

Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999:133)

Amendments: up to and including SFS 2005:479

Purpose of the Act

Section 1 The purpose of this Act is to combat discrimination in working life because of sexual orientation.

Section 2 Sexual orientation means homosexual, bisexual or heterosexual orientation.

Section 2 a A person who, though not employed, seeks or is undertaking vocational training at a workplace shall be deemed to be a job applicant and an employee respectively when applying the prohibitions of discrimination and reprisals contained in Sections 3 - 4 b, Section 5, item 3 and Section 7 and also the provisions contained in Sections 8 - 11 and 13 - 15.

The party with whom the vocational training is sought or being undertaken shall be deemed to be an employer. (SFS 2003:310)

Section 2 b A person who, though not employed, performs work at a workplace as rented or borrowed manpower shall be deemed to be an employee when applying the provisions contained in Sections 7 and 8, Section 10, fourth paragraph and Sections 13 - 15.

The party with whom the work is performed shall be deemed to be an employer. (SFS 2005:479)

Prohibition of discrimination

Direct discrimination

Section 3 An employer may not disfavour a job applicant or an employee by treating her or him less favourably than the employer treats, has treated or would have treated someone else in a comparable situation, if the disfavour is connected to sexual orientation. (SFS 2003:310)

Indirect discrimination

Section 4 An employer may not disfavour a job applicant or an employee by applying a provision, a criterion or a method of procedure that appears to be neutral but which in practice disfavours persons with a particular sexual orientation. However, this does not apply if the provision, criterion or method of procedure can be justified by a reasonable goal and the means are appropriate and necessary in order to achieve the goal. (SFS 2003:310)

Harassment

Section 4 a An employer may not discriminate a job applicant or an employee by harassing her or him.

In this Act, harassment means behaviour in working life that violates the dignity of a job applicant or an employee and which is connected with sexual orientation. (SFS 2003:310)

Instructions to discriminate

Section 4 b An employer may not issue orders or instructions to an employee concerning the discrimination of a person according to Sections 3 - 4 a. (SFS 2003:310)

Scope of the prohibitions

Section 5 The prohibitions of discrimination contained in Sections 3 - 4 b apply when the employer:

1. decides on an employment issue, selects a job applicant for an employment interview or implements other measures during the employment procedure,
2. decides on promotion or selects an employee for training for promotion,
3. decides on or implements other measures concerning vocational training,
4. decides on or implements other measures concerning other training or vocational counselling,
5. applies pay or other terms of employment,
6. manages and distributes work, or
7. gives notice of termination, summarily dismisses, lays-off or implements other significant measure against an employee.

The prohibition of direct discrimination does not apply in connection with decisions on employment, promotion or training for promotion if a particular sexual orientation is necessary owing to the nature of the work or the context in which it is performed. (SFS 2003:310)

Information in respect of qualifications

Section 6 A job applicant who has not been employed or an employee who has not been promoted or selected for training for promotion, is entitled upon request to obtain written information from the employer about what training, professional experience and other qualifications the person has who got the job or training position.

Prohibition of reprisals

Section 7 An employer may not subject an employee to reprisals on the grounds that the employee has reported the employer for discrimination, complained about discrimination or participated in an investigation under this Act. (SFS 2003:310)

Obligation to investigate and implement measures against harassment

Section 8 An employer who becomes aware that an employee considers her or himself to have been exposed to harassment as referred to in Section 4 a, second paragraph by another employee shall investigate the circumstances surrounding the said harassment and when it occurs implement the measures that may reasonably be required to prevent continuance of the harassment. (SFS 2003:310)

Sanctions

Invalidity

Section 9 A contract shall be invalid to the extent that it prescribes or permits such discrimination as referred to in Sections 3 - 5. (SFS 2003:310)

Section 10 If an employee is discriminated against by a provision in a contract with an employer in any way that is prohibited under this Act, the provision shall be adjusted or declared invalid, if the employee so requests. If the provision is of such importance for the contract that it cannot reasonably be required that it should otherwise apply, without amending the content, the contract may also be adjusted in other respects or declared invalid in its entirety.

If an employee is discriminated against in any way that is prohibited under this Act by an employer giving notice terminating a contract or implementing another such legal act, the legal act shall be declared invalid, if the employee so requests.

The first and second paragraphs do not apply if Section 9 is applicable.

If a job applicant or an employee is discriminated against through a rule of procedure or a similar internal provision at the workplace in any way that is prohibited under this Act, the provision should be adjusted or declared to be without effect if the job applicant or the employee so requests. (SFS 2005:479)

Damages

Section 11 If a job applicant or an employee is discriminated against by an employer violating the prohibitions contained in Section 3, 4, 4 a or 4 b and Section 5, items 1 - 3, the employer shall pay damages to the person discriminated against for the violation that the discrimination involves. (SFS 2003:310)

Section 12 If an employee is discriminated against by an employer breaching the prohibitions contained in Section 3, 4, 4 a or 4 b and Section 5, items 4 - 7, the employer shall pay damages to the employee for the loss that arises and for the violation that the discrimination involves. (SFS 2005:479)

Section 13 If an employee is subjected to reprisals as referred to in Section 7, the employer shall pay damages to the employee for the loss that arises and for the violation that the reprisals involve.

Section 14 If an employer does not fulfil the employer's obligations under Section 8, the employer shall pay damages to the employee for the violation caused by the omission.

Section 15 If it is reasonable, damages under Sections 11 - 14 can be reduced or lapse completely.

Supervision

The Office of the Ombudsman against discrimination because of sexual orientation

Section 16 There shall be an Ombudsman against discrimination because of sexual orientation in order to ensure compliance with this Act.

The Ombudsman against discrimination because of sexual orientation shall be appointed by the Government.

The Ombudsman shall in the first instance endeavour to get the employer to voluntarily comply with the provisions of this Act.

Duty to provide information

Section 17 An employer is liable at the request of the Ombudsman against discrimination because of sexual orientation to provide the information concerning the circumstances in the employer's operation that may be of importance for the Ombudsman's supervision under Section 16.

An employer is also liable to provide information when the Ombudsman deals with a request by an individual job applicant or employee under Section 6.

If there are special reasons, the employer is not liable to disclose information. (SFS 2003:310)

Default fine

Section 18 If an employer does not comply with a request under Section 17, the Ombudsman against discrimination because of sexual orientation may order the employer, subject to a default fine, to fulfil her or his obligations.

Appeals, etc.

Section 19 A decision concerning a default fine order by the Ombudsman against discrimination because of sexual orientation may be appealed against to the Board against Discrimination. The decision of the Board may not be appealed against.

Actions for the judicial confirmation of default fines are brought in a district court by the Ombudsman.

The procedure at the Board against Discrimination

Section 20 The Board against Discrimination shall ensure that matters are investigated to the extent their nature requires.

Where necessary, the Board shall cause the investigation to be supplemented. Unnecessary investigation may be rejected.

Section 21 Matters concerning orders for default fines are determined following an oral hearing, except when the Board considers such a hearing unnecessary.

Section 22 The Ombudsman against discrimination because of sexual orientation and the employer shall be summoned to a hearing under Section 21.

The Board may order, subject to a default fine, the employer or the employer's legal representative to attend personally.

Where so required for the investigation, the Board may also summon others to the hearing.

Judicial proceedings

Regulations applicable

Section 23 Cases concerning the application of Sections 3 - 5 and 7 - 15 shall be dealt with in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371).

In such context, a job applicant shall be deemed to be an employee and a person who applies for or is undertaking vocational training or who is performing work at a workplace as rented or borrowed manpower. The party with whom someone has applied for or is undertaking vocational training or applied for or performs work shall be deemed to be an employer.

The second paragraph also applies when the regulations concerning hearings in disputes in the Employment (Co-Determination in the Workplace) Act (1976:580) are applied in a dispute under Sections 3 - 5 and 7 - 15. (SFS 2003:310)

Burden of proof

Section 23 a If a person who considers that he or she has been discriminated against or subjected to reprisals shows circumstances that give cause to assume that he or she has been discriminated against or subjected to reprisals, it is the employer that shall prove that discrimination or reprisals have not occurred. (SFS 2003:310)

Right to bring an action

Section 24 In a dispute, under Section 23, the Ombudsman against discrimination because of sexual orientation may bring an action on behalf of an individual employee or job applicant, if the individual allows this and the Ombudsman considers that a judgment in the dispute is of importance for the application of law or where there is otherwise special reason for so doing. If the Ombudsman considers it appropriate, the Ombudsman may in the same judicial proceedings also bring other actions as representative for the individual.

The decision of the Ombudsman in matters under the first paragraph may not be appealed against.

The actions by the Ombudsman under the first paragraph shall be brought in the Labour Court.

Section 25 When an employee's organisation is entitled 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 against discrimination because of sexual orientation may only bring an action if the organisation does not do so.

That prescribed in the Act concerning the standing of an individual in the judicial proceedings shall also apply when actions are brought by the Ombudsman.

Section 26 Actions concerning damages under Section 11 as a result of a decision concerning employment that has been issued by an employer with public status may not be considered before the employment decision has entered into final legal force.

Time limits, etc.

Section 27 If someone brings an action as a result of notice of termination or summary dismissal, Section 34, second and third paragraphs, Section 35, second and third paragraphs, Section 37, Section 38, second paragraph, second sentence, Sections 39 - 42 and also Section 43, first paragraph, second sentence and second paragraph of the Employment Protection Act (1982:80) shall be applied.

Section 28 In matters concerning some other action than those referred to in Section 27 of this Act, Sections 64 - 66 and 68 of the Employment (Co-Determination in the Workplace) Act (1976:580) shall apply, except that the time limit stated in Section 66, first paragraph, first sentence, shall be two months.

Section 29 In matters concerning actions for damages as a result of a decision of employment that has been issued by an employer with public status, the time limits under Section 28 are computed from the date when the employment decision entered into final legal force.

Section 30 An action brought by the Ombudsman against discrimination because of sexual orientation is dealt with as if the action had been brought by the employee or the job applicant her or himself.