

Act relating to a prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act)

Chapter 1. Purpose and scope

Section 1. *Purpose*

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

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

This Act shall help to dismantle disabling barriers created by society and prevent new ones from being created.

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.

However, chapter 3 and sections 18, 19, 24, 25 and 26 on universal design, individual accommodation, active equality efforts and the duty of employers to make efforts and to report shall not apply on Svalbard and Jan Mayen, on installations in operation on the Norwegian continental shelf or aboard Norwegian ships engaged in foreign trade or Norwegian aircraft engaged in international traffic. The King may issue regulations on the application of the provisions of this Act in these areas.

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

“Discrimination” shall mean direct or 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 disability. “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 disability.

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 disability 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 disability 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.

Section 12. *Breach of the duty to ensure universal design or individual accommodation*

Breach of the duty to ensure universal design pursuant to section 13 or the duty to ensure individual accommodation in sections 16, 17 and 26 shall constitute discrimination.

Discrimination due to a lack of physical accommodation shall be fully regulated by sections 13 to 17 and section 26 in respect of the legal persons and areas to which those provisions apply.

Chapter 3. Universal design and individual accommodation

Section 13. *Universal design*

Public undertakings shall make active, targeted efforts to promote universal design within the undertaking. The same shall apply to private undertakings focused on the general public.

“Universal design” shall mean designing or accommodating the main solution with respect to the physical conditions, including information and communications technology (ICT), such that the general function of the undertaking can be used by as many people as possible.

Public and private undertakings focused on the general public shall have a duty to ensure universal design of the undertaking’s general function provided that this does not impose a disproportionate burden on the undertaking. When assessing whether the design or accommodation imposes a disproportionate burden, particular weight shall be given to the effect of the accommodation on the dismantling of disabling barriers, whether the general function of the undertaking is of a public nature, the necessary costs associated with the accommodation, the undertaking’s resources, safety considerations and cultural heritage considerations.

No duty to ensure universal design pursuant to this Act shall apply if the undertaking satisfies further provisions in law or regulation regarding the content of the duty to ensure universal design.

The King may issue regulations on the content of the duty to ensure universal design in areas that are not covered by requirements in or pursuant to other legislation.

Section 14. *Details regarding universal design of ICT*

“Information and communications technology (ICT)” shall mean technology and technology systems that are used to express, create, convert, exchange, store, duplicate or publish information, or that otherwise make information usable.

New ICT solutions shall be universally designed. This duty shall enter into force 12 months after standards or guidelines relating to the content of this duty are introduced; see the fourth paragraph. As of 1 January 2021, all ICT solutions shall be universally designed. The enforcement body appointed pursuant to section 29 shall be authorised to grant exemptions from these deadlines if particularly weighty reasons apply.

The duty shall apply to ICT solutions that support the undertaking’s general functions and that are main solutions aimed or made available to the general public.

The King shall issue regulations containing further provisions on the delimitation of the scope and content of the duty to ensure universal design of ICT solutions.

Section 15. *Universal design of buildings, facilities, etc.*

Universal design requirements laid down in or pursuant to the Planning and Building Act shall apply to buildings, facilities and outdoor areas intended for the general public.

Section 16. *Right of individual accommodation in municipal services*

Children with disabilities shall have a right to suitable individual accommodation in municipal day care facilities to ensure equal development and activity opportunities. Persons with disabilities shall have a right to suitable, permanent, individual accommodation in municipal care services provided pursuant to the Health and Care Services Act to ensure that persons with disabilities receive equal services.

The right shall apply to accommodation that does not impose a disproportionate burden. When assessing whether the accommodation imposes a disproportionate burden, particular weight shall be given to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs associated with the accommodation and the resources of the undertaking.

Section 17. *Right of individual accommodation in schools and educational institutions*

Pupils and students with disabilities who attend a school or educational institution shall have a right to suitable individual accommodation of the place of learning, teaching, teaching aids and examinations to ensure equal training and education opportunities.

The right shall apply to accommodation that does not impose a disproportionate burden. When assessing whether the accommodation imposes a disproportionate burden, particular weight shall be given to the effect of the accommodation on the

dismantling of disabling barriers, the necessary costs associated with the accommodation and the resources of the undertaking.

Chapter 4. Active equality efforts

Section 18. *Duty of public authorities to make active equality efforts*

Public authorities shall make active, targeted and systematic efforts to promote equality irrespective of disability.

Section 19. *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 20. *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 5. Supplementary rules relating to employment relationships

Section 21. *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 22. *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 23. *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 24. *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 25. *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 24.

The reporting duty shall apply to undertakings that have an activity duty under section 24 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 26. *Right of individual accommodation*

Workers and job applicants with disabilities shall have a right to suitable individual accommodation of their workplaces and work tasks to ensure that they can obtain or retain a job, have access to training and other skills development, and perform and have the opportunity to advance in their work in the same way as other people.

The right shall apply to accommodation that does not impose a disproportionate burden. When assessing whether the accommodation imposes a disproportionate burden, particular weight shall be given to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs associated with the accommodation and the resources of the undertaking.

Section 27. *Employer's duty to preclude and prevent harassment*

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

Chapter 6. Enforcement, burden of proof and penalties

Section 28. *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) universal design of ICT in section 14,
- b) universal design of buildings, facilities, etc. in section 15,
- c) handling of pay information in section 23, second paragraph,
- d) active equality efforts in chapter 4 and section 24, or
- e) compensation for non-economic loss and compensation for economic loss in section 31.

Section 29. *Enforcement of the rules on universal design of ICT*

The King shall appoint a body to supervise compliance with the requirements in section 14 regarding universal design of ICT.

The body may order an undertaking that does not meet the requirements laid down pursuant to section 14, fourth paragraph, to remedy the matter, and may decide to impose a coercive fine to ensure the implementation of the order if the deadline for complying with the order is breached. The rules in section 8, first to third paragraphs, of the Anti-Discrimination Ombud Act shall apply correspondingly.

The body may demand the information it requires to perform its tasks under this Act, and demand access to ICT solutions as mentioned in section 15. The same shall apply to the appeals body in the event of an appeal against a decision made pursuant to the second paragraph.

Legal proceedings concerning the validity of decisions made by this body or by the appeals body shall be instituted within three months of receipt of notice of the decision. The decision may not be brought before the courts unless the right of appeal has been used and a final decision has been made on the appeal.

The King may issue regulations on the taking and implementation of decisions to impose a coercive fine.

Section 30. *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:

- a) the provisions in sections 5 to 11 and section 21,
- b) the rules on universal design in section 13, and
- c) the rules on individual accommodation in sections 16, 17 and 26.

Section 31. *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:

- a) the provisions in sections 5 to 11 and section 21, and
- b) the rules on individual accommodation in sections 16, 17 and 26.

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 32. *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 7. Entry into force and changes to other acts, etc.

Section 33. *Entry into force*

This Act shall apply as of the date determined by the King. On the same date, the Act of 20 June 2008 No. 42 relating to a prohibition against discrimination on the basis of disability shall be repealed.

Section 34. *Continuation of regulations*

Regulations issued pursuant to the Act of 20 June 2008 No. 42 relating to a prohibition against discrimination on the basis of disability shall continue to apply after this Act has entered into force.

Section 35. *Changes to other acts*

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