

Equal Treatment in Employment and Occupation

The principle of equal treatment is one of the principles considered as source of the EU law. With respect to employment and occupation there are prohibited following grounds of discrimination:

- a) Nationality
- b) Sex
- c) Race
- d) Ethnic origin
- e) Religion,
- f) Belief
- g) Age
- h) Disability
- i) Sexual orientation

Prohibition of discrimination based on nationality

Article 18 of the Treaty on functioning of the EU - direct prohibition of discrimination based on nationality.

Article 45 - free movement of workers

Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

Prohibition of discrimination based on sex

Equality between men and women is one the principles of the EU law. It has been regulated since 1970s and includes

Equality of opportunities

Equal treatment

Equal pay or pay of equal value for men and women (article 157)

Directive 2006/54 of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Gender Equality Directive)

The EU legislation relating to equal opportunities between men and women was adopted at the beginning of 1970s. There were several directives (equal pay, equal opportunities in employment and occupation, burden of proof). The legislation was amended so as to simplify and to implement the relevant case-law of the ECJ.

The main objective of the Directive 2006/54 is to ensure gender equality in working life.

Scope of application:

- access to employment, including promotion, and to vocational training;
- working conditions, including pay;
- occupational social security schemes

Prohibition of discrimination on the grounds of race and ethnic origin

Directive 2000/43/EC of the Council of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive)

Scope of application:

- (a) Conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) Employment and working conditions, including dismissals and pay;

- (d) Membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- (e) Social protection, including social security and healthcare;
- (f) Social advantages;
- (g) Education;
- (h) Access to and supply of goods and services which are available to the public, including housing.

Prohibition of discrimination on the grounds of religion or belief, disability, age and sexual orientation

Directive 2000/78/EC of the Council establishing a general framework for equal treatment in employment and occupation (Framework Equality Directive)

Scope of application:

- a) Conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- b) Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- c) Employment and working conditions, including dismissals and pay;
- d) Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Definitions

Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the prohibited grounds.

Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular characteristic recognized as prohibited ground of discrimination at a particular disadvantage compared with other persons unless:

- (I) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or
- (II) as regards persons with a particular disability, the employer or any person or organisation to whom the equality law applies, is obliged, under national legislation, to take appropriate measures in order to eliminate disadvantages entailed by such provision, criterion or practice.

Harassment shall be deemed to be a form of discrimination within when unwanted conduct related to any of the prohibited grounds takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Sexual harassment: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

Instruction to discriminate against person on any of prohibited grounds shall be deemed to be discrimination. It shall be defined according to the national law or practice.