

Anti-Discrimination Law in the European Union

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Legal Bases

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Legal Bases (2)

- Directive 2006/54/EC 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

A **consolidated text**, called a “recast” version, of Directive 75/117 (Equal Pay), 76/207 (Access to Employment) 97/80 (Burden of Proof) and Directive 86/378 (Social Security)

Criteria (Grounds for) Discrimination

Employees should be treated equally irrespective of

- **sex**(2006/54),
- **racial or ethnic origin** (200/48),
- **religion or belief, disability, age and sexual orientation** (2000/73).

**Supreme Court Judgment
of 4 October 2007, LEX No 406847**

A different treatment of employees **on grounds of appearance** when they are assigned duties is contrary to the principle of equal treatment in employment.

General Non-Discrimination Criterion

Employees who are alike should be treated alike.

Direct Discrimination

For the above reasons, a person is treated less favourably than another person is treated in a comparable situation

Indirect Discrimination

An apparently neutral provision, criterion or practice that would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons.

Admissible Differentiation

Differentiation is not discrimination if it is **objectively** justified by a legitimate **aim** and the means of achieving that aim are **appropriate and necessary**,

Occupational Requirements

A difference of treatment which is based on a characteristic related to any of the grounds referred above shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the **objective is legitimate and the requirement is proportionate.**

Supreme Court Judgement of 8 December 2005, I PK 103/05, OSNP 2006/21-22/321,

An employer issuing orders related to work that are within the framework of the law in principle **is not violation of dignity of the employee, equal treatment or discrimination or harassment.**

Harassment

An **unwanted** conduct related to racial or ethnic origin with the purpose or effect of violating the **dignity** of a person and of creating an intimidating, hostile, degrading, humiliating or offensive **environment**.

Sexual Harassment

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

Age

Differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate **employment policy, labour market and vocational training** objectives, and if the means of achieving that aim are appropriate and necessary.

Seniority

Condition of

- Access to employment
- Better employee rights

Religion or Beliefs

In the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities a person's **religion or belief** constitute a genuine, legitimate and justified **occupational requirement**, having regard to the organisation's ethos.

Disabled Persons

- Employers shall take **appropriate 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 **public measures**.

Scope of equal treatment

- Establishment and termination of the employment relation
- Employment conditions
- Promotion
- Access to training

Who can discriminate?

- Employer
- Parties to collective agreements
- Legislator

Instruction to Discriminate

An instruction to discriminate against persons on any of the grounds shall be deemed to be discrimination

Protection of Security and Order

It is permissible to adopt measures that are necessary in a democratic society to ensure **public security, public order** and to defend against crimes as well as in order to **protect health** and the rights and freedoms of others.