

EQUAL TREATMENT ACT (ALGEMENE WET GELIJKE BEHANDELING, AWGB)

Equal Treatment Act

Act of 2 March 1994 containing general rules to provide protection against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status (as amended on 9 September 2004)

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who see or hear these presents! Be it known:

Whereas We have considered that, having regard inter alia to article 1 of the Constitution, it is desirable to provide protection against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status, in order to promote equal participation in society, and that it is therefore desirable to prohibit discrimination on these grounds except in such cases as provided for by law, and that to enforce this prohibition it is desirable that an Equal Treatment Commission be established;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Chapter I Equal treatment of persons irrespective of their religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status

§ 1. General provisions

Section 1

1. For the purposes of this Act and the provisions based upon it the following definitions apply:

a. discrimination: direct and indirect discrimination;

b. direct discrimination: discrimination between persons on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;

c. indirect discrimination: discrimination on the grounds of characteristics or behaviour other than those referred to under (b), resulting in direct discrimination.

2. Direct discrimination on the grounds of sex includes discrimination on the grounds of pregnancy, childbirth and maternity.

Section 1a

1. The prohibition on discrimination laid down in this Act includes a prohibition on harassment.

2. Harassment as referred to in subsection 1 means conduct related to the characteristics or behaviour referred to in section 1 (b) which has the purpose or effect of undermining the dignity of a person and creating a threatening, hostile, degrading, humiliating or offensive environment.

3. Section 2, section 5, subsections 2 to 6, section 6a, subsection 2 and section 7, subsections 2 and 3 do not apply to the prohibition of harassment contained in this Act.

§ 2. General exceptions

Section 2

1. The prohibition on discrimination contained in this Act does not apply to indirect discrimination which is objectively justified by a legitimate aim and where the means to achieve that aim are appropriate and necessary.

2. The prohibition on discrimination on grounds of sex contained in this Act does not apply:

- a. in cases in which sex is a determining factor and
- b. in cases concerning the protection of women, notably in relation to pregnancy and maternity.

3. The prohibition on discrimination contained in this Act does not apply if the aim of the discriminatory measure is to place women or persons belonging to a particular ethnic or cultural minority group in a privileged position in order to eliminate or reduce existing inequalities connected with race or sex and the discrimination is in reasonable proportion to that aim.

4. The prohibition on discrimination on the grounds of race contained in this Act does not apply:

- a. in cases where a person's racial appearance is a genuine and determining requirement, provided that the aim is legitimate and provided that the requirement is proportionate to that aim;
- b. if the discrimination concerns a person's racial appearance and constitutes, by reason of the nature of the particular occupational activity in question or of the context in which it is carried out, a genuine and determining occupational requirement, provided that the aim is legitimate and the requirement is proportionate to that aim.

5. The prohibition on discrimination on the grounds of nationality contained in this Act does not apply:

- a. if the discrimination is based on generally binding regulations or on written or unwritten rules of international law, or
- b. in cases where nationality is a determining factor.

6. The cases referred to in subsections 2, 4 and 5 (b) are to be defined in more detail by Order in Council.

Section 3

This Act does not apply to:

- a. legal relations within religious communities, independent sections or associations thereof and within other associations of a spiritual nature;
- b. the office of minister of religion.

§ 3. Provisions in the field of employment and the professions

Section 4

This Act is without prejudice to:

- a. the Equal Treatment (Men and Women) Act;
- b. articles 646, 647, 667 and 670 of Book 7 of the Civil Code.

Section 5

1. It is unlawful to discriminate in or with regard to:

- a. advertisements for job vacancies and procedures leading to the filling of vacancies;
- b. job placement;
- c. the commencement or termination of an employment relationship;
- d. the appointment and dismissal of civil servants;
- e. terms and conditions of employment;
- f. permitting staff to receive education or training during or prior to employment;
- g. promotion;
- h. working conditions.

2. Subsection 1 does not apply to:

- a. the freedom of an institution founded on religious or ideological principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;
- b. the freedom of an institution founded on political principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of race, sex, nationality, heterosexual or homosexual orientation or civil status, or
- c. the freedom of an educational establishment founded on religious or ideological principles to impose requirements on the occupancy of a post which, in view of the institution's purpose, are necessary for it to live up to its founding principles; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

3. Subsection 1 does not apply to requirements which, in view of the private nature of the employment relationship, may reasonably be imposed on the employment relationship.

4. Subsection 1 does not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to administrative or advisory bodies.

5. Subsection 1 does not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to confidential posts.

6. Subsection 1 (e) does not apply to discrimination on grounds of civil status in relation to surviving dependants' pension schemes and pension entitlements accrued before the entry into force of section 1 (B) of the Act of 21 December 2000 amending the Pensions and Savings Funds Act and a number of other Acts in connection with the right to opt for old age pension instead of

surviving dependants' pension and equal treatment for men and women (Bulletin of Acts and Decrees 625).

Section 6

It is unlawful to discriminate with regard to the conditions for and access to the professions and opportunities to pursue such professions or for development within them.

Section 6a

1. It is unlawful to discriminate with regard to membership of or involvement in an employers' organisation or trade union, or a professional association, or with regard to the benefits which arise from such membership or involvement.

2. Subsection 1 does not affect:

- a. the freedom of an organisation or association founded on religious or ideological principles to impose requirements which, having regard to its purpose, are necessary to meet its founding principles; such requirements may not lead to discrimination on the sole ground of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status or
- b. the freedom of an organisation or association founded on political principles to impose requirements which, having regard to its purpose, are necessary to meet its founding principles; such requirements may not lead to discrimination on the sole ground of race, sex, nationality, heterosexual or homosexual orientation or civil status.

§ 4. Other provisions in the socioeconomic field

Section 7

1. It is unlawful to discriminate in offering goods or services, in concluding, implementing or terminating agreements thereon, and in providing educational or careers guidance if such acts of discrimination are committed:

- a. in the course of carrying on a business or practising a profession;
- b. by the public sector;
- c. by institutions which are active in the fields of housing, social services, health care, cultural affairs or education, or
- d. by private persons not engaged in carrying on a business or practising a profession, insofar as the offer is made publicly.

2. Subsection 1 (c) does not affect the freedom of an educational establishment founded on religious or ideological principles to impose requirements governing admission to or participation in the education it provides which, having regard to the establishment's purpose, are necessary for the fulfilment of its principles; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status. Discrimination on the grounds of sex is permitted solely if the distinctive nature of the establishment so requires and if equivalent facilities are available for pupils or students of both sexes.

Subsection 1 (a) and (d) does not apply to requirements which may reasonably be imposed in view of the private nature of the circumstances to which the legal relationship applies.

Section 7a

1. Without prejudice to section 7, it is unlawful to discriminate on the ground of race in the field of social protection, including social security and access to social advantages.
2. The concepts of social protection, social security and social advantages referred to in subsection 1 may be defined by Order in Council. A recommendation for an Order in Council pursuant to the first sentence will not be made earlier than four weeks after the Bill has been submitted to both Houses of the States General.

§ 5. Protection and enforcement

Section 8

1. If an employer terminates an employee's contract of employment in contravention of section 5 or on the grounds that the employee has invoked section 5, either at law or otherwise, such termination is voidable.
2. Without prejudice to chapter 8 of the General Administrative Law Act, the right of an employee to invoke subsection 1 to void the termination of employment lapses two months after the termination of the employment relationship. The invocation of grounds for avoidance takes place by means of notification to the employer. Article 55, Book 3 of the Civil Code does not apply.
3. The right to institute legal proceedings in connection with avoidance lapses six months after the date on which the employment relationship was terminated.
4. The termination referred to in subsection 1 does not make the employer liable to pay compensation.

Section 8a

It is unlawful to disadvantage persons because they have invoked this Act, either in or out of court, or have assisted others in this connection.

Section 9

All contractual provisions which conflict with this Act are null and void.

Section 10

1. If a person who considers that he is a victim of discrimination within the meaning of this Act adduces before a court facts from which it may be presumed that such discrimination has taken place, the other party is required to prove that the action in question was not in breach of this Act.
2. Subsection 1 applies mutatis mutandis to legal actions as referred to in section 305a of Book 3 of the Civil Code and to review or appeal proceedings under administrative law instituted by interested parties within the meaning of section 1:2, subsection 3 of the General Administrative Law Act.

Chapter 2 The Equal Treatment Commission

Section 11

1. There is an Equal Treatment Commission, hereafter referred to as the Commission.

2. The Commission may establish subcommittees from among its members for the performance of its duties.

Section 12

1. The Commission may, in response to a request in writing, conduct an investigation to determine whether discrimination as referred to in this Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code has taken or is taking place, and may publish its findings. The Commission may also conduct an investigation on its own initiative to determine whether such discrimination is systematically taking place and publish its findings.

2. A request in writing as referred to in subsection 1 may be submitted by:

- a. a person who believes that he/she is a victim of discrimination as referred to in this Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code;
- b. a natural or legal person or competent authority wishing to know whether they have discriminated within the meaning of this Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code;
- c. a person responsible for deciding on disputes concerning discrimination as referred to in this Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code;
- d. a works council or comparable employee participation body which believes that discrimination as referred to in this Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code is taking place in the organisation for which it was appointed;
- e. an association with full legal powers or a foundation which, in accordance with its constitution or statutes, represents the interests of those whose protection is the objective of this Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code.

3. If a request in writing as referred to in subsection 2 (d) and (e) names persons who are said to have been disadvantaged, or if an investigation conducted on the Commission's own initiative relates to such persons, the Commission must inform the persons concerned of the planned investigation. The Commission is not empowered to involve persons as referred to in the previous sentence in the investigation or the evaluation if they have stated in writing that they have reservations about such involvement.

Section 13

1. The Commission institutes an investigation and forwards its findings, in writing and with reasons, to the petitioner, the person said to have discriminated and, if relevant, the victim of discrimination.

2. The Commission may make recommendations when forwarding its findings to a person said to have discriminated.

3. The Commission may forward its findings to such of Our Ministers as may be concerned, and to such organisations of employers, employees, professionals, public servants, consumers of goods and services and relevant consultative bodies as it believes appropriate.

Section 14

1. The Commission may not institute an investigation if:
 - a. the request referred to in section 12, subsection 2 is manifestly unfounded;
 - b. the interest of the petitioner or the seriousness of the behaviour concerned is manifestly insufficient;
 - c. the period of time which has elapsed since the discrimination referred to in section 12 took place is such that an investigation can no longer reasonably be conducted.
2. In cases as referred to in subsection 1, the Commission notifies the petitioner in writing, giving reasons.

Section 15

1. The Commission may bring a legal action with a view to obtaining a ruling that conduct contrary to this Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code is unlawful, requesting that such conduct be prohibited or that the court order the consequences of such conduct to be rectified.
2. No conduct may form the subject of an action as referred to in subsection 1 if the person affected by that conduct has reservations.

Section 16

1. The Commission is composed of nine members – including a chair and two assistant chairs. Alternate members may be appointed.
2. The chair and the assistant chairs must fulfil the requirements laid down in section 48, subsection 1 of the Judicial Officers (Legal Status) Act governing eligibility for appointment as officers of the court.
3. The members and alternate members are appointed by Our Minister of Justice, in consultation with Our Minister of the Interior, Our Minister of Social Affairs & Employment, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs.
4. Sections 46c, 46d, subsection 2, 46f, 46g, 46i, with the exception of subsection 1 (c), 46j, 46l, subsection 1, with the exception of (c), and subsection 3, 46m, 46n, 46o and 46p of the Judicial Officers (Legal Status) Act apply mutatis mutandis on the understanding that:
 - a. with respect to the members of the Commission, the disciplinary measure referred to in section 46c, subsection 1 is to be imposed by the chair;
 - b. the prohibition laid down in section 46c, subsection 1 (b) on engaging in talk or conversation with the parties or their advocates, attorneys of record or representatives or accepting from them specific information or documents does not apply to members of the Commission.
5. The members and alternate members are appointed for a maximum of six years. They may be reappointed immediately. The Minister of Justice may accept their resignation, if tendered.

Section 17

1. An office is to be set up to assist the Commission in the performance of its duties.
2. On the recommendation of the Commission Our Minister of Justice appoints, promotes, suspends and dismisses the staff of the office. Our Minister of Justice decides in what cases they are to be appointed, promoted, suspended and dismissed.

Section 18

1. The Commission may, in the performance of its duties, call on the assistance of civil servants designated by such of Our Ministers as it may concern.
2. The Commission may, in the performance of its duties, seek assistance from one or more persons who are able to supply the information required by the Commission for that purpose.

Section 19

1. The Commission and the persons referred to in section 17 who are designated by the Commission may demand all the information and documents which may reasonably be considered necessary for the performance of its duties.
2. Everyone is obliged, unless they are exempt on the grounds of official or professional confidentiality, to provide the information and documents required pursuant to subsection 1 in full and in accordance with the truth, in the manner and within the time limit laid down by or on behalf of the Commission. This obligation does not apply if, in doing so, a person would expose themselves or a relative by blood or marriage, in the direct or indirect line to the second or third degree, or their spouse or former spouse, or their registered partner or former registered partner, to the risk of conviction for a serious offence.

Section 20

1. The Commission is required to issue an annual report of its activities, which will be published. It must forward this report in any event to such of Our Ministers as it may concern and to the advisory bodies concerned.
2. Every five years, calculated from the entry into force of this Act, the Commission is required to draw up a report of its findings on the operation of this Act, the Equal Treatment (Men and Women) Act and article 646, Book 7 of the Civil Code. It must forward this report to the Minister of the Interior.

Section 21

1. Further rules concerning the working methods of the Commission are to be laid down by Order in Council, including in any event rules governing:
 - a. the manner in which cases are to be dealt with;
 - b. hearing both parties;
 - c. the public conduct of hearings;
 - d. the publication of its findings as referred to in section 13, subsection 3.

2. The members of the Commission receive a fee for their activities. Further rules concerning their legal status are to be laid down by Order in Council. These rules will in any event relate to their appointment and career development, fees, allowances, supplements, expenses, rights and duties in the event of reorganisations, disciplinary penalties, suspension and termination of the appointment.

3. The alternate members receive a fee for their activities for each hearing, as well as travel and accommodation expenses.

CHAPTER 3 Concluding provisions

[Sections 22 , 23 and 24 have been deleted.]

Section 25

[Contains amendments to other legislation]

[Sections 26 to 29 have been deleted.]

Section 30

[Contains amendments to the National Ombudsman Act]

[Sections 31 and 32 have been deleted.]

Section 33

In consultation with Our Minister of Justice, Our Minister for Social Affairs & Employment, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs, Our Minister of the Interior forwards to the States General a report on the operation of this Act, the Equal Treatment (Men and Women) Act and article 646, Book 7 of the Civil Code as soon as possible after receipt of the report referred to in section 20, subsection 2.

Section 34

This Act enters into force with effect from the first day of the sixth calendar month after the date of publication of the Bulletin of Acts and Decrees (Staatsblad) in which it appears. An earlier date of entry into force may be laid down by Royal Decree.

Section 35

This Act may be cited as the Equal Treatment Act.

Done at The Hague on 2 March 1994

Beatrix

E. van Thijn
Minister of the Interior

E.M.H. Hirsch Ballin
Minister of Justice

J. Wallage
State Secretary for Social Affairs and Employment

J.M.M. Ritzen
Minister of Education and Science

H. d'Ancona
Minister of Welfare, Health and Cultural Affairs

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