

Netherlands

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General rules providing protection against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status (Equal Treatment Act)

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

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

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

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

Chapter I

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

§ 1. General provisions

Section 1

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

a, discrimination: direct and indirect discrimination, as well as the instruction to discriminate;

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

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

Section 1a

The prohibition on discrimination laid down in this Act shall also include a prohibition on harassment.

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

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

§ 2. General exceptions

Section 2

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

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

a. in cases in which sex is a determining factor and

b. in cases concerning the protection of women, notably in relation to pregnancy and motherhood.

3. The prohibition on discrimination contained in this Act shall not apply if the discrimination concerns a specific measure which has the aim of placing women or persons belonging to a particular ethnic or cultural minority group in a privileged position in order to eliminate or reduce *de facto* disadvantages in relation to the grounds of race or sex and the discrimination is reasonably proportionate to that aim;

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

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

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

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

6. The cases referred to in subsections 2, 4 and 5(b) shall be defined in more detail by order in council.

Section 3

This Act shall not apply to:

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

Section 4

This Act shall be without prejudice to:

- a. the Equal Opportunities Act;
- b. sections 646, 647, 667 and 670 of book 7 of the Civil Code.

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

Section 5

1. It shall be unlawful to discriminate with regard to:

- a. public advertising of employment and procedures leading to the filling of vacancies;
- b. job placement;

- c. the commencement or termination of an employment relationship;
- d. the appointment and dismissal of civil servants;
- e. terms and conditions of employment;
- f. permitting staff to receive education or training during or prior to employment;
- g. promotion;h. working conditions.

2. Subsection 1 shall not apply to:

a. the freedom of an institution founded on religious or ideological principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;

b. the freedom of an institution founded on political principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status and

c. the freedom of a private educational establishment to impose requirements on the occupancy of a post which, in view of the establishment's purpose, are necessary for it to live up to its founding principles, although such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

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

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

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

6. Subsection 1 (d) shall not apply to discrimination on grounds of civil status in relation to next of kin

pension provision and in relation to claims on pension which were built up before the date on which section I, part B, of the law of 21 December 2000, containing changes to

the Pension- and Savings Funds Act and some other Acts relating to the right to chose old-age pension instead of next of kin pension and equal treatment of men and women (Bulletin of Acts and Decrees (*Staatsblad*) 625), entered into force .

Section 6

It shall be unlawful to discriminate with regard to the conditions for and access to the liberal professions and opportunities to pursue the liberal professions or for development within them.

Section 6a

1. It shall be unlawful to discriminate with regard to membership of or involvement in an employers' organisation or trade union, or a professional occupational organisation, as well as the benefits which arise from that membership or involvement.

2. Subsection 1 shall not affect:

a. the freedom of an organisation or association founded on religious or ideological principles to impose requirements which, having regard to its purpose, are necessary to actualise its foundation; such requirements should not justify discrimination on the sole ground of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status and

b. the freedom of an organisation or association founded on political principles to impose requirements which, having regard to its purpose, are necessary to actualise its foundation; such requirements should not justify discrimination on the sole ground of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

§ 4. Other provisions in the socio-economic field

Section 7

1. It shall be unlawful to discriminate in offering or permitting access to goods or services, in concluding, implementing or terminating agreements on the subject, and in providing career orientation and advice or information regarding the choice of educational establishment or career if such acts of discrimination are committed:

a. in the course of carrying on a business or exercising a profession;

b. by the public service;

c. by institutions which are active in the field of housing, social services, health care, cultural affairs or education or

d. by private persons not engaged in carrying on a business or exercising a profession, in so far as the offer is made publicly.

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

3. Subsection 1 (a and d) shall not apply to requirements which may reasonably be imposed having regard to the private nature of the circumstances to which the legal relationship applies.

Section 7a

1. Without prejudice to section 7, it shall be unlawful to discriminate on the ground of race in social protection, including social security and social advantages.

2. The concepts of social protection, social security and social advantages, mentioned in subsection 1, can be defined by order in council. An order in council determined pursuant to the first sentence, shall not be recommended earlier than four weeks after which the draft has been submitted to both Chambers of the States General.

§ 5. Protection and enforcement

Section 8

1. If an employer terminates an employee's employment in contravention of section 5, on the grounds that the employee has invoked section 5, either at law or otherwise, or has provided assistance in relation to it, such termination shall be invalid.

2. Without prejudice to chapter 8 of the General Administrative Law Act, an employee may invoke subsection 1 within two months of being given notice of termination of employment. Section 55 of Book 3 of the Civil Code shall not apply.

3. A claim in connection with the invocation of invalidity of termination of employment shall lapse six months after the employment has terminated.

Section 8a

Adverse treatment in reaction to a person's reliance either at law or otherwise on this Act or provision of assistance in relation to it shall be prohibited.

Section 9

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

Section 10

1. If a person who considers that he has been wronged through discrimination as referred to in this Act establishes before a court facts from which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that the action in question was not in breach of this Act.

2. Subsection 1 shall apply *mutatis mutandis* to legal actions as referred to in section 305a of Book 3 of the Civil Code and to appeals instituted by interested parties within the meaning of section 1:2, subsection 3 of the General Administrative Law Act.

Chapter 2 The Equal Treatment Commission

Section 11

1. An Equal Treatment Commission shall be established, hereinafter referred to as the Commission.

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

Section 12

1. The Commission may, in response to a request in writing, conduct an investigation to determine whether discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code has taken or is taking place, and may publish its findings. The Commission may also conduct an investigation on its own initiative to determine whether such discrimination is systematically taking place in the public service or in one or more sectors of society, and publish its findings.

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

a. a person who believes that he/she has suffered discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code;

b. a natural or legal person or competent authority wishing to know whether they are guilty of discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code;

c. a person responsible for deciding on disputes concerning discrimination as referred to

in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code;

d. a works council, which believes that discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code is taking place in the company for which it was appointed, or a representative advisory organ similar to that works council, which believes that discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code is taking place in the organ for which it was appointed;

e. a legal person with full legal powers which, in accordance with its constitution or statutes, represents the interests of those whose protection is the objective of this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code.

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

Section 13

1. The Commission shall institute an investigation and shall forward its findings, in writing and with reasons, to the petitioner, the person said to be guilty of discrimination and, if relevant, the victim of discrimination.

2. The Commission may make recommendations when forwarding its findings to a person said to be guilty of discrimination.

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

Section 14

1. The Commission shall not institute an investigation if:

a. the request referred to in section 12, subsection 2 is manifestly unfounded;

b. the interest of the petitioner or the importance of the behaviour concerned is manifestly insufficient;

c. the period of time which has elapsed since the discrimination referred to in section 12 took place is such that an investigation can no longer reasonably be conducted.

2. In cases as referred to in subsection 1, the Commission shall notify the petitioner in writing, giving reasons.

Section 15

1. The Commission may bring legal action with a view to obtaining a ruling that conduct contrary to this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be rectified.

2. No conduct may form the subject of action as referred to in subsection 1 if the person affected by that conduct has reservations.

Section 16

1. The Commission shall comprise nine members - including a chair and two assistant chairs - and the same number of deputy members.

2. The chair and the assistant chairs must fulfil the requirements laid down in section 1d of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.

3. The members and deputy members shall be appointed by Our Minister of Justice, in consultation with Our Minister of the Interior, Our Minister of Employment & Social Security, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs.

4. Sections 46c, 46d, subsection 2, 46f, 46g, 46i, with the exception of subsection 1 (c), 46j, 46l, subsection 1, with the exception of (c), and subsection 3, 46m, 46n, 46o and 46p of the Judiciary (Organisation) Act shall apply *mutatis mutandis*, on the understanding that:

a. with respect to the members of the Commission, the disciplinary measure as referred to in section 46c, subsection 1, shall be imposed by the chair;

b. the prohibition to associate during a conversation with parties or their advocates, attorneys or representatives or to accept from them special information or a written piece, as referred to in section 46c, subsection 1(b), does not apply to members of the Commission.

5. The members and deputy members shall be appointed for a maximum of six years. They may be reappointed immediately. The Minister of Justice may accept their resignation, if tendered.

Section 17

1. An office shall be set up to assist the Commission in the performance of its duties.
2. Our Minister of Justice shall, on the recommendation of the Commission, appoint, promote, suspend and dismiss the staff of the office. Our Minister of Justice shall decide in what cases they shall be appointed, promoted, suspended and dismissed.
3. The secretary, who shall also be the head of the office, must fulfil the requirements laid down in section 1(d) of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.

Section 18

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

Section 19

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

Section 20

1. The Commission shall issue an annual report of its activities, which shall be published. It shall forward this report in any event to such of Our Ministers as it may concern and to the advisory bodies concerned.
2. Every five years, calculated from the entry into force of this Act, the Commission shall draw up a report of its findings on the operation in practice of this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code. It shall forward this report to the Minister of the Interior.

Section 21

1. Further rules concerning the working methods of the Commission shall be laid down by order in council, including in any event rules governing:

a. the manner in which cases are to be dealt with;

b. hearing both parties;

c. the public conduct of hearings;

d. publication of its findings as referred to in section 13, subsection 3.

2. The salaries, travel and accommodation expenses and other remuneration of the members and deputy members of the Commission shall be laid down by order in council, and rules shall likewise be laid down concerning the entitlement of the members of the Commission to redundancy pay after the expiry of the period for which they were appointed.

Chapter 3 Concluding provisions

Section 22

(Has been deleted)

Section 23

(Has been deleted)

Section 24

(Changes the Civil Code)

Section 25

(Has been deleted)

Section 26

(Changes the Equal Opportunities Act)

Section 27

Written requests for an investigation as referred to in section 14 of the Equal Treatment Act, which have not yet been finished on the date on which this Act enters into force, shall be continued by the Commission taking into account Chapter 2 of this Act.

Section 28

In contravention to section 17, subsection 2, the first appointment of the persons to which that subsection refers, will not be on the recommendation of the Commission.

Section 29

1. The prohibition on discrimination on the grounds of nationality contained in this Act shall not apply for a period of two years, to be calculated from the entry into force of the Act, in respect of discrimination practised by administrative authorities on the basis of published policy rules.

2. The policy rules referred to in subsection 1 shall be defined as written rules for the exercise of a power by an administrative authority.

Section 30

(Has been deleted)

Section 31

(Changes the Higher Education and Academic Research Act)

Section 32

(Changes the Participation (Education) Act)

Section 33

Our Minister of the Interior shall, in consultation with Our Minister of Justice, Our Minister for Social Affairs & Employment, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs, forward to the States General as soon as possible after receipt of the report referred to in section 20, subsection 2, a report on the operation in practice of this Act, the Equal Opportunities Act and section 646 of Book 7 of the Civil Code.

Section 34

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

Section 35

This Act may be cited as the Equal Treatment Act.

Done

The Minister of the Interior
The State Secretary for Social Affairs and Employment
The Minister of Education and Science
The Minister of Welfare, Health and Cultural Affairs