

Anti-discrimination clauses and public contracts

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diskriminerings
ombudsmannen

THE BLUE AND YELLOW GLASS HOUSE: STRUCTURAL DISCRIMINATION IN SWEDEN (SOU 2005:56)



Who is free from prejudice?

- Harvard Implicit Association Test
(<https://implicit.harvard.edu/implicit/demo/>)
- People with openly sexist or racist opinions have the same levels of underlying prejudices as “non-racists”
- Difference between the man on the soap-box and his audience?

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Creating change in behaviour or attitudes?

Earl Warren – Chief Justice US S Ct 1953-1969

“... you can't wipe out racial discrimination by law, only through changing the hearts and minds of men’.

This is a ‘false credo. True, prejudice cannot be wiped out, but infliction of it upon others can.’”

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Making discrimination cost

Laws at the individual level are often reactive – they put pressure on those who are the targets of discrimination

Proactive measures put pressure on those with the power to discriminate

Proactive measures raise the cost risks

Why anti-discrimination clauses?

- *They are legal*
- *They strengthen equality*
- *They strengthen democracy*
- *They lead to quality*
- *They are proactive, they work*

The EU directives:

Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

Sweden's Discrimination Act:

Employers (and others) shall not discriminate

Violations can lead to damages

Larger employers have a duty to develop gender equality plans and undertake active measures to promote ethnic equality

Violations can lead to fines

The Glass House clause § 1

§ 1 The supplier shall throughout the contract period, in his business activities in Sweden, follow the applicable anti-discrimination laws. The laws currently referred to are Article 141 of the EU Treaty, § 16:9 of the Swedish Penal Code, the Swedish Discrimination Act.

Discuss:

Why limit it to the period of the contract?

Why business activities in Sweden?

Does this cover both goods and services?

Should other laws be included?

The Glass House clause § 2

§ 2 The supplier, during the contract period, has a duty, at the request of the contracting entity, to provide a written report concerning the measures, equality plans etc., that have been undertaken in accordance with the duties specified in § 1. The report shall be submitted to the city within one week after a request is made unless some other agreement has been reached in the individual case.

Discuss:

Why has this § been included?

The Glass House clause § 3

§ 3. In his or her contracts with sub-contractors, the supplier shall apply the same duty to them as is specified in § 1. The supplier shall be responsible to the contracting entity for a sub-contractor's violation of the anti-discrimination laws specified in § 1. The supplier shall also ensure that the contracting entity can upon request be informed of the sub-contractor's measures, plans etc. in accordance with §2.

Discuss

Why should sub-contractors be included?

The Glass House clause §§ 1-4

§ 4 As it is of very substantial importance to the contracting entity that its suppliers live up to basic democratic values, a violation of the duties in §§ 1-3 shall constitute a significant breach of the contract. The contracting entity therefore has the right to cancel the contract if the supplier or a sub-contractor violates the conditions in §§ 1-3. However, the contract will not be cancelled if the supplier immediately remedies the situation or undertakes other measures with the purpose of achieving compliance with the laws specified in § 1, or if the violation is considered to be insignificant.

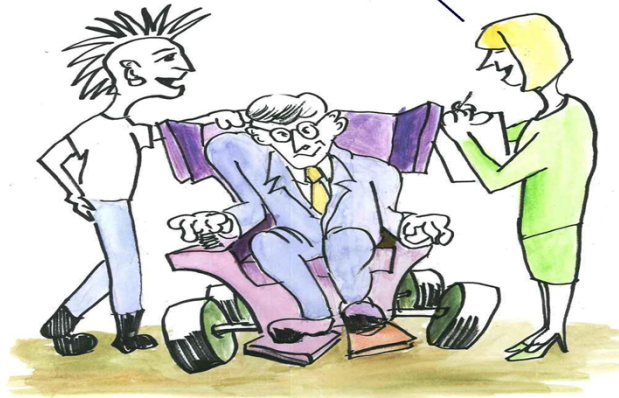
Discuss

Why is this § needed?

Should the § specify that a judgment re discrimination has been issued?

Must a contract be cancelled if discrimination has occurred?

Does he take sugar?



"No. But he does have a degree in disability law and he'll sue your ass if you don't speak to him directly!"

Aha! Now I see them...!



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