

Act relating to gender equality (the Gender Equality Act)

Chapter 1. Purpose and scope

Section 1. *Purpose*

The purpose of this Act is to promote equality irrespective of gender. Equality shall mean:

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

This Act has the particular objective of improving the position of women.

Section 2. *Factual scope of this Act*

This Act shall apply in all sectors of society.

The King may issue regulations providing that the service of women in the Norwegian Armed Forces shall fall entirely or partly outside the scope of this Act.

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 gender shall be prohibited. Discrimination on the basis of pregnancy and leave in connection with childbirth or adoption shall be deemed discrimination on the basis of gender. The prohibition shall apply to discrimination on the basis of a person's actual, assumed, former or future pregnancy or leave. The prohibition shall also apply to discrimination on the basis of the gender 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 gender. “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 gender.

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 of one gender 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.

The King may issue regulations on the types of differential treatment that are permitted pursuant to this Act, including provisions on the differential treatment of men in connection with teaching of and care for children.

Section 8. *Prohibition against harassment*

Harassment on the basis of gender and sexual harassment shall be prohibited.

“Harassment on the basis of gender” shall mean acts, omissions or statements that have the effect or purpose of being offensive, frightening, hostile, degrading or humiliating. “Sexual harassment” shall mean unwanted sexual attention that is troublesome to the person receiving the attention.

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 gender equality.

Section 13. *Gender balance on public committees*

When a public body appoints or selects committees, governing boards, councils, boards, delegations, etc., both genders shall be represented as follows:

- a) If the committee has two or three members, both genders shall be represented.
- b) If the committee has four or five members, each gender shall be represented by at least two members.
- c) If the committee has six to eight members, each gender shall be represented by at least three members.
- d) If the committee has nine members, each gender shall be represented by at least four members.
- e) If the committee has more members, each gender shall be represented by at least 40 per cent of the members.

The first paragraph shall also apply in connection with the selection of deputy members.

The Ministry shall be authorised to grant exemptions when special circumstances apply that make it clearly unreasonable to meet the requirements.

The first paragraph shall not apply to committees, etc. that pursuant to statute may only have members from directly elected assemblies. In the case of committees, etc. elected by publicly elected bodies in municipalities and county authorities, the provisions of the Local Government Act shall apply.

The King shall issue regulations on enforcement and reporting. The King may also issue regulations containing supplementary provisions under this provision.

Section 14. *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 15. *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.

Section 16. *Content of teaching aids*

The teaching aids used in schools and other educational institutions shall be based on equality irrespective of gender.

Chapter 4. Supplementary rules relating to employment relationships

Section 17. *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 18. *Prohibition against collection of information in connection with appointment*

An employer shall not collect information about pregnancy, adoption or plans to have children during the appointment process, whether during interviews or otherwise.

Section 19. *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 20. *Workers' rights in connection with parental leave*

A worker who is or has been on parental leave pursuant to section 12-5 of the Working Environment Act shall be entitled to:

- a) return to the same, or a corresponding, position,
- b) benefit from improvements in working conditions to which the worker would otherwise have been entitled during the absence, and
- c) make pay claims and, in pay negotiations, be assessed in the same way as the other workers in the undertaking.

The first paragraph shall not govern the setting of or changes to pay and working conditions as a result of circumstances other than parental leave.

This section shall apply correspondingly in connection with other types of leave linked to pregnancy and childbirth; see sections 12-2 to 12-8 of the Working Environment Act.

Section 21. *Equal pay for work of equal value*

Women and men in the same undertaking shall receive equal pay for the same work or work of equal value. Pay shall be set in the same way for women and men without regard to gender.

The right to equal pay for the same work or work of equal value shall apply irrespective of whether the work relates to different professions or pay is governed by different wage agreements.

Whether the work is of equal value shall be determined following an overall assessment in which emphasis is given to the expertise that is required to perform the work and other relevant factors, such as effort, responsibility and working conditions.

“Pay” shall mean ordinary remuneration for work plus all other supplements or advantages or other benefits provided by the employer.

The King may issue regulations laying down further rules on what shall be deemed the same undertaking in central government and the municipal sector.

Section 22. *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 23. *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.

Section 24. *Employer's reporting duty*

Employers shall report on:

- a) the actual state of affairs as regards gender equality in their undertaking, and
- b) equality measures that have been implemented and that are to be implemented to satisfy the activity duty pursuant to section 23.

The reporting duty shall apply to undertakings that have 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 25. *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 26. *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) sexual harassment in section 8,
- b) active equality efforts in chapter 3 and section 23,
- c) handling of pay information in section 22, second paragraph, and
- d) compensation for non-economic loss and compensation for economic loss in section 28.

The ombud and the tribunal shall not enforce the prohibition against discrimination in family life and purely personal relationships.

Section 27. *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 17, 18, 20 and 21.

Section 28. *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 17, 18, 20 and 21.

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 29. *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 30. *Entry into force*

This Act shall apply as of the date determined by the King. On the same date, the Act of 9 June 1978 No. 45 relating to gender equality shall be repealed

Section 31. *Continuation of regulations*

Regulations issued pursuant to section 2, fourth paragraph, of the Act of 9 June 1978 No. 45 relating to gender equality shall continue to apply after this Act has entered into force.