

**Consolidation Act No. 756 21 August 2003**

**Consolidation Act on Equal Pay to Men and Women**

This is an Act to consolidate the provisions on Equal Pay to Men and Women, of Consolidation Act No. 909 of 27 September 2000 with the amendments following from Article 2 of Act No. 440 of 7 June 2001 and Act No. 445 of 7 June 2001.

**1. -** (1) No discrimination on the ground of sex as regards pay may take place in contravention of this Act. This applies to both direct and indirect discrimination.

(2) Indirect discrimination exists where a provision, a criterion or a practise which is seemingly neutral places a substantially bigger number of persons of one gender in a less favourable position unless this provision, criterion or practise is expedient and necessary or can be justified by objective non-gender related factors.

(3) Any employer shall give men and women equal pay, including equal pay conditions, for the same work or work given the same value.

(4) The evaluation of the value of the work shall take place on the basis of a general evaluation of relevant qualifications and other relevant factors.

(5) The provisions laid down in this Act shall not apply to the extent that a corresponding obligation to give equal pay follows from a collective agreement.

**2. -** (1) An employee whose pay is lower than that of others in contravention of section 1 of this Act shall have a claim to the difference.

**2 (a)** Any employee has a right to pass on information relating to own wage conditions. This information can be passed to anyone.

(2) This provision shall not apply where a collective agreement gives the employee rights, which, as a minimum, corresponds to the rights under section 1.

**3. -** (1) An employer shall not be allowed to dismiss an employee for having put forward a claim for equal pay, including equal pay conditions or for passing on information on pay. An employer cannot dismiss an employee or an employee representative for having put forward a claim under section 5a subsection (1).

(2) It is incumbent upon the employer to prove that a dismissal has not been effected in contravention of the rules laid down in subsection (1). However, if the dismissal takes place more than 1 year after the employee has put forward the claim for equal pay, subsection (1) shall only apply where the employee is able to establish factual circumstances which give ground to presume that the dismissal has taken place in contravention of subsection (1).

(3) A dismissal which has been effected in contravention of the rules laid down in subsection (1) 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. A dismissed employee may instead claim compensation. The compensation may not exceed 78 weeks' pay calculated on the basis of the average earnings of the dismissed employee and shall be fixed with due regard to the employment period of the employee and other circumstances in the particular case.

**4.** Section 3 shall be similarly applicable to sectors covered by collective agreements under which the employees are entitled to equal pay, including equal pay conditions, but which do not have rules on compensation in connection with a dismissal which is not reasonably justified by circumstances of the employee or the enterprise. The claim shall be dealt with under the special procedures for settlement of industrial disputes.

**5.** (1) An employee may not waive his rights under this Act.

**5 (a)** Where claims of the above-mentioned nature have been put forward an employer with 10 employees or more shall work out wage statistics for the entire enterprise broken down on gender and other criteria which are relevant for remuneration of the employees. The wage statistics may not show wage data for groups of less than 5 persons.

(2) The claim for the drawing up of wage statistics under subsection (1) can be put forward by any employee, employee representative, or trade union with one or more members at the enterprise in question or by the Danish Equal Opportunities Board.

(3) The wage statistics will for an employer registered with the LetLøn system see Act on the reporting system for information on pay, etc (LetLøn) be worked out on the basis of the registered data.

(4) Wage statistics under subsection (1) may only be used to examine whether any wage discrimination takes place in contravention of this Act. The statistics are to be treated confidentially.

(5) This provision shall not apply to the extent that a collective agreement gives the rights corresponding to those laid in subsection (1).

**6.** An employee who finds that the employer does not comply with the duty to give equal pay, including even pay conditions under the Act may bring legal action to establish the claim.

(2) Where a person who finds that he or she has been discriminated under section 1 can demonstrate factual circumstances which give grounds to presume that direct or indirect discrimination has taken place, it is incumbent on the other party to prove that the principle of equal treatment has not been violated.

**6a** Every third year the Minister of Labour and the Minister of Gender Equality present a report on measures, guarantee equal pay between men and women.

**6b** Violation of section 5 (1) first clause and section 5a (1) second clause will be sanctioned by fine unless higher punishments are imposed under other legislation.

(2) Enterprises, etc (legal persons) can be held criminally liable under the provisions of part 5 of the Penal Code.

7. This Act may receive the Royal Assent as soon as it has been adopted.

8. This Act shall come into operation on 9 February 1976 and shall apply to pay relating to the period after the commencement of the Act.

9. This Act shall not extend to the Faroe Islands.

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Act No. 374 of 20 May 1972 lays down the following provision on commencement:

### **Section 3**

This Act shall come into operation the day after its publication in the Danish Law Gazette.

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Act No. 388 of 30 May 2000 on Equal Treatment of Men and Women lays down the following provision on commencement:

### **Section 24**

This Act shall come into operation on the 1 June 2000.

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Act No 440 of 7 June 2001 on amendment of 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 Equal Treatment of Men and Women in occupational social security schemes lays down the following provisions on commencement:

### **Section 6**

The Act shall come into operation on 1 July 2001

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Act no 445 of 7 June 2001 on the amendment of the Act on Equal Pay to Men and Women (information on wages) lays down the following provisions on commencement:

### **Section 2**

(1) The Act shall come into operation on 1 July 2001. The date shall be decided by the Minister for Employment.

(2) Section 1 paras. 1 and 2 shall apply for employment relationships entered into before 1 July 2001.

(3) The report under section 6a will be drawn for the first time in 2003 as mentioned in section 1 para 5 of this Act.

*Ministry of Employment 21 August 2003*

Claus Hjort Frederiksen

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