

Act Prohibiting Discrimination and other Degrading Treatment

Name of organisation:
Swedish Equality Ombudsman

Swedish Code of Statutes

SFS 2008:567

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Discrimination Act

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In accordance with a decision by the Riksdag¹, the following is enacted².

Chapter 1. Introductory provisions

The purpose of the Act

Section 1 The purpose of this Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

The contents of the Act

Section 2 The first chapter of the Act contains definitions and other introductory provisions. The second chapter contains provisions on prohibitions against discrimination and reprisals. The third chapter contains provisions on active measures. The fourth chapter contains provisions on supervision. The fifth chapter contains provisions on compensation and invalidity. The sixth chapter contains provisions on legal proceedings.

¹ Government Bill 2007/08:95, Committee Report 2007/08: AU7, Riksdag Communication 2007/08:219.

² Cf. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ L 045, 19/02/1975, p. 19, Celex 31975L0117), Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 039, 14/02/1976, p. 40, Celex 31976L0207), amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC (OJ L 269, 05/10/2002, p. 15, Celex 32002L0073), Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 006, 10/01/1979, p. 24, Celex 31979L0007), Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359, 19/12/1986, p. 56, Celex 31986L0613), Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (OJ L 014, 20/01/1998, p. 6, Celex 31997L0080), Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19/07/2000, p. 22, Celex 32000L0043), Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02/12/2000, p. 16, Celex 32000L0078), Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21/12/2004, p. 37, Celex 32004L0113) and 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 (recast) (OJ L 204, 26/07/2006, p. 23, Celex 32006L0054).

The Act is binding

Section 3 A contract or agreement that restricts someone's rights or obligations under this Act is of no legal effect in that regard.

Discrimination

Section 4 In this Act discrimination has the meaning set out in this Section.

1. *Direct discrimination*: that someone is disadvantaged by being treated less favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if this disadvantaging is associated with sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.
2. *Indirect discrimination*: that someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of a certain sex, a certain transgender identity or expression, a certain ethnicity, a certain religion or other belief, a certain disability, a certain sexual orientation or a certain age at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.
3. *Harassment*: conduct that violates a person's dignity and that is associated with one of the grounds of discrimination sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.
4. *Sexual harassment*: conduct of a sexual nature that violates someone's dignity.
5. *Instructions to discriminate*: orders or instructions to discriminate against someone in a manner referred to in points 1–4 that are given to someone who is in a subordinate or dependent position relative to the person who gives the orders or instructions or to someone who has committed herself or himself to performing an assignment for that person.

Sex, transgender identity or expression, ethnicity, disability, sexual orientation and age

Section 5 In this Act the following terms have the meaning set out in this Section.

1. *Sex*: that someone is a woman or a man.
2. *Transgender identity or expression*: that someone does not identify herself or himself as a woman or a man or expresses by their manner of dressing or in some other way that they belong to another sex.
3. *Ethnicity*: national or ethnic origin, skin colour or other similar circumstance.
4. *Disability*: permanent physical, mental or intellectual limitation of a person's functional capacity that as a consequence of injury or illness existed at birth, has arisen since then or can be expected to arise.
5. *Sexual orientation*: homosexual, bisexual or heterosexual orientation.
6. *Age*: length of life to date.

A person who intends to change or has changed the sex they belong to is also covered by sex as a grounds of discrimination.

Chapter 2. Prohibition of discrimination and reprisals

Working life

Prohibition of discrimination

Section 1 An employer may not discriminate against a person who, with respect to the employer,

1. is an employee,
2. is enquiring about or applying for work,
3. is applying for or carrying out a traineeship, or
4. is available to perform work or is performing work as temporary or borrowed labour.

The prohibition of discrimination also applies in cases where the employer, by taking reasonable support and adaptation measures, can see to it that an employee, a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability.

A person who has the right to make decisions on the employer's behalf in matters concerning someone referred to in the first paragraph shall be equated with the employer.

Section 2 The prohibition in Section 1 does not prevent

1. differential treatment based on a characteristic associated with one of the grounds of discrimination if, when a decision is made on employment, promotion or education or training for promotion, by reason of the nature of the work or the context in which the work is carried out, the characteristic constitutes a genuine and determining occupational requirement that has a legitimate purpose and the requirement is appropriate and necessary to achieve that purpose,
2. measures that contribute to efforts to promote equality between women and men and that concern matters other than pay or other terms of employment,
3. the application of age limits with regard to the right to pension, survivor's or invalidity benefits in individual contracts or collective agreements, or
4. differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Obligation to investigate and take measures against harassment

Section 3 If an employer becomes aware that an employee considers that he or she has been subjected in connection with work to harassment or sexual harassment by someone performing work or carrying out a traineeship at the employer's establishment, the employer is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future.

This obligation also applies with respect to a person carrying out a traineeship or performing work as temporary or borrowed labour.

Information about qualifications

Section 4 If a job applicant has not been employed or selected for an employment interview, or if an employee has not been promoted or selected for education or training for promotion, the applicant shall, upon request, receive written information from the employer about the education, professional experience and other qualifications that the person had who was selected for the employment interview or who obtained the job or the place in education or training.

Education

Prohibition of discrimination

Section 5 A natural or legal person conducting activities referred to in the Education Act (1985:1100) or other educational activities (an education provider) may not discriminate against any child, pupil or student participating in or applying for the activities. Employees and contractors engaged in the activities shall be equated with the education provider when they are acting within the context of their employment or contract.

The prohibition of discrimination also applies in cases where an education provider, by taking reasonable measures regarding the accessibility and usability of the premises, can see to it that a person with a disability who is applying or has been accepted for education under the Higher Education Act (1992:1434) or for education that can lead to a qualification under the Act

concerning authority to award certain qualifications (1993:792), is put in a comparable situation to people without such a disability.

Section 6 The prohibition in Section 5 does not prevent

1. measures that contribute to efforts to promote equality between women and men in admissions to education other than that referred to in the Education Act (1985:1100),
2. the application of provisions that take account of age with regard to preschool activities, school-age childcare, education in a preschool class, the compulsory school system or an independent school equivalent to compulsory school, special needs school for pupils with learning disabilities or special school for children with disabilities, or
3. differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Nor does the prohibition prevent a folk high school or a study association from taking measures that contribute to efforts to promote equal rights and opportunities regardless of ethnicity, religion or other belief.

Obligation to investigate and take measures against harassment

Section 7 If an education provider becomes aware that a child, pupil or student participating in or applying for the provider's activities considers that he or she has been subjected in connection with these activities to harassment or sexual harassment, the education provider is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future.

Information about qualifications

Section 8 If an applicant has been refused admission to an educational programme, or has not been selected for a test or interview if such a procedure is used in the admissions process, the applicant shall, upon request, receive written information from the education provider about the education or other qualifications that the person had who was admitted to the educational programme or who was selected for the test or interview.

Labour market policy activities and employment services not under public contract

Section 9 Discrimination against applicants or employees is prohibited with regard to labour market policy activities and employment services not under public contract.

However, this prohibition does not prevent

1. measures that contribute to efforts to promote equality between women and men or equal rights and opportunities regardless of ethnicity, or
2. differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Starting or running a business and professional recognition

Section 10 Discrimination is prohibited with regard to

1. financial support, permits, registration or similar arrangements that are needed or can be important for someone to be able to start or run a business, and
2. recognition, certification, authorisation, registration, approval or similar arrangements that are needed or can be important for someone to be able to exercise a certain profession.

These prohibitions do not prevent differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Nor does the prohibition in the first paragraph, point 1 prevent measures concerning support that contributes to efforts to promote equality between women and men or equal rights and opportunities regardless of ethnicity.

Membership of certain organisations

Section 11 Discrimination is prohibited with regard to

1. membership of or participation in an employees' organisation, employers' organisation or professional organisation, and
2. benefits that any such organisation provides to its members.

This prohibition does not prevent an organisation from providing benefits to members of one sex so as to contribute to efforts to promote equality between women and men.

Goods, services and housing etc.

Section 12 Discrimination is prohibited on the part of a natural or legal person who

1. supplies goods, services or housing to the general public, outside the private and family sphere, or
2. organises a meeting or event that is open to the public.

A person who represents a person referred to in the first paragraph in relation to the public, shall be equated with that person.

However, this prohibition does not apply to discrimination associated with age. The prohibition of discrimination associated with sex does not apply to the supplying of insurance services, nor does it prevent women and men being treated differently with regard to other services or housing if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Health and medical care and social services etc.

Section 13 Discrimination is prohibited with regard to

1. health and medical care and other medical services, and
2. social services activities and support in the form of special transport services and national special transport services and housing adaptation allowances.

However, these prohibitions do not apply to discrimination associated with age.

The prohibitions applying to health and medical care and other medical services or social services activities do not prevent women and men being treated differently if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Social insurance system, unemployment insurance and financial aid for studies

Section 14 Discrimination is prohibited with regard to

1. social insurance and related benefit systems,
2. unemployment insurance, and
3. state financial aid for studies.

However, these prohibitions do not apply to discrimination associated with age.

With regard to social insurance and related benefit systems, the prohibition of discrimination associated with sex does not prevent the application of provisions concerning widow's pension, wife's supplement or payment of child allowance.

National military service and civilian service

Prohibition of discrimination

Section 15 Discrimination is prohibited in connection with enrolment inspection, admission tests or other examination of personal circumstances under the National Total Defence Service Act (1994:1809) and in connection with enlistment for and during the performance of national military service or civilian service.

However, this prohibition does not apply to discrimination associated with age.

Nor does the prohibition prevent the application of provisions concerning

1. the obligation for men only to report for enrolment inspection and service, or that a person liable for national total defence service shall not be called for enrolment inspection or called up

for national military service or civilian service if he or she refers to her or his membership of a certain religious association, or

2. the opportunity for women to perform national military service or civilian service provided in the Act concerning Opportunities for Women to perform National Military Service or Civilian Service involving extended Basic Training (1994:1810).

Obligation to investigate and take measures against harassment

Section 16 If a government agency or an organisation covered by the prohibition in Section 15 becomes aware that a person liable for national total defence service considers herself or himself to have been subjected in connection with activities described in that Section to harassment or sexual harassment, the government agency or organisation is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future.

However, the first paragraph does not apply to harassment associated with age.

Public employment

Section 17 Discrimination is also prohibited in cases other than those referred to in Section 5 or Sections 9–15 when a person who is wholly or partly subject to the Public Employment Act (1994:260)

1. assists the public by providing information, guidance, advice or other such help, or
2. has other types of contacts with the public in the course of her or his employment.

However, this prohibition does not apply to discrimination associated with age.

Prohibition of reprisals

Section 18 An employer may not subject an employee to reprisals because the employee has

1. reported or called attention to the fact that the employer has acted contrary to this Act,
2. participated in an investigation under this Act, or
3. rejected or given in to harassment or sexual harassment on the part of the employer.

The prohibition also applies in relation to a person who, with respect to the employer,

1. is enquiring about or applying for work,
2. is applying for or carrying out a traineeship, or
3. is available to perform work or is performing work as temporary or borrowed labour.

A person who has the right to make decisions on the employer's behalf in matters concerning someone referred to in the first or second paragraph shall be equated with the employer.

Section 19 A person who is alleged to have acted contrary to the provisions of Chapter 2, Section 5, 7, 9, 10, 11, 12, 13, 14, 15, 16 or 17 or Chapter 3, Section 15 or 16 may not subject an individual to reprisals because that individual has

1. reported or called attention to such actions,
2. participated in an investigation under this Act, or
3. rejected or given in to harassment or sexual harassment on the part of the person who is alleged to have engaged in discrimination.

Chapter 3. Active measures

Working life

Cooperation between employers and employees

Section 1 Employers and employees are to cooperate on active measures to bring about equal rights and opportunities in working life regardless of sex, ethnicity, religion or other belief, and in particular to combat discrimination in working life on such grounds.

Section 2 Employers and employees are in particular to endeavour to equalise and prevent differences in pay and other terms of employment between women and men who perform work which is to be regarded as equal or of equal value. They are also to promote equal pay growth opportunities for women and men.

Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.

Goal-oriented work

Section 3 Within the framework of their activities, employers are to conduct goal-oriented work to actively promote equal rights and opportunities in working life regardless of sex, ethnicity, religion or other belief.

More detailed regulations on the obligations of employers are provided in Sections 4–13.

Working conditions

Section 4 Employers are to implement such measures as can be required in view of their resources and other circumstances to ensure that the working conditions are suitable for all employees regardless of sex, ethnicity, religion or other belief.

Section 5 Employers are to help enable both female and male employees to combine employment and parenthood.

Section 6 Employers are to take measures to prevent and hinder any employee being subjected to harassment or reprisals associated with sex, ethnicity, religion or other belief, or to sexual harassment.

Recruitment

Section 7 Employers are to work to ensure that people have the opportunity to apply for vacant positions regardless of sex, ethnicity, religion or other belief.

Section 8 Employers are to promote an equal distribution of women and men in different types of work and in different employee categories, by means of education and training, skills development and other appropriate measures.

Section 9 When the distribution of women and men is not more or less equal in a certain type of work or in a certain employee category at a place of work, the employer is to make a special effort when recruiting new employees to attract applicants of the under-represented sex. The employer is to attempt to see to it that the proportion of employees from the under-represented sex gradually increases.

However, the first paragraph shall not be applicable if there are special grounds not to take such measures or if the measures cannot reasonably be required in view of the employer's resources and other circumstances.

Matters of pay

Section 10 In order to discover, remedy and prevent unfair gender differences in pay and other terms of employment, every three years the employer is to survey and analyse

- provisions and practices regarding pay and other terms of employment that are used at the employer's establishment, and
- pay differences between women and men performing work that is to be regarded as equal or of equal value.

The employer is to assess whether existing pay differences are directly or indirectly associated with sex. The assessment is to refer in particular to differences between

- women and men performing work that is to be regarded as equal, and
- groups of employees performing work that is or is generally considered to be dominated by women and groups of employees performing work that is to be regarded as of equal value to such work but is not or is not generally considered to be dominated by women.

Section 11 Every three years employers are to draw up an action plan for equal pay in which they report the results of the survey and analysis described in Section 10. The plan is to indicate the pay adjustments and other measures that need to be taken to bring about equal pay for work that is to be regarded as equal or of equal value. The plan is to contain a cost estimate and a time plan based on the goal of implementing the necessary pay adjustments as soon as possible and within three years at the latest.

A report on and evaluation of how the planned measures were implemented is to be included in the next action plan.

The obligation to draw up an action plan for equal pay does not apply to employers who employed fewer than 25 employees at the start of the latest calendar year.

Section 12 Employers are to provide employees' organisations with respect to which they are bound by a collective agreement with the information needed for the organisations to be able to cooperate in the survey, analysis and drawing up of an action plan for equal pay.

If the information concerns data on pay or other circumstances that relate to an individual employee, the rules on confidentiality and damages contained in Sections 21, 22 and 56 of the Employment (Co-determination in the Workplace) Act (1976:580) apply. In public sector activities, Chapter 14, Sections 7, 9 and 10 of the Secrecy Act (1980:100) apply instead.

Gender equality plan

Section 13 Every three years employers are to draw up a plan for their gender equality work. The plan is to contain an overview of the measures under Sections 4–9 that are needed at the place of work and an account of which of these measures the employer intends to begin or implement during the coming years.

The plan is also to contain a summary account of the action plan for equal pay that the employer is required to draw up under Section 11.

An account of how the planned measures under the first paragraph have been implemented is to be included in the next plan.

The obligation to draw up a gender equality plan does not apply to employers who employed fewer than 25 employees at the start of the latest calendar year.

Education

Goal-oriented work

Section 14 An education provider conducting education or other activities under the Education Act (1985:1100), education under the Higher Education Act (1992:1434) or education that can lead to a qualification under the Act concerning authority to award certain qualifications (1993:792) is to conduct goal-oriented work within the framework of these activities to actively promote equal rights and opportunities for the children, pupils or students participating in or

applying for the activities, regardless of sex, ethnicity, religion or other belief, disability or sexual orientation.

More detailed regulations on the obligations of education providers are provided in Sections 15 and 16.

Preventing and hindering harassment

Section 15 An education provider referred to in Section 14 is to take measures to prevent and hinder any child, pupil or student who is participating in or applying for their activities from being subjected to harassment associated with sex, ethnicity, religion or other belief, disability or sexual orientation, or to sexual harassment.

Equal treatment plan

Section 16 An education provider referred to in Section 14 is to draw up a plan each year containing an overview of the measures needed to (1) promote equal rights and opportunities for the children, pupils or students participating in or applying for the activities, regardless of sex, ethnicity, religion or other belief, disability or sexual orientation, and (2) prevent and hinder harassment referred to in Section 15. The plan is to contain an account of which of these measures the education provider intends to begin or implement during the coming year.

An account of how the measures planned under the first paragraph have been implemented is to be included in the next year's plan.

Chapter 4. Supervision

The Equality Ombudsman

Duties of the Equality Ombudsman

Section 1 The Equality Ombudsman is to supervise compliance with this Act. The Ombudsman is to try in the first instance to induce those to whom the Act applies to comply with it voluntarily. Provisions on the duties of the Ombudsman are also contained in the Act concerning the Equality Ombudsman (2008:568).

Section 2 Chapter 6, Section 2 states that the Equality Ombudsman may bring a court action on behalf of an individual who consents to this.

Obligation to provide information

Section 3 A natural or legal person who is subject to the prohibitions of discrimination and reprisals, the obligation to investigate and take measures against harassment or the provisions on active measures in this Act is obliged, at the request of the Equality Ombudsman,

1. to provide information about circumstances in their activities that are of importance for the supervision exercised by the Ombudsman,
2. to provide information about qualifications when the Ombudsman is assisting in a request from an individual under Chapter 2, Section 4 or 8,
3. to give the Ombudsman access to workplaces and other premises where the activities are conducted for the purpose of investigations that may be of importance to the supervision exercised by the Ombudsman, and
4. to attend discussions with the Ombudsman.

The obligations specified in points 1–3 do not apply if there are special grounds against their doing so in an individual case.

Financial penalty

Section 4 A natural or legal person who does not comply with a request under Section 3 may be ordered by the Equality Ombudsman to fulfil his or her obligation subject to a financial penalty. A decision to order a financial penalty may be appealed to the Board against Discrimination.

Section 5 A natural or legal person who does not fulfil his or her obligations concerning active measures under Chapter 3, Section 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 or 16 may be ordered to fulfil them subject to a financial penalty. Such orders are issued by the Board against Discrimination on application from the Equality Ombudsman. They can also be directed towards the State as an employer or as the entity responsible for educational activities.

If the Ombudsman has declared that he or she does not want to apply to the Board for a financial penalty to be ordered, a central employees' organisation with respect to which the employer is bound by a collective agreement may make an application concerning active measures in working life under Chapter 3, Sections 4–13.

The application is to state the measures that should be required of the party that the application concerns, the grounds referred to in support of the application and what investigation has been made of the matter.

Prohibition against appeals

Section 6 No appeal may be made against decisions of the Equality Ombudsman under this Act other than decisions under Section 4 concerning the ordering of financial penalties.

Board against Discrimination

Duties of the Board

Section 7 The Board against Discrimination examines applications for financial penalties under Section 5 and appeals against decisions concerning orders for financial penalties under Section 4. In processing these cases, Sections 8–15 are to be applied.

Processing of an application for a financial penalty

Section 8 A natural or legal person who is the subject of an application for a financial penalty shall be ordered to comment within a certain time on the application and to supply the information concerning circumstances in their activities that the Board against Discrimination needs for its examination.

When an employees' organisation has made the application, the Equality Ombudsman shall be given an opportunity to comment.

Section 9 The Board against Discrimination shall ensure that cases are adequately investigated. When necessary, the Board shall arrange for additional investigation. Superfluous investigation may be refused.

Section 10 Cases before the Board against Discrimination are decided after an oral hearing, unless the Board considers such a hearing unnecessary.

Section 11 The Board against Discrimination shall call the party that has made the application to the Board and the party that is the subject of the application to a hearing. If necessary for the investigation, the Board may also call others to the hearing.

The Board may order the party that the application concerns or that party's representative to attend in person, subject to a financial penalty.

Section 12 A case concerning the ordering of a financial penalty may be decided even if the party that the application concerns does not comment on the case, does not cooperate in the investigation or fails to attend an oral hearing.

If the Equality Ombudsman or the employees' organisation that has made the application for a financial penalty fails to attend a hearing, the application for a financial penalty becomes void.

Section 13 In deciding a case concerning the ordering of a financial penalty, the Board against Discrimination may instruct the party that the application concerns to take measures other than those sought in the application, if these other measures are not obviously more burdensome for the party.

In its decision the Board shall state how and by when the measures are to be started or implemented.

The Board's decision shall be in writing and shall be delivered to the party that the application concerns.

Processing of an appeal against a decision to order a financial penalty

Section 14 In processing an appeal against a decision to order a financial penalty, Sections 9 and 10 shall be applied.

Section 15 The Board against Discrimination shall call the party that has appealed against the decision to order a financial penalty and the Equality Ombudsman to a hearing. If necessary for the investigation, the Board may also call others to the hearing. The Board may order the party that has appealed against the decision or that party's representative to attend in person, subject to a financial penalty.

Prohibition against appeals

Section 16 No appeal may be made against a decision of the Board against Discrimination under this Act.

Imposition of a financial penalty

Section 17 Proceedings for the imposition of a financial penalty that has been ordered under this Act are brought before a district court by the Equality Ombudsman.

In cases concerning the imposition of a financial penalty, the district court may also assess the appropriateness of the penalty.

Board of Appeals for Higher Education

Section 18 A decision of a university or other higher education institution for which the State, a municipality or a county council is the responsible entity may, if it concerns education under the Higher Education Act (1992:1434), be appealed to the Board of Appeals for Higher Education on the grounds that the decision is contrary to

1. the prohibition of discrimination in Chapter 2, Section 5, first paragraph, if the decision concerns

- a) admission to education,
- b) credit for education,
- c) deferment of studies or resumption of studies after time off from studies,
- d) a change of supervisor,
- e) withdrawal of a supervisor and other resources in postgraduate education,
- f) grants for research students, or
- g) a disciplinary measure against a student,

2. the prohibition of discrimination in Chapter 2, Section 5, second paragraph, or

3. the prohibition of reprisals in Chapter 2, Section 19.

If the Board of Appeals finds that the appealed decision is contrary to one of the prohibitions and that this can be assumed to have influenced the outcome, the decision shall be set aside and the case, if necessary, referred back to the university or other higher education institution for re-examination.

If a decision can be appealed under another statute, the appeal shall be made as prescribed there instead of as directed in the first paragraph.

Section 19 No appeal may be made against a decision of the Board of Appeals for Higher Education under this Act.

Chapter 5. Compensation and invalidity

Compensation

Section 1 A natural or legal person who violates the prohibitions of discrimination or reprisals or who fails to fulfil their obligations to investigate and take measures against harassment or sexual harassment under this Act shall pay compensation for discrimination for the offence resulting from the infringement. When compensation is decided, particular attention shall be given to the

purpose of discouraging such infringements of the Act. The compensation shall be paid to the person who has been offended by the infringement.

An employer who violates Chapter 2, Section 1, first paragraph or Section 18 shall also pay compensation for the loss that arises. However, this does not apply to a loss that arises in connection with a decision concerning employment or promotion.

If there are special grounds, the compensation can be reduced or set at zero.

Section 2 If an employer in activities referred to in Chapter 2, Section 9, 10, 11, 13, 14, 15 or 17 discriminates against someone or subjects someone to reprisals, the compensation for discrimination shall be paid by the employer. A person performing work on behalf of another person in circumstances resembling those in an employment relationship shall be equated with an employee.

If an education provider violates Chapter 2, Section 5, 7 or 19 the compensation shall be paid by the entity responsible for the activities.

Invalidity

Section 3 If someone is discriminated against by a provision in an individual contract or in a collective agreement in a manner that is prohibited under this Act, the provision shall be modified or declared invalid if the person discriminated against requests this. If the provision is of such significance for the contract or agreement that it cannot reasonably be demanded that the contract or agreement shall apply in other respects without material changes, the contract may also be modified in other respects or be declared invalid in its entirety.

If someone is discriminated against by termination of a contract or agreement or by some other such legal act, the legal act shall be declared invalid if the person discriminated against requests this. If someone is discriminated against by a rule or similar internal provision at the place of work, the provision shall be modified or declared without effect if the person discriminated against requests this.

Chapter 6. Legal proceedings

Applicable rules

Section 1 Cases concerning the application of Chapter 2, Section 1, 2, 3 or 18 shall be dealt with under the Labour Disputes (Judicial Procedure) Act (1974:371). In such cases a person enquiring about or applying for work, a person applying for or carrying out a traineeship or a person who is available to perform work or who is performing work as temporary or borrowed labour shall be regarded as an employee. The person at whose establishment the traineeship or work is being or would have been carried out shall be regarded as employer. This also applies when the regulations on negotiations concerning disputes in the Employment (Co-determination in the Workplace) Act (1976:580) are applied.

Cases concerning the application of Chapter 2, Section 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 or 19 shall be examined by a general court and dealt with in accordance with the provisions of the Swedish Code of Judicial Procedure concerning procedures in civil cases in which out-of-court settlement of the matter is permitted.

Right to bring an action

Section 2 The Equality Ombudsman, or a non-profit organisation whose statutes state that it is to look after the interests of its members and that is not an employees' organisation referred to in the third paragraph, may bring an action, as a party, on behalf of an individual who consents to this. When the Ombudsman or the association brings such an action, the Ombudsman or association may also bring another action on behalf of the individual as part of the same proceedings, if he or she consents to this. In cases under Section 1, first paragraph the Ombudsman's action is brought before the Labour Court. For unmarried children under 18 years of age the consent of the custodian or custodians is required.

To be allowed to bring an action, the association must be suited to represent the individual in the case, taking account of its activities and its interest in the matter, its financial ability to bring an action and other circumstances.

When an employees' organisation has the right to bring an action on behalf of the individual under Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371), the Ombudsman or association may only bring an action if the employees' organisation does not do so.

Burden of proof

Section 3 If a person who considers that he or she has been discriminated against or subjected to reprisals demonstrates circumstances that give reason to presume that he or she has been discriminated against or subjected to reprisals, the defendant is required to show that discrimination or reprisals have not occurred.

Statute of limitations

Working life

Section 4 If someone brings an action on the basis of notice of termination or summary dismissal, the following provisions of the Employment Protection Act (1982:80) shall be applied:

- Section 40 concerning the time limit for actions for a declaration of invalidity,
- Section 41 concerning the time limit for damages or other claims, and
- Section 42 concerning the expiry of the right to bring an action on the grounds that it is time-barred.

If someone brings an action against an employer other than an action referred to in the first paragraph, the following provisions of the Employment (Co-determination in the Workplace) Act (1976:580) shall be applied:

- Section 64 on the time limit for calling for negotiations,
- Section 65 on the time limit for bringing an action,
- Section 66 on the extended time limit for a person who is not represented by an employees' organisation, with the difference that the time limit referred to in Section 66, first paragraph, first sentence shall be two months, and
- Section 68 concerning the expiry of the right to bring an action on the grounds that it is time-barred.

If the action concerns compensation on grounds of an employment decision announced by an employer in the public sector, the time limits specified in the second paragraph are calculated from the day on which the employment decision gained legal force.

Section 5 In cases under Section 1, first paragraph the Equality Ombudsman can toll the statute of limitations, except in cases concerning a declaration that a notice of termination or summary dismissal is invalid, by informing the employer in writing that the Ombudsman is making use of her or his right to toll the statute of limitations. If the running of the statute of limitations has been tolled by such a communication, a new statute of limitations under Section 4 runs from the day of tolling.

A statute of limitations cannot be tolled more than once.

Other areas of society

Section 6 A legal action other than actions referred to in Section 4 must be brought within two years from the date on which the act to which attention is called was performed or from the last date on which an obligation should have been fulfilled. Otherwise the right to bring legal action expires.

If the action concerns a person who was under 18 years of age when the act was performed or the obligation should have been fulfilled at the latest, the time limit specified in the first paragraph is calculated from the day on which the person reached the age of 18.

Litigation costs

Section 7 In cases under Section 1, second paragraph, each party may be ordered to bear its litigation costs, if the party that has lost the case had reasonable grounds for bringing the dispute to court. However, this does not apply when the Equality Ombudsman brings an action on behalf of an individual under Section 2.

In cases under Section 1, first paragraph, Chapter 5, Section 2 of the Labour Disputes (Judicial Procedure) Act (1974:371) applies instead.

Other provisions

Section 8 If someone brings an action on the basis of notice of termination or summary dismissal, the following provisions of the Employment Protection Act (1982:80) are to be applied:

- Section 34 concerning the validity of a notice of termination etc.,
- Section 35 concerning the validity of a notice of summary dismissal etc.,
- Section 37 concerning suspension from work when a notice of termination or summary dismissal has been declared invalid,
- Section 39, first paragraph, first sentence concerning the dissolution of an employment relationship, and
- Section 43, first paragraph, second sentence and second paragraph concerning expeditious conduct of proceedings etc.

Section 9 An action for compensation based on a decision on employment that has been announced by an employer in the public sector may not be examined before the employment decision has gained legal force.

Section 10 The provisions of the Swedish Code of Judicial Procedure concerning parties shall also apply to a person on whose behalf the Equality Ombudsman or an association brings an action under this Act in so far as they regard disqualifying circumstances, ongoing legal proceedings and personal attendance, as well as hearing of witnesses on oath and other issues concerning evidence. When an individual brings an action under this Act, the Equality Ombudsman or an association may not bring an action on the individual's behalf in the same matter.

Section 11 The decision of the court in a case where the Equality Ombudsman or an association brings an action on behalf of an individual may be appealed by the individual, if it may be appealed by the Ombudsman or the association.

When the decision of the court in a case referred to in the first paragraph has become final and non-appealable, the matter may not be reviewed on the action either of the individual or of the Equality Ombudsman or the association.

1. This Act enters into force on 1 January 2009.

2. This Act supersedes

- the Equal Opportunities Act (1991:433),
- the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (1999:130),
- the Prohibition of Discrimination in Working Life on Grounds of Disability Act (1999:132),
- the Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999:133),
- the Equal Treatment of Students at Universities Act (2001:1286),
- the Prohibition of Discrimination Act (2003:307), and
- the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and Pupils (2006:67).

3. The superseded acts continue to apply with regard to discrimination and reprisals that have taken place before this Act entered into force. After this Act enters into force, the duties incumbent on an ombudsman under the superseded acts shall be fulfilled by the Equality Ombudsman. After this Act has entered into force, the duties incumbent under the superseded acts on the Equal Opportunities Commission or the Board against Discrimination shall be fulfilled by the Board against Discrimination.

4. The obligation of the employer under Chapter 3, Section 10 shall be performed for the first time in 2009 or the year in which the provision first becomes applicable.

5. The obligations of the employer under Chapter 3, Sections 11 and 13 shall be performed for the first time in the year immediately following the start of the calendar year when the employer employed at least 25 employees or the year after that, if the obligation under Chapter 3, Section 10 is to be performed that year.

On behalf of the Government

FREDRIK REINFELDT

NYAMKO SABUNI

(Ministry of Integration and Gender Equality)