positive differential treatment*

Positive differential treatment on the basis of sexual orientation, gender identity or gender expression shall not breach the prohibition in section 5 if:

- a) the differential treatment is suited to promote the purpose of this Act,
- b) the negative impact of the differential treatment on the person or persons whose position will worsen is reasonably proportionate in view of the intended result, and
- c) the differential treatment will cease when its purpose has been achieved.

Section 8. *Prohibition against harassment*

Harassment on the basis of sexual orientation, gender identity or gender expression shall be prohibited. “Harassment” shall mean acts, omissions or statements that have the effect or purpose of being offensive, frightening, hostile, degrading or humiliating.

Section 9. *Prohibition against retaliation*

It shall be prohibited to retaliate against anyone who has submitted a complaint regarding breach of this Act, or who has stated that a complaint may be submitted. This shall not apply if the complainant has acted with gross negligence. The prohibition shall also apply to witnesses in a complaint case.

It shall be prohibited to retaliate against anyone who fails to follow an instruction that breaches section 10.

Section 10. *Prohibition against instructions*

It shall be prohibited to instruct anyone to discriminate, harass or engage in retaliation contrary to this Act.

Section 11. *Prohibition against participation*

It shall be prohibited to participate in discrimination, harassment, retaliation or instruction contrary to this Act.

Chapter 3. Active equality efforts

Section 12. *Duty of public authorities to make active equality efforts*

Public authorities shall make active, targeted and systematic efforts to promote equality irrespective of sexual orientation, gender identity or gender expression.

Section 13. *Activity duty of employer and employee organisations*

Employer and employee organisations shall make active, targeted and systematic efforts to promote the purpose of this Act within their fields of activity.

Section 14. *Duty of organisations and educational institutions to preclude and prevent harassment*

The managements of organisations and educational institutions shall, within their areas of responsibility, preclude and seek to prevent the occurrence of harassment contrary to section 8.

Chapter 4. Supplementary rules relating to employment relationships

Section 15. *Prohibition against discrimination in employment relationships*

The prohibitions in chapter 2 shall apply to all aspects of an employment relationship. This shall include the following:

- a) announcement of a position,
- b) appointment, reassignment and promotion,
- c) training and skills development,
- d) pay and working conditions, and
- e) cessation of the employment relationship.

The first paragraph shall apply correspondingly to the employer's selection and treatment of self-employed persons and hired workers.

Section 16. *Prohibition against collection of information in connection with appointment*

An employer shall not collect information about the applicant's sexual orientation, gender identity and gender expression during the appointment process, whether during interviews or otherwise. However, this shall not apply to information about the applicant's cohabitation form if:

- a) the collection of the information is based on the nature of the position, or

- b) the objective of the undertaking in question includes the promotion of particular religious, cultural or political views, and the worker's position will be important for the achievement of the objective.

If such information will be requested, this must be stated in the announcement of the position.

Section 17. *Employer's disclosure duty to job applicants*

Job applicants who consider themselves to have been disregarded contrary to this Act shall be entitled to demand that the employer provide written information about the person who has been appointed. The employer shall provide information about education, experience and other formal qualifications.

Section 18. *Employer's disclosure duty regarding pay*

A worker who suspects discrimination in the setting of pay shall be entitled to demand that the employer provide written confirmation of the pay level and the criteria for the setting of the pay of the person or persons with whom the person in question is making a comparison.

A person who receives information about pay pursuant to this provision shall be subject to a duty of confidentiality and shall sign a confidentiality declaration. This shall not apply in the case of information covered by the Freedom of Information Act.

An employer who releases pay information about an employee under this provision shall simultaneously inform the person in question of what information has been released, and to whom.

Section 19. *Employer's activity duty*

Employers shall make active, targeted and systematic efforts to promote the purpose of this Act in their undertakings. The activity duty shall encompass matters such as recruitment, pay and working conditions, promotion, development opportunities and protection against harassment. The activity duty shall apply to:

- a) employers in the private sector who generally employ more than 50 employees,
and
- b) employers in the public sector.

Section 20. *Employer's reporting duty*

Employers shall report on equality measures that have been implemented and that are to be implemented to satisfy the activity duty pursuant to section 19.

The reporting duty shall apply to undertakings that have an activity duty under section 19 and that are subject to a statutory duty to prepare an annual report. These undertakings shall include the reports in their annual reports.

The reporting duty shall also apply to public authorities and public undertakings that are not subject to a duty to prepare an annual report. These bodies shall include the reports in their annual budgets.

Section 21. *Employer's duty to preclude and prevent harassment*

Employers shall preclude and seek to prevent the occurrence of harassment contrary to section 8.

Chapter 5. Enforcement, burden of proof and penalties

Section 22. *Enforcement of this Act*

The Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal shall enforce and contribute to the implementation of this Act; see the Anti-Discrimination Ombud Act. However, the ombud and the tribunal shall not enforce the rules relating to:

- a) active equality efforts in chapter 3 and section 19,
- b) handling of pay information in section 18, second paragraph, or
- c) compensation for non-economic loss and compensation for economic loss in section 24.

Section 23. *Burden of proof*

Discrimination shall be assumed to have occurred if:

- a) circumstances apply that provide grounds for believing that discrimination has occurred, and
- b) the person responsible fails to substantiate that discrimination did not in fact occur.

This shall apply in the case of alleged breaches of the provisions in chapter 2 and sections 15 and 16.

Section 24. *Compensation for non-economic loss and compensation for economic loss*

A person who is discriminated against may claim compensation for non-economic loss and compensation for economic loss. This shall apply in the case of breaches of the provisions in chapter 2 and sections 15 and 16.

In an employment relationship, liability shall exist irrespective of whether the employer can be blamed for the discrimination. In other sectors of society, liability shall exist if the person who has committed the discriminatory act can be blamed for doing so.

The compensation for economic loss shall cover economic losses resulting from the discrimination. Compensation for non-economic loss shall be set at an amount that is reasonable in view of the scope and nature of the harm, the relationship between the parties and the circumstances otherwise.

These rules shall not limit the right of persons to claim compensation for non-economic loss and compensation for economic loss under the general principles of the law of damages.

Section 25. *Right of organisations to act as legal representatives*

In cases dealt with by the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal, an organisation that has anti-discrimination work as its sole or partial purpose may be used as a legal representative.

In cases before the courts, a person appointed by and associated with an organisation that has anti-discrimination work as its sole or partial purpose may be used as counsel. This shall not apply to the Supreme Court. The court may refuse to accept an appointment as counsel if the court finds there to be a risk that counsel lacks sufficient qualifications to safeguard the party's interests satisfactorily. In addition to the authority mentioned in section 3-4 of the Dispute Act, counsel shall at the same time submit written information from the organisation regarding counsel's qualifications.

Chapter 6. Entry into force, etc.

Section 26. *Entry into force*

This Act shall apply as of the date determined by the King.

Section 29. *Continuation of regulations*

Regulations issued pursuant to the Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. and the Act of 9 June 1978 No. 45 relating to gender equality shall continue to apply after this Act has entered into force.