

Equal Treatment, Prohibition of Discrimination in Employment and Occupation

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Programme

1. Prohibited grounds of discrimination
2. Historical backgrounds,
3. EU legislation concerning fight against discrimination in employment and occupation,
4. Forms of discrimination,
5. Exceptions from prohibition of discrimination (justifications of unequal treatment)

Prohibited Grounds of Discrimination

EU primary and secondary law recognises following grounds of discrimination:

1. Sex,
2. Racial or ethnic origin,
3. Religion or belief,
4. Age,
5. Disability,
6. Sexual orientation

Historical backgrounds

- Treaty Establishing the European Economic Community (Treaty of Rome) – the right to equal pay for men and women for equal work or for work of equal value
- 1970s directives concerning equal opportunities and equal remuneration for men and women
- Treaty of Amsterdam (entered into force 1999) – new competences for EU institutions to adopt secondary law with respect to other prohibited grounds
- 2000 – Racial Equality Directive (race, ethnic origin) Employment Equality Directive (religion or belief, age, disability, sexual orientation)
- 1st December 2009 Charter of Fundamental Rights of the Union – part of primary law

EU legislation – Primary Law

- Article 19 of TFEU– legal base for adoption of secondary legislation
- Article 157 of TFEU – equal pay for men and women for equal work or for work of equal value
- Charter of Fundamental Rights of the Union

EU legislation – secondary law

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

Gender Equality Directive (2006/54)

- Replaced directives adopted in 1970s, implements the case-law of the ECJ
- Objective - 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

Race Equality Directive (2000/43)

Objective – to put into effect in the Member States the principle of equal treatment

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.

Employment Equality Directive (2000/78)

Objective – to put into the effect in the Member States the principle of equal treatment

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.

Forms of Discrimination

- Direct discrimination,
- Indirect discrimination,
- Harassment,
- Sexual Harassment,
- Instruction to discriminate (EU law makes references to national law or practice)

Direct Discrimination

1. Unequal treatment – less favourable treatment – (in the past, at present, hypothetical),
2. Characteristic feature of a person recognised as prohibited grounds of discrimination,
3. Comparable situation,
4. Causal link

Indirect Discrimination

1. Apparently neutral of provision of law, criterion or practice,
2. Characteristic feature of a person recognised as prohibited grounds of discrimination,
3. Comparison with other persons,
4. Negative effect – putting a person into disadvantage,
5. Causal link

Harassment

1. Unwanted conduct,
2. Characteristic feature of a person recognised as a ground of discrimination,
3. Negative purpose or effect – violation the dignity of a person and creation an intimidating, hostile, degrading, humiliating or offensive environment
4. Causal link

Sexual Harassment

1. Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature
2. Negative purpose or effect - of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment

Reasonable Accommodation for Persons with Disabilities

- Purpose – to comply with the principle of equal treatment with persons with disabilities
- The employer's obligation to take measures where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer
- This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned

Exceptions from Prohibition of Discrimination

- Occupational requirements
- Religion or belief – possibility of a Member State to maintain the legislation concerning occupation within churches and other public or private organisations the ethos of which is based on religion or belief,
- Possibility of a Member State to exclude the part armed force with respect to age and disability
- Justifications of differences of treatment on grounds of age - legitimate aim e. g. legitimate employment policy, labour market and vocational training objectives