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Top ILLN News

Prohibition of discrimination
in employment in the ILLN
member states.

Fellow Reader,

We are pleased to present the latest edition of our newsletter. In this issue, we focus on the prohibition of employment discrimination across the ILLN member states, including some European Union countries, the United Kingdom, and Switzerland. Ensuring equal treatment in the workplace is a core principle of modern labour law and an essential element of fair and inclusive employment relations.

Although legal frameworks, protected characteristics, and enforcement mechanisms vary across jurisdictions, they share a common objective: protecting employees and job applicants from unequal treatment and promoting equal opportunities throughout the employment relationship.

In many European countries, anti-discrimination rules are shaped by EU law, international standards, and constitutional principles and play an essential role in broader employment and human rights policies.

This newsletter provides an in-depth overview of how the prohibition of discrimination in employment is regulated and applied in selected ILLN jurisdictions.

It examines, among other issues, the legal basis for protection, the scope of protected grounds, enforcement mechanisms, and available remedies.

This cross-jurisdictional perspective highlights both shared principles and key differences in approaches to workplace equality across Europe.

We hope you will enjoy reading this release.



02/30

New Members of the ILLN
Welcome on board!

PROHIBITION OF DISCRIMINATION IN EMPLOYMENT IN AUSTRIA

REPUBLIC OF AUSTRIA

Introduction

The prevention of workplace discrimination is a fundamental element of modern labour law in Austria. The principle of equal treatment is firmly embedded in national legislation and closely aligned with European Union anti-discrimination standards. Employees are entitled to protection against unequal treatment throughout their professional lives, from access to employment to termination of employment. The following provides an overview of the Austrian legal framework governing workplace discrimination, highlights the protected grounds, outlines employer obligations, and explains the available enforcement mechanisms and remedies.

Legal Basis & Scope of Application

The primary legal instrument addressing workplace discrimination in Austria is the Equal Treatment Act (Gleichbehandlungsgesetz – GIBG). This Act transposes several EU directives on equal treatment into Austrian law and covers all phases of an employment relationship, including job advertisements, recruitment and selection procedures, remuneration, working conditions, access to training, career advancement, and dismissal.

For federal public employees, equal treatment is regulated by the Federal Equal Treatment Act (Bundes-Gleichbehandlungsgesetz – B-GIBG), which mirrors the principles of the GIBG while taking into account the specific structure of public administration.

Furthermore, the Disabled Persons Employment Act (Behinderteneinstellungsgesetz) provides additional protection for employees with disabilities, including obligations for employers to promote their integration and prevent discriminatory practices.

Prohibited Grounds & Forms of Discrimination

Austrian anti-discrimination law prohibits unequal treatment on the grounds of gender, ethnic origin, religion or belief, age, sexual orientation, and disability. Gender-based discrimination also includes discrimination related to pregnancy, parenthood, and gender identity.

The law distinguishes various forms of discrimination: (i) Direct discrimination occurs when a person is treated less favourably than another in a comparable situation. (ii) Indirect discrimination arises when apparently neutral provisions or practices disproportionately disadvantage individuals belonging to a protected group, unless objectively justified.

AUSTRIA



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Harassment and sexual harassment are explicitly recognized as forms of discrimination when they violate a person's dignity and create a hostile or offensive working environment. Additionally, instructions to discriminate are prohibited.

Employer Duties & Preventive Measures

Employers in Austria have a legal duty to ensure equal treatment in the workplace and to take appropriate measures to prevent discrimination and harassment. This includes designing recruitment processes in a neutral manner, ensuring transparency in pay and promotion decisions, and fostering a respectful working culture. Employers are also required to take action if discriminatory behaviour occurs, including investigating complaints and implementing corrective measures.

Failure to comply with these obligations may expose employers to legal claims and reputational risks. In practice, many employers implement internal guidelines, training programmes, and complaint procedures to meet their legal responsibilities and reduce the risk of discrimination.

Enforcement Mechanisms & Legal Remedies

Employees who believe they have been subjected to discrimination have access to several enforcement mechanisms. The Equal Treatment Ombud for Private Industry (Gleichbehandlungsanwaltschaft) offers free and confidential counselling, supports affected individuals, and may accompany them during legal proceedings.

The Equal Treatment Commission (Gleichbehandlungskommission) examines alleged cases of discrimination and issues expert opinions. While these opinions are not legally binding, they often carry significant persuasive authority.

Individuals may also bring claims before labour or civil courts. Austrian law provides for compensation for both material damages, such as lost earnings, and immaterial damages, such as emotional distress caused by discrimination or harassment. Employees are entitled to compensation from the harasser, regardless of whether this is the employer themselves, a colleague, or even a customer. In addition, employees are entitled to compensation from the company if it has not taken appropriate remedial action against harassment.

A notable feature of Austrian anti-discrimination law is the shift in the burden of proof: once the claimant establishes facts suggesting discrimination, the employer must prove that no violation of the equal treatment principle occurred.

Summary

Austria's legal framework against workplace discrimination is comprehensive and closely aligned with European standards. Through the Equal Treatment Act and related legislation, employees are protected against discrimination on multiple grounds, while employers are obliged to promote equality and prevent discriminatory conduct. Advisory bodies, enforcement mechanisms, and effective remedies play a crucial role in ensuring that the principle of equal treatment is upheld in practice. Together, these measures contribute to fairer working conditions and reinforce the importance of diversity and inclusion in the Austrian labour market.

WORKPLACE DISCRIMINATION IN BELGIUM:

The rules and a practical example

KINGDOM OF BELGIUM

CAN AN EMPLOYEE BE DISMISSED WHILE ON SICK LEAVE?

A recent Brussels labour court decision reminds employers that timing alone does not prevent discrimination claims.

1.The rules

In Belgium, there are mainly three different laws which regulate the issues with regard to discrimination:

- The general act on non-discrimination
- The anti-racism act
- The act on equality of treatment between women and men

In essence, these laws prohibit any kind of different treatment (discrimination), based on 19 so-called protected criteria. Examples of these protected criteria are: actual or future health situation, disability, race, gender, sexual orientation, nationality, religious or political conviction, etc.

These laws provide protection both against direct and indirect discrimination:

Direct discrimination occurs when in a comparable situation a direct distinction is made based on one of the protected criteria between persons.

Example:

When an employer refuses to hire someone because of an illness, without having any justification.

Indirect discrimination occurs when a seemingly neutral provision, criterion or practice puts persons sharing one or more protected characteristics at a particular disadvantage.

Example:

When an employer decides to terminate persons who have reached a certain seniority within the company, when these persons are, generally speaking, older than the persons with a more limited seniority.

As a rule, any difference in treatment based on a protected criterion is presumed to be discriminatory, unless the employer can demonstrate that it is objectively justified by a legitimate aim and proportionate means.

BELGIUM



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Furthermore, the law provides that - in the framework of an employment relation - a difference in treatment based on age, sexual orientation, belief or disability can only be justified by essential and determining professional requirements.

The law provides for sanctions against those who are found guilty of discrimination. No account is taken of whether they have consciously and deliberately broken the law. For example, if a person who is in the middle of a social transition is not recruited for that reason, this constitutes discrimination, regardless of whether the employer knew that this violated the law.

With regard to the burden of proof, the law provides for a specific mechanism: the victim will first have to prove the presumption of discrimination. Only when the court acknowledges the existence of such presumption, the employer will have to prove the absence of a discrimination. Only when the employer does not manage to prove the absence of the discrimination, the worker will be entitled to compensation.

With regard to the amount of the compensation, the victim can either claim compensation for the actual damage suffered, or the victim can opt for a lump sum compensation. If the victim chooses to claim compensation for the actual damage suffered, he/she must have evidence to prove the damage.

The amount of the lump sum compensation depends on the area in which the victim was discriminated against. If the discrimination takes place in the field of employment (e.g., during recruitment), the lump sum compensation amounts to six months' gross salary.

II. An example: discrimination of workers based on health/disability

Discrimination issues often take place when an employer considers terminating the employment of someone who is on illness leave. I

In our daily practice, we observe often two misunderstandings: either employers think that a contract cannot be terminated for any reason whatsoever during an illness leave, or they often think that a discrimination can be avoided if they wait until the employee has returned to work.

None of these assumptions is however correct, which has recently been illustrated in a decision rendered by the labour court of appeal in Brussels.

The facts:

A worker was the victim of a long period of incapacity for work and remained absent from work for +- 9 months.

On the very day he returns to work, he is dismissed with an indemnity in lieu of notice.

The employer's argument:

The employer invoked as grounds a reorganization of his department, which allegedly took place several months earlier, at the beginning of the period of incapacity for work. The worker contests his dismissal, considering it to be discriminatory and linked to his state of health.

The court's assessment:

The court confirmed that there is no general prohibition for employers to terminate an employment during a period of illness and that the timing of the dismissal does not protect the employer: dismissing an employee when they return to work does not protect the employer and may still be considered discriminatory.

Furthermore, the court decided that the fact that the employer invoked facts which took place several months before the dismissal (the reorganization) and that the dismissal took place on the very first day the employee returned to work, made the dismissal suspect, which triggered the existence of a presumption of discrimination.

Also, the court decided that the employer did not prove the reality of the invoked reorganization, nor why this employee (rather than another worker who was not incapacitated for work) had been dismissed.

Outcome:

The employer was ordered to pay a lump sum compensation equal to six months' gross salary.

III. What are the takeaways?

The law is strict and an employer cannot act lightly.

As soon as they identify that one of the protected criteria may be applicable, they must exercise extra caution. However, the fact that an employee is on illness leave does not prevent their employment contract from being terminated.

The reasons must be clearly proven (poor performance by the employee/elimination of the position/reorganization/etc.). Before implementing their decision, employers must ensure that they are able to prove not only the reasons, but also why they decided to terminate this employee rather than another.

It all comes down to evidence and the credibility of the reasons: if an employer wishes to proceed with dismissal in a context of incapacity for work, it is in their best interest to act when the reasons arise, rather than waiting for the employee to return.

If you have questions about dismissals in sensitive contexts or discrimination risks, feel free to contact us.



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PROHIBITION OF DISCRIMINATION IN THE EMPLOYMENT IN THE CZECH REPUBLIC

Introduction

In the Czech Republic, the prohibition of discrimination is enshrined in the Charter of Fundamental Rights and Freedoms and further elaborated in labour and anti-discrimination legislation implementing EU and international law. Workplace discrimination may have a wide range of consequences, the most significant legal provisions against workplace discrimination are outlined below.

Legal framework

Under the Czech Labour Code, employers have an obligation to ensure equal treatment of all employees with respect to their working conditions, remuneration for work and provision of other pecuniary fulfilments and fulfilments of pecuniary value, professional training, and opportunity for professional advancement. Except for admissible forms of difference of treatment, any discrimination of employees is prohibited, in particular, but not limited to discrimination on the grounds of gender, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, gender, language, state of health, age, religion or belief, property, marital and family status and relationship or obligations toward family, political or other opinion, membership and activities in political parties or political movements, in trade unions or employers' organizations. The Anti-Discrimination Act also prohibits persecution, i.e. the act of punishing, treating unfavourably or disadvantaging someone because they are lawfully asserting their rights or claims arising from the prohibition of discrimination.

According to the Czech Labour Code, employers are liable if their employees are discriminated against by other employees or third parties in connection with their work.

Under the Anti-Discrimination Act, discriminated employees are entitled to demand from the employer that the discrimination stops, that the consequences of such discrimination be removed and appropriate satisfaction. If the aforementioned remedy does not appear sufficient, particularly because the employee's good reputation or dignity or their standing in society has been significantly harmed as a result of the discrimination, the discriminated employee is also entitled to compensation for non-pecuniary damage.

CZECH REPUBLIC



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The amount of compensation shall be determined by the court taking into account the severity of the harm suffered and the circumstances under which the violation of the right occurred.

The Whistleblower Protection Act provides protection to employees who formally disclose information about an employer's wrongdoing, including discrimination. Discrimination may also result in significant penalties imposed on employers by the labour inspection authority.

The number of discrimination-related claims in the Czech Republic has increased in recent years, reflecting greater awareness of employees' rights and improved access to legal remedies. This trend is also influenced by evolving case law and a growing willingness of individuals to challenge discrimination before courts.

Last but not least, the transposition of Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms is expected to be adopted in 2026 and should help to strengthen the prohibition of gender-based discrimination.

Summary

In the Czech Republic, discrimination is prohibited by the Charter of Fundamental Rights and Freedoms and further regulated by labour and anti-discrimination laws. Employers must ensure equal treatment, may be held liable for discriminatory acts, and can face fines, while employees can seek remedies and compensation. The Whistleblower Protection Act safeguards those reporting wrongdoing, and the upcoming EU pay transparency rules (expected in 2026) will further strengthen anti-discrimination enforcement.



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Fair play at work: HOW GERMAN LAW PROTECTS AGAINST WORKPLACE DISCRIMINATION

FEDERAL REPUBLIC OF GERMANY

In Germany, workplace discrimination is primarily governed by the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG). Enacted in 2006, the AGG implements multiple European Union anti-discrimination directives into German law. Its purpose is to ensure comprehensive protection against discrimination based on race or ethnic origin, gender, religion or belief, disability, age, or sexual identity in both civil and employment law (§ 1 AGG).

Legal framework of the AGG

1. Scope of application

In employment law, the AGG covers every stage of the working relationship - from recruitment and hiring decisions to promotions, workplace conditions, and dismissal. Its anti-discrimination rules protect not only employees and job applicants, but also self-employed individuals and members of executive or management bodies, as far as access to employment and career advancement are concerned (§ 6 AGG).

2. Prohibition of direct and indirect discrimination

Discrimination can occur in different ways, whether directly or indirectly, and both forms are prohibited under the AGG (§ 3 AGG).

- Direct discrimination takes place when someone is treated less favourably explicitly because of a named protected characteristic.
- Indirect discrimination, by contrast, refers to apparently neutral rules or practices that put certain groups at a particular disadvantage without objective justification.

In addition, the AGG recognizes harassment, including sexual harassment, as a form of discrimination, as well as instructions to discriminate.

3. Permissible unequal treatment

At the same time, the AGG acknowledges that unequal treatment is not unlawful in every case. The law allows for limited exceptions, but only within narrowly defined statutory boundaries - for instance, where a specific characteristic is a genuine occupational requirement (§ 8 AGG). Depending on the circumstances, differences in treatment may also be justified on grounds of religion, belief, or age (§§ 9, 10 AGG). These exceptions are rare and must be evaluated in light of existing case law.

GERMANY



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4. Employer's organisational obligations

When recruiting, employers are required to draft job postings in a non-discriminatory manner (§ 11 AGG). As a negative example: Discrimination regularly arises when a job posting targets applicants of only one gender.

Further, employers are legally required to prevent discrimination within their organisations (§ 12 AGG). This obligation includes adopting preventive measures such as internal guidelines, employee training, and effective complaint procedures. If discrimination does occur, employers must take suitable action to address and stop it; failure to do may result in legal liability.

4. Legal consequences

In the event of violations of the prohibition of discrimination, the AGG allows affected individuals to claim damages for material harm and compensation for non-material harm (§ 15 AGG). Importantly, the AGG introduces a shift in the burden of proof for such claims: an applicant or employee only needs to present indications suggesting discrimination, leading to the employer then being required to prove that no violation took place (§ 22 AGG).

“AGG-hopper”

On the flip side, anti-discrimination laws are unfortunately strategically exploited by so called “AGG-hoppers”, posing risks for employers. AGG-hoppers often target discriminatory job postings, not with the intention of actually taking the job, but to identify formal or substantive violations of the AGG and pursue compensation.

Typical characteristics include:

- the application is deliberately made for obviously unsuitable positions,
- characteristics relevant to discrimination (e.g., age, gender, origin) are documented,
- after an expected rejection, compensation is demanded.

Case law - in particular the Federal Labour Court (BAG) - recognises that the AGG must not be used to abuse the law. Individuals who do not submit genuine applications are not considered “applicants” within the meaning of the AGG and therefore cannot claim compensation. However, successfully raising this objection in practice is challenging.

Conclusion

The AGG has significantly increased awareness of discrimination issues in the workplace and improved standards. Nevertheless, employers also face possible legal risks as a result.

Transparent recruitment processes, objective performance evaluations, and clear internal guidelines are essential. Employers should regularly review their policies and provide training to managers and HR professionals to ensure consistent application of anti-discrimination standards. In practice, it is also important to stay vigilant about potential areas of vulnerability and to prevent any appearance of discriminatory behaviour from the outset.

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LEGAL FRAMEWORK AND PRACTICAL GUIDANCE ON WORKPLACE ANTI-DISCRIMINATION IN LUXEMBOURG

DUCHY OF LUXEMBOURG

Anti-discrimination law in Luxembourg is anchored in several key legislative texts, reflecting the commitment to equality and fair treatment in the workplace. These provisions are designed to protect employees from unfair treatment based on specific, legally protected criteria, and to promote a culture of diversity and inclusion.

Legal framework

The main legal principles for anti-discrimination in Luxembourg are established in both the Labour Code and the Penal Code. In particular, the Luxembourg Labour Code contains the following key provisions:

- Articles L. 225-1 et seq.: addressing equal pay for men and women, these articles enshrine the principle that remuneration should not be influenced by gender.
- Articles L. 241-1 et seq.: focusing on discrimination in the workplace based on gender, these provisions prohibit differential treatment on the basis of sex including family status.
- Articles L. 251-1 et seq.: extending protection to other criteria, such sex, religion or beliefs, disability, age, sexual orientation, racial or ethnic origin.

The Luxembourg Criminal Code supplements these protections by criminalizing certain forms of discrimination, as set out in Articles 454 et seq. The grounds for discrimination in the Penal Code are more extensive than those in the Labour Code, and additionally cover, for example: skin colour, gender reassignment and gender identity, health status, morals, political or philosophical beliefs, trade union activities, and others.

Definition of discrimination

Discrimination occurs when an employee or group is treated less favourably than others due to specific protected characteristics. Luxembourg law prohibits unequal treatment based on these defined criteria. Harassment is also considered discrimination if it targets a protected characteristic and creates a hostile, intimidating, degrading, humiliating, or offensive environment. Discrimination can be hidden or subtle, and victims may not always be aware of it.

LUXEMBOURG



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Direct and indirect discrimination

The Labour Code distinguishes between direct and indirect discrimination:

- Direct discrimination occurs when a person is treated less favourably than another in a comparable situation, on the basis of a protected criterion. A classic example is paying women less than men for the same job.
- Indirect discrimination arises when an apparently neutral provision or practice puts certain groups at a disadvantage, unless justified by a legitimate aim and appropriate means. For instance, awarding a bonus only on the basis of physical effort may disproportionately disadvantage women or older employees.

Exceptions and Positive Action

Luxembourg law allows exceptions to non-discrimination, such as protections for pregnant women, disabled people and justified age distinctions. Employers may require specific characteristics for certain jobs and implement positive measures for under-represented groups, with Ministry of Equal Opportunities approval.

Formalities to be respected by the Employers

Employers have a fundamental responsibility to uphold non-discrimination principles at every stage of employment, from hiring to termination. This generally involves certain formalities, such as performance evaluations or time records, access to training, promotions, etc. While employers are legally required to respect non-discrimination principles, preventive or awareness-raising initiatives are optional but encouraged.

The Inspectorate of Labour and Mines oversees compliance, can mediate disputes, may intervene with employers following complaints or on its own initiative, and is also empowered to impose administrative fines in cases of non-compliance.

Conclusion

The legal framework for anti-discrimination in Luxembourg combines labour and criminal law provisions to protect employees from unfair treatment, setting clear boundaries on what constitutes unlawful discrimination.

As workplaces evolve and diversity becomes increasingly valued, understanding and complying with these rules is essential.



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THE DUTCH FRAMEWORK FOR PREVENTING WORKPLACE DISCRIMINATION

THE NETHERLANDS

Introduction

Discrimination at work is a serious breach of fundamental rights and it undermines equal opportunities in the labour market. Dutch law contains a broad legal framework to protect employees and job applicants against unequal treatment. Below the main statutory provisions that prohibit workplace discrimination in the Netherlands will be highlighted.

Constitutional framework

The starting point is Article 1 of the Constitution of the Netherlands, which is the cornerstone of Dutch equal treatment law. It requires that all persons be treated equally in equal circumstances and prohibits discrimination on grounds such as religion, belief, political opinion, race, sex, disability and sexual orientation – “or on any other grounds whatsoever”. This constitutional principle is further developed in more detailed legislation, including the laws and regulations discussed below.

General Equal Treatment Act

A central piece of legislation is the General Equal Treatment Act (Algemene Wet Gelijke Behandeling”). It prohibits discrimination on grounds including religion or belief, political opinion, race, sex, nationality, pregnancy, heterosexual or homosexual orientation, and marital status. Importantly, discrimination “on grounds of sex” also covers discrimination relating to sex characteristics, gender identity and gender expression.

The Act also prohibits harassment, including sexual harassment, and applies across the employment lifecycle: recruitment and selection, terms and conditions of employment, promotion, access to training, and dismissal. Direct discrimination is prohibited unless a specific statutory exception applies. Indirect discrimination may be permitted only where it is objectively justified, i.e., where it pursues a legitimate aim and the means used are appropriate and necessary.

Specific Equal Treatment Legislation

In addition to the General Equal Treatment Act, the Netherlands has several specific statutes addressing particular grounds of discrimination:

The Equal Treatment of Men and Women Act (Wet gelijke behandeling van mannen en vrouwen) addresses unequal treatment between men and women in employment.

THE NETHERLANDS



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The Act allows limited exceptions, for example for positive action measures intended to remedy disadvantage, or where sex is a genuine and determining occupational requirement. As with other Dutch equal treatment laws, indirect discrimination may be permissible only where it is objectively justified.

The Equal Treatment on the Grounds of Age in Employment Act (Wet gelijke behandeling op grond van leeftijd bij de arbeid) protects individuals against age discrimination—for instance where a person is considered “too old” or “too young”. Direct and indirect age discrimination are prohibited, unless the distinction can be objectively justified by a legitimate aim and the means used are appropriate and necessary.

The Equal Treatment on the Grounds of Disability or Chronic Illness Act (Wet gelijke behandeling op grond van handicap of chronische ziekte) prohibits discrimination based on disability or chronic illness. It also requires employers, upon request, to provide effective reasonable accommodation for persons with a disability or chronic illness, unless this would impose a disproportionate burden on the employer. The Act permits exceptions in specific situations, such as necessary safety measures or positive action intended to remedy disadvantage. Indirect discrimination may likewise be permissible only where it is objectively justified.

These statutory protections apply across virtually the entire employment relationship, including the formation and termination of the employment contract, terms and conditions of employment, and working conditions.

The Dutch Civil Code

In addition to the specific equal treatment statutes, the Dutch Civil Code (Burgerlijk Wetboek, “DCC”) contains three key anti-discrimination provisions relevant to employment. First, Section 7:646(1) DCC largely mirrors the Equal Treatment of Men and Women Act and prohibits discrimination between men and women in the workplace.

Second, Section 7:648(1) DCC prohibits discrimination based on working hours. An employee may not be treated less favourably in connection with the conclusion, continuation or termination of an employment contract on the ground that they work part-time or full-time, unless the distinction is objectively justified.

Third, Section 7:649(1) DCC prohibits discrimination based on the fixed-term or indefinite nature of the employment contract. Employers may not treat employees differently in their terms and conditions of employment on that basis, unless the distinction is objectively justified.

Enforcement

Any contractual provision that conflicts with the above anti-discrimination rules is null and void. In other words, it is treated as if it never existed: the provision is invalid by operation of law (as it contravenes mandatory law) and cannot be enforced.

Where an employee’s employment is terminated in breach of these protections, the employee may bring proceedings before the subdistrict court (kantonrechter). Depending on the circumstances, the employee may seek annulment of the dismissal and/or an award of fair compensation (billijke vergoeding). Alleged discrimination can also be submitted to the Netherlands Institute for Human Rights (College voor de Rechten van de Mens). The Institute’s opinions are not legally binding, but they are influential in practice. As an independent expert body, it assesses whether discrimination has occurred, although it cannot impose sanctions. Dutch courts must, however, give such opinions due consideration when deciding related disputes.

Summary

The Dutch legal framework provides broad and detailed protection against discrimination in the workplace. Employers are required to strictly comply with this legislation and to actively ensure equal treatment and a safe working environment. For employees, this body of law constitutes an important instrument to challenge unjustified unequal treatment.

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PROHIBITION OF DISCRIMINATION IN EMPLOYMENT IN POLAND

REPUBLIC OF POLAND

Prohibition of discrimination in employment in Poland

The prohibition of discrimination, including in employment, is enshrined in Article 32 of the Constitution of the Republic of Poland, the Labour Code, and other laws.

A general prohibition of discrimination in employment relations is contained in Article 113 of the Labour Code. Any discrimination in employment, whether direct or indirect, is unacceptable, in particular on the grounds of: gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, sexual orientation, as well as fixed-term or indefinite employment, or full-time or part-time employment.

The provisions in question apply only to employment under labour relations. They do not regulate employment under civil law contracts or the relationship between a company commissioning a service and a subcontractor who performs work as a so-called self-employed person.

The principle of equal treatment in employment

Pursuant to Article 183a § 1 of the Labour Code, employees should be treated equally in terms of establishing and terminating employment relationships, employment conditions, promotion,

and access to training to improve professional qualifications, in particular regardless of gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, creed, sexual orientation, and regardless of whether they are employed for a fixed or indefinite period or on a full-time or part-time basis.

Under Polish labour law, a violation of the principle of equal treatment in employment is considered to be the differentiation of an employee's situation primarily (but not exclusively) based on one or more of the above-mentioned criteria of discrimination. First, the circumstances underlying this allegation should be stated, and then the criterion (reason) on which the employee was treated differently should be indicated.

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Criteria for discrimination

According to Supreme Court ruling, the list in Article 183a § 1 of the Labour Code, referring to the employee, is open-ended. This means that an employee may indicate other reasons for discrimination, e.g., their family situation, health, or marital status.

Types of a discrimination

The Labour Code distinguishes between two forms of discrimination: direct and indirect.

Within the meaning of Article 183a § 3 of the Labour Code, direct discrimination is a situation in which an employee, for one or more discriminatory reasons, has been, is, or could be treated less favourably than other employees in a comparable situation. Direct discrimination concerns the individual relationship between an employee and an employer or between a person intending to enter into an employment relationship and a potential employer. It occurs when an employer treats an employee less favourably than other employees for a reason specified in Article 183a § 1 of the Labour Code.

According to Article 183a § 4 of the Labour Code, indirect discrimination exists when, as a result of an apparently neutral provision, criterion, or action, there are disparities in employment conditions to the detriment of all or a significant number of employees belonging to a group distinguished based on one or more grounds, if other objective reasons cannot justify these disparities. Indirect discrimination occurs when an employer treats a group of employees unfavourably based on an apparently neutral criterion.

Furthermore, discrimination also includes encouraging another person to violate the principle of equal treatment in employment or ordering them to violate this principle, as well as unwanted behaviour whose purpose or effect is to violate the dignity of an employee and create an intimidating, hostile, degrading, humiliating, or offensive atmosphere (harassment).

The provisions of the Labour Code also stipulate that discrimination based on sex also includes any unwanted conduct of a sexual nature or relating to the sex of an employee, the purpose or effect of which is to violate the dignity of the employee, in particular to create an intimidating, hostile, degrading, humiliating, or offensive environment for them; such behaviour may consist of physical, verbal, or nonverbal elements (sexual harassment).

Discrimination, harassment, and sexual harassment

The provisions of the Labour Code also stipulate that discrimination based on sex also includes any unwanted conduct of a sexual nature or relating to the sex of an employee, the purpose or effect of which is to violate the dignity of the employee, in particular to create an intimidating, hostile, degrading, humiliating, or offensive environment for them; such behaviour may consist of physical, verbal, or nonverbal elements (sexual harassment).

Burden of proof - exemption

According to Article 6 of the Civil Code, the burden of proving a fact rests with the person who derives legal consequences from that fact. In discrimination cases, the situation is different. Article 183b § 1 of the Labour Code exempts the employee from the need to prove discrimination. The burden of proof consists of the employee's obligation to present facts from which discrimination can be presumed (substantiation of discrimination), and the employer's obligation to prove that they did not discriminate against the employee.

Discrimination & unequal treatment

Not all unequal treatment constitutes discrimination. An employer may therefore treat individual employees differently (unequally) if there are objective reasons for such treatment.

Secondly, the principles of equal treatment in employment are also not violated by actions that are proportionate to the achievement of a legitimate objective of differentiating the situation of an employee, including the use of:

1. measures that differentiate the legal situation of an employee on the grounds of parental protection or disability,
2. The criterion of length of service when determining remuneration rules.

Measures taken for a limited period of time to equalise opportunities for all or a significant number of employees (e.g., age, disability, gender) by reducing actual inequalities in favour of such employees do not constitute a violation of the principle of equal treatment in employment.

Measures taken for a limited period of time to equalise opportunities for all or a significant number of employees (e.g., age, disability, gender) by reducing actual inequalities in favour of such employees do not constitute a violation of the principle of equal treatment in employment.

Employee claims

A person against whom an employer has violated the principle of equal treatment in employment is entitled to compensation in an amount not lower than the minimum wage (in 2026, this is PLN 4,806 gross, i.e., EUR 1,140 gross). There is no upper limit on the amount of compensation.

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AGE DISCRIMINATION IN THE WORKPLACE IN PORTUGAL

PORTUGUESE REPUBLIC

Introduction

After being relegated to a secondary role, age discrimination in the workplace has been attracting increase attention from European legal literature and case law.

The focus placed on age in the employment context is, in fact, driven by different motivations: first, the necessary protection of the dignity of the employees affected. Nevertheless, as is commonly pointed out, it is not feasible to disregard economic and social considerations of great importance, such as the tendency to extend working life (and not merely biological age), the marked decline in birth rates and the effects associated with these factors, which impact the policies designed by each country: the imbalance of the age pyramid and the (in)sustainability of social security systems; the pressing concern with levels of youth unemployment—which coexists, side by side, with the need to counter particular resistance to the inclusion of older workers in the labour market; and it is also necessary to consider the adjustments introduced to the age bracket that should condition access to old-age retirement (whether voluntary or mandatory) – with changes that currently tend towards a preference for more advanced ages.

In this context, attention must be paid to the framework set out in Articles 4 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (“Directive”), which established a general framework for equal treatment in employment.

Differential treatment

Recruitment

CASE 1

In *Colin Wolf v. Stadt Frankfurt am Main**, concerning recruitment for entry into the fire service, the Court of Justice of the European Union (hereinafter, “CJEU”) held that, in that case—having regard to the training period required and the establishment of a maximum age for the performance of duties involving greater physical demands—the Directive “did not preclude national legislation [...] which set the maximum age for recruitment at 30 years”.

***Judgement of 12 January 2010,
Case No. C-229/08**

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In fact, the aim pursued by such a restriction was consistent with §18 of the Preamble, according to which the Directive “could not have the effect, in particular, of requiring the armed forces, the police, prison or emergency services to recruit or retain in employment persons who do not have the necessary capacities to perform all the duties that they might be required to carry out, within the scope of the legitimate objective of maintaining the operational capacity of the respective services”.

The limitation also appeared to satisfy the proportionality test, since “the age at which the official is recruited determines the length of time during which he will be able to carry out physically demanding tasks”. It was, indeed, shown that, within the activity in question, “an official recruited before the age of 30, bearing in mind that he must undergo two years of training, may be assigned to such tasks for at least 15 to 20 years. By contrast, if he is recruited at the age of 40, that period will be, at most, 5 to 10 years”. The Court therefore concluded that this restriction was compatible with the Directive’s regime, since “recruitment at an advanced age” would exclude “an excessively high number of officials” from more physically demanding duties.

CASE 2

In a judgement of 8 September 2011 (*Sabine Hennigs v. Eisenbahn-Bundesamt and Land Berlin v. Alexander Mai**), the CJEU was required to assess whether the Directive precluded a collective agreement providing that, within each professional level, the pay step would be determined according to age at the time of recruitment.

Under the scheme thus established, “the basic pay received by two employees recruited on the same day at the same grade would differ depending on the age they had at the time of that recruitment”.

***Joined Cases C-297/10 and C-298/10.**

Given that the existence of differential treatment was assumed, it remained to be examined whether, considering Article 6 of the Directive, such treatment could be regarded as justified.

Two arguments were advanced to support this variation: older workers would, as a rule, bear greater financial burdens and would tend to have greater professional experience.

Whilst the first objective did not persuade the Court, since no clear correlation between age and financial responsibilities had been demonstrated, the second purpose—compensating greater professional experience—although legitimate, was not, in the CJEU’s view, adequately pursued through this means: although length of service may be consistent with such an aim, age does not necessarily reflect professional experience. The CJEU therefore held that the Directive precluded the remuneration scheme described.

Termination

Alongside other cases, attention should be drawn to the CJEU judgement in *Vasil Ivanov Georgiev v. Tehnicheski Universitet – Sofia, Plovdiv Branch**. Among other issues, the case concerned a provision of Bulgarian legislation establishing that once the statutory retirement age was reached (in that case, 65 years), if the worker remained in service, their open-ended employment contract would be converted into a fixed-term contract. Having identified an obvious difference in treatment affecting those workers in comparison with others (of a lower age) who were not subject to such conversion, it was necessary to assess its conformity with the Directive.

Although, in principle, the legitimacy of the stated objectives was acknowledged—namely, “to allocate teaching posts optimally among the generations, in particular through the recruitment of young professors”, and “the coexistence of different generations of teaching staff and researchers”

***Judgment of 18 November 2010, Joined Cases C-250/09 and C-268/09**

–it was necessary to assess whether the contractual conversion was an appropriate means of achieving those aims. And, notwithstanding the reference to the Mangold case law, the CJEU concluded, on this occasion, that the specific features of the case justified a finding of compatibility with the Directive: essentially because the conversion did not depend solely on the worker having reached a certain age, but rather, above all, on the fact that the worker had acquired the right to an old-age pension.

Conclusion

Solutions that entail either a benefit or a disadvantage for workers on the grounds of age must be carefully assessed, as increased litigation based on age can be anticipated in the medium term. It is, therefore, reasonable to admit that the growing body of case law and the impact of such decisions on procedures that had long gone unquestioned may lead to unexpected outcomes.

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LEGAL PROVISIONS AGAINST WORKPLACE DISCRIMINATION

KINGDOM OF SWEDEN

Legal basis and framework

Sweden has comprehensive legislation aimed at combating discrimination in the workplace and promoting equal rights and opportunities regardless of sex, gender identity or expression, ethnicity, religion or other beliefs, disability, sexual orientation or age. This is achieved primarily through the Discrimination Act (the "Act") but there is also legal protection against discrimination linked to parental leave in the Parental Leave Act. This newsletter provides an overview of the key legal provisions protecting employees and job seekers from workplace discrimination.

The Discrimination Act

Protected grounds

The Act prohibits discrimination on seven grounds: sex, gender identity or expression, ethnicity, religion or other beliefs, disability, sexual orientation and age. These terms are specifically defined in the Act.

Forms of discrimination

There are six forms of discrimination; direct discrimination, indirect discrimination, lack of accessibility, harassment, sexual harassment and instructions to discriminate.

Direct discrimination occurs when someone is treated less favourably than another person is, has been or would be treated in a comparable situation, if the disadvantage is related to any of the protected grounds.

Indirect discrimination occurs when someone is disadvantaged by the application of a provision, criterion or practice that appears neutral but which may particularly disadvantage persons with a certain protected ground, unless the provision, criterion or practice has a legitimate aim and the means used are appropriate and necessary to achieve that aim. The other forms of discrimination are also further defined in the Act.

Prohibition of discrimination in the workplace

The Act prohibits employers against discriminating employees, job applicants, those seeking or undertaking internship, or hired or borrowed workers. The prohibition covers all protected grounds and all forms of discrimination.

SWEDEN



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There are certain exemptions from the discrimination prohibition, e.g. is differential treatment permitted if:

- the requirement constitutes a genuine and determining occupational requirement with a legitimate purpose (based on the nature or context of the work) and the requirement is appropriate and necessary to achieve that aim;
 - the measure is taken to promote equality between women and men and regards other than pay or other terms of employment;
1. regards age limits for entitlement to pension, survivors', or disability benefits in individual or collective agreements; or
 2. it is based on age and it has a legitimate purpose and the measure is appropriate and necessary to achieve that aim.

The prohibition applies at all stages of employment, including recruitment, and it is sufficient that one of the protected grounds is one of several reasons for a specific measure to constitute discrimination under the act.

Employer obligations

Investigation and Action Against Harassment

An employer who becomes aware of that an employee considers they have been subjected to harassment or sexual harassment in connection with work, the employer is obliged to investigate the circumstances surrounding the alleged harassment and, where appropriate, take relevant and reasonable measures to prevent harassment in the future.

Information on merits

An employer is also obliged, upon request from (i) a job applicant who has not been hired or selected for an interview, or from (ii) an employee who has not been promoted or selected for training for promotion, to provide a written statement specifying the education, professional experience, and other qualifications possessed by the person who was selected. This information may be used by the job applicant or employee in a discrimination claim towards the employer.

Active measures

An employer shall also take active measures to preventive discrimination and promote equal opportunities in the organisation. This work must cover working conditions, provisions and practices concerning salaries and other employment terms, recruitment and promotion, training and other competence development, and opportunities to combine paid work with parenthood. Employers must have guidelines and routines for their operations aimed at preventing harassment, sexual harassment and reprisals. The active measure shall be documented in writing if the employer has 25 or more employees.

Pay surveys

Employers shall annually conduct pay surveys with the aim to investigate, rectify and prevent unmotivated salary gaps between men and women.

Burden of proof

There is a special rule on the burden of proof in discrimination cases. If the person who considers themselves having been subject to discrimination can demonstrate circumstances giving reason to assume that discrimination has occurred, the burden of proof shifts to the employer, who must show that discrimination has not occurred.

Remedies

Breach of the prohibitions against discrimination or reprisals, or the obligation to investigate and take measures against harassment or sexual harassment, may render liability to pay financial and/or general damages to the victim. Such damages may be considerable.



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PROHIBITION OF DISCRIMINATION IN EMPLOYMENT IN SWITZERLAND

THE SWISS CONFEDERATION

Introduction

Swiss employment law does not provide a comprehensive anti-discrimination framework. Instead, protection results from general principles of private law, influenced by constitutional values, and from specific statutory provisions.

This article outlines the legal protection against workplace discrimination under Swiss law, with a particular focus on termination of employment. It examines abusive dismissal based on personal characteristics under the Swiss Code of Obligations (“CO”) and the special regime governing gender-based discriminatory dismissal under the Federal Act on Gender Equality (“GEA”), which prevails as *lex specialis* and provides enhanced procedural protection.

General Protection Against Discrimination in Employment Relationships

Article 328 CO obliges the employer to respect and protect the employee’s personality and constitutes the primary legal basis for protection against discriminatory treatment in private employment relationships. This duty may be violated where an employee is unjustifiably disadvantaged on the basis of personal characteristics in areas such as recruitment, remuneration, promotion, working conditions, or termination.

The concept of personality is interpreted broadly and includes characteristics such as age, nationality, sexual orientation, religion, disability, and lifestyle. However, Swiss law does not provide specific statutory protection against discrimination on these grounds.

Swiss employment law, however, does not recognise a general principle of equal treatment among employees. With the exception of gender equality, which is governed by the GEA, employers are in principle free to differentiate between employees, even arbitrarily, provided such differentiation does not infringe mandatory law or personality rights.

Unequal treatment becomes legally relevant only where it amounts to a discriminatory disadvantage of an individual employee or a minority group in comparison with a larger group of employees, and where such disadvantage is based on a personal characteristic that is irrelevant to the employment relationship. In such cases, discriminatory treatment may constitute a violation of the employer’s duty of care and the employee’s personality rights under Article 328 CO.

SWITZERLAND



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Abusive Dismissal Under Article 336 CO

Swiss employment law allows termination without cause, subject to notice periods. This freedom is limited by Article 336 CO, which prohibits abusive dismissal. Under Article 336 paragraph 1 letter a CO, a dismissal is abusive if it is based on a personal characteristic inherent to the employee's personality, unless that characteristic is relevant to the employment relationship or significantly impairs workplace cooperation. Typical examples include dismissals based on age, nationality, ethnic origin, religion or belief, political opinion, health condition or disability, sexual orientation, or gender identity where no objective connection to job performance exists.

An abusive dismissal does not invalidate the termination but gives rise to a claim for compensation of up to six months' salary under Article 336a CO. The employee must object to the dismissal before the end of the notice period and bring a claim within 180 days. The burden of proof rests largely with the employee.

Gender-Based Discriminatory Dismissal Under the GEA

Discriminatory dismissal based on gender is governed by the GEA, which generally prevails over the CO. The GEA applies to all aspects of employment and covers direct and indirect discrimination, including discrimination related to pregnancy, childbirth, motherhood, and family responsibilities.

The GEA provides significant procedural advantages. The employee must only make discrimination plausible, shifting the burden of proof to the employer. In cases of discriminatory dismissal, compensation of up to six months' salary may be awarded. The GEA also allows for claims aimed at maintaining the employment relationship and facilitates access to justice through specific procedural rules.

Absence of Special Protection for Other Forms of Discrimination

Swiss law does not provide comparable special statutory protection for discrimination based on age, sexual orientation, nationality, religion, or disability. In such cases, employees must rely on the general duty of care and the prohibition of abusive dismissal under Article 336 CO (see above Section 3). As a result, the level of legal protection varies depending on the ground of discrimination.

Summary & outlook

Swiss employment law offers protection against workplace discrimination through a combination of general contractual duties and specific statutory provisions. While the employer's duty of care and the concept of abusive dismissal provide a basic level of protection against discriminatory conduct, they remain limited in their remedial scope.

Gender discrimination occupies a special position under Swiss law. The GEA, as a *lex specialis*, not only prevails over the CO but also introduces substantive and procedural mechanisms that substantially enhance legal protection.

The absence of equivalent statutory regimes for other forms of discrimination continues to be a subject of legal and political debate. From a comparative and policy-oriented perspective, the question remains whether Swiss employment law should move toward a more comprehensive and uniform anti-discrimination framework in the future.

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PROHIBITION OF DISCRIMINATION IN EMPLOYMENT IN THE UK

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Introduction

The Equality Act 2010 ("the Act") is the central piece of UK legislation governing discrimination in the workplace. It brings together discrimination law into a single, coherent framework intended to protect individuals and promote fair treatment. For employers, the Act imposes clear duties which range from preventing discriminatory conduct to managing risks linked to third-party behaviour.

The scope of the Equality Act 2010

The Act applies broadly to employment relationships, vocational training, work placements, and the functions of public authorities. Employers must understand not only direct employment obligations but also that wider workplace interactions may fall within scope.

Definitions of discrimination under the Act

The Equality Act 2010 recognises several forms of unlawful discrimination. Employers should be aware of each type to ensure compliance and reduce legal risk.

Direct discrimination

Direct discrimination occurs when a person is treated less favourably than another person because of a protected characteristic.

Indirect discrimination

Indirect discrimination arises when an apparently neutral Provision, Criterion or Practice ("PCP") puts individuals with a protected characteristic at a particular disadvantage compared with others. Employers can defend an indirect discrimination claim only if the PCP is a proportionate way of achieving a legitimate aim.

Harassment

Harassment is unwanted conduct related to a protected characteristic that violates dignity or creates an intimidating/hostile/humiliating environment. This can be verbal, non-verbal or physical.

Victimisation

Victimisation occurs when a person is treated unfavourably because they made, supported or were suspected of making a complaint under the Equality Act.

Discrimination Arising from Disability

This form of discrimination is specific to disability and occurs when an individual is treated unfavourably because of something arising in consequence of their disability, unless the treatment is a proportionate means of achieving a legitimate aim.

Failure to Make Reasonable Adjustments

Employers have a duty to take reasonable steps to remove or mitigate disadvantages experienced by disabled employees or job applicants. A failure to comply with this duty constitutes unlawful discrimination.

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Protected characteristics under the Equality Act 2010

The Act protects individuals from discrimination based on the following nine protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

These characteristics cover a wide range of personal attributes and life circumstances, so employers should review policies, practices and culture for any unintended bias.

Third party liability, what employers need to know (now and next)

Current position

There is currently no standalone statutory test specifically for third-party harassment under the Act. However, employers may still be liable where they fail to take reasonable steps to prevent a hostile or discriminatory environment.

Changes under the Employment Rights Act 2025

The Employment Rights Act 2025 re-introduces employer liability for third party harassment across relevant protected characteristics where the third party harasses an employee in the course of their employment and the employer fails to take all reasonable steps to prevent it. This is expected to come into force in late 2026. To rely on the reasonable steps defence, employers should consider adequate training for employees, documented interventions, risk assessments and reporting channels.

Summary

The Equality Act 2010 remains the cornerstone of UK discrimination law, placing extensive obligations on employers to safeguard equality, dignity, and fairness in the workplace. To reduce risk, employers should be aware of the legal definitions of discrimination, the nine protected characteristics and any risks arising from third parties. This is essential for legal compliance and good HR practice.

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The ILLN is delighted to welcome a Czech law firm **Aegislaw** as one of its new members

About Aegis Law

Aegis Law, a law firm based in Prague, Czech Republic, is an innovative addition to the Czech legal landscape since 2022 that leverages a potent combination of legal experience, creativity, and industry expertise to offer superior legal solutions. Despite their newcomer status, Aegis Law has quickly attracted many high-profile international brands as clients and strives to become one of the leading brands in the Czech Republic. Today, with a team of more than 40 persons, Aegis Law provides comprehensive services across all key areas of law, with employment law belonging to their flagship practices.

Employment Law Team

The employment law team, led by the seasoned Tomáš Procházka, is one of the largest and most respected in the Czech Republic. The team offers an unrivalled depth of knowledge across transactional, contentious and advisory facets of employment law. Aegis Law's market-leading practice represents employers in high-stakes scenarios, standing out for its acumen in redundancies, disputes, and collective bargaining.

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Should you have any further questions,
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