
Equal Treatment (Men and Women) Act**Consulted on 07-07-2022****Applicable since 01-07-2015**

Act of 1 March 1980 harmonising Dutch legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women

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

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

Whereas We have considered that it is necessary to harmonise Dutch legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women;

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:

§ 1. General**Section 1**

1. For the purposes of this Act the following definitions apply:
 - a. discrimination: direct or indirect discrimination, or an instruction to discriminate directly or indirectly;
 - b. direct discrimination: where a person is, has been or would be treated differently from another in a comparable situation on the grounds of sex;
 - c. indirect discrimination: where an apparently neutral provision, criterion or practice particularly affects persons of a particular sex in comparison with other persons.
2. Direct discrimination includes discrimination on the grounds of pregnancy, childbirth and motherhood.

Section 1a

1. The prohibition of discrimination laid down in this Act includes a prohibition of harassment and a prohibition of sexual harassment.
2. Harassment as referred to in subsection 1 means conduct which is related to the sex of a person and which has the purpose or effect of undermining the dignity of a person and creating

a threatening, hostile, degrading, humiliating or offensive environment.

3. Sexual harassment as referred to in subsection 1 means any form of verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of undermining the dignity of a person and creating a threatening, hostile, degrading, humiliating or offensive environment.
4. The fact that a person rejects or passively undergoes the conduct referred to in subsections 2 and 3 may not be grounds for a decision that affects that person.
5. Section 3, subsections 2, section 4, subsection 2 and section 5, subsections 1 and 2 do not apply to the prohibition of harassment and of sexual harassment contained in subsection 1.

Section 1b

1. In public service the competent authorities, when making appointments of public servants or concluding civil-law contracts of employment, may not discriminate in relation to conditions of employment, working conditions, instructions or training, promotions or the termination of an employment relationship.
2. Public service, as referred to in subsection 1, includes all institutions, services and undertakings that are managed by the state and public bodies.
3. A derogation from subsection 1 is permitted in matters concerning the protection of women, particularly with regard to pregnancy and motherhood.
4. The competent authorities are not permitted to terminate the employment of, or otherwise disadvantage, anyone employed in public service by appointment or under a civil-law contract of employment on the grounds that that person has invoked the provisions of subsection 1 either at law or otherwise, or has assisted others in this connection.
5. In the event of termination by the competent authorities of a public service employee's civil-law contract of employment in contravention of this Act, article 681, Book 7 of the Civil Code applies *mutatis mutandis*.
6. Any contractual provision which conflicts with subsection 1 is null and void.

Section 1c

If a natural person, legal person or competent authority engages a person to perform work under their authority other than pursuant to a civil-law contract of employment or public service appointment, articles 646 and 681, Book 7 of the Civil Code apply *mutatis mutandis*.

Section 2

1. It is unlawful to discriminate with regard to the conditions for access to the liberal professions and opportunities to pursue the liberal professions or for development within them, or with regard to social security arrangements between fellow professionals not constituting pension schemes as referred to in section 12a.

2. If an arrangement as referred to in subsection 1 relates to sickness or invalidity, it may not include exceptions for pregnancy and childbirth, without prejudice to the power to include provisions preventing abuse and improper use.
3. Any provision of an arrangement as referred to in subsection 1 that is contrary to the provisions of subsection 1 or 2 is null and void.

Section 3

1. It is unlawful to discriminate in advertisements for job vacancies, procedures for the filling of vacancies and job placement activities.
2. A derogation from subsection 1 is permitted in cases where this or any other Act of Parliament allows discrimination in advertisements for job vacancies and, in so far as the vacancy is being advertised publicly, the grounds for such discrimination are stated explicitly.
3. Advertisements for job vacancies, as referred to in subsection 1, must be written and designed in such a way that it is clear that the vacancy is open to both men and women.
4. If a job title is used for the job being advertised, both the masculine and the feminine form must be used, or it must be expressly stated that the vacancy is open to both men and women.
5. If a person is liable in tort against another on account of a job advertisement that contravenes the provisions of this Act, a court may also order the latter, on the application of the former, to publish a rectification in a manner to be prescribed by the court.

Section 4

1. Natural persons or legal persons providing vocational courses, advanced vocational courses or further training or retraining, however styled, and natural persons or legal persons administering examinations relating to such courses, may not discriminate with regard to criteria or standards, in admitting persons to the course, their treatment during the course or in the administering of examinations.
2. A derogation from subsection 1 is permitted, with the exception of the holding of examinations, and providing students of both sexes have access to equivalent facilities, if the content of that subsection conflicts with the distinctive nature of a private educational establishment.
3. Any provision that is contrary to the provisions of subsection 1 is null and void.

Section 4a

1. It is unlawful to discriminate with regard to membership of or involvement in an employers' or employees' organisation or an occupational association, and with regard to the benefits ensuing from that membership or involvement.
2. Any contractual provision which conflicts with subsection 1 is null and void.

Section 5

1. A derogation from sections 1b, 2, 3 and 4 is permitted if the aim of the discrimination is to place women in an advantageous position in order to eliminate or reduce disadvantages and the discrimination is in reasonable proportion to that aim.
2. A derogation from sections 1b, 2, 3 and 4 is permitted with regard to access to occupational activities or courses required for them if the discrimination is based on a characteristic related to sex and that characteristic, by reason of the nature of the specific occupational activities concerned or of the context in which they are carried out, constitutes a genuine and determining occupational requirement, provided that the aim is legitimate and the requirement is proportionate to that aim.
3. The only occupational activities and courses required for them for which a characteristic as referred to in subsection 2 can be considered a genuine and determining occupational requirement are those that belong to training for the office of minister of religion or occupational activities that are designated by order in council.

Section 6

The prohibition on discrimination contained in this Act does not apply to indirect discrimination if it is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary.

Section 6a

If a person who considers that he is or has been a victim of discrimination as referred to in this Act adduces before a court facts from which it may be presumed that such discrimination has taken place, the other party must prove that no contravention of this Act has occurred.

§2

Equal pay for work of equal value

Section 7

1. For the purposes of article 646, Book 7 of the Civil Code, the basis for comparing the terms and conditions of employment referred to in that article is, as far as pay is concerned, the pay normally received by a worker of the other sex for work of equal value or, in the absence of such work, for work of approximately equal value, in the undertaking where the worker on whose behalf the comparison is made is employed.
2. Pay as referred to in subsection 1 means the remuneration payable by the employer to the employee for the work performed by the latter.

Section 8

For the purposes of section 7, work must be assessed in accordance with a reliable system of job evaluation, adhering as far as possible to the system customary at the undertaking where the employee concerned works. In the absence of such a system, the work is fairly assessed in the light of the available information.

Section 9

1. For the purposes of section 7, the pay received by the employee concerned is deemed to be equal to the pay that a worker of the other sex normally receives for work of equal value if it is calculated on the basis of equivalent criteria.
2. For the purposes of section 7, non-cash salary components are taken into account as pay at the market value that can be assigned to them.
3. Where shorter working hours have been agreed than those that are in principle deemed to constitute full-time work in a corresponding employment relationship, pay is to be reduced proportionately in so far as it is calculated on the basis of hours worked.

Section 10

Further rules may be laid down by order in council concerning the provisions of sections 7, 8 and 9.

Section 11

[Repealed on 04-10-2000]

Section 12

For the purposes of sections 1b and 1c of this Act, this division applies *mutatis mutandis*.

§3

Equal treatment with regard to pension schemes

Section 12a

For the purposes of the provisions of this division, a pension scheme means a pension scheme for one or more people, exclusively in connection with their work at an undertaking, in an industry, a profession or public service, supplementing a statutory system of social security and, in the case of a scheme for an individual, not set up by that individual.

Section 12b

1. Persons other than the employer referred to in article 646, Book 7 of the Civil Code or the competent authorities referred to in section 1b are not permitted to discriminate when deciding on who may participate in a pension scheme, on the content of a pension scheme, or on the way in which it is implemented.
2. For the purposes of article 646, Book 7 of the Civil Code, section 1b and subsection 1, provisions pursuant to which the accrual of pension entitlements is interrupted during pregnancy and maternity leave on the basis of a statutory provision or agreement are deemed contrary to the prohibition of unequal treatment of men and women.

Section 12c

1. In the case of a defined-benefit agreement as referred to in section 1 of the Pensions Act, the size of the employer's cash contribution is not taken into account for the purposes of article 646, Book 7 of the Civil Code and sections 1a and 12b, in so far as this is justified by the differing actuarial calculations for men and women.
2. In the case of a defined-contribution agreement as referred to in section 1 of the Pensions Act or a defined-capital agreement as referred to in section 1 of the Pensions Act, the size of the employer's cash contribution is not taken into account for the purposes of article 646, Book 7 of the Civil Code and sections 1a and 12b and either:
 - a. the size of the periodic pension benefit ensuing from the defined-contribution agreement or defined-capital agreement must be equalised for men and women; or
 - b. the employer's contribution or the accrual of a capital entitlement must be set at such a level that the size of men's and women's pensions is equalised, according to opinion at the time the contribution or accrual is set.
3. In the case of a defined-benefit scheme as referred to in section 1 of the Occupational Pension Scheme (Compulsory Participation) Act, the size of the cash contribution of the person belonging to the occupational sector in question is not taken into account for the purposes of section 12b, in so far as this is justified by the differing actuarial calculations for men and women.
4. In the case of a defined-contribution scheme or a capital entitlement under a defined-capital scheme as referred to in section 1 of the Occupational Pension Scheme (Compulsory Participation) Act, the size of the ensuing pensions is to be equalised for men and women.
5. Further rules will be laid down by or pursuant to order in council concerning subsections 2 and 4.

Section 12d

Notwithstanding section 12b, provisions concerning the protection of women, particularly in connection with pregnancy and motherhood, are permitted.

Section 12e

Any provision that is contrary to the prohibition of unequal treatment of men and women as referred to in section 12b is null and void.

Section 12f

The provisions of article 681, Book 7 of the Civil Code apply *mutatis mutandis* to the termination of employment by an employer on the grounds that the employee has invoked the provisions of section 12b either at law or otherwise.

Sections 13

[Repealed on 01-09-1994]

Section 14

[Repealed on 01-09-1994]

Section 15

[Repealed on 01-09-1994]

Section 16

[Repealed on 01-09-1994]

Section 17

[Repealed on 01-09-1994]

Section 18

[Repealed on 01-09-1994]

Section 19

[Repealed on 01-09-1994]

Section 20

[Repealed on 01-09-1994]

Section 20a

[Repealed on 01-07-1994]

§4. Concluding provisions

Section 21

1. Responsibility for supervising compliance with article 646, Book 7 of the Civil Code and the provisions by or pursuant to this Act is vested in officials designated for this purpose by order of Our Minister of Social Affairs and Employment. Our Minister of Social Affairs and Employment may arrange for these officials to carry out an investigation in the interests of such supervision. For matters relating to the public service, Our Minister of the Interior may request Our Minister of Social Affairs and Employment to institute an investigation as referred to in the second sentence. Orders as referred to in the first sentence are published in the Government Gazette.
2. If an investigation reveals that discrimination as referred to in article 646, Book 7 of the Civil Code or in this Act has taken or is taking place, Our Minister of Social Affairs and Employment will notify the natural person, legal person or competent authority that has discriminated or is discriminating and, in the case of discrimination as referred to in article 646, Book 7 of the Civil Code or section 1b or 1c of this Act, the relevant works council or comparable employee participation body, and, as appropriate, the relevant employers', employees', professional or civil service organisation. Notification given to the relevant works council or comparable employee participation body, or, as appropriate, the relevant, employers', employees', professional or civil service organisation, must not include any information from which the identity of the person involved in the investigation who has been or is being discriminated against can be derived.

Section 22

[Repealed on 01-01-1994]

Section 23

A recommendation for an amendment to an order in council as referred to in section 5, subsection 3, point c and a recommendation for an order in council as referred to in section 10 will not be made before the draft thereof has been published in the Government Gazette and all interested parties have been given the opportunity to express any wishes or reservations to Our Minister within four weeks of the date of publication. The draft will be presented to both houses of the States General at the same time as it is published in the Government Gazette.

Section 24

1. This Act may be cited as: the Equal Treatment (Men and Women) Act.
2. This Act enters into force on the second day after the date of the Bulletin of Acts and Decrees in which it is published.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministerial departments, authorities, bodies and officials whom it may concern diligently implement it.

Done at Lech on 1 March 1980

Juliana

J. de Ruiter
Minister of Justice

W. Albeda
Minister of Social Affairs

A. Pais
Minister of Education and Science

J.G. Kraaijeveld-Wouters
State Secretary for Culture, Recreation and Social Work

H. Wiegel
Minister of the Interior

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J. de Ruiter
Minister of Justice