

Introduction

The Employment Equality Acts 1998 and 2004:

- Promote Equality
- Prohibit discrimination (with some exemptions) across nine grounds
- Prohibit sexual harassment and harassment
- Prohibit victimisation
- Require appropriate measures for people with disabilities in relation to access, participation and training in employment
- Allow positive action measures to ensure full equality in practice across the nine grounds.

Scope

Aspects of employment that are covered include:

- Advertising
- Equal pay access to employment
- Vocational training and work employment
- Terms and conditions of employment
- Promotion or re-grading
- Classification of posts
- Dismissal
- Collective agreements.

The Acts apply to:

- Full-time, part-time and temporary employees
- Public and private sector employment
- Vocational training bodies
- Employment agencies
- Trade unions, professional and trade bodies.

The Acts also extend to:

- The self-employed
- Partnerships
- People employed in another person's home.

Grounds

The legislation prohibits discrimination on the following nine grounds:

- **The gender ground:** A man, a woman or a transsexual person (specific protection is provided for pregnant employees or in relation to maternity leave);
- **The marital status ground:** Single, married, separated, divorced or widowed;
- **The family status ground:** A parent of a person under 18 years or the resident primary carer or a parent of a person with a disability;
- **The sexual orientation ground:** Gay, lesbian, bisexual or heterosexual;
- **The religion ground:** Different religious belief, background, outlook or none;
- **The age ground:** This applies to all ages above the maximum age at which a person is statutorily obliged to attend school;
- **The disability ground:** This is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions;
- **The race ground:** A particular race, skin colour, nationality or ethnic origin;
- **The traveller community ground:** People who are commonly called Travellers, who are identified both by Travellers and others as people with a shared history, culture and traditions, identified historically as a nomadic way of life on the island of Ireland.

Discrimination

Discrimination has a specific meaning in the Acts.

Discrimination is described as the treatment of a person in a less favourable way than another person **is, has been or would be** treated in a comparable situation on any of the nine grounds.

There are different types of discrimination covered by the Acts including **indirect discrimination, discrimination by imputation** and **discrimination by association**.

Discrimination is defined as the treatment of a person in a less favourable way than another person **is, has been or would be** treated in a comparable situation on any of the nine grounds which **exists, existed, may exist in the future**, or is imputed to the person concerned. The instruction to discriminate is also prohibited.

- **Indirect Discrimination** – happens where there is less favourable treatment in effect or by impact. It happens where people are, for example, refused employment or training not explicitly on account of a discriminatory reason but because of a provision, practice or requirement which they find hard to satisfy. If the provision, practice or requirement puts people who belong to one of the grounds covered by the Acts at a particular disadvantage then the employer will have indirectly discriminated, unless the provision is **objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary**.

- **Discrimination by association** – this happens where a person associated with another person (belonging to a specified ground) is treated less favourably because of that association.

Advertising

It is prohibited to publish, display or cause to be published or displayed an advertisement which related to employment which indicates an intention to discriminate or might be reasonably understood to indicate such an intention.

Equal pay

The Acts provides for **equal pay** for **like work**. Like work is defined as work that is the **same, similar or work of equal value**.

It is a term of everyone's contract of employment that there is an entitlement to equal pay. Equal pay claims can be taken on any of the nine discriminatory grounds.

Sexual Harassment and Harassment

Sexual harassment and harassment of an employee (including agency workers or vocational workers) is prohibited in the workplace or in the course of employment by

- a) Another employee
- b) The employer
- c) Clients, customers or other business contacts of an employer including any other person with whom the employer might reasonably expect the victim to come into contact and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to control it.

The Acts prohibit the victim being treated differently by reason of rejecting or anticipated the harassment (or it could reasonably be anticipated that he or she would be so treated).

What is harassment and sexual harassment?

Harassment is any form of **unwanted conduct** related to **any** of the **discriminatory grounds**.

Sexual harassment is any form of **unwanted verbal, non-verbal or physical conduct of a sexual nature**.

In both cases it is conduct which has the **purpose or effect of violation a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person**.

In both cases the **unwanted conduct** may include **acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.**

Sexual harassment or harassment of an employee is discrimination by the employer. It is a defence for an employer to prove that the employer took reasonably practicable steps to prevent the person harassing or sexually harassing the victim or (where relevant) prevent the employee from being treated differently in the workplace or in the course of employment (and to reverse its effects if it has occurred).

The equality Authority has published a Code of Practice on Sexual Harassment and Harassment at work, which has been approved by the Minister (S.I. No. 78 of 2002). This is available from the Equality Authority.

Disability – Reasonable Accommodation

An employer is obliged to take **appropriate measures** to **enable** a person who has a disability –

- To have **access** to employment
- To **participate or advance in employment**
- To **undertake training**

unless the measures would impose a disproportionate burden on the employer.

What are appropriate measures?

They are effective and practical measures to adapt the employer's place of business including:

The adaptation of premises and equipment, patterns of working time, distribution of tasks or the provision of training or integration resources.

The employer is not obliged to provide any treatment, facility or thing that the person might ordinarily or reasonably provide for himself or herself.

What is disproportionate burden?

In determining whether the measures would impose a disproportionate burden, account is taken of

- a) The financial and other costs entailed
- b) The scale and financial resources of the employer's business, and
- c) The possibility of obtaining public funding or other assistance.

Positive Action

Employers can take steps with a view to **ensuring full equality in practice between** employees on all of the nine discriminatory grounds.

Victimisation

It is unlawful for an employer to penalise an employee for taking action around the enforcement of the Employment Equality Acts 1998 – 2004 and Equal Status Acts 2000 – 2004. Victimisation occurs where there is a reaction by the employer to

- a) A complaint of discrimination made by the employee to the employer,
- b) Any proceedings by a complainant,
- c) An employee having represented or otherwise supported a complainant,
- d) The work of an employee having been compared with that of another employee for any of the purposes of these Acts or any enactment repealed by these Acts,
- e) An employee having been witness in any proceedings under these Acts or any such repealed enactment
- f) An employee having opposed by lawful means an act which is unlawful under these Acts or any such repealed enactment, or
- g) An employee having given notice or an intention to take any of the actions mentioned in the preceding paragraphs.

Vicarious Liability

Employers are liable for anything done by an employee in the course of his or her employment, unless the employer can prove that he or she took reasonably practicable steps to prevent the discrimination.

General Exemptions

The prohibition on discrimination is subject to a number of general and specific exemptions. Some of the exemptions apply to particular types of employment, some apply to all kinds of employment, some apply to particular grounds and some apply to provisions in other legislation. The full number and extent of the exemptions go beyond the scope of this booklet.

The main exemptions applying to particular types of employment:

Exemptions in relation to all types of employment

a) Capacity and competence

- An employer is not required to employ someone who will not undertake the duties or is not fully competent or capable of doing the job. However, a person with a disability is fully competent and capable of undertaking any duties if the person would be so fully competent and capable on reasonable accommodation being provided by the employer

b) Educational, technical or professional qualifications

- The Act allows requirements in relation to the holding of specified educational, technical or professional qualifications which are generally accepted qualifications in the State for the post in question.
- The Act allows requirements in relation to the production and evaluation of information about any production other than such a specified qualification

c) Benefits in respect of an employee's family

- The Acts allows employers to provide certain benefits in respect of employee's families and family events and in relation to the provision of childcare or other care provision.

Exemptions in relation to occupational requirements

a) In relation to officers or servants of the State (including the Garda Siochana and the Defence Forces) and officers or servants of a local authority, a harbour authority, a health service executive area or a Vocational Education Committee

- The application of any provision in relation to proficiency in the Irish language is allowed

b) In relation to teachers in primary and post primary schools

- The application of any provision in relation to proficiency in the Irish language is allowed

c) In relation to the Defence Forces

- There is an exemption on the age and disability grounds

d) In relation to employment in another person's home for the provision of personal services

- There is an exemption in relation to access to such employment (this exemption does not extend to other areas such as conditions of employment etc.)

e) In relation to employment in the Garda Siochana or the Prison Service

- There is an exemption on the gender ground in relation to the assignment to a particular post based on issues of privacy or decency, the control of violent individuals or crowds and the rescue of hostages
- There are exemptions in relation to the application of height criteria for men and women and to the maintenance of a sufficient number of either men or women in the Garda Siochana or Prison Service.

The main exemptions applying to particular grounds

a) In relations to all grounds – Occupational requirement

- Difference in treatment is allowed which is based on a characteristic related to any of the nine grounds in respect of access to employment but only to the extent that the characteristic constitutes a genuine and determining occupational requirement proportionate

b) In relation to the gender and marital status grounds – pregnancy, maternity & breastfeeding

- Treatment which confers benefits on women in connection with pregnancy and maternity including breastfeeding is allowed
- Anything done in compliance with any provisions of the maternity protection and adoptive leave legislation is not discrimination on the material status ground

c) In relation to the age ground

- An employer may set a minimum age not exceeding eighteen years in recruitment and may offer a fixed term contract to a person over the compulsory retirement age
- Exemptions are provided in relation to age based criteria for occupational benefits and severance pay provided it does not constitute discrimination on the gender ground
- Exemptions are provided in relation to terms to collective agreement to the effect that where length of service would otherwise be regarded as equal, seniority may be determined by reference to relative ages of employees
- An employer can set different ages for the retirement of employees
- Anything done in compliance with the Protection of Young Persons (Employment) Act 1996, the National Minimum Wage Act 2000 or section 3 of the Redundancy Payments Act 1971 as amended by section 5 of the Redundancy Payments Act 1979 is not discrimination on the age ground. A number of other sections of various Acts are also exempted.

d) In relation to the age and race grounds

- Different treatment is allowed by vocational/training bodies in relation to fees and the allocation of places to people who are nationals of EU member State
- Different treatment is allowed by vocational training bodies in relation to assistance to particular categories of persons by way of sponsorships, scholarships, bursaries but only to the extent that the assistance is reasonably justified having regard to traditional and historical considerations
- Different treatment is allowed by universities or other third level institutions in relation to allocation of places for mature students

e) In relation to the religion ground

- Certain religious, educational and medical institutions may give more favourable treatment on the religion ground to an employee or prospective employee where it is reasonable to do so in order to maintain the religious ethos of the institution
- Certain religious, educational and medical institutions may take action which is reasonably necessary to prevent an employee or a prospective employee from understanding the religious ethos of the institution
- Certain religious, educational and medical institutions may reserve places on specified vocational training courses and schools of nursing in such numbers (as seem necessary to the relevant Minister) to ensure the availability of nurses and primary teachers

f) In relation to nationality

- There is an exemption for any action taken in accordance with the Employment Permits Act 2003

g) In relation to the disability ground

- There is an exemption in relation to the provision of a particular rate of remuneration for work of a particular description where, due to disability, the amount of work done during a particular period is less than the amount

of similar work done or which could reasonably be expected to be done over that period by an employee without a disability.

Making a Claim

The equality Tribunal, the Labour Court and the Circuit Court all have roles in relation to claims of discrimination. All claims (except for gender discrimination claims) must be referred in the first instance to the **Equality Tribunal** (Gender discrimination claims have the option of going to the **Circuit Court**). The Equality Tribunal is the quasi judicial body established to investigate, hear and decide on claim for discrimination.

Step 1: Deciding whether to refer a claim

Right to Look for Information

Any person who believes that they have experienced discrimination may write to the person who may have discriminated against them asking for certain information which will assist in deciding whether to refer a claim.

Employers are not obliged to reply but an Equality Officer may draw such inferences as seem appropriate from an employer failing to reply or supplying false, misleading or inadequate information. An employer is not obliged to disclose confidential information. Information should be requested using a standard form of questionnaire and reply (form E.E.2 and E.E. 3 available from the Equality Tribunal, 3 Clonmel Street, Dublin 2 Tel: 01 477 4100 or www.equalitytribunal.ie).

Time Limits

A complaint of discrimination or harassment must be made within the 6 month time from the last act of discrimination. The 6 month time limit can be extended up to 12 months by the Director 'for reasonable cause'.

People with intellectual or psychological difficulties

A parent, guardian or other person acting in place of a parent can be the complainant where a person is unable by reason of an intellectual or psychological disability to pursue a claim effectively.

Step 2: At the Equality Tribunal

Mediation

The Director of the Equality Tribunal can at any stage with the consent of both parties, appoint an Equality Mediation Officer. If a settlement is reached through mediation then the items are legally enforceable.

Investigation

If either party does object to mediation or, if the process of mediation is unsuccessful, the case will be referred to an Equality Officer for investigation. Investigations are held in private (people can represent themselves or be represented by a trade union or other representative). The Equality Officer will issue a determination which is enforceable through the Circuit Court.

Dismissal of a Claim

Cases can be struck out after a year if the Director decides they are not being pursued. The Director may dismiss a claim at any stage if of the opinion that it has been made in bad faith, or is frivolous, vexatious or misconstrued or relates to a trivial matter.

Representation and Costs

A complainant may represent themselves or be represented by a lawyer, trade union or other representative. In general, costs are not awarded. Costs in respect of travelling and other expenses (except expenses of representative) can be awarded where a person obstructs or impedes the investigation or appeal/

Remedies

Where the Equality Officer finds in Favour of the complainant, the following orders can be made

- In equal pay claims an order for equal pay and arrears in respect of a period not exceeding three years
- In other cases for the effects of discrimination of up to a maximum of 2 years pay or €12,700 where the person was not an employee (the maximum compensation applies notwithstanding there was discrimination on more than one ground)
- An order for reinstatement or re-engagement with or without an order for compensation
- An order that a named person or persons take a course of action which is set out.

In gender discrimination claims which are initiated in the Circuit Court, the Circuit Court in equal pay claims may order arrears of pay in respect of 6 years before the date of referral. There is no limit to the amount of compensation that may be ordered by the Circuit Court.

There are specific provisions in relation to claims of discrimination by the **Civil Service Commissioners, the Local Appointments Commissioners, the Minister for Defence and the Commissioner of the Garda Siochana.**

Appeals

All decisions (including decisions on time limits and striking out of the claim) may be appealed to the Labour Court not later than 42 days from the date of a decision.

Enforcement

A final decision of the Director or the Labour Court may be enforced through the Circuit Court.

Appeal to the High Court on a point of Law

Where a determination is made by the Labour Court on an appeal, either party may appeal to the High Court on a point of law.