

Consolidation Act on Equal Treatment of Men and Women as regards Access to Employment etc.¹

This is an act to consolidate the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave etc., cf. Consolidation Act No. 711 of 28 August 2002 with the amendments following from Act No. 1385 of 21 December 2005 and section 57 of 9 June 2006.

Part 1

Scope etc. of the Act

1 (1) For the purpose of this Act equal treatment of men and women means that there shall be no discrimination on ground of sex. This applies to both direct discrimination and indirect discrimination, in particular by reference to pregnancy or to marital or family status.

(2) Direct discrimination shall be understood as taking place where one person is treated less favourably than another is, has been or would be treated in a comparable situation on ground of sex. Direct discrimination on ground of sex shall also be understood as taking place in connection with any form of discrimination in connection with pregnancy and during women's 14 weeks of absence after childbirth.

(3) Indirect discrimination shall be understood as taking place where an apparently neutral provision, criterion or practice put persons of one gender at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means achieving that aim are appropriate and necessary.

(4) Harassment, as defined in subsection (5), and sexual harassment, as defined in subsection (6), shall be deemed to be discrimination on the ground of sex and is consequently prohibited. Any person's rejection of or consent to that type of conduct must not be used as grounds for a decision concerning the person in question.

(5) Harassment shall be understood as taking place when any form of unwanted verbal, non-verbal or physical conduct is exhibited in relation to one person's sex for the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

(6) Harassment shall be understood as taking place when any form of unwanted verbal, non-verbal or physical conduct with sexual undertones is exhibited for the purpose or effect of violating the dignity of a person, in particular by creating an intimidating, hostile, degrading, humiliating or offensive environment.

(7) An instruction to discriminate against one person on ground of sex shall be deemed to be discrimination.

(8) This Act shall be without prejudice to provisions on protection of women, especially in connection with pregnancy or maternity, cf. part 3 of the Act.

(9) The provisions of this Act shall not apply to the extent that a similar obligation to equal treatment follows from a collective agreement.

Part 2

Equal treatment of men and women

1a Public authorities shall - within their field of responsibility - work to ensure gender equality and incorporate gender equality into all planning and management in the fields dealt with in this Act.

2 All employers shall observe the principle of equal treatment of men and women in connection with recruitment, transfers and promotions.

3 (1) Any employer who employs men and women shall treat them equally as regards access to vocational guidance, vocational training, vocational continued training and retraining.

(2) The obligation to observe the principle of equal treatment shall also apply to any person who undertakes guidance and training activities as mentioned in subsection (1).

4 Any employer who employs men and women shall treat them equally as regards working conditions. This shall also apply in connection with dismissal.

5 (1) The obligation to observe the principle of equal treatment shall also apply to any person who lays down provisions and makes decisions concerning the access to exercise activities on the basis of self-employment. This shall also apply to the establishment, organisation or extension of an enterprise and the taking-up or extension of any other form of self-employment, including the financing hereof.

(2) The obligation to observe the principle of equal treatment shall also apply to any person who lays down provisions and makes decisions concerning vocational training etc. and concerning the terms governing the performance of such activities.

5 (a) The obligation to observe equal treatment also applies to any person who decides to become a member of and participate in employees' or employers' organisations, or in organisations whose members carry on a certain trade, including the benefits that such organisations offer their members.

6 No advertisement may state that persons of a specific gender are wanted or preferred in connection with recruitment or vocational training etc.

Part 3

Pregnancy, maternity and adoption

7 (Repealed).

7 (a) (Repealed).

8 The time during which the employee has been absent under sections 6 to 14 of the Act on Maternity Leave shall be included in connection with the calculation of seniority in the employment relationship. This provision shall not apply in connection with pension matters.

8 (a) Parents who have exercised the right to absence under sections 6 to 14 of the Act on Maternity Leave shall be entitled to return to their job or an equivalent post, on terms and conditions which are no less favourable to them and to benefit from any improvement in working conditions to which they would be entitled during their absence.

9 An employer may not dismiss an employee for having put forward a claim to use the right to absence or for having been absent under sections 6 to 14 of the Act on Maternity Leave or for any other reason related to pregnancy, maternity or adoption.

10 (Repealed).

Part 4

Void agreements, etc.

11 (1) Provisions laid down in agreements and in regulations, etc. of enterprises which are in contravention of sections 2 to 5 shall be void. This shall also apply to rules, etc. governing independent professions.

(2) Provisions in agreements and in regulations etc. of enterprises which concern more than one employer shall also be void if they allow discrimination on grounds of gender in the fields mentioned in sections 2 to 4. This shall also apply to rules, etc. governing independent professions.

12 No deviation from the provisions laid down in this Act may take place to the detriment of the employee.

Part 5

Exemptions

13 In the event that certain types of occupational activities and education significantly require a person to be of a specific sex, and this requirement is reasonable in the context of the occupational activity in question, the minister under whose competence the enterprise in question falls may deviate from the provisions in sections 2 to 6.

(2) The minister under whose competence an activity falls may permit measures deviating from sections 2 to 6 with a view to promoting equal opportunities for men and women, particularly by remedying actual inequalities which affect the access to employment, education, etc.

(3) The Minister for Gender Equality may under the Act on Gender Equality lay down more detailed rules concerning the cases in which measures may be implemented to promote equal opportunities without permission under subsection (2).

(4) The deviations mentioned in subsections (1) and (2) shall be reported to the Minister for Equal Opportunities by the competent minister before 1 November at least every second year, for the first time in 2002.

Part 6

Compensation, assessment of evidence, etc.

14 Persons whose rights have been violated by non-compliance with sections 2 to 5 may be awarded compensation.

15 An employee, including an employee's representative who is dismissed or exposed to other adverse treatment or consequence due to a claim of equal treatment under sections 2 to 4 shall be awarded compensation from the employer.

(2) Compensation laid down in subsection (1) above shall be fixed taking into account the seniority of the employee and other circumstances of the case.

(3) Subsections (1) and (2) shall be correspondingly applicable where the obligation to observe the principle of equal treatment follows from a collective agreement, but where the collective agreement does not give the person concerned a right to compensation in the case of dismissal which is not reasonably justified by the conditions of the employee or the undertaking. The claim shall be dealt with under the procedures set up for settlement of industrial disputes.

16 (1) If an employee is dismissed in contravention of section 9, the dismissal shall be set aside if a claim to this effect is made, unless it is - in special cases and after a balancing of the parties' interests - considered unreasonable to claim the employment relationship maintained or restored.

(2) If an employee is dismissed in contravention of section 9 and the dismissal is not set aside, the employer shall pay compensation.

(3) Compensation shall be fixed with due regard to the seniority of the employee and other circumstances of the case.

(4) If the dismissal takes place in connection with pregnancy, or absence laid down in sections 6 to 11, 13 and 14 of the Act on Maternity Leave, and in periods of notice under section 16 subsection (2) it shall be incumbent on the employer to prove that dismissal was not based on these grounds.

(5) If an employee is dismissed during the periods mentioned in sections 6 to 14 of the Act on Maternity Leave, the employee shall have the right to a document in writing giving adequate particulars of the ground for the dismissal.

16 (a) Where a person who finds that he or she has been discriminated against, cf. sections 2 to 5, 9 and section 15 subsection (1), establishes facts which give cause for presuming that direct or indirect discrimination may have occurred, it shall be incumbent upon the other party to prove that the principle of equal equality has not been violated.

Part 7

Miscellaneous provisions

17 The Minister for Employment shall lay down special rules on the maternity leave, etc. of seafarers.

18 (Repealed).

Part 8

Penal sanctions

19 (1) Violation of sections 2 to 6 shall be punishable by a fine.

(2) Penal sanctions may be imposed upon companies etc. (legal persons) under the rules laid down in part 5 of the Danish Criminal Code.

Part 9

Commencement provisions

20 (1) This Act shall come into force on 1 May 1989.

(2) The Act on Equal Treatment of Men and Women as regards Employment, etc., cf. Consolidation Act. No. 572 of 28 August 1986 and the Act on Maternity leave, etc., cf. Consolidation Act. No. 101 of 6 March 1987 are hereby repealed.

21 This Act shall not extend to the Faroe Islands and to Greenland.

Act No. 268 of 2 May 1990 amending the Act on Equal Treatment of Men and Women as regards Employment and Maternity Leave etc. contains the following commencement provisions:

Section 2

(1) This Act shall come into force the day after its publication in the Danish Law Gazette and shall be effective as per 2 April 1990.

(2) However, section 1 (v) shall come into force at a date to be fixed by the Minister for Employment².

Act No. 412 of 1 June 1994 amending the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave etc. contains the following commencement provisions:

Section 2

This Act shall come into force on 1 October 1994.

Act No. 416 of 1 June 1994 amending the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave etc.³ contains the following commencement provisions:

Section 2

This Act shall come into force on 1 July 1994.

Act No. 1111 of 29 December 1997 amending the Act on Daily Cash Benefits during Sickness or Birth and the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave etc.⁴ include the following commencement provisions:

Section 3

This Act shall come into force on 1 April 1998 and shall be applicable to cases where the birth or the reception of the child has taken place on 15 October 1997 or later.

Act. No. 388 of 30 May 2000 Act on Equal Opportunities for Men and Women⁵ contains the following commencement provisions:

Section 24

This Act shall come into force on 1 June 2000.

Act No. 440 of 7 June 2001 amending the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave, etc., the Act on Equal pay to Men and Women, the Act on Child Care Leave, the Act on Equal Opportunities for Men and Women and the Act on Equality for Men and Women in Occupational Social Security Schemes⁶, include the following commencement provisions:

Section 6

This Act shall come into force on 1 July 2001.

Act No. 141 of 25 March 2002⁷ contains the following commencement provisions:

Section 4

(1) This Act shall come into force the day after its publication in the Danish Law Gazette⁸. This Act shall take effect as per 1 January 2002.

- (2) The Act on Childcare Leave shall be repealed as per 1 June 2011.

Section 5

(1) Parents of children born after 31 December 2001, but before the commencement of this Act continue to be covered by the existing rules of the Act on Childcare Leave, the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave, etc. and the Act on Benefits in the event of Sickness or Childbirth. Furthermore, in relation to adopted children received after 31 December 2001 but before the commencement of the Act the parents will be covered by the rules of the Act on Childcare Leave, the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave, etc. and the Act on Benefits in the event of Sickness or Childbirth.

(2) However, under subsection (1) first sentence parents may before 1 June 2002 alternatively both choose to be covered by this Act by written notice to the Public Employment Service. The same applies to parents under subsection (1) second sentence where adoption authorities decide whether the adoptive parent or one of the adoptive parents shall stay at home with the child for a period of time.

(3) Parents who are transferred from the childcare leave scheme to the extended maternity leave scheme under subsection (2) will have their childcare leave set off proportionally in the parental leave scheme.

(4) The Minister for Employment shall lay down more detailed rules on the transition from childcare leave to maternity leave and set off periods of childcare leave.

(5) Children born before 1 January 2002 are covered by the existing rules on maternity leave laid down in the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave, etc. and the Act on benefits in the event of sickness or childbirth.

Act No. 1385 of 21 December 2005 which amends the footnote to the title of the Act, section 1, 13 and 15 and inserts section 1 paragraph (a), section 5 paragraph (a), section 8 paragraph (a) and a headline to part 1 contains the following commencement provisions:

Section 2

This Act shall come into force the day after its publication in the Danish Law Gazette⁹.

Act No. 566 of 9 June 2006 which repeals section 7, section 7 paragraph (a) and section 10 of the Act and changes the title of the Act, section 8, section 8 paragraph (a), section 9 and 16 contains the following commencement provisions:

Section 55

This Act shall come into force on 3 July 2006.

Ministry of Employment 28 June 2006

Claus Hjort Frederiksen

/E. Edelberg

¹ This Act contains provisions that implement Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment of men and women as regards access to employment (Official Journal No. L 039 of 14/02/1976, p. 0040 to 0042) as amended by Directive 2002/73/EEC of 23 September 2002 of the European Parliament and the Council (Official Journal 2002 No. L 269, p. 15). Furthermore, this Act concerns the implementation of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvement in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth separate Directive within the meaning of Article 16 (1) of Directive 92/391/EEC and includes provisions which implement the Council Directive 97/80/EC of 15 December 1997 on the burden of proof in relation to gender-based discrimination, (Official Journal 1998 No. L 14, p. 6) and the Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (Official Journal 1986 No. L 225, p. 40) as amended by the Council Directive 96/97/EC of 20 December 1996 (Official Journal 1997 No. L 46, p. 20) as well as provisions implementing the Council Directive 96/34/EEC of 3 June 1996 on the framework agreement concerning parental leave concluded by UNICE, CEEP and EFS (Official Journal 1996 No. L 145, p. 4), as amended by the Council Directive 97/75/EEC of 15 December 1997 (Official Journal 1998 No. L 10, p. 24).

² I.e. section 21 of the Act.

³ I.e. section 7 paragraph (a) of the Act.

⁴ I.e. section 7 subsection (1), section 7 subsection (4), section 10 subsection (2), section 10 subsection (3), section 10 subsection (5), section 10 subsection (6), section 10 subsection (7) and section 19 subsection (2) of the Act.

⁵ I.e. among others section 13 of the Act.

⁶ I.e. section 1 subsection (2) and section 16 paragraph (a) of the Act.

⁷ The Act amends section 7, section 7 paragraph (a), section 10 and section 16 subsection (4) of this Act.

⁸ Act No. 141 of 25 March 2002 was published in the Danish Law Gazette on 26 March 2002.

⁹ Act No. 1385 of 21 December 2005 was published in the Danish Law Gazette on 22 December 2005.