

Act relating to a prohibition against discrimination on the basis of ethnicity, religion and belief (the Ethnicity Anti-Discrimination Act)

Chapter 1. Purpose and scope

Section 1. *Purpose*

The purpose of this Act is to promote equality irrespective of ethnicity, religion and belief. 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.

Section 5. *UN Racial Discrimination Convention*

The United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 shall apply as Norwegian law.

Chapter 2. Prohibition against discrimination

Section 6. *General rule regarding the prohibition against discrimination*

Discrimination on the basis of ethnicity, religion or belief shall be prohibited. Discrimination on the basis of national origin, descent, skin colour and language shall also be deemed discrimination on the basis of ethnicity. The prohibition shall apply to discrimination on the basis of actual, assumed, former or future ethnicity, religion or belief. The prohibition shall also apply to discrimination on the basis of the ethnicity,

religion or belief 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 7 or section 8. “Direct differential treatment” shall mean an act or omission that has the purpose or effect that a person or an undertaking is treated worse than others in the same situation, and that is due to ethnicity, religion or belief. “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 ethnicity, religion or belief.

Section 7. *Lawful differential treatment*

Differential treatment shall not breach the prohibition in section 6 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 8. *Positive differential treatment*

Positive differential treatment on the basis of ethnicity, religion or belief shall not breach the prohibition in section 6 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 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 9. *Prohibition against harassment*

Harassment on the basis of ethnicity, religion or belief 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 10. *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 11.

Section 11. *Prohibition against instructions*

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

Section 12. *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 13. *Duty of public authorities to make active equality efforts*

Public authorities shall make active, targeted and systematic efforts to promote equality irrespective of ethnicity, religion or belief.

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 9.

Chapter 4. Supplementary rules relating to employment relationships

Section 16. *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 17. *Prohibition against collection of information in connection with appointment*

An employer shall not collect information about applicants' views on religious or cultural questions during the appointment process, whether during interviews or otherwise. However, this shall not apply 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 or cultural 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 18. *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 19. *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 20. *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 21. *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 20.

The reporting duty shall apply to undertakings that have an activity duty under section 20 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 22. *Employer's duty to preclude and prevent harassment*

Employers shall preclude and seek to prevent the occurrence of harassment contrary to section 9.

Chapter 5. Enforcement, burden of proof and penalties

Section 23. *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 20,
- b) handling of pay information in section 19, second paragraph,
- c) compensation for non-economic loss and compensation for economic loss in section 25, and
- d) penalties for gross breach of the prohibition against discrimination committed jointly by several persons in section 26.

Section 24. *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 16 and 17.

Section 25. *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 16 and 17.

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 26. *Penalties for gross breach of the prohibition against discrimination committed jointly by several persons*

A person who intentionally commits a gross breach or participates in a gross breach of sections 6 to 12 jointly with at least two other persons shall be punished by fines or imprisonment for up to three years. A person who has previously been subjected to a penalty for breach of this provision may be punished even if the breach is not gross.

In the assessment of whether a breach is gross, particular weight shall be given to the degree of demonstrated guilt, whether the breach was racially motivated, whether it constitutes harassment, whether it involves bodily harm or a serious violation of an individual's mental integrity, whether it is suited to create fear and whether it has been committed against a person under the age of 18.

Before an indictment is issued in respect of circumstances as mentioned in the first paragraph, consideration shall be given to whether the imposition of an administrative penalty would be sufficient.

The rules on the burden of proof in section 24 shall not apply in connection with the enforcement of this provision.

If the breach forms part of the activities of an organised criminal group, sections 162c and 60a of the General Civil Penal Code shall apply.

Section 27. *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 28. *Entry into force*

This Act shall apply as of the date determined by the King. On the same date, the Act of 3 June 2005 No. 33 relating to a prohibition against discrimination on the basis of ethnicity, religion, etc. shall be repealed.

Section 29. *Continuation of regulations*

Regulations issued pursuant to the Act of 3 June 2005 No. 33 relating to a prohibition against discrimination on the basis of ethnicity, religion, etc. shall continue to apply after this Act has entered into force.