

Your Legitimate Right

Equal Treatment and Full Equality
of Women and Men in Employment





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It should be self-evident that women and men enjoy equal opportunities at work. In legal terms, equality has been mandatory ever since the Equal Treatment Act was passed.

In practice, however, job advertisements are still placed that call for men only (or women only, typically for lower-paid jobs); women are still offered lower pay for similar work; and their career aspirations are still played down.

It is evidently still necessary for women to fight for their right to equal treatment. In their struggle they are advised, supported and accompanied by specialised facilities created on the basis of the Equal Treatment Act, such as the National Equality Body (Ombud for Equal Treatment).

The experts at the Ombud offer confidential and free consultation services, and they are briefed to negotiate directly and informally with employers on how to compensate for unequal pay or abolish harassment at work - in short, how to implement genuine gender

equality at enterprise level, thus frequently sparing women cumbersome court cases.

If gender equality cannot be achieved in this manner, the National Equality Body can instruct the Equal Treatment Commission to look into the matter or assert a claim in court, supported by the employees' interest groups.

The legal underpinnings for enforcing full equality in employment have been considerably strengthened by the comprehensive amendment to the Equal Treatment Act in 2004.

This brochure informs you of the new aspects added to the Act and is intended to boost your morale if you should be feeling discriminated against vis-à-vis men and to take up our offer of consulting and support. Naturally the same applies to men feeling disadvantaged against women.

The amendment has also made provision for other grounds than gender-based discrimination as a basis for consulting the National Equality Body.

In-depth information material on the activities of the two new Ombuds is currently being prepared.

A handwritten signature in black ink that reads "Maria Rauch-Kallat". The signature is written in a cursive, flowing style.

Maria Rauch-Kallat
Federal Minister for Health and Women



In 1991, when the National Equality Body was established, 338 persons came to seek information, counselling, support and assistance in gender equality issues related to employment. Ten years on - after two regional offices had been opened - their number had increased fivefold; in 2004 - with two additional regional offices - the number reached more than 4500.

Although it is certainly a good thing that so many people - four fifths of them women - refuse to take unfavourable treatment lying down, there remains a lot to be done. It takes a great deal of courage and stamina to enforce the legal options provided for by the Equal Treatment Act on an individual basis against one's own employer.

We would like to express our gratitude to all those who found this courage, providing us with examples to make discrimination patterns visible and thus combatable.

The 6th amendment to the 2004 Equal Treatment Act extends the counselling and support offered by the National Equality Body to persons feeling discriminated against at work on grounds of ethnic belonging, religion or belief, age or sexual orientation in employment, and to persons feeling discriminated against on grounds of ethnic belonging in the field of goods and services, education, social protection and social advantages. These legal matters will be discussed in a separate brochure.

Major improvements were achieved with regard to gender equality. The present brochure contains everything you should know about this subject.

One of the key innovations is the fact that the provisions of the Equal Treatment Act affecting women and men are now aimed at gender equality.

Gender equality is more than equal treatment. Equality implies the participation of both sexes in all areas of society, based on equal rights and resources. The experts at the National Equality Body look forward to continuing towards this goal together with all of you - step by step.

A handwritten signature in black ink, consisting of a long horizontal stroke followed by a loop and a final upward stroke.

Dr. Ingrid Nikolay-Leitner
Head of the National Equality Body



***I wanna make a career for myself!
A sex change operation? I'd think twice about it!***

Why do we need an Equal Treatment Act?

On 1 July 2004, the new Austrian Equal Treatment Act (GIBG) for the private sector entered into force. Rather than being restricted to the equal treatment of women and men, the Act now forbids the following acts of discrimination:

- In employment:
 - Unequal treatment of women and men,
 - Unequal treatment on grounds of ethnic belonging, religion or belief, age and sexual orientation,
- In the field of goods and services, education, social protection and social advantages:
 - Unequal treatment on the ground of ethnic belonging

The present brochure focuses on Part I of the Act, i.e., gender equality in employment. As a matter of fact, the legal principle forbidding gender-based discrimination applies equally to both men and women. However, since women usually are the victims of discrimination in working life, it is primarily directed at women.

95 per cent of cases brought before the Equal Treatment Commission in the years 1991 to 2004 dealt with the discrimination of women.

In principle, the world of work is traditionally geared to fit the needs and skills of men. In this men's world, women are frequently confronted with prejudices; their achievements are undervalued, they are paid less, and their chances of advancement are limited. In short, women face disadvantages related to gender to a much larger extent than men. Despite some assertions to the contrary, these disadvantages are definitely not a thing of the past.

Although it is certainly true that women today have more job opportunities than before, the state of affairs with respect to equal opportunities still leaves much to be desired. Scientific studies and statistics show that inequalities between women and men are diminishing, but progress is slow and needs to be helped along. However, inequalities are even increasing in certain areas, such as income disparities between the sexes.

The gender-related inequalities discussed in this brochure cannot be ascribed to biological causes but result from traditional societal expectations and can therefore be eliminated. Equal treatment legislation can make a substantial contribution towards this goal.

Gender-specific inequalities

Education and training

Women's educational level has risen distinctly over the last decades:

Highest educational level completed by the female resident population aged 15 and over

Highest educational level	1971 in %	2001 in %
Compulsory schools	73.0	43.6
Apprenticeships	12.6	22.9
Medium-level vocational schools	8.9	15.8
Secondary education (AHS + BHS / secondary schools providing general education or basic training)	4.6	10.9
University or similar educational establishment	1.0	7.1

Source: 1971 and 2001 Censuses

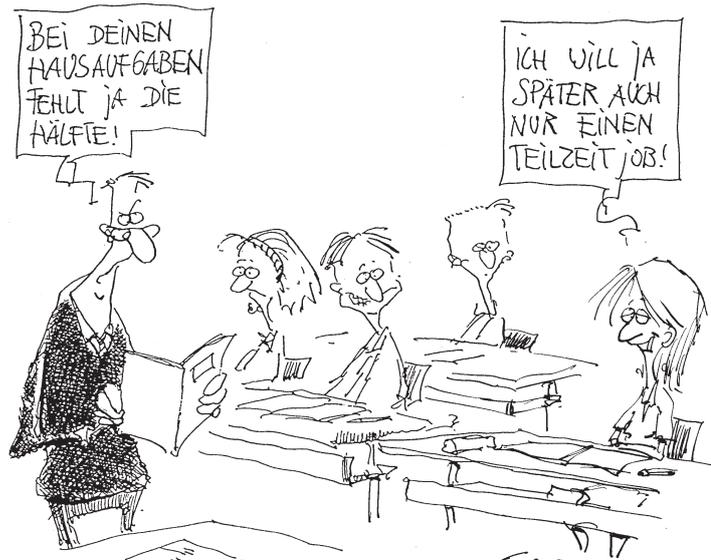
The traditional gap in education and training between women and men has diminished, in particular with respect to labour force participants:

Highest educational level completed by labour force participants, by gender

Highest educational level	Men in %	Women in %
Compulsory schools	19.7	27.3
Apprenticeships	50.2	28.3
Medium-level vocational schools	7.8	19.8
Secondary education (AHS + BHS / secondary schools providing general education or basic training)	12.7	13.4
University or similar educational establishment	9.6	11.2

Source: 2001 Census

In the younger generation, a distinctly higher proportion of women complete secondary schools and earn university degrees. However, women account for a larger proportion of persons who do not go on to higher education after having completed compulsory education, even in the younger generation. Besides, the choice of schools and occupations frequently reflects traditional stereotypes (while technological training is regarded as a male domain, women are typically associated with caregiving occupations).



***You've done only part of your homework!
Well, I'll be getting a part-time job later.***

Highest educational level completed by labour force participants aged 25-29, by gender

Highest educational level	Men in %	Women in %
Compulsory schools	14.3	18.1
Apprenticeships	52.8	30.7
Medium-level vocational schools	7.6	17.7
Secondary education (AHS + BHS / secondary schools providing general education or basic training)	16.9	19.9
University or similar educational establishment	8.4	13.6

Source: 2001 Census

Income from work

With regard to education and training women have gained on men over the last decades, even outperforming them in some respects. Slowly but continuously, the income gap between men and women in Austria has been narrowed over recent decades, as reflected by working-hour adjusted calculations. Whereas in the early 1980's the median income of women corresponded to 71.2% of that of men, this ratio had risen to 82.2% in 2002.¹

According to Eurostat the female employment rate increased from 58.9% in 1994 to 62% in 2005. However, a growing number of women are working part time or hold marginal jobs. According to the 2001 census, one third of gainfully employed women are working part time (as compared to one fifth ten years earlier). By comparison, a mere seven per cent of gainfully employed men work part time. Moreover, women account for the major part of persons holding marginal jobs (71%).²

Women - Median Income^a as a Percentage of Men's Median Income^a (adjusted for working-time)

	1980	1990	1995	2000	2002
Gainfully employed ^b , adjusted for working time ^c	71.2	76.5	80.6	81.2	82.2

^a 50% earn more and 50% earn less

^b Wage earners and salaried employees

^c Adjusted for average working hours

Source: Association of Austrian Social Insurance Institutions; Statistical Manual; Statistics Austria, Microcensus; WIFO-calculations

Bericht über die Soziale Lage 2003-2004, Federal Ministry of Social Security, Generations and Consumer Protection, Vienna 2004, p. 270

Generally, women are overrepresented in the lower income brackets and underrepresented in the higher income brackets. For example, men account for 80 per cent of employed persons with an income above the ceiling on insurable earnings³.

A comparison of incomes by sex and social position shows that differences in income between the sexes are most marked among white-collar workers.

One of the reasons for the distinct gap between the financial situation of women and men is the fundamental undervaluation by society of women's skills and achievements, which also results in their diminished opportunities for advancement.

On average, women entering the job market earn 18 per cent less than men⁴.

Women often hold jobs for which they are overqualified: according to the 2002 microcensus, 28 per cent of men having completed secondary education and working as salaried employees in private enterprises are in a highly qualified or managerial position, which compares with a mere 6.6 per cent of women with the same educational background.

However, women's disadvantaged status in employment is a complex problem. Its causes are to be found in part outside the world of work, such as in the gender-specific choice of schools and basic training or in a lack of childcare facilities. Attempting to eliminate gender-specific discrimination by adopting an act on the equal treatment of women and men in employment is bound to remain an illusion. What is needed is an active, targeted and systematic equality policy in all areas of society.

¹ Bericht über die Soziale Lage 2003-2004, Federal Ministry of Social Security, Generations and Consumer Protection, Vienna 2004, p. 24

² Federation of Austrian Social Insurance Institutions, March 2005.

³ The monthly ceiling on insurable earnings (for public health, accident and public pension insurance) under the ASVG / General Social Security Act is € 3,750.- (2006).

⁴ Synthesis Research 2000, 30.

The marked differential between women's and men's median incomes exists not only for employed women but also for female entrepreneurs:

According to a labour force survey, women account for 30 per cent of Austrian entrepreneurs. However, most of them belong to the category "micro-enterprise without employee", with a 36 per cent share of women. Among self-employed persons owning small-sized enterprises, women account for 25 per cent, yet for a mere 15 per cent of self-employed persons with medium or larger enterprises.

In 2003, 81 per cent of enterprises managed by women reported sales below € 0.5 million.⁵

Reconciling job and family obligations

Equal sharing of household and family chores is practised only by a minority of Austrian families. As a matter of fact, women bear a much larger burden of household chores and childcare than men. Single women are also heavily involved in the care of elderly relatives.

Very few fathers avail themselves of the legal option to claim parental leave after the birth of a child or to share parental leave with the child's mother. To this date, men have never accounted for more than 3 per cent of Austrians on parental leave.

This percentage doubled, however, after the introduction of the childcare allowance.

In an effort to contribute towards remedying this situation, the Austrian Federal Economic Chamber launched a campaign called "Väterkarenz Consulting" (Paternity Leave Consulting). Initiated by the management consulting division, the campaign aims at providing advice and support to companies in the handling of paternity leave. Once companies learn to solve (coordination) problems with respect to parental leaves, they will see paternity leave as a chance rather than a nuisance.

In fact, promoting paternity leave is an asset for every enterprise. It has a positive impact on the loyalty of employees, the working climate and on the company's image as a family-friendly enterprise committed to equal opportunities for women and men.

For more information, see www.vaeterkarenz.at

The difficulties encountered by women trying to reconcile job and family obligations (and men's reluctance to contribute to their share of family chores) are an important factor why women lag behind men with regard to income. On the other hand, it is partly due to (normally) lower women's incomes that some families cannot afford "paternity leave", as women's incomes plus childcare benefits often do not suffice for the livelihood of a family.

Typically, men's incomes rise successively because of continuous working life. Women, however, suffer an income break in the 30-39 age group as a result of a more or less protracted career break because of childcare and the difficulty of re-entering the labour market. As a rule, this re-entry entails a drop in income. In the further course of their careers, very few women manage to catch up with men's earnings. Quite the contrary holds true: after job re-entry, the income gap between women and men widens.

⁵ KMU-Forschung Austria, (Research on small and medium-sized enterprises)17 and 36.

The extent of income losses suffered by many women as a result of career breaks for childcare does not, however, follow inevitably from such breaks. In civil service as well as in certain private branches and industries, childcare duties do not lead to female employees falling behind their male colleagues.⁶

This implies that the extent of financial drawbacks is determined by occupational framework conditions. Experience shows that women benefit from a clearly defined and transparent remuneration scheme (including rules with regard to classifications, credits for previous service and advancements), while they are usually adversely affected by a lack of transparency. Employers often unofficially pay male - but not female - employees more than the amounts specified in collective agreements, thus discriminating against women.

Corporate mission statements stipulating the promotion of equal opportunities and transparent personnel policy in conjunction with intra-company plans for gender equality are efficient means to avoid gender-based discrimination and actively contribute towards gender equality.



**Why does he get two euros more?!!
Dearest, the earlier you get used to it ...**

⁶ Cf. Synthesis Research 2002, vol. 2, 10.

Options and limits of the law

Given the large number of existing gender-specific inequalities, what can be accomplished by the Equal Treatment Act?

Equal treatment

Section 5 GIBG (Equal Treatment Act)

Equal treatment at work implies not being treated less favourably than other persons and groups of persons in a comparable situation. The Act governing the Equal Treatment between Women and Men in Employment grants persons affected by gender-based discrimination, i.e., women and men, the right to file complaints and bring actions. They are also entitled to claim compensation. In the case of indirect discrimination, this also applies to members of disadvantaged groups (e.g., part-timers).

Thus the Equal Treatment Act makes it possible to fight gender-based occupational discrimination, given a comparable person who was treated better (e.g., a predecessor in the same job), is currently treated better (e.g., a colleague who is paid more from the outset) or would be treated better (such as a key date regulation potentially discriminating against women). Such arrangements can be contested under the Act.

In principle, protection against discrimination must be enforced on an individual basis. The Act can take effect only if the persons protected by it avail themselves of its options. Support for persons affected by discrimination is provided by the National Equality Body (see page 44).

Many – albeit not all – types of job discrimination against women have their roots in the labour market. This is true not least of income disparities, which may be partly due to career breaks, but to a larger extent to discrimination related to working conditions on the job, such as lower entry salaries, gender-specific differences with respect to credits for previous service, payment for overtime, allowances, bonuses and extraordinary biennial pay increases, as well as generally lower chances for promotion. In concrete figures, 20 per cent of income differences between women and men are the result of inferior starting conditions for women at job entry, 50 per cent of slower income increases are due to limited promotion chances. The remaining 30 per cent can be attributed to the effects of career interruptions due to childcare duties.⁷

Income-related disadvantages are frequently a result of company arrangements or collective agreements being interpreted and applied in the interest of the male rather than that of the female labour force. Both HR officers and the women concerned are often quite unaware of this fact.

In this context, the Metal-Textile Trade Union together with the National Equality Body has conducted detailed research based on collective agreements. It was found that the metal workers' (= men's) world is clearly and precisely structured. In contrast, the textile workers' (= women's) world is characterised by a tangled web of pay arrangements. "In the metal area, the strict separation into skilled and semi-skilled work means that women remain badly paid even if they do excellent work, just because they have not formally completed an apprenticeship. Metal apprenticeships are traditionally a male domain. Only very few young women are trained for one of these occupations. In contrast, textile apprenticeships are predominantly completed by women, but they do not benefit from this fact: completion or non-completion of apprenticeship training does not count – or barely counts – by the logic of textile collective agreements. Pay depends exclusively on the type of work actually performed. This implies that men (mostly foreign nationals) performing accordingly qualified work can get at least the same pay, irrespective of noncompleted apprenticeship."⁸

⁷ Synthesis Research 2000, 78ff.

⁸ Metal-Textile Trade Union, 41.

Under the Equal Treatment Act, the Equal Treatment Commission is authorised to review the alleged occurrence of discrimination in a collective agreement by preparing an expert opinion (see page 49).

Gender equality

Section 2 GIBG

Rather than simply endorsing the concept of equal treatment, the new Equal Treatment Act explicitly targets an active gender equality policy as stipulated by EU law, particularly by Directive 2002/73/EC.

The new target of “gender equality” as specified by the Equal Treatment Act is both declaration of intent and interpretation principle. All provisions of the Equal Treatment Act must now be interpreted from the perspective of gender equality. Gender equality is more than just equal treatment. Gender equality implies a participation of both genders in all areas of society, based on equal rights and equal resources.⁹ This requires concrete legal and institutional benchmarks, but also structural changes in the labour market.

In practice, this may imply creating the conditions for gender equality in a company (e.g., compiling gender-specific internal statistics; targeted promotion of young female employees; advanced training).

In this field, Sweden has set a good example. In Sweden, employers have the legal obligation to take step-by-step measures aimed at distributing the total wages and salaries paid by the enterprise at a 50:50 ratio among women and men.

The Ombud for Gender Equality in Employment advises both employers and members of works councils or shop stewards in all issues of gender equality and provides support with the initiation of gender equality plans in enterprises. (See also p. 44ff.).

Positive action

Section 8 GIBG

Affirmative action promotes equal opportunities for women and men by means of specific measures. The Equal Treatment Act expressly stipulates that policies aimed at the promotion of gender equality - through laws, statutory regulations, collective agreements, works agreements etc. - do not infringe the equal treatment principle, even if they appear to constitute unequal treatment (e.g., temporary preference of equally qualified women in areas where they are underrepresented). (See page 44ff.)

The Federal Government provides grants/subsidies to employers for special expenses in connection with promotion policies aimed at eliminating or diminishing de facto inequalities between women and men.

⁹ Nikolay-Leitner, 128.

Gender equality: the evolution of a concept

Chronology

The demand for “equal pay for equal work” goes back to the late 19th century. It was raised by the nascent movement of female blue-collar workers. To this day, it has failed to become self-evident reality. But the obligation for equal treatment and equality of women and men at work is successively finding its way into laws and other legally binding documents.

- ILO 1951** The International Labour Organisation (ILO) adopts Convention 100 concerning equal remuneration for men and women workers for work of equal value.
- EU 1957** The 1957 treaties establishing the European Economic Community (EEC) include the principle of “equal pay for equal work” (Article 119 EEC Treaty). However, this inclusion was prompted not so much by emancipatory as by economic considerations. At that time, French law already endorsed women’s right to equal pay, which is why France feared competitive disadvantages from a less well paid (=cheaper) female workforce in other Member States.
- ILO 1958** Convention 111 obligates the members to eliminate all forms of discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin in employment or occupation.
- EU 1975** The Equal Pay Directive¹⁰ (75/117/EEC) establishes the principle of equal pay not only for equal work, but also for work of equal value. Work is deemed to be of equal value if it makes similar demands with respect to essential criteria, such as: ¹¹
- ❑ Qualifications/ skills
 - ❑ Strain / stress
 - ❑ Responsibility
 - ❑ Working conditions
- EU 1976** The Equal Treatment Directive (76/207/EEC) proscribes all forms of indirect and direct discrimination on grounds of sex and marital and family status as regards access to employment, basic training, other advanced vocational training, working conditions and promotion. It applies to employment relationships in private enterprises and under public law as well as self-employed persons.
- EU 1979** The Directive on Equal Treatment in Legal Social Security Schemes (79/7/EEC) calls for the reduction of gender-specific discriminations in the field of social security.
- A 1979** The first Austrian equal treatment act enters into force - the “Act on the Equal Treatment of Women and Men with regard to Remuneration” (FLG / Federal Law Gazette No 108/1979). The separate pay scales for women and men are removed from the collective agreements.
- UNO 1979** The United Nations General Assembly adopts the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 4 of this Convention permits temporary positive discrimination (affirmative action) to benefit women: “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.” Article 11 of the Convention proscribes discrimination against women in the labour market.

¹⁰ Since 1975, the European Union has issued directives for the equal treatment of men and women. The EU and EEA member states are obligated to implement EC directives on the national level within a specific period. Moreover, the judgments issued by the European Court of Justice (ECJ) and the principles endorsed in this context must be observed.

¹¹ Winter, 111 and 202ff (quoted according to Ranftl, 5).

- A 1982 Austria ratifies the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (FLG No 443/1982).
- A 1985 Enlargement of the scope of the Equal Treatment Act (FLG No 290/1985) to include the granting of fringe benefits and company measures for (advanced) vocational training. Provisions now include the principle of gender-neutral recruitment advertisements. New title: Act Governing the Equal Treatment of Women and Men at Work.
- EU 1986 The Directive on Equal Treatment in Occupational Social Security Schemes (86/378/EEC) extends equal treatment to include occupational old-age provision schemes.
- EU 1986 The Directive on Equal Treatment of Persons Engaged in Gainful Self-Employment (86/613/EEC) stipulates the equal treatment of women and men engaged in an activity, including agriculture, in a self-employed capacity, also in matters of social security.
- A 1990 New amendment of the Equal Treatment Act (FLG No 410/1990): Extension of the equal treatment principle to include all aspects of working life. In particular, it now includes the establishment of an employment relationship, fixing remuneration, granting of fringe benefits, basic and other advanced vocational training measures, promotion, all other working conditions as well as termination of employment. Compensation of minor scope is established. An Ombud for Gender Equality is appointed as a direct contact. Temporary special measures are promoted to advance the de facto equality of women and men.



To give you an overview of our agenda:

...

Item 23: Choice of colour for the basement door

Item 24: Average length of lawn cut at the back door

Item 25: Promotion of women

- A 1992** Alignment of the Equal Treatment Act to the EC directives on equal treatment (FLG No 833/1992): Sexual harassment at the workplace is considered as gender-based discrimination. The principle "equal pay for work of equal value" must also be observed with regard to collective classification schemes and remuneration criteria. Infringement of the principle of gender-neutral job advertisement by the labour market administration and private job recruitment agencies shall be punished by an administrative penalty. The amount of compensation is increased. The Act must be displayed within companies.
- A 1993** The Federal Equal Treatment Act (FLG No 199/1993) enters into force. Apart from the equal treatment principle for federal employees, it also establishes the principle of targeted promotion of women in federal service.
- EU 1996** The Parental Leave Directive (96/34/EC) is aimed at a fair division of duties between women and men with regard to childcare. It is the first attempt to reconcile professional and family responsibilities.
- EU 1997** The Part-Time Directive (97/81/EEC) proscribes discrimination against part-time workers vis-à-vis comparable full-time workers in the same enterprise. Pursuant to the judgment of the European Court of Justice, discrimination against part-timers constitutes an indirect discrimination on grounds of sex, because the majority of part-timers are women.
- The Directive on the Burden of Proof (97/80/EC) introduces rules of evidence which are more favourable to plaintiffs. If the latter can establish a credible case of discrimination on grounds of gender, it shall be for the respondent to produce counter-evidence.
- A 1998** Since its adoption in 1920, the Austrian Federal Constitution (B-VG) has expressly forbidden discrimination on grounds of sex (equality principle); the explicit commitment to the equality of women and men was added in 1998. Article 7 (2) of the Federal Constitutional Act states that: "the Federal and Provincial governments and local authorities endorse the de-facto equality of women and men. Measures to promote de facto equality of women and men, particularly by eliminating actually existing inequalities, shall be permitted."
- Amendment of the Equal Treatment Act (FLG 44/1998): Regionalisation of the National Equality Body.
- EU 1999** The Amsterdam Treaty enters into force. This treaty of the European Union is the basis or the equal treatment of women and men in the European Community. Article 2 EC refers to the promotion of equality as one of the duties of the European Community. Article 3 EC obligates the Community to eliminate inequalities and to promote equality-between women and men. Pursuant to Article 13 EC, the Community can take suitable measures for combating discrimination based on sex. Article 141 EC establishes the principle "Equal pay for male and female workers for equal work or work of equal value". Besides, Article 141 (4) of the Treaty establishing the European Community permits so-called "affirmative action" in the interest of equality: "With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers."
- A 2001** Amendment of the Equal Treatment Act (FLG No 129/2001). Establishment of the constitutional independence of the chairperson of the Equal Treatment Commission in exercising her/his function. An application to the Equal Treatment Commission by the Ombud for Gender Equality has the effect of suspending the statutory deadlines for claims in court.

EU 2002 The new Equal Treatment Directive (2002/73/EC) amends Directive 76/207/EEC and contains provisions for the access to employment, basic training and promotion and working conditions.

Gender-related and sexual harassment are now considered an infringement of the principle of equal treatment of women and men. Article 1a stipulates active policies aimed at equality. It states that a woman shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post.

EU 2004 The Directive on Equal Treatment in the Access to and Supply of Goods and Services (2004/113/EC) stipulates the equal treatment of women and men also in areas outside of the labour market (e.g., the calculation of premiums and benefits for the purposes of insurance and related financial services). Implementation of this Directive by the Member States shall be completed by 2007.

A 2004 The new Equal Treatment Act (FLG No 66/2004) enters into force on 1 July 2004. Its first part, "Gender Equality in Employment", implements Directive 2002/73/EC. At the same time, the Federal Act Governing the Equal Treatment Commission and the National Equality Body (Ombud for Equal Treatment) - GBK/GAW Act (FLG No 66/2004) enters into force.

The second part of the Equal Treatment Act forbids discrimination on grounds of ethnic belonging, religion or belief, age or sexual orientation, while the third part bans discrimination on grounds of ethnic belonging in the field of goods and services, education, social protection and social advantages.

The third act taking effect at that time is the new Federal Equal Treatment Act which also forbids discrimination on grounds of ethnic belonging, religion or belief, age and sexual orientation in employment.



It's grown late ... I suggest we get a bite to eat. Else ... Who wants ... Ms. Plaumann wishes to take the floor on promotion of women ...

Equal Treatment Act: scope of application

Innovations

By comparison with the previous legal position with regard to the equal treatment of women and men, the new 2004 Equal Treatment Act (GIBG) introduces the following innovations:

Section 2 GIBG

The goal of gender equality is now set forth expressly in the Act and is considered as an interpretation principle for all provisions of the Equal Treatment Act. This implies that gender equality must be taken into consideration in all relevant legal and policy areas. The target is the 50% distribution of resources between women and men and the balanced representation of both sexes.

Section 17 GIBG

Apart from gender-based discrimination, the new Equal Treatment Act prohibits discrimination on grounds of ethnic belonging, religion or belief, age and sexual orientation in employment and is also applicable to multiple discrimination.

Section 5 (3) GIBG

Under the new Equal Treatment Act, instructions to commit acts of discrimination are expressly forbidden.

Section 5 (3) GIBG

The new Act offers legal protection for affected persons and witnesses against discrimination related to the assertion of rights under the equal treatment principle.

Section 1 GIBG

Protection against discrimination also includes atypical or employment-assimilated employment relationships (e.g., homeworkers, trainees, quasi-freelancers).

Section 4 GIBG

The equal treatment principle now extends to areas not directly related to employment, such as the access to vocational counselling and basic training, external advanced training and retraining measures, as well as the access to self-employment.

Section 7 GIBG

Apart from sexual harassment, the Equal Treatment Act also forbids so-called "gender-related harassment" with regard to a working climate generally hostile to women or men.

Section 9 GIBG

So far, the ban on discriminatory job advertisements has addressed not only job recruitment agencies but also employers placing recruitment ads. After one warning, employers can now be fined up to € 360 (administrative penalty). For most discrimination cases, there are now no upper limits for claims for compensation.

These far-reaching modifications of the Equal Treatment Act were occasioned by the required alignment with the EU law, which did not merely influence the content of the Act but also accordingly enlarged the competences of the National Equality Body and the Equal Treatment Commission (see p. 44ff.).

Entities and persons obligated under the Equal Treatment Act

Sections 10 and 12 GIBG

The Equal Treatment Act described in this brochure applies to the private sector. The principle of equal treatment of women and men is primarily addressed to employers. Depending on the given infringement of the Equal Treatment Act, vocational training institutions and the Public Employment Service (AMS), and in certain cases even colleagues and customers, may be held responsible for discriminatory conduct. Employment relationships with federal authorities are regulated in the Federal Equal Treatment Act. In all Länder (with the exception of Vorarlberg), there are additional provincial equal treatment acts governing employment relationships with Länder governments or local authorities.

- Employers are liable for infringements, committed knowingly or unknowingly, of the equal treatment principle with regard to recruitment, remuneration, promotion, access to training, working conditions and termination of employment.
If an employer negligently fails to take adequate remedial measures against gender-related and sexual harassments by colleagues, customers or business partners, the harassed person is entitled to claim compensation from the employer.
- Colleagues and customers can be liable to pay compensation if they harass employees. (Example: A saleswoman in a clothes shop is sexually harassed by a customer.)
- In the event of discriminatory job advertisements, recruitment agencies and the Public Employment Service can be fined up to € 360 administrative penalty. In the case of job advertisements placed by employers themselves, the law is a little more lenient; administrative penalties up to the amount mentioned above are imposed only after one warning.

Persons protected by the Equal Treatment Act

Section 1 GIBG

The Equal Treatment Act protects employees against gender-based discrimination, irrespective of their working full time, part time or holding marginal jobs. Apprentices, foreign-national employees or persons completing a trial period in an enterprise are considered employees and enjoy protection under the Act. Besides, the Act also applies to employment-assimilated persons. Persons with a status assimilated to employment hold the middle ground between dependently employed and self-employed individuals. Unlike employed persons, they work on the basis of quasi-freelance contracts or contracts for work and services, i.e., they are personally independent, not bound by instructions and not integrated into an enterprise. However, unlike truly self-employed persons they are economically dependent. For example, a person is considered to be economically dependent if she/he works for one or several enterprises with a certain regularity and depends on their pay to make a living.

The Act also applies to home workers and persons posted to Austria by non-Austrian employers within the framework of labour subcontracting loanwork.

The Equal Treatment Act also protects against discrimination in the run-up to employment, entitling persons to claim compensation if they are discriminated against in the course of the application procedure. Persons discriminated against with regard to access to vocational counselling, basic or other advanced vocational training and retraining measures are also entitled to compensation. In the event of discriminatory job advertisements in or outside an enterprise, job applicants can institute administrative penal proceedings by lodging a claim with the competent district authority (municipal authorities).

Labour market areas covered by the Act

Section 1 (1) GIBG

The Equal Treatment Act prohibits all forms of gender-based discrimination in the labour market. It applies exclusively to private enterprises.

The Act does not only cover employees (employment contracts), but also employment-assimilated relationships (see p. 23f).

Section 3 GIBG

The Equal Treatment Act forbids gender-based discrimination related to the employment relationship, in particular with regard to:

- Establishing an employment relationship
- Fixing the pay
- Fringe benefits
- basic, or advanced vocational training and retraining
- Job advancement/promotion
- Working conditions
- Termination of employment

(see also p. 30ff.)

Sections 1 and 4 GIBG

The 2004 amendment of the Equal Treatment Act substantially enlarged its scope. Apart from the employment relationship itself, it now includes certain other areas of the labour market, forbidding gender-based discrimination in the following areas:

- Access to vocational counselling, basic training, advanced vocational training and retraining (e.g., in vocational schools, within the scope of training measures of the Public Employment Service or of advanced training courses at adult education centers),
- Membership and involvement in activities of employees' and employers' organisations (e.g., Chamber of Labour, Economic Chamber, trade unions) and making use of the services of such organisations,
- Conditions for access to self-employment activity (e.g., prerequisites for obtaining trade licences).

In the abovementioned areas, the Act also prohibits sexual harassment and other forms of gender-related harassment (see p. 27ff).

Equal Treatment Act: Basic principle

The equal treatment principle applies to women and men. In essence, it states that gender-based discrimination in the labour market is not permissible.



Inadequate child-care facilities, problems at work! That's a laugh, eh poppet?! See you at night!

Gender-based discrimination

Gender-based discrimination is a prejudicial, objectively unwarranted, unequal treatment of women and men.

Reference to marital or family status has now been included as a specific form of gender-based discrimination.

According to the judgment of the European Court of Justice, discrimination on grounds of sexual orientation also falls within the category of gender-based discrimination.

Discrimination related to marital or family status

Sections 3 and 4 GIBG

Discrimination vis-à-vis a colleague on the grounds of being married or having children, being single or having no children, constitutes an infringement of the Equal Treatment Act. This newly added discrimination ban is intended to contribute towards the dismantling of the traditional distribution of roles and duties between the sexes. Many employers still prefer a male employee to be married, assuming he will receive support from his wife. On the other hand, it is expected that a female employee who is married and/or has children will be forced by her family duties to cut back on her work schedule.

For example, if childless employees cannot go on vacation during school holidays or at Christmas because these times are "reserved" for employees with families, this is considered as discrimination related to marital and family status.

Discrimination on the grounds of sexual identity

According to the European Court of Justice, discrimination on grounds of sexual identity (transgender, trans-sexuality) is a form of gender-based discrimination. In particular, if persons make it known in their work environment that they do not feel they belong to their biological sex, this can entail discrimination on grounds of sexual identity. For example, discrimination can occur during job search, if the "legal sex" in the documents and certificates does not coincide with the chosen sex, with the result that the person concerned is not invited to a job interview. Further cases include dismissal in connection with planning or having undergone a sex change, reassignment to an inferior job or revocation of approval for advanced vocational training.

Forms of discrimination

The Equal Treatment Act distinguishes between the following forms of discrimination:

- Direct discrimination
- Indirect discrimination
- Sexual harassment
- Gender-related harassment
- Instruction to commit acts of discrimination
- Protection against victimisation

Direct discrimination

Section 5 (1) GIBG

By definition, direct discrimination means that a person, on the grounds of her/his gender, is, was, would be accorded less favourable treatment than another in a comparable situation. (Example: A woman's male colleague, younger and less qualified, is preferred over her in a promotion.) This reference person need not belong to the other sex; it is sufficient if the person affected by discrimination is treated differently because of her/his sex. In the case of discrimination on grounds of pregnancy, the reference person would be a non-pregnant female colleague or a male colleague, while a male colleague doing comparable work but being paid more would be the reference person in a case of pay discrimination.

Gender-based unequal treatment may be justified only within very narrow limits; for example, if:

- Belonging to one of the two sexes is an essential prerequisite for the work to be performed (example: soprano singer; see also p. 30), or
- The unequal treatment contributes to de-facto equality between women and men (e.g., through measures that promote women).

Unequal treatment on grounds of a possible or actual pregnancy is never justified. It is definitely a case of discrimination if a female applicant is not given a job because she does not answer when asked if she wants to have children.

Indirect discrimination

Section 5 (2) GIBG

We speak of indirect discrimination if apparently neutral regulations specifically discriminate against persons of one sex vis-à-vis persons of the other sex.

In a company, the majority of part-timers are women. In comparison to the full-timers, they earn lower pay per hour, are excluded from the continued payment of wages in case of illness, or are obliged to attend advanced training courses in their free time. As a rule, these are cases of indirect discrimination.

Unequal treatment of this kind can be objectively justified only if:

- The goal pursued by the employer by means of unequal treatment is legitimate and sufficiently important to have priority over the equal treatment principle (according to the judgment of the European Court of Justice, purely economic objectives, such as the reduction of costs, are no justification for this kind of unequal treatment), and
- The unequal treatment is commensurate with and necessary for achieving the goal.

To justify the discriminatory arrangement, both requirements must be fulfilled.

Indirect discrimination must be substantiated with the aid of statistical data or proven by other suitable means, such as employees' surveys.

Sexual harassment

Section 6 GIBG

Harassments are among the gravest and most common impairments at the workplace. According to the experience of the National Equality Body, sexual harassment – along with pay discrimination – is the most frequent form of discrimination against women. Sexual harassment at the workplace reflects the imbalance of power between women and men. Sexual assaults are frequently sanctioning measures aimed at showing women “their place” and maintaining the male-dominated hierarchy.¹²

The prohibition of sexual harassment does not imply a general ban on sexual relations at the workplace. But they must be subject to mutual consent. Harassment occurs if there is no consent or if consent is extracted under pressure. Sexual harassment occurs if the sex-related conduct is subjectively undesirable to the person concerned (it being completely irrelevant whether or not another person considers this conduct harassing) and if this conduct has negative effects on the situation at the workplace (e.g., by creating a hostile work environment or causing disadvantages for the person concerned if she/he combats the harassment). The prohibition of sexual harassment is addressed to colleagues and superiors as well as to employers (whether the latter commit harassment themselves or negligently fail to take action against harassment by third persons). Sexual harassment also occurs if committed by third persons, such as customers, in connection with the employment relationship. Figure-hugging clothes or friendly relations are by no means a justification for harassment. The following examples frequently occur in many variations:

A female employee of a travel agency is invited by her superior for an after-work drink at a bar. Later on, he invites her to his place. When she refuses, he becomes angry and asks what she thinks he invited her for. The woman hurries from the bar.

A man sharing an office with a woman puts up a calendar featuring pin-up girls. Although asked to take it down, he insists that it stay up, telling her not to be envious of the pretty models.

¹² Smutny/Mayr, 318.

The employer's negligent failure to take remedial actions against sexual harassment also constitutes discrimination. Even if employers do something against the harassment - for example, by taking down the calendar and admonishing the offending person - it is possible to file a claim against the colleague.

Massive sexual harassments involving physical acts (such as intensive touching of the private parts) constitute a criminal offence (section 218 of the Penal Code) and can be reported to the police.

Gender-related harassment

Section 7 GIBG

Apart from the prohibition of sexual harassment, the Equal Treatment Act now also includes a ban on gender-related harassment. This is a type of harassment through gender-related - for example misogynic - behaviour that is not related to the sexual sphere and is subjectively unpleasant to the person concerned. This may include verbal comments, gestures or the writing, displaying and circulation of texts or images. This conduct must have a grave character and create a disturbing and/or hostile work atmosphere. Gender-related bullying¹³ also constitutes a form of gender-related harassment.

An employer likes to make fun of women and is astonished that his female employees cannot laugh about his jokes, quite unlike their male colleagues, who repeatedly call them "women's libbers who can't take a joke".

Instruction to commit acts of discrimination

Section 7(2) (3) GIBG

The new Equal Treatment Act also prohibits instructions to commit acts of discrimination. If, for example, an enterprise commissions a recruiting agency to exclusively select men aged between 35 and 40 for the position of managing director, it may be held liable for paying compensation.

Unfavourable treatment related to the assertion of the equal treatment principle (victimisation)

Section 13 GIBG

The legal prohibition of unfavourable treatment provides protection for persons combating discrimination by bringing an action or serving as witnesses. Under this provision, summary dismissal, notice of dismissal or other unfavourable treatment of complainants and witnesses by employers are prohibited. If unfavourable treatment occurs nevertheless, the person concerned is merely required to establish a credible case, not to prove the discrimination.

¹³ Bullying implies a conflict among colleagues or between superiors and employees. The bullied person is in an inferior position and is attacked directly or indirectly by one or several persons systematically, frequently and over a longer period, a conduct aimed at removing him/her from the employment relationship (Smutny/Hopf, 21).

Multiple discrimination

Section 17 GIBG

Since July 2004, the Equal Treatment Act has forbidden not only gender-based discrimination but also unjustified unfavourable treatment related to ethnic belonging, religion or belief, age or sexual orientation. Discrimination on grounds of disability is regulated in the Equal Treatment Act for People with Disabilities.

Multiple discrimination implies discrimination against a person for more than one of the reasons mentioned above.

Some people wear a headgear for religious reasons. If enterprises have specific clothing rules forbidding the wearing of headgears, these persons can be considered to be unfavourably treated indirectly on grounds of religion and gender, unless there are objective reasons for this ban. Such clothing rules need to be examined for potential adaptation or for specific safety reasons that do not permit the wearing of headgears. Claiming that, for example, customers generally do not wish to be served by women wearing a headscarf is no sufficient justification for such clothing rules.

A contractual clause providing for giving notice to flight attendants at the age of 36, whereas pilots may continue up to age 60, also constitutes multiple discrimination. On the one hand, this age limit affects primarily women, since they account for the large majority of flight attendants. On the other hand, persons over 36 are treated unfavourably directly on grounds of age. The fact that pilots may be given notice only at age 60 suggests that there are no health reasons or other justifications for setting an age limit of 36. Flight attendants over 36 are therefore subject to multiple discrimination on grounds of sex (indirectly) and age (directly).

Section 1 (3) GBK/GAW Act

Multiple discriminations are frequently related to the gender of the person discriminated against. Therefore the responsibility for such cases lies with the Senate I of the Equal Treatment Commission (see p.44ff.).

The most frequent discrimination cases related to employment

Gender-neutral job advertisements

Section 9 GIBG

Personnel recruitment must not be limited to either men or women. It is not permissible to place newspaper ads looking for a “committed young man” or a “young, dynamic, flexible, very attractive, female and single management assistant”. Another case of discrimination is addressing both men and women but expressly demanding that female applicants have “completed their family planning”.

Gender-specific ads are permitted only in exceptional cases where one sex or the other is a genuine occupational requirement for performing the activity concerned, such as models, singers, actors/actresses, social workers in a women’s shelter or social workers in a men’s counselling centre. It is not permitted to exclusively seek men due to a lack of sanitary facilities or for security reasons (such as front desk service in banks).

The wording must clearly and unequivocally address both women and men – such as by using both female and male forms, where available, or otherwise clarify that the ad is aimed at both sexes.

The principle of gender-neutral recruitment is designed to facilitate women’s access to occupations other than the “classical”, traditionally less well paid women’s jobs with few chances of promotion – and to use the wording to make them “visible”. The point is to induce employers to consider women when placing recruitment ads. Numerous advertisements still look for male managers or directors and for female secretaries, accountants or telephone operators. An Austrian survey conducted in 1999 of 7,642 ads in nine newspapers showed that a mere 41 per cent of ads placed by private employers and 65 per cent of ads placed by private job recruitment agencies and HR consulting agencies complied with the legal provisions. And there can be no doubt that gender-specific wording of job adverts has an impact on applications. According to a German survey conducted in 1997, more than half of job adverts with “male” wording is exclusively answered by men.¹⁴

Establishing an employment relationship

Section 3 (1) GIBG

Gender-based discrimination can affect not just the working conditions but frequently begins one step earlier – upon establishing the employment relationship. For example, it is inadmissible if:

- During job interviews, employers ask women about pregnancy or family planning or even ask them to submit a negative pregnancy test;
- In a company, women always receive fixed-term or quasi-freelance non-standard contracts or contracts for work and services, while men are employed for a non-limited duration or on the basis of a fixed employment contract that provides much better protection under labour law;
- A woman does not get a job because “she’ll get pregnant and will be gone in two years’ time” or, being a single parent, is seen as “not flexible enough”;
- A man replacing another person as a teacher at a private school is rejected on the ground that children cannot be expected to cope with the change from a female to a male teacher;
- A company places a gender-neutral ad for a secretary or accountant but does not even consider men in the selection procedure because it is actually looking for a woman.

¹⁴ Smutny/ Mayr, 362 und 364.

Pay scales

Section 3 (2) GIBG

The Equal Treatment Act also contains the principle of equal pay for women and men. It forbids discrimination not merely with regard to the basic salary but also to all other components of the salary, such as lump-sum overtime pay, hardship allowance or voluntary company pension schemes.

The following frequent cases of pay discrimination are examples of infringement of the Equal Treatment Act:

- A woman receives a lower entry salary than her male colleague, although they are both equally qualified and do the same job, on the ground that the colleague has to keep a family and “did better in negotiations”. In its 1998 judgment, the Supreme Court explicitly stated that the employer is responsible for providing equal pay for work of equal value.
- A woman has been doing the job of her previous superior for two years. She does not get any pay increase, while her male colleagues get additional pay for assuming additional responsibility.

The essential point is that the principle of equal pay applies not only to equal work but also to work of equal value. Activities are considered to be of equal value if they involve similar, albeit not identical, conditions with respect to knowledge, training, strain, effort, working conditions and responsibility.

- For example, it is a case of discrimination if, under the collective agreement, a company pays hardship allowance to men for work under certain aggravating conditions (e.g., cold or use of physical strength), while no allowances are provided for women working in comparable stressful situations (e.g., dirt, odour, damp).

Fringe benefits

Section 3 (3) GIBG

The equal treatment principle does not merely apply to pay but also to voluntary fringe benefits provided by employers. For example, this includes staff canteens, meal vouchers, in-house libraries, company housing and sports facilities.¹⁵ If male - but not female - employees are provided with company housing, this constitutes gender-based discrimination. It is also unlawful if a company grants fringe benefits to full-time employees but not to (predominantly female) part-time employees.

Basic and advanced vocational training, retraining

Section 3 (4) GIBG

The Equal Treatment Act prohibits all forms of gender-based discrimination involving the access to basic training and advanced vocational training as well as retraining measures.

Advanced training at company level is primarily aimed at increasing the occupational qualifications of employees. In this area, women are still suffering from disadvantages. Superiors rarely motivate or admit women to participate in advanced training activities. Besides, it is mostly higher-level employees who benefit from advanced training measures. As a result, women - evidentially overrepresented in subordinate jobs - also have fewer opportunities for qualifying for promotion.

Further examples of infringements of the Equal Treatment Act:

- The management of a company always approves the applications of male employees for participation in advanced training programmes abroad, while women's applications do not even get a reply.
- A company does not even offer female employees participation in advanced training programmes because they are supposedly not interested due to family duties.

¹⁵ Smutny/ Mayr, 250.

- In an enterprise, employees working part-time must attend advanced training courses in their free time, while full-time employees are allowed to attend during working hours. The large majority of part-timers are women.
- A female employee training to become a medical specialist learns that she was not considered for a training position because her superior thinks she might get pregnant.

Job advancement/Promotion

Section 3 (5) GIBG

Working their way up, women face disadvantages at all levels of the job hierarchy, hitting the “glass ceiling” quite soon. A total of 56 per cent of all Austrian employees are female, but the proportion of women declines as qualification levels rise: while women account for approximately 70 per cent of apprentices and unskilled workers, only 24 per cent of persons in highly qualified and managerial positions are women.¹⁶ According to a new study conducted by the Chamber of Labour, the proportion of women in the management of 379 Austrian corporations is a modest 2.9%.¹⁷ The low proportion of women in higher positions cannot be explained by lower qualifications. “Typically male” qualifications are frequently rated more highly, so that men are a priori classified as “better qualified”. Certain characteristics listed in job specifications, such as “ability to assert oneself” or “performance aspirations” are frequently seen as positive in men but negative in women, making them seem “self-centred” or “obsessed with power”.

Many women face a specific career dilemma: When they are young, their job advancement is impeded because employers are afraid they will be distracted by childcare (“women are not eligible for all positions because they cannot really be relied on while they are of childbearing age”). When they are finally free of childcare duties, they are considered to be “too old”. When job vacancies for managerial positions are to be filled, women with higher qualifications and longer job experience are frequently passed over. The jobs are given to younger, less qualified men.

- It is an infringement of the Equal Treatment Act if a better qualified female applicant is not given an internally advertised managerial position because she is accused of “aspirations for power” and “lack of team skills”, while the post is given to a younger man - who worked below her for years - despite less job experience and lower qualifications.

In practice, women are frequently passed over for promotion because the job profile was modified ex post facto in favour of a man:

- For a managerial position, a man is preferred over a woman who meets all job profile requirements. He is promoted because he has completed university studies and is classified as “better qualified”, although this type of qualification was not required in the advertisement.

¹⁶ Statistics Austria 2002, 45.

¹⁷ Vienna Chamber of Labour, 1.

Working conditions

Section 3 (6) GIBG

For "other working conditions", the discrimination concept has deliberately been given a wide scope to ensure that the Act includes any possible form of gender-based discrimination, even if not expressly specified in the Act. The following are typical examples of discrimination related to "other working conditions":

- Apart from their actual work, women are often expected to do traditional (house-keeping) chores. Example: a female technician is the only woman in a team. While all team members perform equal work or work of equal value, she is the only one required to make coffee, get snacks and clean the office.
- A group of female employees in a company has neither fixed working hours nor fixed workplaces. Every day they are required to wait from 8 to 12 in the morning to see whether and where they will be needed. This arrangement is unacceptable for one of the affected women, a single parent of two children, since it makes it impossible for her to organise her family life.
- In a research institute, all employees perform work of equal value, but only men are provided with single rooms, while women are required to share open-plan offices.

Upon re-entry into the job market after maternity leave, women are often subjected to discriminatory treatment, such as having to do subordinate work, being excluded from the circulation of important information, or being downgraded in some other manner. A female university graduate working as the principal's assistant in an educational institution returns from maternity leave to find herself transferred to another place. Her superior asks her if she "manages with the one child" or maybe prefers "getting herself pregnant with a second child". At the new place, she is required to work in the secretariat for several months and to put up with constantly changing working hours, making it difficult for her to organise childcare.

In its counselling practice, the National Equality Body has found that men are also affected by discrimination related to parental leave. For example, men wishing to take parental leave are threatened with dismissal or, upon going on leave, learn that they will not be needed in future.



Women's Literature
NOVELS BUSINESS MAGAZINE SCIENCE FICTION

Termination of employment

Section 3 (7) GIBG

It is quite common for women to be the first to be dismissed in the event of operational problems or in the course of streamlining measures. Sometimes women are dismissed, just to be replaced immediately by men. In such cases, operational or economic reasons are hardly credible.

- In practice, women complaining about sexual harassment are frequently given notice to quit, since many companies tend to “solve” the problem by removing not the harassing but the harassed person.
- Sometimes women are dismissed when they take legal steps against an infringement of the equal treatment principle – a clear infringement of the prohibition of unfavourable treatment (see also p. 35).

Pregnancy and parental leave are specific discrimination factors affecting women:

- For health reasons, a pregnant painter is prevented from working with paints containing solvents. She and a female colleague (the only two female employees) are given notice to quit in order to “prevent” further pregnancies in the company. The reasons given are the internal situation and unsatisfactory business performance. In fact, both women have always done their work to the employer’s satisfaction, and the order book position is good enough.
- A female computing specialist is given notice to quit directly upon the expiry of the four-week retention period after parental leave. The same has already happened to several of her female colleagues.

In case of discrimination: legal options

Section 4 GBK/GAW

The National Equality Body (Ombud for Equal Treatment), and, especially the independent Ombud for Gender Equality in Employment, have been established by law to support and advise individuals who consider themselves as having been gender-discriminated at work. The Federal Ombud and the Regional Ombuds are responsible for assisting and supporting individuals in company negotiations to implement the non-discrimination principle and to advise them to the best of their capacity. Whether and to what extent any support is to be given is decided by the individual after consultation. The Ombud is entitled to obtain information from the employer or works council. It may also institute proceedings with the Equal Treatment Commission to investigate whether the case actually involves discrimination, and it will assist complainants throughout the proceedings. Individuals feeling discriminated within the meaning of the Equal Treatment Act may, alternatively, contact the Equal Treatment Commission directly and apply to have their case investigated.

Sections 1 and 12 GBK/GAW

The Equal Treatment Commission is an independent body established at the Federal Ministry of Health and Women. Senat 1 consists of the chairperson, eight representatives of employees' and employers' organisations and three representatives of the Ministry. Proceedings before the Commission are free of charge and serve to attain a solution to discrimination problems between the individual involved and her/his employer in an informal, non-public framework. This method is especially suitable for employees in a valid employment relationship since extrajudicial proceedings are better suited to finding a solution that is in conformity with the Equal Treatment Act and that allows parties to continue their employment relationship. This objective is further supported by the strict confidentiality of the proceedings, which involves, e.g., questioning of third parties who are hoped to be able to furnish information, in the absence of and without informing the parties to the dispute.

In contrast to judicial proceedings, this procedure does not conclude with a (legally enforceable) judgment but with a non-binding expert opinion where the Commission explains and gives reasons for its decision on whether or not discrimination has occurred.

Section 12 GIBG

In addition to involving the Equal Treatment Commission, the individual affected by discrimination may also take court action to enforce her/his claim for equal treatment. Women and men who are discriminated against or harassed at work, whether directly or indirectly, because of their sex are entitled to be compensated for the damage from the employer and/or any other person responsible for such discrimination (e.g. private education facility, colleague, customer). If the court finds that the complainant has been discriminated against because of gender or marital status, she/he may lodge a claim for material compensation and compensation for the personal injury suffered.

The Act's effectiveness to a large part depends on those it is intended to protect - those suffering discrimination. If an ever greater number of employees suffering from gender discrimination take advice and action to combat their discrimination, discriminatory practices will become unprofitable for enterprises in the long run and will damage their reputation. It is only when employers realise that they run the risk of being forced to take responsibility whenever they infringe the equal treatment principle that the Act will become an important tool to avoid discrimination. In this connection, the National Equality Body is given the key role of advising and supporting victims in enforcing their right to equal treatment.

For more details on the responsibilities vested in the National Equality Body and the Equal Treatment Commission see p. 44ff.

Proof of discrimination

Section 12 (12) GIBG

For persons who suffer from discrimination at work it may be difficult to provide proper proof. Evidence is a key factor when it comes to a court case. The Act makes provision for this difficulty and makes it easier for complainants to assert their right to non-discrimination in court. Rather than being asked to submit concrete evidence of discrimination, the complainant is only asked to produce prima facie evidence of:

- the kind of discrimination involved (e.g. lower wages for equal work, worse working conditions, non-promotion or non-admission to an educational activity); and
- why it is a gender- or status-based discrimination (e.g. when a bonus is given only to married staff members, or when the harassment is in the form of comments hostile to women).

The employer, on the other hand, needs to prove that it is more probable that no discrimination within the meaning of the Act occurred. Thus employers need to divulge wage schemes or furnish the records of other applicants.

In the last analysis it is up to the court to evaluate the arguments, documents and other evidence. The law, however, provides for the defendant (employer) to carry the greater burden by requiring him/her to refute the claim of discrimination while the plaintiff (employee) only needs to show the claim's probable validity.

Compensation

Section 12 GIBG

In addition to granting compensation for a financial or material damage, the Equal Treatment Act expressly provides for compensation for suffering a personal impairment. In the case of an infringement of the Act, the complainant is, as a rule, entitled to be restored to a non-discriminatory state. Thus if an individual receives less pay for equivalent work, she/he is entitled to have her/his future wages adjusted accordingly and to be compensated for the financial loss suffered due to the discriminatory practice (e.g. payment of the income differential for the period provided for in the law or collective agreement) and for the personal injury suffered.

An individual suffering from discrimination can sue for:

- achievement of a non-discriminatory state (e.g. adjustment of future pay to that received by colleagues doing equivalent work; inclusion in future vocational training measures, modelling the working conditions on those enjoyed by colleagues in a better position);
AND/ OR
 - compensation for the financial loss suffered in the past (e.g. compensation for the wage differential for, at most, the past three years, or of the loss suffered in earnings as a result of non-inclusion in vocational training).
AND
 - Compensation for the personal injury suffered (e.g. personal affront by discrimination)
-

In general, compensation for a loss suffered due to discrimination does not depend on the individual guilt of the person committing the discrimination. Even employers who are not aware that, e.g., special benefits granted in their enterprise will discriminate indirectly against women are required to amend this unequal treatment and grant compensation for the loss thus suffered.

Under the Equal Treatment Act, employers cannot be forced to enter into an employment contract with any specific individual. If a woman suffers from discrimination during the application procedure, she is not entitled to the job but only to compensation for the

financial loss thus suffered by her (e.g. the cost incurred for applying, lost wages for at least one month) and for the personal injury. In the event that an employer refuses to employ or promote an individual due to her/his sex, minimum limits for compensation have been specified, i.e. the court, in determining compensation, cannot go below the limit set in the law, but may well go higher. Where a case concerns sexual harassment, the victim is entitled to at least € 720 in compensation due to having her/his dignity violated. For gender-related harassment, the minimum compensation is € 400. The Equal Treatment Act does not stipulate any maximum limits for compensation. A limit (€ 500) is provided only for those cases where an individual is excluded from the selection procedure from the outset due to her/his sex or family status and the employer can furnish evidence that such individual would not have had a chance to get the job or promotion even if her/his application had been considered.

The position of department manager is advertised. Ms. A. is qualified to hold this job but her application is ignored because she is a woman. The job is given to a “better qualified” man.

For an in-depth description of claims for compensation and their respective time limits see the table on page 38ff.

Time limits

Section 15 GIBG

Claims for compensation must be asserted within a specified time limit (“limitation period”), which depends on the type of infringement against the Equal Treatment Act.

- An appeal against discriminatory dismissal must be lodged with the court within two weeks of receiving the notice of termination from the employer.
- Discrimination suffered with regard to promotion or a job offering must be asserted with the court within six months.
- Claims with regard to gender-related or sexual harassment must be filed with the court within one year.
- All other cases of discrimination at work (e.g. discrimination suffered with regard to wages, working conditions, bonus payments or training schemes) can be sued for within three years except when the relevant collective agreement provides otherwise.

While the employment relationship exists it may be difficult for an employee to take legal steps. Therefore an action may be brought for such claims after the employment has been terminated provided that the limitation period has not yet expired.

The limitation period is interrupted when the victim of discrimination applies to the Equal Treatment Commission and files an informal application to have the case reviewed. Once the Commission’s expert opinion has been submitted, the employee has three months to bring an action. There is one exception: In case of dismissal, the time limit is only 14 days.

Ms. A. hears on 1 March that a male and less qualified colleague has been preferred over her in a promotion. If she brings a suit for gender-based breach of the equal treatment principle, she would have to do so by 1 September at the latest. But if she applies to the Equal Treatment Commission before, the period will be interrupted, and Ms. A has another three months to sue after the Commission’s expert opinion has been delivered.

When and where to assert claims

Type of discrimination	Example	Applicable law provision	Possible exceptions	Limits	Legal consequence	Notes
Ignoring a job application	The position of department head is advertised. Ms. A. has the requisite qualifications for the job but her application is rejected outright because she is a woman. The job is then given to a better qualified man.	Section 12 (1) 2	A specific sex is an indispensable prerequisite for the job (e.g. counsellor to women, actor/actress, singer)	6 months upon rejection	Entitled to compensation: - compensation for the financial loss incurred (cost of application) and - compensation for the personal impairment suffered Amount in compensation: maximum € 500 , provided the employer can prove that the plaintiff would not have been awarded the job even if her/his application had been considered and that such person suffered no further loss.	
Specific discrimination suffered upon application	Ms. B. applies for a job and is invited to an interview. Even though she is better qualified, a male applicant is preferred.	Section 12 (1) 1	A specific sex is an indispensable prerequisite for the job (e.g. counsellor to women, actor/actress, singer)	6 months upon rejection	Entitled to compensation: - compensation for the financial loss incurred (cost of application, lost wages) and - compensation for the personal injury suffered Amount in compensation: one month's pay as a minimum.	The court must find that the applicant would have got the job if the selection process had not been gender-biased. The employer cannot be forced to employ a specific person, but she/he may offer the plaintiff a job and thus have the compensation payable reduced.

Type of discrimination	Example	Applicable law provision	Possible exceptions	Limits	Legal consequence	Notes
Wage discrimination	Ms. C. works with a male colleague of the same age on a joint project in the same department. Their work is equivalent in nature, but Ms. C. earns 12% less than her male colleague.	Section 12 (2)	None	3 years (except when the collective agreement provides for a shorter limitation period)	Entitled to equalise the future pay and entitled to compensation - payment of the difference between own pay and the higher pay of a reference person for at most 3 years (limitation period), unless the respective collective agreement provides for another period and - entitled to compensation for the personal injury suffered.	In such a case it is important to find a reference person of the other sex or of another family status who works at an equivalent job for a higher pay. The Ombud may require the enterprise to disclose its remuneration scheme. With such claims becoming time-barred only after three years, the victim may claim the difference in backpay for a maximum of three years. Such claims may be asserted even after termination of the employment relationship provided that the limitation period has not yet expired.
Discrimination with regard to fringe benefits	Subsidised company flats are leased only to married couples (discrimination by family status).	Section 12 (3)	None	3 years (except when the collective agreement provides for a shorter limitation period)	Entitled to a fringe benefit <u>or</u> entitled to compensation for the financial loss incurred <u>and</u> entitled to compensation for the personal injury suffered.	

Type of discrimination	Example	Applicable law provision	Possible exceptions	Limits	Legal consequence	Notes
Discrimination with regard to vocational (advanced) training schemes	A company restricts advanced training schemes to full-time employees, both male and female. Most of the women in the company are employed only part time and thus excluded from such schemes (indirect gender-based discrimination).	Section 12 (4)	None	3 years (except when the collective agreement provides for a shorter limitation period)	Entitled to participate in (advanced) training schemes or entitled to compensation for the financial loss incurred (e.g. cost for privately organised courses) and entitled to compensation for the personal injury suffered.	
Ignoring a person for promotion	Ms. D. is interested in the position of department head. She meets all the criteria for qualification but her application is ignored by the management because the post is to be given to a man.	Section 12 (5) 2	A specific sex is an indispensable prerequisite for the job (e.g. counsellor to women, actor/actress, singer)	6 months upon rejection	Entitled to compensation: - compensation for the financial loss incurred and - compensation for the personal injury suffered. Amount in compensation: maximum € 500, provided the employer can prove that the plaintiff would not have been awarded the job even if her/his application had been considered and that such person suffered no further loss.	

Type of discrimination	Example	Applicable law provision	Possible exceptions	Limits	Legal consequence	Notes
Discrimination in promotion	Ms. E. is the best qualified person in the company to be promoted head of department. But she is passed over because the management fears that due to her two young children she would not be flexible enough to put in overtime.	Section 12 (5) 1	A specific sex is an indispensable prerequisite for the job (e.g. counsellor to women, actor/actress, singer)	6 months	Entitled to compensation: - compensation for the financial loss incurred (e.g. pay of the wage difference thus lost) and - compensation for the personal injury suffered. Amount in damages: at least the amount of the wage differential for three months.	In such a case the court must find that the individual would have been promoted if no discrimination had been involved (e.g. a male reference person was promoted).
Discriminatory working conditions	Ms. F. is the only woman in a project team and is the only one to be regularly required to put in overtime on weekends.	Section 12 (6)	None	3 years (except when the collective agreement provides for a shorter limitation period)	Entitled to enjoy the same working conditions as an individual of the other sex or entitled to compensation for the financial loss incurred and entitled to compensation for the personal injury suffered.	
Discriminatory dismissal	Ms. G. is given notice to quit because the management learns that she plans to become pregnant next year.	Section 12 (7)	None	14 days after receiving the notice to quit from the employer	An appeal against the termination of employment/dismissal can be lodged with labour court.	

Type of discrimination	Example	Applicable law provision	Possible exceptions	Limits	Legal consequence	Notes
Discrimination regarding off-the-job vocational counselling, retraining, advanced training	A private training facility offers a course on controlling. The Public Employment Service regularly refers job-seekers to this facility. Even though numerous qualified women are among those referred, the facility accepts only male applicants for its course.	Section 12 (8)	None	3 years	Entitled to participate in off-the-job vocational counselling, retraining, advanced training <u>or</u> entitled to compensation for the financial loss incurred, from the training facility and entitled to compensation for the personal injury suffered.	
Discrimination with regard to membership and participation in employers' and employees' organisations or organisations whose members are of the same occupational group, including use of the services of such organisations	Ms. I. is harassed by a male colleague and wants to avail herself of the legal services of her employees' organisation to assert her claim in court. She is refused help but hears that the male colleague who had harassed her and who was fired is granted enjoyment of the organisation's legal services.	Section 12 (9)	None	3 years	In this specific case entitled to compensation for the financial loss incurred from the organisation and entitled to compensation for the personal injury suffered. In other cases, alternatively entitled to membership and participation in such organisation and to the use of services by such organisation plus compensation for the personal injury suffered.	Selection procedures for positions in occupational interest groups that do not constitute an employment relationship are also subject to the equal treatment provision of the law.
Discrimination in access to self-employment	The prerequisites for obtaining a trade licence are put in gender-neutral terms but in actual fact biased towards the physical properties of men.	Section 12 (10)	The specific property is an indispensable prerequisite for the work.	3 years	Entitled to compensation: - Compensation for the financial loss incurred and - Compensation for the personal injury suffered.	

Type of discrimination	Example	Applicable law provision	Possible exceptions	Limits	Legal consequence	Notes
Sexual harassment	Ms. X's colleague posts a calendar featuring pin-up girls in their joint office. Against Mrs. X's protests he insists that the calendar stay up.	Section 12 (12)	None	1 year from the incident	Entitled to compensation from the employer who failed to remedy the situation and the harassing person: - Compensation for the financial loss incurred and - Compensation for the personal injury suffered. Amount in compensation : minimum € 720.	
Gender-related harassment	Ms. Y. employer keeps making fun of women and is astonished that his female employees can't not laugh about his jokes, quite unlike their male colleagues, who repeatedly call them "women's libbers who can't take a joke".	Section 12 (12)	None	1 year from the incident	Entitled to compensation from the employer who failed to remedy the situation and from the harassing person: - Compensation for the financial loss incurred and - Compensation for the personal injury suffered. Amount in damages: minimum € 400.	
Submitting employees and witnesses to unfavourable treatment in connection with the assertion of claims under the GIBG (prohibition of victimisation)	Ms. H. complains to the management of the sexual harassment suffered from a male colleague and considers taking legal steps. In order to avoid internal conflicts, the management fires Ms. H.	Section 12 (7); Section 13	Claims under the GIBG are improperly asserted in order to damage the defendant.	The limitation periods depend on the type of discrimination, e.g. 2 weeks in the case of a dismissal.	Dismissals can be appealed against in court. For other types of unfavourable treatment, the party is entitled to compensation: - Compensation for the financial loss incurred and - Compensation for the personal injury suffered.	

Area of authority

Together with the Equal Treatment Act, the Act governing the Equal Treatment Commission and the National Equality Body (GBK/GAW Act of FLG No 66/2004) entered into force on 1 July 2004.

This Act provides for the establishment of a National Equality Body and the institution of an Equal Treatment Commission, defining their respective responsibilities and competences.

National Equality Body

Composition

Section 3 (1) GBK/GAW

The National Equality Body is an organisation set up at the federal government level to enforce the human right of equal treatment and full equality between women and men. The National Equality Body has the following members, reflecting the addition of several grounds for discrimination under the law:

- The ombud for gender equality in employment;
- The ombud for equal treatment on the grounds of ethnic belonging, religion or belief, age or sexual orientation in employment;
- The ombud for ethnic equality in goods and services;
- The Regional Ombuds for gender equality in employment;
- The deputies to the above;
- The staff members of the above.

(Regional) Ombuds for Gender Equality in Employment

These ombuds serve as personal contacts for all issues involving discrimination of women or men.

National Equality Body

Ombud for Gender Equality in Employment

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E-mail: linz.gaw@bmgf.gv.at

Section 4 GBK/GAW

The fact that the law explicitly provides for an ombudswoman and regional ombudswomen for gender equality in employment does not constitute any discrimination of men but is an objectively justified gender-based differentiation which is in line with the equal treatment principle, considering that the problem of gender-based discrimination mainly affects women. Especially in cases of sexual harassment women cannot be reasonably expected to discuss their case with a male counsellor.

Responsibilities and competences

The Ombud for Gender Equality in Employment as well as the four Regional Ombuds and their respective deputies are primarily responsible for providing counselling, support and information.

Under the new law, the (Regional) Ombuds have been given additional competences.

Section 3 (3) GBK/GAW

Within the National Equality Body, the Ombud for Gender Equality in Employment is charged with acting as co-ordinator. This structure permits drawing on the equality know-how of the Ombuds gained since 1991.

Counselling and support:

The Ombud for Gender Equality in Employment advises and supports individuals who feel discriminated against in the workplace.

Examples of such discrimination would be:

- A person of the other sex getting a job or promotion in spite of being less qualified;
- A male/female colleague earning more in spite of doing the same work;
- An employer, colleague or customer failing to keep at a proper physical distance.

Counselling is free of charge and confidential. To the extent possible and desired, the anonymity of victims of discrimination is assured.

Counselling also extends to persons who wish to avoid discrimination (e.g. employers, works councils).

Section 3 (4) and Section 7 (1) GBK/GAW

o provide such counselling services, the Ombudswoman and her deputies can hold open days anywhere in Austrian territory, whereas the Regional Ombuds and their deputies are competent for their respective territory only.

For the schedule of open days see www.bmgf.gv.at

(Gleichbehandlung/Gleichstellung/GAW {equal opportunities/gender mainstreaming}
- TOP-INFOS)

Persons considering themselves as victims of discrimination can address themselves to the (Regional) Ombud for Gender Equality in Employment in order to get customised advice and support. The counselling comprises a clarification of the specific situation and a detailed discussion of further steps available to the individual (e.g. help with the person's own approach to a solution, negotiations with the employer, review of the case by the Equal Treatment Commission). Such steps will be taken only with the counselled person's consent.

Section 4 (2) and Section 7 (2) 2 GBK/GAW

In order to clarify whether a concrete case actually constitutes a violation of the equal treatment principle, the Ombud for Gender Equality in Employment and, in their respective spheres of activity, the Regional Ombuds are authorised to obtain a written statement or other information from the employer, works council or other persons working at the enterprise affected. Such persons are obliged to give the information requested.

Alternatively, the ombudswomen are authorised to intervene before a case is tried in court or before the Equal Treatment Commission, requiring the employer to comment and enter into internal negotiations.

A large part of the work undertaken by the National Equality Body involves consulting services and negotiations with companies, all aiming to achieve a solution that is in line with the equal treatment principle.

Of the 3,398 individuals that turned to the National Equality Body for the first time in 2003, 729 (or slightly more than one in five) were men. Experience has shown that men make up some 20% to 25% of those seeking help from the National Equality Body.

Section 10 (3) GBK/GAW

In cases involving an infringement of the principle of gender-neutral job advertisements, the (Regional) Ombuds are not only entitled to institute administrative proceedings but also enjoy the status of party to the proceedings.

Section 4 (3) GBK/GAW

If the Ombud for Gender Equality in Employment assumes that a breach of the equal treatment principle has occurred and, with the consent of the victim furnishes prima facie evidence to Senate I of the Equal Treatment Commission, the Senate is required ex officio to initiate proceedings. In accordance with the most recent amendment, the Regional Ombuds are similarly entitled to submit such requests to the Equal Treatment Commission.

The Ombud for Gender Equality in Employment, the Regional Ombuds and their respective deputies may, upon the Senate's request, investigate the matter, e.g. enter company premises and inspect company documents. The works council must be involved in such investigations.

Sections 4, 5 and 6 (1) GBK/GAW

The Ombuds are independent in the performance of their duties.

Information:

The National Equality Body informs multipliers and other interested parties on the Equal Treatment Act and its implications for business and on its applications in actual practice, precedents issued by the Equal Treatment Commission and ongoing discussions in connection with the law on equal treatment. Its brief also includes PR work and research.

Section 3 (5) GBK/GAW

The National Equality Body is also authorised to carry out independent investigations of discrimination, publish independent reports and furnish recommendations on all issues concerning discrimination.

Equal Treatment Commission

Sections 1 (1) and 2 GBK/GAW

As provided for in the Equal Treatment Act, the Equal Treatment Commission was set up in 1979. It acts in the run-up to judicial proceedings, operates within the Federal Ministry of Health and Women and consists of three senates.

Section 12 (3) GBK/GAW

A key responsibility of the Equal Treatment Commission and its senates is to enforce gender mainstreaming before cases come to court. Its expert opinions and recommendations do not have any direct legal consequences. If the Commission finds that discrimination has occurred, the procedure ends with an expert opinion and a proposal to the employer of how to eliminate such discrimination.

Any claims for compensation must be asserted before a court, unless the employer voluntarily complies with the Commission's recommendations.

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Senate I

Section 1 (2) 1 and (3) GBK/GAW

Senate I within the Equal Treatment Commission is competent to discuss issues of discrimination of women and men in employment, and of multiple discrimination in employment.

Senate composition

Section 2 (1) and 23 GBK/GAW

Senate I consists of the chair and

- Two representatives of the Austrian Federal Economic Chamber,
- Two representatives of the Federal Chamber of Labour,
- Two representatives of the Federation of Austrian Industry,
- Two representatives of the Austrian Trade Union Federation,
- One member each appointed by the Federal Chancellor, the Federal Minister for Health and Women and the Federal Minister for Economic Affairs and Labour.

Sections 3 (10) and (11) 3 GBK/GAW

The Ombud for Gender Equality in Employment is not a member of the Commission's Senate I, but it is entitled to participate in the Senate's meetings and working committees, where it has the right to take the floor and to ask questions.

Section 2 (9) 3 GBK/GAW

Under the law, each of the above interest groups is expected to appoint at least one woman to the Senate. Also, these institutions are asked to ensure that at least 50 percent of the substitute members are female.

Responsibilities and competences

The Senate's main task consists in dealing with all issues related to gender discrimination and all violations of the equal treatment principle, and to determine whether a case of discrimination has actually occurred. Senate I is authorised to investigate individual cases and prepare expert opinions on general issues.

Section 11 GBK/GAW

Preparation of general expert opinions: Upon application of any interest group within Senate I, upon request of the Ombud for Gender Equality in Employment, or of a Regional Ombud or any of their respective deputies, or in its ex officio capacity, the Senate is required to prepare an expert opinion on issues of violation of the equal treatment principle. Such expert opinions may, i.a., be obtained on regulations of collective legal structures (such as collective agreements or works agreements).

The Senate's expert opinions must be made available by the Equal Treatment Commission, in their full wording but on an anonymous basis, free of charge on the homepage of the Federal Ministry of Health and Women: www.bmgf.gv.at (Erwerbstätigkeit/Gleichbehandlung TOP-INFOS). Previously, the Commission's decisions had been published in a print version:

Anträge an die Gleichbehandlungskommission. Verfahren, Entscheidungen, Gutachten (Applications to the Equal Treatment Commission. Procedures, Decisions, Expert Opinions). Lose-Blatt-Sammlung, Vienna 1997 ff. To be obtained from the Ombud for Gender Equality in Employment (see p. 48).

Section 12 GBK/GAW

Investigation on a case-to-case basis: Senate I is also called upon to investigate whether a gender-based discrimination has occurred in a particular case. In the past years, the Commission discussed some 30 cases each year.

An application to investigate a particular case may be filed by employees, employers, works councils and the interest groups that are members of the Senate.

Also entitled to apply for such an investigation are the Ombud for Gender Equality in Employment, the Regional Ombuds and their respective deputies.

Section 14 (3) GBK/GAW

The Senate decides on whether a discriminatory action has occurred by majority of the votes cast. The chairperson has the casting vote in the case of a tie.

Sections 12 (3) and (4) GBK/GAW

If the Senate finds that the equal treatment principle has been violated, it is its duty to furnish a proposal for implementing equal treatment to the person responsible for the discriminatory action and call upon such person to terminate her/his discriminatory action. If such person fails to do so, any of the interest groups represented in the Senate is entitled to bring an action at the competent labour tribunal to determine whether the equal treatment principle has been violated. In some cases, the civil court may be competent. This procedure offers the advantage that the legal issue is clarified without the victim of discrimination being required to carry the legal costs. If it is found that a discriminatory action has actually been committed, the victim needs to file an action for performance in order to obtain compensation, unless the person responsible for the discriminatory action is required to pay compensation under a declaratory judgment.

Sections 4 (5), 12 (5) GBK/GAW

When proceedings have been instituted by the Ombud for Gender Equality in Employment, by a Regional Ombud or any of their deputies, these are authorised to file an action for a declaratory judgment in case they continue to assume that a discriminatory action has occurred even though the Equal Treatment Commission, upon reviewing the case, has arrived at a contrary opinion, or when an application filed by the Equal Treatment Commission has not been accepted.

All judgments by the court that find that the equal treatment principle has been violated must be published on the homepage run by the Federal Ministry of Health and Women, in their full but anonymous wording: www.bmgf.gv.at

Enforce your rights

1. Don't take it lying down when you are discriminated against at work because you are a woman/man. Gender-based discrimination is a violation of a human right.
2. List all information that may be relevant in connection with your work situation before you approach an expert to seek advice.

What is relevant will, not least, depend on the type of discrimination. Thus, if you feel that you were gender-discriminated when you applied for a job, you should cover the following questions:

- What company and what sector?
- Did you reply to a job advertisement? Or what other type of application was it?
 ◊◊What was the reason given for the refusal?
- Were you asked about being pregnant or wishing to have a child?
- Who was your vis-à-vis at the job interview?

In all other cases, you should preferably be able to provide information on the following:

On your person:

- Name, except when you wish to remain anonymous (if you are not acting on your own behalf: name of the person feeling discriminated),
- Occupation and sphere of activity,
- Information on the employment contract (category, remuneration), training and previous job experience,
- Exact description of the sphere of activity.

On the enterprise:

- Name, address and type of operation.
- Name and job title of the managers and HR officers.
- Is there a works council at the enterprise?
- Is there any person within the works council or company who enjoys your confidence and who could be contacted by the (Regional) Ombud?
- Which collective agreement applies to you?
- Content of the works agreement.

On the discriminatory action:

In what way are you gender-discriminated or (sexually) harassed? Are there other women/men who suffer from discrimination at the company?

3. Obtain advice. Contact the Ombud for Gender Equality in Employment or your Regional Ombud. Furnish it with a description of the situation that is as detailed as possible. If possible, summarise this in writing.

Alternatively, employees can address themselves to the works council or the Chamber of Labour, or submit their case directly to the Equal Treatment Commission, or file it with the labour and social tribunal or, in some cases, a civil court.

4. The (Regional) Ombud will inform, advise and support you free of charge. It will attempt to clarify the options available to solve the problem and will agree with you on how to continue. In many cases, a letter or other intervention by the (Regional) Ombud will suffice to clarify the situation.

If you wish the National Equality Body to intervene on your behalf, it will usually not be possible to preserve your anonymity.

5. If there is reason to assume that the equal treatment principle has actually been violated, the (Regional) Ombud or her deputy can, subject to your consent, submit a request to the Equal Treatment Commission to have your case reviewed.

6. If the Commission arrives at the conclusion that the equal treatment principle has actually been violated, it must furnish a written proposal for implementing equal treatment to the person responsible for discrimination (typically the employer) and to instruct such person that the discrimination be terminated.

7. If such instruction by the Equal Treatment Commission is not complied with within the period to be stipulated by the Senate, an action for a declaratory judgment may be filed by the National Equality Body or any of the interest groups in the Commission.

8. Irrespective of a Commission procedure and an action for a declaratory judgment, any individual suffering from discrimination is entitled to assert her/his claims by filing an action for performance. Under Section 61 of the Equal Treatment Act, the court is required to consider the expert opinion or the finding by the Equal Treatment Commission and must give reasons if it comes to different conclusions. Which procedure is more appropriate in the individual case can be clarified in consultation with the (Regional) Ombud for Gender Equality in Employment.

In most cases, employees are entitled to free legal counsel from the Chamber of Labour. Trade union members can obtain free legal representation from their respective trade unions provided they have been a member for more than six months.

Signs of change

Non-discriminatory language

Discrimination is often reflected in the language used.

If we insist on using only the male form, we send a message that “women are of no importance”. Simply adding (as is often done) that “women are included” when we talk or write about men, is incorrect from the linguistic point of view and, worse, shows a fine disregard of women. Using only the masculine form when women are meant as well is, in the final analysis, an exercise in gender discrimination, even though the Equal Treatment Act bans the practice only in connection with job advertisements.

Thus, it is an expression of the equality intended by the law that the new Equal Treatment Act (unlike the former versions) uses gender-adequate wording.

Ensuring that the language is gender-adequate is not a negligible concern: studies have found that women are much less likely to respond to job advertisements that use only the masculine form. The situation is similar when people are asked to list the names of athletes, politicians, singers, etc.: almost automatically, although not exclusively, they enumerate the name of men. It is only when explicitly asked to name men and women athletes that people will produce women’s names as well. It shows how much the choice of language influences the thought process.¹⁸

Courts too still tend to use the masculine form only. The result may then be as follows: “In the name of the Republic! The Labour and Social Tribunal of Vienna under its Chairman Dr. Petra XY has found ...”

(From a ruling by the Labour and Social Tribunal of Vienna dated 7 March 2003)

Under the Austrian constitution the use of official and academic titles is to be in a form that expresses the sex of the individual (Article 7 (3) of the Federal Constitution Act).

For a guideline for employers on gender-adequate wording in enterprises see: www.bmgf.gv.at (Gleichbehandlung/Gleichstellung/GAW - Berufliche Gleichbehandlung).

¹⁸ Psychologie Heute 2/2003, 18.

Gender equality at company level

Efforts aimed at the promotion of women and full equality between women and men are being intensified at company level – a logical process: equality is in the interest of all parties concerned.

- An enterprise that makes it clear that it welcomes women and men equally has a much greater choice of skilled applicants.
- Employing and training staff members in line with their capabilities and needs regardless of their sex has been documented as improving satisfaction at work, performance and loyalty to the company.
- The effect is similar where companies take measures to facilitate reconciliation of work and family life. The number of women wishing to exclusively devote themselves to their family is dwindling while the number of men wishing to make time for their children is growing.
- Modern, objective and transparent selection procedures will ensure that female job applicants will not founder over male prejudices and that the best-suited applicants are actually employed.
- Co-operation between women and men has been shown to increase efficiency at work: With their different socialisation skills, women and men contribute different social competences so that mixed teams are better at handling tasks, as they can draw on a greater range of action and problem-solving capacities.
- Transparent pay systems make it easier to identify equivalent work and pinpoint discrimination based on pay.

Since the 1990s, the Industrial Relations Act has made provision to allow positive discrimination at work, in the form of:

- Establishing a women's committee,
- Developing plans for the promotion of women and full equality,
- Entering into optional company agreements for the targeted promotion of equal opportunities.

The four pillars for a promising equality policy are:¹⁹

- Ensuring equal opportunities for access to and holding executive positions and jobs in other male-dominated areas;
- Eliminating discrimination in structuring of work and pay policies for traditionally "female" activities;
- Facilitating the reconciliation of work and family life for both women and men;
- Improving the gender mainstreaming competence and equality motivation among executives.

In-company management plans are an efficient tool for achieving equality at work. Such plans or programmes may be launched by staff, works councils, management or HR officers.

The Ombud for Gender Equality in Employment gives advice and support in cases of specific discrimination and to persons wishing to prevent discrimination in particular:

- Prevent sexual harassment,
- Staff selection on a gender-neutral basis,
- Evaluating work on a non-discriminatory basis,
- Human resources management with a view to full equality,
- Develop a pay system in conformity with the law,
- Initiation of gender equality management in the enterprise.

¹⁹ Krell, 17.

Literature

AMS / Arbeitsgruppe für Gleichbehandlungsfragen: Laufbahnplanung für Frauen. Vienna

Anwaltschaft für Gleichbehandlungsfragen: Tätigkeitsberichte 1999 - 2003.

Arbeiterkammer Wien, AK-Auswertung: Mittelalter in der Wirtschaft: fast nur Männer an der Spitze, 2.3.2005. (Download: <http://www.arbeiterkammer.at/www-192-IP-20353.html>)

Baur, Christine: Anti-Diskriminierungsrecht in Österreich. In: AEP-Informationen 1/2005, 22 - 25.

Baur, Christine/ Eva Fleischer und Paul Schober: Gender Mainstreaming in der Arbeitswelt. Grundlagenwissen für Projekte, Unternehmen und Politik. Innsbruck 2005.

Bendl, Regine/ Ulrike Papouschek und Ulli Pastner: Im Aufbruch. Betriebliche Frauenförderung in Österreich. Frankfurt am Main 1998.

Bundesministerium für soziale Sicherheit, Generationen und Konsumentenschutz: Bericht über die soziale Lage 2003-2004, Vienna 2004

Equal Opportunities Ombudsman: Legislation and Concerning Wage Surveys, Analysis and Equal Pay Action Plans. Report on Swedish Experiences by the Equal Opportunities Ombudsman. Stockholm, June 2003.

Gewerkschaft Metall - Textil: "Mit gutem Beispiel voran". Gender Mainstreaming in Kollektivverträgen. ,56ienna 2003.

GPA-Frauen: Leitfaden zur Initiierung von betrieblichen Gleichstellungsprogrammen. Vienna 2001. (Download: www.gpa.at/frauen/index.html)

KMU-Forschung Austria im Auftrag von BMWA und WKÖ: Unternehmerinnen in Österreich. Aktuelle Situation und Entwicklungsmöglichkeiten. Published by BMWA. Vienna 2005.

Krell, Gertraude (ed.): Chancengleichheit durch Personalpolitik. Gleichstellung von Frauen und Männern in Unternehmen und Verwaltungen. Rechtliche Regelungen Problemanalysen - Lösungen. Wiesbaden 2004 (4th print run).

Lutz, Hedwig: Wiedereinstieg und Beschäftigung von Frauen mit Kleinkindern. Ein Vergleich der bisherigen Karenzregelung mit der Übergangsregelung zum Kinderbetreuungsgeld. Editor: Österreichisches Institut für Wirtschaftsforschung. Vienna 2004.

MA 57/ Frauenbüro der Stadt Wien (ed.): 7 Schritte zur Gleichstellung. Handbuch zur betrieblichen Gleichstellung von Frauen und Männern und zur Vereinbarkeit von Beruf und Familie/ Privatleben. Vienna 2001. (Download: www.gleichstellung.info)

Nikolay-Leitner, Ingrid: Zwei Ziele - ein Weg. Gleichbehandlung für diskriminierungsgefährdete Gruppen und Minderheiten und Gleichstellung zwischen Frauen und Männern. In: Institut für Gewerkschafts- und AK-Geschichte (ed.): "Man ist ja schon zufrieden, wenn man arbeiten kann". Käthe Leichter und ihre politische Aktualität. Vienna 2003, 119-135.

Ranftl, Edeltraud: Gleichwertiger Lohn für gleiche und gleichwertige Arbeit. Leitfaden zu Bestimmungen der Entgeltgleichheit und nicht diskriminierender Arbeitsbewertung. Editor: Federal Ministry of Health and Women, Vienna 2004.

Schindler, René: Zur Umsetzung der EU-Richtlinien in Österreich - Teil 1: Strukturelle Umsetzungsfehler. In: DRdA/Das Recht der Arbeit 5/2003, 402-409.

Schindler, René: Zur Umsetzung des EU-Rechts in Österreich - Teil 2: Überblick über Richtlinien, deren Umsetzung bevorsteht, insbesondere die Antidiskriminierungs-Richtlinien. In: DRdA/Das Recht der Arbeit 6/2003, 523-536.

Sonnenmoser, Marion: Bürger oder Bürgerin? In: Psychologie Heute 2/2003, 18.

Smutny, Petra/ Klaus Mayr (ed.): Gleichbehandlungsgesetz, samt den wichtigsten einschlägigen Rechtsquellen. Vienna 2001. Vol. 174 of the series "Gesetze und Kommentare".

Smutny, Petra/ Herbert Hopf: Ausgemobbt! Vienna 2003.

Statistik Austria: Geschlechtsspezifische Disparitäten. Vienna 2002.

Statistik Austria: Haushaltsführung, Kinderbetreuung, Pflege. Ergebnisse des Mikrozensus September 2002. Vienna 2003.

Statistik Austria: Volkszählung 2001. Hauptergebnisse II - Österreich, Vienna 2004.

Statistik Austria: Mikrozensus Jahresergebnisse 2002, Vienna 2004.

Statistik Austria: Statistik der Lohnsteuer 2003, Vienna 2004.

Statistik Austria: Statistisches Jahrbuch Österreichs 2005, Vienna 2004.

Synthesis-Forschung: Einkommen von Frauen und Männern in unselbständiger Beschäftigung. Published by the Federal Ministry of Economics and Labour. Vienna 2000.

Synthesis-Forschung: Beschäftigung und Einkommen von Frauen und Männern, 4 volumes. Published by the Federal Ministry of Economics and Labour. Vienna 2002.

Synthesis-Forschung: Nach der Elternkarenz. Wie gut gelingt Frauen der Wiedereinstieg? Kurzbericht 2/04. www.ams.or.at (Forschung - Publikationen - Forschungseinrichtungen)

Windisch-Graetz, Michaela: Probleme der Mehrfachdiskriminierung in der Arbeitswelt. In: DRdA/Das Recht der Arbeit 3/2005 (to be printed).

Winkler, Gottfried: Die neuen europäischen Gleichbehandlungsregeln. In: ZAS/Zeitschrift für Arbeits- und Sozialrecht 02/2004, 52-57.

Winter, Regine: Gleiches Entgelt für gleichwertige Arbeit. Ein Prinzip ohne Praxis, Baden-Baden 1998.

Websites:

European Union - equal opportunities for women and men:

www.europa.eu.int/comm/employment_social/equ_opp/index_de.htm

Inter-ministry working group on gender mainstreaming:

www.imag-gendermainstreaming.at

Webportal on gender mainstreaming: www.gendermainstreaming.at

Co-ordination Unit for Gender Mainstreaming within the European Social Fund (ESF):

www.gem.or.at/de/index.htm

Equal Project "Gleiche Chancen im Betrieb": www.gleiche-chancen.at

European Project on Equal Pay: www.equalpay.nu

AUSTRIAN EQUAL TREATMENT ACT FOR THE PRIVATE SECTOR

Federal Act by which the Federal Act Governing the Equal Treatment between Women and Men (the Equal Treatment Act - GIBG) is passed and the Federal Act on the Equal Treatment Between Women and Men in Employment (Equal Treatment Act) is amended.

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Article One

The Federal Act Governing the Equal Treatment (Equal Treatment Act - GIBG)

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Title One

Equal Treatment Between Women and Men in Employment

Scope

Section 1

- (1) The scope of Title One applies to the sphere of employment which includes:
1. All types of employment relationships established under private-law contracts;
 2. Access to all types and to all levels of vocational guidance, basic and further vocational training and retraining, including practical work experience;
 3. Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members belong to a particular professional or occupational category, including the right to receive benefits from such organisations.
 4. Conditions for access to self-employment provided that the Federal State is competent for the statutory regulation of the former
- (2) These provisions do not apply to employment relationships;
1. Involving workers in agriculture and forestry within the meaning of the Act Governing Agricultural Labour of 1984, Federal Law Gazette no. 287;
 2. With a Province, an association of local authorities or a single local authority;
 3. With the Austrian Federal State.
- (3) The provisions set forth in Title One also apply to
1. Employment relationships governed by the Act on Home Working of 1960, Federal Law Gazette no. 105/1961, and
 2. Employment relationships of persons who have no employment contract but perform work under a mandate and for the account of certain individuals and are deemed to have a status similar to employees because of their economic dependence on the former.
- For the scope of this Act, the employment relationships referred to in sub paragraphs (1) and (2) above are considered as work relationships.
- (4) The provisions of Title One also apply to the employment of wage and salary-earners who were seconded to positions in Austria by employers having no registered office in this country, for the duration of their assignment
1. Under temporary loan employment schemes or
 2. For continued work.

Equality

Section 2 The aim of this Title is to achieve full equality between women and men.

The Equal Treatment Obligation as regards Employment Relationships

Section 3 No person shall be subject to direct or indirect discrimination at work on the ground of sex, especially by reference to marital or family status, in particular not with regard to

1. The establishment of an employment relationship,
2. The fixing of pay,
3. The granting of fringe benefits which do not represent remuneration,
4. Access to vocational training and retraining,
5. Professional career, in particular job advancement,
6. Working conditions,
7. Termination of employment.

The Equal Treatment Obligation in Other Labour Market Areas

Section 4 No person shall be subject to direct or indirect discrimination on the ground of sex, especially by reference to marital or family status, with regard to

1. Access to vocational guidance, basic or further vocational training and retraining outside of an employment relationship
2. Membership of and involvement in an organisation of workers or employers, or any organisation whose members belong to a certain professional or occupational category, including the right to receive benefits provided by such organisations.
3. Conditions for access to self-employment.

Definition of Terms

Section 5

- (1) Direct discrimination shall be taken to occur where one person is treated less favourably on the grounds of sex than another is, has been or would be treated in a comparable situation.
- (2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice puts persons of one sex at a particular disadvantage compared with persons of the other sex, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (3) Instructions to discriminate against a person also constitute discrimination.

Sexual Harassment

Section 6

- (1) Discrimination on the ground of sex shall also be taken to have occurred if a person is
 1. Sexually harassed by his/her employer,
 2. Discriminated against by an employer who in cases of sexual harassment culpably fails to take appropriate remedial action as stipulated by the relevant legal provisions, collective labour law regulations or work contracts.
 3. Harassed by a third party in the workplace in connection with his/her employment relationship or
 4. Harassed by a third party outside of the employment relationship (Section Four).
- (2) Sexual harassment shall be taken to have occurred where a person is exposed to unwanted conduct related to the sexual sphere that violates the dignity of such person or is undesirable, inappropriate or offensive and
 1. Creates an intimidating, hostile or humiliating work environment, or
 2. A person's rejection of, or submission to, such conduct by an employer, a superior or colleague shall not be expressly or tacitly used as a basis for a decision affecting this person's access to basic and further vocational training, employment, continuation of employment, advancement or remuneration, or as a basis for any other decision related to work.
- (3) An instruction to discriminate against a person on the ground of sex shall also be taken to be discrimination.

Harassment

Section 7

- (1) Discrimination on the ground of sex is also be taken to have occurred if a person is exposed to conduct related to his/her sex,
 1. Which constitutes harassment by his/her employer.
 2. If a person is discriminated against by an employer who in case of discrimination culpably fails to take appropriate remedial action as stipulated by the relevant legal provisions, collective labour law regulations or work contracts where such harassment emanates from a third party (sub paragraph three),
 3. Where a third party harasses such person in connection with his/her employment relationship,
 4. Where a third party harasses such person outside of the workplace (Section Four).
- (2) Harassment is taken to have occurred where a person is exposed to conduct related to his/her sex that violates his/her dignity, is undesirable and
 1. Creates an intimidating, hostile or humiliating work environment, or
 2. Where a person's rejection of, or submission to, such conduct related to his/her sex exhibited by an employer, a superior or colleague has been expressly or tacitly used as a basis for a decision affecting this person's access to basic and further vocational training, employment, continuation of employment, advancement or remuneration, or as a basis for any other decision related to work.
- (3) An instruction to discriminate against a person on the grounds of sex shall also be deemed to be discrimination.

Positive Action

Section 8 Measures for the promotion of equality between women and men, which aim, in particular, at the elimination of existing inequalities within the meaning of Article Seven, paragraph 2, of the Federal Constitution and are provided for in acts, statutory regulations or collective labour law regulations or directions given by an employer and generally affecting several employees, shall not be taken as discriminatory within the meaning of this Act. The Federal State may grant subsidies to employers for extraordinary expenditure incurred in the implementation of such measures.

Principle of Gender-Neutral Job Advertisements

Section 9 Employers or private placement agencies as defined in Section Four and following of the Labour Market Promotion Act, Federal Law Gazette no. 31/1969, or public legal entities entrusted with job placement tasks may not advertise a position publicly or within an enterprise (company) exclusively for men or women, or have such job advertisements placed by third parties, unless being a member of one sex is an indispensable professional or occupational prerequisite for performing the activity concerned. Furthermore, the job advertisement shall not contain any references from which it could be inferred that members of one sex would be preferred.

Penal Provisions

Section 10

- (1) Any job placement agency that advertises a job only for men or women contrary to the provisions of Section Nine shall be fined by the competent district authority with an amount of up to euro 360 upon demand of a job applicant, the Ombud for Equal Treatment between Women and Men in Employment, or one of the regional Ombuds.

- (2) Any employer who for the first time advertises a job only for men or only for women contrary to the provisions of Section Nine, shall be reprimanded upon demand of a job applicant, the Ombuds for the Equal Treatment between Women and Men in Employment or one of the regional Ombuds; in case of further violations a fine of up to euro 360 shall be imposed on such an employer.
- (3) In administrative penal procedures on account of a violation of the provisions of Section Nine, instituted upon a demand made by the Ombuds for Equal Treatment between Women and Men in Employment or one of the regional Ombuds, the Ombud for Equal Treatment between Women and Men in Employment or one of the regional Ombuds appear as parties. The Ombud for Equal Treatment and the regional Ombuds have the right to appeal against court decisions and lodge objections against penalties imposed by administrative authorities.

Pay Criteria

Section 11 In-company classification schemes and collective labour law regulations shall, in defining pay criteria, take into account the principle of equal pay for equal work or work to which equal value is attributed, and may not set out separate criteria for the work of men on the one hand and the work of women on the other which would lead to discrimination.

Legal Consequences of the Violation of the Equal Treatment Obligation

Section 12

- (1) If, owing to a violation of the equal treatment obligation pursuant to Section 3, sub paragraph 1, an employment relationship was not established, the employer shall be liable vis-à-vis the job applicant for compensation of the material damage sustained and personal injury suffered. The compensation shall amount to
 1. A minimum of one monthly salary if the job applicant would have been awarded the position had the selection not be discriminatory, or
 2. A maximum amount of euro 500 if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.
- (2) If due to a violation by an employer of the equal treatment obligation set forth in Section 3, sub paragraph 2, an employee receives lower pay than an employee of the other sex for equal work or to which equal value is attributed, he/she shall be entitled to claim payment of the income differential by the employer and compensation for the personal injury suffered.
- (3) In case of a violation of the equal treatment obligation defined in Section 3, sub paragraph 3, the employee shall be entitled to be granted the relevant fringe benefit or compensation for material damage sustained and personal injury suffered.
- (4) In case of a violation of the equal treatment obligation pursuant to Section 3, sub paragraph 4, the employee shall be entitled to claim inclusion in relevant in-company basic or further training or compensation for material damage sustained and personal injury suffered.
- (5) If owing to a violation of the equal treatment obligation pursuant to Section 3, sub paragraph 5, an employee has not been promoted, an employer shall be liable for paying compensation to such employee for material damage sustained or personal injury suffered. The compensation shall correspond to
 1. The income differential for at least three months if the employee would have been promoted had the selection not been discriminatory
 2. A maximum of euro 500 if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.

- (6) In the event of a violation of the equal treatment obligation pursuant to Section Three, paragraph 6, the employee concerned shall be entitled to enjoy the same working conditions as an employee of the other sex or to compensation for material damage sustained and personal injury suffered.
- (7) In the event that the employment relationship was ended through dismissal or otherwise prematurely terminated by the employer (Section 3, paragraph 7) because of the sex of an employee or because of claims pursuant to this Act which were not obviously unjustified, such notice of dismissal or termination of employment can be contested in court.
- (8) In case of a violation of the equal treatment obligation pursuant to Section Four, paragraph 1, the employee shall be entitled to claim inclusion in relevant in-company vocational guidance, basic or further training or compensation for material damage sustained and personal injury suffered.
- (9) In the event of a violation of the equal treatment obligation pursuant to Section Four, paragraph 2, the person concerned shall be entitled to membership of, and involvement in, the relevant organisation or to the benefits provided by such organisation, or compensation for material damage sustained and personal injury suffered.
- (10) In the event of a violation of the equal treatment obligation pursuant to Section 4, sub paragraph 3, the person concerned shall be entitled to compensation for material damage sustained and personal injury suffered.
- (11) In case of sexual harassment pursuant to Section 6 or a harassment related to the sex of a person pursuant to Section 7, the person concerned shall be entitled to compensation for the damage sustained from the harasser, and if harassment in accordance with Section 6, paragraph 1, sub paragraph 2, or Section 7, paragraph 1, sub paragraph 2, has occurred, the person concerned shall also be entitled to claim compensation for the damage suffered from his/her employer. To the extent to which the impairment has not only resulted in material loss, the person concerned shall be entitled to adequate compensation for his/her personal injury suffered, which must not be less than euro 400; in the event of sexual harassment, such compensation shall at least amount to euro 720.
- (12) To the extent to which the person concerned invokes the fact of discrimination within the meaning of Sections 3, 4, 6 or 7, he/she shall be required to establish probable cause of such discrimination. If the claimant invokes Sections 3 or 4, it shall be incumbent upon the defendant to prove that when considering all facts and circumstances it appears more probable that a motive other than that for which the defendant has established probable cause has resulted in the unequal treatment, or that a ground for justification with the meaning of Section 5, paragraph 2 exists. If the claimant invokes Sections 6 or 7 it shall be the responsibility of the defendant to furnish proof that when considering all facts and circumstances it appears probable that the facts for which the defendant has established probable cause correspond to the truth.

Victimisation

Section 13 In response to a complaint or to the initiation of proceedings for compliance with the equal treatment obligation, an employee working in the relevant company (or enterprise) must not be dismissed, given notice of dismissal or otherwise be put at a disadvantage. Another employee appearing in court or other proceedings as a witness or informer or endorsing the complaint of another employee must not be dismissed, given notice of dismissal or be otherwise put at a disadvantage in response to such a complaint or the initiation of proceedings. Section Twelve, paragraph twelve, shall apply *mutatis mutandis*.

Promotion Measures

Section 14 The guidelines for the granting of state subsidies to enterprises shall stipulate that the Federal State may grant subsidies exclusively to enterprises complying with the provisions of Title One.

Time Limits

Section 15

- (1) Claims pursuant to Section 12, paragraphs one and five shall be lodged with a competent court within a period of six months. The period for asserting claims in accordance with Section Twelve, paragraphs one and five shall start to run on the date on which a job application or promotion is rejected. Claims pursuant to Section 12, paragraph 11, shall be lodged with a competent court within a period of one year. Notice of dismissal or dismissal in accordance with Section Twelve, paragraph seven or Section Thirteen shall be contested at court within fourteen days after having been received. The three year limitation period set forth in Section 1486 of the Austrian Civil Code shall apply to claims pursuant to Section Twelve, paragraphs two, three, four, six, eight, nine and ten to the extent to which claims arising under collective agreements concluded after July 1, 2004 are not subject to other provisions.
- (2) Applications submitted or a request made by an Ombud for Equal Treatment for investigation of an infringement of the equal treatment obligation or action taken proprio motu by the Commission in order to investigate a violation of the equal treatment obligation, result in a suspension of the time limits for lodging a complaint with a court.
- (3) If the employer can be proved to have received
 1. The findings of an investigation by the Commission on a particular case or
 2. A letter from the executive of the Commission stating that the prerequisites for investigating an infringement of the equal treatment obligation in a particular case do not or no longer exist, service of process shall terminate the suspension of time limits for the assertion of a claim. After service of process, the employee shall still have a period of three months during which he/she may bring an action in court. If the original period was shorter, the employee must observe this period.

Title Two

Equal Treatment in Employment irrespective of Ethnic Belonging, Religion or Belief, Age or Sexual Orientation (Anti-Discrimination)

Scope

Section 16

- (1) The scope of Title Two applies to the sphere of employment which includes:
1. All types of employment relationships established under private-law contracts;
 2. Access to all types and to all levels of vocational guidance, basic and further vocational training and retraining, including practical work experience;
 3. Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members belong to a particular professional or occupational category, including the right to receive benefits from such organisations.
 4. Conditions for access to self-employment provided that the Federal State is competent for the statutory regulation of the former
- (2) These provisions do not apply to employment relationships
1. Involving workers in agriculture and forestry within the meaning of the Act Governing Agricultural Labour of 1984, Federal Law Gazette no. 287;
 2. With a Province, an association of local authorities or a single local authority;
 3. With the Austrian Federal State.
- (3) The provisions set forth in Title Two also apply to
1. Employment relationships governed by the Act on Home Working of 1960, Federal Law Gazette no. 105/1961, and
 2. Employment relationships of persons who have no employment contract but perform work under a mandate and for the account of certain individuals and are deemed to have a status similar to employees because of their economic dependence on the former.
- For the scope of this Act, the employment relationships referred to in subparagraphs (1) and (2) above are considered as work relationships.
- (4) The provisions of Title Two also apply to the employment of wage and salary-earners who were seconded to positions in Austria by employers having no registered office in this country, for the duration of their assignment
1. Under temporary loan employment schemes or
 2. For continued work.

The Equal Treatment Obligation as regards Employment Relationships

Section 17 No person shall be subject to direct or indirect discrimination on the grounds of ethnic belonging, religion or belief, age or sexual orientation in employment, in particular not with regard to

1. The establishment of an employment relationship
2. The fixing of pay,
3. The granting of fringe benefits which do not represent remuneration,
4. Access to vocational training and retraining,
5. Professional career, in particular job advancement,
6. Working conditions,
7. Termination of employment.

The Equal Treatment Obligation in Other Labour Market Areas

Section 18 No person shall be subject to direct or indirect discrimination on the grounds specified in Section 17, with regard to

1. Access to vocational guidance, basic or further vocational training and retraining outside of an employment relationship.
2. Membership of and involvement in an organisation of workers or employers, or any organisation whose members belong to a certain professional or occupational category, including the right to receive benefits provided by such organisations.
3. Conditions for access to self-employment.

Definition of Terms

Section 19

- (1) Direct discrimination shall be taken to occur where one person is treated less favourably on one of the grounds specified in Section 17 than another is, has been or would be treated in a comparable situation.
- (2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice puts persons belonging to an ethnic group or persons having a particular religion or particular belief, or a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (3) Instructions to discriminate against a person also constitute discrimination.

Exemption Clause

Section 20

- (1) Unequal treatment based on a characteristic related to one of the grounds for discrimination specified in Section 17, shall not constitute discrimination where by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.
- (2) Discrimination on the grounds of religion or belief shall not be deemed to have occurred with regard to vocational activities pursued within churches and other public or private organisations, the ethos of which is based on religious principles or belief, where the religion or belief of the person concerned constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.
- (3) Discrimination on the ground of age shall not be deemed to have occurred if unequal treatment is
 1. Objective and appropriate,
 2. Justified by a legitimate aim, especially lawful objectives set in the spheres of employment, labour market and educational policies, and
 3. The means for achieving these objectives are appropriate and necessary.
- (4) Unequal treatment pursuant to paragraph (3) may include, in particular,
 1. The setting of special conditions on access to employment and vocational training as well as specific employment and working conditions, including those relating to dismissal and pay, in order to promote the integration into the labour market of young people, older employees and persons with caregiving duties to safeguard the protection of these groups,
 2. The fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment,

3. Fixing the maximum age for recruitment which is based on the training requirement of the post in question or the need for a reasonable period in employment prior to retirement.
- (5) Discrimination on the grounds of age shall not be deemed to have occurred as regards in-company social insurance schemes in which age limits are fixed as a prerequisite for membership in the former or for entitlements to old-age pensions or benefits for disability, whereby provision includes the fixing of different age limits for certain employees, groups or categories of employees in such schemes, and the application of age criteria for actuarial calculations, provided that this does not result in discrimination on grounds of sex.

Harassment

Section 21

- (1) Discrimination pursuant to Section 17 is also deemed to have occurred if a person is
 1. Exposed to harassment by his/her employer,
 2. Discriminated against by an employer, who culpably fails to take appropriate remedial action as stipulated by the relevant legal provisions, collective labour law regulations or work contracts where such harassment emanates from a third party (sub paragraph 3).
 3. Harassed by a third party in connection with his/her employment.
 4. Harassed by a third party outside of an employment relationship (Section 18).
- (2) Harassment is taken to have occurred where a person is exposed to conduct related to one of the grounds specified in Section 17, which,
 1. Violates the dignity of the person concerned,
 2. Is unwanted, inappropriate or indecent for the person concerned.
 3. Creates an intimidating, hostile, degrading, offensive or humiliating environment for the person concerned.
- (3) An instruction to discriminate against a person on the grounds of sex shall also be deemed to be discrimination.

Positive Action

Section 22 Specific measures for the promotion of equality in employment, which aim at eliminating or compensating for discrimination on one of the grounds specified in Section 17 as provided for in acts, statutory regulations or collective labour law regulations or directions given by an employer and generally affecting several employees, shall not be taken as discriminatory within the meaning of this Act.

Principle of Non-Discrimination Job Advertisements

Section 23 Employers or private placement agencies as defined in Section Four and following, of the Labour Market Promotion Act, Federal Law Gazette no. 31/1969, or public legal entities entrusted with job placement tasks may not advertise a position publicly or within an enterprise (company) in a discriminatory manner, or have such job advertisements placed by third parties, unless the special characteristic is a vital and decisive prerequisite for performing the activity concerned because of the type of occupational or professional activity and provided that it serves a lawful purpose and constitutes a reasonable requirement.

Penal Provisions

Section 24

- (1) Any job placement agency that advertises a job contrary to the provisions of Section 23 shall be fined by the competent district authority with an amount of up to euro 360 upon demand of a job applicant, the Ombud for Equal Treatment on the grounds of Ethnic Belonging, Religion or Belief, Age or Sexual Orientation in Employment, or one of the Regional Ombuds.
- (2) Any employer who for the first time advertises a job contrary to the provisions of Section 23, shall be reprimanded upon demand of a job applicant, the Ombud for Equal on the grounds of Ethnic Belonging, Religion or Belief, Age or Sexual Orientation in Employment or one of the Regional Ombuds; in case of further violations a fine of up to euro 360 shall be imposed on such an employer by the district authority.
- (3) In administrative penal procedures instituted upon a demand made by the Ombud for Equal Treatment on the grounds of Ethnic Belonging, Religion or Belief, Age or Sexual Orientation in Employment or one of the Regional Ombuds, the Ombud for Equal Treatment or one of the Regional Ombuds appear as parties. The Ombud for Equal Treatment and the Regional Ombuds have the right appeal and lodge objections against penalties imposed by administrative authorities.

Pay Criteria

Section 25 In-company classification schemes and collective labour law regulations shall, in defining pay criteria, take into account the principle of equal pay for equal work or work to which equal value is attributed, and may not set out separate criteria of which would lead to discrimination on account of one of the grounds specified in Section 17.

Legal Consequences of the Violation of the Equal Treatment Obligation

Section 26

- (1) If, owing to a violation of the equal treatment obligation pursuant to Section 17, paragraph 1, sub paragraph 1, an employment relationship was not established, the employer shall be liable vis-à-vis the job applicant for compensation of the material damage sustained and personal injury suffered. The compensation shall amount to
 1. A minimum of one monthly salary if the job applicant would have been awarded the position had the selection not be discriminatory, or
 2. A maximum amount of euro 500 if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.
- (2) If due to a violation of the equal treatment obligation by an employer as set forth in Section 17, paragraph 1, sub paragraph 2, an employee receives lower pay than an employee who is not discriminated against on one of the grounds specified in Section 17, he/she shall be entitled to claim payment of the income differential by the employer and compensation for the personal injury suffered.
- (3) In case of a violation of the equal treatment obligation pursuant to Section 17, paragraph 1, subparagraph 3, the employee shall be entitled to being granted the relevant fringe benefit or compensation for material damage sustained and personal injury suffered.
- (4) In case of a violation of the equal treatment obligation pursuant to Section 17, paragraph 1, sub paragraph 4, the employee shall be entitled to claim inclusion in relevant in-company basic or further training or compensation for material damage sustained and personal injury suffered.
- (5) If owing to a violation of the equal treatment obligation pursuant to Section 17, sub paragraph 5, an employee has not been promoted, an employer shall be liable for paying compensation to such employee for material damage sustained or personal injury suffered. The compensation shall correspond to

1. The income differential for at least three months if the employee would have been promoted had the selection not been discriminatory
 2. A maximum of euro 500 if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.
- (6) In the event of a violation of the equal treatment obligation pursuant to Section 17, paragraph 6, the employee concerned shall be entitled to enjoy the same working conditions as an employee who is not discriminated against on one of the grounds specified in Section 17 or to compensation for material damage sustained and personal injury suffered.
- (7) In the event that the employment relationship was ended through dismissal or otherwise prematurely terminated by the employer (Section 17, subparagraph 7) on one of the grounds specified in Section 17 or because of claims pursuant to this Act which were not obviously unjustified, such notice of dismissal or termination of employment can be contested in court.
- (8) In case of a violation of the equal treatment obligation pursuant to Section 18, paragraph 1, the employee shall be entitled to claim inclusion in relevant in-company vocational guidance, basic or further training or compensation for material damage sustained and personal injury suffered.
- (9) In the event of a violation of the equal treatment obligation pursuant to Section 18, paragraph 2, the person concerned shall be entitled to membership of, and involvement in, the relevant organisation or to the benefits provided by such organisation, or compensation for the material damage sustained and personal injury suffered.
- (10) In the event of a violation of the equal treatment obligation pursuant to Section 18, sub paragraph 3, the person concerned shall be entitled to compensation material damage sustained and personal injury suffered.
- (11) In case of sexual harassment pursuant to Section 21, the person concerned shall be entitled to claim compensation for the damage sustained from the harasser, and in case of harassment in accordance with Section 21, paragraph 1, sub paragraph 2, the person concerned shall also be entitled to claim compensation for the damage suffered from his/her employer. To the extent to which the impairment consists not only of material loss, the person concerned shall be entitled to adequate reasonable compensation for his/her personal injury suffered, which must not be less than euro 400.
- (12) To the extent to which the person concerned invokes the fact of discrimination within the meaning of Sections 17, 18 or 21, he/she shall be required to establish probable cause of such discrimination. If the claimant invokes Sections 17 or 18, it shall be incumbent upon the defendant to prove that when considering all facts and circumstances it appears more probable that a motive other than that for which the defendant has established probable cause resulted in the unequal treatment, or that a ground for justification within the meaning of Sections 19, paragraph 2 or 20 exists. If the claimant invokes Section 21 it shall be incumbent upon the defendant to furnish proof that when considering all facts and circumstances it appears probable that the facts for which the latter has established probable cause correspond to the truth.

Victimisation

Section 27 In response to a complaint or to the initiation of proceedings for compliance with the equal treatment obligation, an employee working in the relevant company (or enterprise) must not be dismissed, given notice of dismissal or otherwise be put at a disadvantage. Another employee appearing in court or other proceedings as a witness or informer or endorsing the complaint of another employee must not be dismissed, given notice of dismissal or be otherwise put at a disadvantage in response to such a complaint or the initiation of proceedings. Section 26, paragraph 12, shall apply mutatis mutandis.

Promotion Measures

Section 28 The guidelines for the granting of state subsidies to enterprises shall stipulate that the Federal State may grant subsidies exclusively to enterprises complying with the provisions of Title Two.

Time Limits

Section 29

- (1) Claims pursuant to Section 26, paragraphs 1 and 5 shall be lodged with a competent court within a period of six months. The period for asserting claims in accordance with Section 26, paras 1 and 5 shall start to run on the date on which a job application or promotion is rejected. Claims pursuant to Section 26, paragraph 11, shall be lodged with a competent court within a period of six months. Notice of dismissal or dismissal in accordance with Section 26, paragraph 7 or Section 27 shall be contested at court within fourteen days after having been received. The three year limitation period set forth in Section 1486 of the Austrian Civil Code shall apply to claims pursuant to Section 26, paragraphs 2, 3, 4, 6, 8, 9 and 10 to the extent to which claims arising under collective agreements concluded after July 1, 2004 are not subject to other provisions.
- (2) Applications submitted or a request made by an Ombud for Equal Treatment for investigation of an infringement of the equal treatment obligation or action taken proprio motu by the Commission in order to investigate a violation of the equal treatment obligation, result in a suspension of the time limits for lodging a complaint with a court.
- (3) If the employer can be proven to have received
 1. The findings of an investigation by the Commission on a particular case or
 2. A letter from the executive of the Commission stating that the prerequisites for investigating an infringement of the equal treatment obligation in a particular case do not or no longer exist, service of process shall terminate the suspension of time limits for the assertion of a claim. After service of process, the employee shall still have a period of three months during which he/she may bring an action in court. If the original period had been shorter, the employee must observe this period.

Title Three

Equal Treatment irrespective of Ethnic Belonging in Other Areas (Anti-Racism)

Part One

Scope

Section 30 The provisions of this Part apply to legal relationships, including the preparation and establishment of these, as well as recourse to and the assertion of claims to services outside of legal relationships, in the areas of

1. Social protection, including social insurance and public health services,
2. Social advantages,
3. Education,
4. Access to, and supply of goods and services which are available to the public, including housing, provided that the regulation of these areas falls within the direct scope of responsibilities of the Federal State.

The Equal Treatment Obligation

Section 31

- (1) No person shall be subject to direct or indirect discrimination on the grounds of ethnic belonging with regard to
 1. Social protection, including social insurance and public health services,
 2. Social advantages,
 3. Education,
 4. Access to, and supply of goods and services which are available to the public, including housing.
- (2) Paragraph one shall not apply to different treatment on the grounds of the legal status of third-country nationals or stateless persons.

Definition of Terms

Section 32

- (1) Direct discrimination shall be taken to occur where one person is treated less favourably on the grounds of his/her ethnic belonging than another person is, has been or would be treated in a comparable situation.
- (2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons belonging to an ethnic group at a particular disadvantage, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (3) An instruction to discriminate against a person shall also be deemed to be discrimination within the meaning of paragraph 1.

Positive Action

Section 33 Measures for the promotion of equality which aim at the elimination of, or compensation for, discrimination on the grounds of ethnic belonging, as provided for in acts, regulations or by other means shall not be deemed discriminatory within the meaning of this Act.

Harassment

Section 34

- (1) Unwanted, inappropriate or offensive behaviour related to the ethnic belonging of a person, which aims at, or results in,
 1. Violating the dignity of the person concerned and
 2. Creating an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned is deemed to constitute discrimination.
- (2) An instruction to harass a person shall also be deemed to be discrimination within the meaning of paragraph 1.

Legal Consequences of Violations of the Equal Treatment Obligation

Section 35

- (1) In the event of violations of the equal treatment obligation set forth in Section 31, the person concerned is entitled to compensation for material damage sustained and personal injury suffered.
- (2) In case of harassment as set forth in Section 34, the person concerned is entitled to claim compensation for damage suffered from the harasser. Should the impairment have consisted not only of material damage, the person concerned is entitled to reasonable compensation for the personal injury suffered, which must at least correspond to euro 400.

- (3) To the extent to which in case of a dispute the person concerned invokes the fact of discrimination within the meaning of Sections 31 or 34, he/she has to establish probable cause of this fact. If the person concerned invokes Section 31, it is incumbent upon the defendant to prove that, considering the facts and circumstances, it appears more probable that a motive other than that for which the defendant has established probable cause was the reason for differential treatment or that a ground for justification pursuant to Section 32, paragraph 2 exists. If the person concerned invokes Section 34 it shall be incumbent upon the defendant to prove that, considering the facts and circumstances, it appears probable that the facts for which the defendant has established probable cause correspond to the truth.

Victimisation

Section 36 In reaction to a complaint or the institution of proceedings for enforcement of the equal treatment obligation, an individual person must not be discriminated against. Section 35, paragraph three shall apply mutatis mutandis.

Promotion Measures

Section 37 The guidelines for the granting of state subsidies to natural persons or legal entities shall ensure that only such legal entities or natural persons are eligible for subsidies as comply with the provisions of Title Three.

Part Two

Principles for Regulating Equal Treatment irrespective of Ethnic Belonging in Other Spheres of Life

The principles set forth in the following shall apply to the regulation of equal treatment irrespective of ethnic belonging in other spheres, to the extent to which the Federal State is responsible for such legislation.

Scope

Section 38 The provisions of this Part apply to legal relationships, including the preparation and establishment of these, as well as recourse to and the assertion of claims to services outside of legal relationships, in the areas of

1. Social protection, including social insurance and public health services,
2. Social benefits,
3. Education,
4. Access to, and provision of goods and services which are available to the general public, including housing, provided that the regulation of these spheres falls within the direct scope of responsibilities of the Federal State.

Equal Treatment Obligation, Definition of Terms, Legal Consequences

Section 39 Sections 31 to 36 shall apply.

Obligation to Establish or Designate an Independent Body

Section 40 For furthering the implementation of the principle of equal treatment of all persons without discrimination on the grounds of ethnic belonging, the Laender shall pass legislation providing for the establishment or designation of a body which meets the requirements of Article 13 of Council Directive 2000/43/EC of June 29, 2000 on the Implementation of the Principle of Equal Treatment irrespective of race or ethnic origin, OJ, no. L 180, page 22, dated July 19, 2000.

Title Four

Principles applying to Equal Treatment in Employment in Agriculture and Forestry

In accordance with Article 12, paragraph one, subparagraph six of the Act Establishing the Federal Constitution the following principles have been drawn up:

Scope

Section 41 The provisions of Title Three shall apply to employment relationships of workers in agriculture and forestry within the meaning of the Act Governing Agricultural Labour of 1984, Federal Law Gazette no. 287.

Equality

Section 42 The objective of this Title is to achieve equality between women and men.

The Equal Treatment Obligation as regards Employment Relationships

Section 43

- (1) No person shall be subject to direct or indirect discrimination at work on the grounds of sex, especially by reference to marital or family status, in particular not with regard to
 1. The establishment of an employment relationship,
 2. The fixing of pay,
 3. The granting of fringe benefits which do not represent remuneration,
 4. Access to basic and advanced basic and further vocational training and retraining,
 5. Professional or occupational careers, in particular job advancement,
 6. Working conditions,
 7. Termination of employment.
- (2) No person shall be subject to direct or indirect discrimination in employment on the grounds of ethnic belonging, religion or belief, age or sexual orientation, in particular not with regard to
 1. The establishment of an employment relationship,
 2. The fixing of pay,
 3. The granting of fringe benefits which do not represent remuneration,
 4. Access to basic and advanced basic and further vocational training and retraining,
 5. Professional or occupational careers, in particular job advancement,
 6. Working conditions,
 7. Termination of employment.
- (3) Paragraph two shall not apply to unequal treatment on the grounds of nationality or a treatment which results from the legal status of third party nationals or stateless persons.

Definition of terms

Section 44

- (1) Direct discrimination is deemed to have occurred where one person is treated less favourably on the grounds of sex than another is, has been or would be treated in a comparable situation.

- (2) Indirect discrimination is deemed to have occurred where an apparently neutral provision, criterion or practice puts persons of one sex at a particular disadvantage compared with persons of the other sex, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (3) Instructions given by one person to discriminate against an individual also constitute discrimination.

Exemption Clauses

Section 45

- (1) Unequal treatment because of a characteristic related to one of the grounds for discrimination specified in Section 17, shall not be deemed to constitute discrimination if in a certain professional or occupational activity or under conditions under which such activity is performed such characteristic represents an essential and decisive prerequisite for its performance and provided that this is justified by a legitimate aim and the requirement for such a characteristic appears reasonable.
- (2) Discrimination on the grounds of religion or belief shall not be deemed to have occurred with regard to vocational activities pursued within churches and other public or private institutions, the ethos of which is based on religious principles or belief, provided that the religion or belief of the person concerned constitute an essential, lawful and justified prerequisite for the type of vocational activity performed by him/her in view of the ethos of the organisation.
- (3) Discrimination on the grounds of age shall not be deemed to have occurred if unequal treatment is
 - 1. Objective and appropriate,
 - 2. Justified by a legitimate aim, especially lawful objectives set in the spheres of employment, labour market and educational policies, and
 - 3. The means for achieving these objectives are appropriate and indispensable.
- (4) Unequal treatment pursuant to paragraph three may include, in particular,
 - 1. Imposing special conditions for access to employment and vocational training as well as specific employment and working conditions, including those relating to dismissal and pay, in order to promote the integration into the labour market of young people, older employees and persons with caregiving duties and to safeguard the protection of these groups,
 - 2. Fixing minimum requirements with regard to age, professional or occupational experience or years of service, for access to employment or certain benefits associated with employment,
 - 3. Fixing the maximum age for recruitment on account of specific training requirements for a particular workplace or the need to guarantee an adequate period of employment prior to retirement.
- (5) Discrimination on the grounds of age shall not be deemed to have occurred as regards in-company social insurance schemes in which age limits are fixed as a prerequisite for membership in the former or for entitlements to old-age pensions or benefits for disability, whereby provision includes the fixing of different age limits for certain employees, groups or categories of employees in such schemes, and the application of age criteria for actuarial calculations, provided that this does not result in discrimination on the ground of sex.

Sexual Harassment

Section 46

- (1) Discrimination on the grounds of sex is also deemed to have occurred if a person is
 1. Sexually harassed by his/her employer,
 2. Discriminated against by an employer who in cases of sexual harassment culpably fails to take appropriate action as stipulated by the relevant legal provisions, collective labour law regulations or work contracts.
 3. Harassed by a third party in the workplace in connection with his/her employment relationship or
- (2) Sexual harassment is deemed to have occurred where a person is exposed to unwanted conduct related to his/her sex that violates the dignity of such person or is undesirable, inappropriate or offensive and
 1. Creates an intimidating, hostile or humiliating work environment, or
 2. A person's rejection of, or submission to, such conduct related to his/her sex exhibited by an employer, a superior or colleague shall not be expressly or tacitly used as a basis for a decision affecting this person's access to basic and further vocational training, employment, continuation of employment, advancement or remuneration, or as a basis for any other decision related to work.
- (3) An instruction to discriminate against a person on the grounds of sex shall also be deemed to be discrimination.

Harassment

Section 47

- (1) Discrimination should also be deemed to have occurred if a person, as a result of conduct related to his/her sex or to one of the grounds specified in Section 43, paragraph two, at his/her workplace is
 1. Harassed by his/her employer,
 2. Discriminated against by an employer who culpably fails to take appropriate remedial action as stipulated by the relevant legal provisions, collective labour law regulations or work contracts where such harassment emanates from a third party (sub paragraph three),
 3. Where a third party harasses such person in connection with his/her employment relationship,
- (2) Harassment is deemed to have occurred if a person is exposed to conduct related to his/her sex or to one of the grounds specified in Section 43, paragraph two, which violates his/her dignity, is undesirable for the person concerned and
 1. Creates an intimidating, hostile or humiliating work environment, or
 2. A person's rejection of, or submission to, such conduct related to his/her sex exhibited by an employer, a superior or colleague shall not be expressly or tacitly used as a basis for a decision affecting this person's access to basic and further vocational training, employment, continuation of employment, advancement or remuneration, or as a basis for any other decision related to work.
- (3) An instruction to discriminate against a person on the grounds of sex shall also be deemed to be discrimination.

Positive Action

Section 48 Measures for the promotion of equality between women and men, which aim, in particular, at the elimination of existing inequalities within the meaning of Article Seven, paragraph 2, of the Act Establishing the Federal Constitution and are provided for in acts, statutory regulations or collective labour law regulations or directions given by an employer and generally affecting several employees, shall not be deemed discriminatory within the meaning of this Act. The Federal State may grant subsidies to employers for extraordinary expenditure incurred in the implementation of such measures.

Principle of Gender-Neutral and Anti-Discrimination Job Advertisements

Section 49

- (1) Employers or private placement agencies as defined in Section Four and following of the Labour Market Promotion Act, Federal Law Gazette no. 31/1969, or public legal entities entrusted with job placement tasks may not advertise a position publicly or within an enterprise (company) exclusively for men or women, or have such job advertisements placed by third parties, unless being a member of one sex or the other is an indispensable professional or occupational prerequisite for performing the activity concerned. Furthermore, the job advertisement shall not contain any references from which it could be inferred that members of only one sex would be preferred.
- (2) An employer may not advertise a position publicly or within an enterprise (company) in any other discriminatory manner, or have such job advertisements placed by third parties, unless the special characteristic constitutes an essential and decisive prerequisite for performing the activity concerned because of the type of occupational or professional activity or the conditions under which such activity is performed and provided that it serves a lawful purpose and constitutes a reasonable requirement.
- (3) The obligation of gender-neutral and non-discriminatory job advertisements equally applies to private job placement agencies pursuant to Section 17 and following of the Labour Market Promotion Act and to public legal entities entrusted with job placement tasks.

Pay Criteria

Section 50 In-company classification schemes and collective labour law regulations shall, in defining pay criteria, take into account the principle of equal pay for equal work or work to which equal value is attributed, and may not set out separate criteria for the work of men on the one hand and the work of women on the other which would lead to discrimination on one of the grounds specified in Section 43, paragraph two.

Legal Consequences of the Violation of the Equal Treatment Obligation

Section 51

- (1) If, owing to a breach of the equal treatment obligation pursuant to Section 43, paragraph one, subparagraph one, or Section 43, paragraph two, subparagraph one, an employment relationship was not established, the employer shall be liable vis-à-vis the job applicant for compensation of the material damage sustained and personal injury suffered. The compensation claim shall amount to
 1. A minimum of one monthly salary if the job applicant would have been awarded the position had the selection not be discriminatory, or
 2. A maximum amount of euro 500 if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.
- (2) If due to a breach by an employer of the equal treatment obligation set forth in Section 43, paragraph one, sub-paragraph two, an employee receives lower pay for equal work or work to which equal value is attributed than an employee who is not discriminated against on one of the grounds specified in Section 43, paragraph two,

he/she shall be entitled to claim payment of the income differential by the employer and compensation for the personal injury suffered.

- (3) In case of a breach of the equal treatment obligation defined in Section 43, paragraph one, sub paragraph three, or Section 43, paragraph two, subparagraph three, the employee shall be entitled to being granted the relevant fringe benefit or compensation for material damage sustained and personal injury suffered.
- (4) In case of a breach of the equal treatment obligation pursuant to Section 43, paragraph one, sub paragraph four, or Section 43, paragraph two, subparagraph four, the employee shall be entitled to claim inclusion in relevant in-company basic or further training or compensation for material damage sustained and personal injury suffered.
- (5) If owing to a breach of the equal treatment obligation pursuant to Section 43, paragraph one, subparagraph five or Section 43, paragraph two, subparagraph five, an employee has not been promoted, an employer shall be liable for paying compensation to such employee for material damage sustained or personal injury suffered. The claim for compensation shall correspond to
 1. The income differential for at least three months in the event that the employee would have been promoted had the selection not been discriminatory
 2. A maximum of euro 500 if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.
- (6) In the event of a breach of the equal treatment obligation pursuant to Section 43, paragraph one, subparagraph six, or Section 43, paragraph two, subparagraph six, the employee concerned shall be entitled to enjoy the same working conditions as an employee of the other sex or another employee who is not discriminated against on one of the grounds specified in Section 43, paragraph two or to compensation for material damage sustained and personal injury suffered.
- (7) In the event that the employment relationship was ended through dismissal or otherwise prematurely terminated by the employer (Section 43, paragraph two) because of the sex of an employee or because of the latter's failure to assert claims pursuant to this Act which were not obviously unjustified, such notice of dismissal or termination of employment can be contested in court.
- (8) In case of sexual harassment pursuant to Section 46 or a harassment related to the sex of a person pursuant to Section 47, the person concerned shall be entitled to claim compensation for the damage sustained from the harasser, and if harassment in accordance with Section 46, paragraph one, subparagraph two, or Section 47, paragraph one, sub paragraph two, has occurred, the person concerned shall also be entitled to claim compensation for the damage suffered from his/her employer. To the extent to which the impairment has not only resulted in material loss, the person concerned shall be entitled to reasonable compensation for his/her personal injury suffered, which must not be less than euro 400; in the event of sexual harassment, such compensation shall at least amount to euro 720.
- (9) To the extent to which in case of a dispute the person concerned invokes the fact of discrimination within the meaning of Sections 43, 46 or 47, he/she shall establish probable cause of this fact. If the person concerned invokes Section 43, it shall be incumbent upon the defendant to prove that, considering the facts and circumstances, it appears probable that a motive other than that for which the defendant has established probable cause was the reason for discrimination or that the other sex is an indispensable prerequisite for performing the activity or that a ground for justification within the meaning of Sections 44, paragraph two or 45 exists. If the person concerned invokes Section 46 or 47 it shall be incumbent upon the defendant to prove that, considering the facts and circumstances, it appears probable that the facts for which the defendant has established probable cause correspond to the truth.

Victimisation

Section 52 In response to a complaint or to the initiation of proceedings for compliance with the equal treatment obligation, an employee working in the relevant company (or enterprise) must not be dismissed, given notice of dismissal or otherwise be put at a disadvantage. Another employee appearing in court or other proceedings as a witness or informer or endorsing the complaint of another employee must not be dismissed, given notice of dismissal or be otherwise put at a disadvantage in response to such a complaint or the initiation of proceedings. Section 51, paragraph nine, shall apply *mutatis mutandis*.

Tasks of an Equal Treatment Commission

Section 53

- (1) To the extent to which Laender legislation provides for the establishment of an Equal Treatment Commission, the latter shall deal with all issues related to discrimination within the meaning of Sections 43 to 47.
- (2) The Commission may prepare expert opinions on discrimination issues within the meaning of Sections 43 to 47. Expert opinions shall, in particular, be drawn up in cases of infringement of the equal treatment obligation in collective labour law regulations.

Section 54

- (1) The commission may investigate on a case by case basis whether a violation of the equal treatment obligation has been committed. If the Commission determines that an infringement of the equal treatment obligation has occurred, it may bring this fact to the cognizance of the employer and request that he/she put an end to such discrimination.
- (2) Laender legislation shall contain a provision to the effect that the employer has the right to have him/herself represented in proceedings before the Commission in particular, by a representative of a statutory interest body or non-governmental organisation, and by a person of his/her trust. Furthermore, that, upon the request of an employer the Commission has to enlist a non-governmental organisation named by such person of trust as informer; the Commission shall instruct the employer expressly about this right to enlist such person as soon as it initiates the investigations on the relevant case.
- (3) If the employer fails to comply with the Commission's demand as set forth in paragraph one, the competent bodies authorised to conclude collective agreements or the Ombud for Equal Treatment or an officer entrusted with equal treatment tasks may demand a declaration by a court to the effect that a breach of the Equal Treatment Principle has occurred.
- (4) In case of suspected breach of the equal treatment obligation, the Commission may demand that the employer draw up a written report. Such a report shall contain all necessary details required for asserting compliance with the equal treatment obligation.

Ombud for Equal Treatment; Equal treatment Officer

Section 55

- (1) Provided that the Laender legislation stipulates that an Ombud for Equal Treatment or an Equal Treatment officer shall be responsible for counselling and supporting persons who feel discriminated against within the meaning of this Act, the Laender legislation may also give such institutions other designations.
- (2) Under Laender legislation, the employer, the works council or shop steward and all employees of an enterprise have the obligation to furnish all information to an Ombud for Equal Treatment or an Equal Treatment Officer that is required for the performance of their task.

- (3) In the event that an Ombud for Equal Treatment or an Equal Treatment Officer suspects non-compliance with the equal treatment obligation and establishes probable cause of the alleged circumstances vis-à-vis the Commission, the latter may (proprio motu) initiate proceedings.
- (4) Laender legislation shall contain a provision to the effect that an Ombud for Equal Treatment or an Equal Treatment Officer, under a mandate from the Commission, is authorised to enter the premises of an enterprise or company to inspect its records and make copies or photocopies of these.
- (5) Laender legislation shall contain a provision to the effect that an Ombud for Equal Treatment or an Equal Treatment Officer may involve the works council / shop steward in its investigations.

Publication

Section 56 Laender legislation may contain a provision to the effect that the Commission must publish its expert opinions as well as final judgments which establish breaches of the equal treatment obligation in one of the print media of the respective Land. Such publication may also be made if an employer has failed to comply with the request to end discrimination in accordance with Section 54, paragraph three.

Obligation to furnish information

Section 57 Laender legislation shall impose the obligation on employers and all employees of the enterprises concerned to furnish the information required by an Equal Treatment Commission to perform its tasks.

Penal Provisions

Section 58 Implementing laws shall stipulate that job advertisements made by private job placement agencies in accordance with Sections 17 and following of the Labour Market Promotion Act or public law legal entities entrusted with the task of job placement or employers that violate the provisions of Laender legislation pursuant to Section 49 shall be fined upon the request of an applicant or the Ombud for Equal Treatment or an Equal Treatment Officer, provided that such fine is stipulated by Laender legislation .

Title Five

Final Provisions

References

Section 59 References in this Federal Act to other Federal Acts are to current versions of such acts.

Publication of the Act

Section 60 Every employer shall make a printed copy of this Federal Act available to employees at an easily accessible place in the enterprise or by means of another data carrier plus readout device, by means of appropriate data processing or by means of telecommunication.

Obligation of the Court to State Reasons

Section 61 In court proceedings for the violation of the equal treatment principle, the court shall deal with an expert opinion or investigation outcome submitted by the Equal Treatment Commission relating to a particular case and shall state reasons for a dissenting judgment.

Third Party Intervention

Section 62 If a party concerned so requires, the Plaintiff Association for the Enforcement of the Rights of Victims of Discrimination can join a litigation for the enforcement of rights under this Federal Act as a third party (Sections 17 to 19 Austrian Code of Civil Procedure).

Entry into Force

Section 63

- (1) This Federal Act shall enter into force on 1 July 2004.
- (2) The Implementation Acts of the Federal Laender covering the principles laid down in Title Three, Part Two and in Title Four shall be passed within six months from the day following public announcement.

Implementation

Section 64

- (1) The following shall be responsible for the implementation of this Federal Act:
 1. The Federal Minister responsible for subsidies for Sections 14, 28 und 37,
 2. The Federal Minister of Justice for Sections 61 and 62,
 3. The Federal Minister for Economic Affairs for the remainder.
- (2) The Federal Minister for Economic Affairs is entrusted with the task of safeguarding the rights pertaining to the Federal State under Article 15, paragraph 8, of the Federal Constitutional Law as regards Title Three, Part Two. Regarding the rights pertaining to the Federal State under Article 15 paragraph 8, the Federal Minister of Justice is responsible for safeguarding the rights under Section 54 paragraph 3, the Federal Minister for Economic Affairs for the remainder.

Article 2

Equal Treatment between Men and Women in Employment

The Federal Act on the Equal Treatment Between Women and Men in Employment (Equal Treatment Act) Federal Law Gazette No. 108/1979, in the version of the Federal Law, Federal Law Gazette I No. 129/2001, will be amended as follows:

1. *The title* "The Federal Act on the Equal Treatment Between Women and Men in Employment (Equal Treatment Act)" is replaced by "Federal Law on the Equal Treatment Commission and the Ombud Office for Equal Treatment".
2. *The heading* "Title One" is omitted.
3. *Sections 1 to 9 including headings are entitled:*

"Equal Treatment Commission"

Section 1

- (1) An Equal Treatment Commission (ETC) is to be set up at the Federal Ministry of Health and Women.
- (2) The Equal Treatment Commission is composed of three Senates. The Senates are responsible for the following subject areas:
 1. Senate I for the equal treatment between women and men in employment (Title One of the Equal Treatment Act – Federal Law Gazette I No. 66/2004);
 2. Senate II for equal treatment in employment irrespective of ethnic belonging, religion or belief, age or sexual orientation (Title Two of the Equal Treatment Act);
 3. Senate III for equal treatment irrespective of ethnic belonging in other areas (Title Three, Part One of the Equal Treatment Act).
- (3) Senate I is responsible for cases brought before the Equal Treatment Commission that concern both the equal treatment between women and men in employment and the equal treatment irrespective of ethnic belonging, religion or belief, age or sexual orientation in employment. In this context the Senate shall also apply the provisions on equal treatment irrespective of ethnic belonging, religion or belief, age or sexual orientation in employment (Title Two of the Equal Treatment Act).
- (4) The Chairperson of Senate I has to coordinate the activities of the Equal Treatment Commission.

Composition of the Senates

Section 2

- (1) Each Senate shall be composed of the Chairperson and additional members.
- (2) The additional members of Senate I shall be:
 1. Two members seconded by the Austrian Federal Chamber of Commerce;
 2. Two members seconded by the Federal Chamber of Labour;
 3. Two members seconded by the Confederation of Austrian Industrialists;
 4. Two members seconded by the Austrian Trade Union Confederation;
 5. One member appointed by the Federal Chancellor;
 6. One member appointed by the Federal Minister for Health and Women;One member appointed by the Federal Minister of Economics and Labour.

- (3) The additional members of Senate II shall be:
 1. Two members seconded by the Austrian Federal Chamber of Commerce;
 2. Two members seconded by the Federal Chamber of Labour;
 3. Two members seconded by the Confederation of Austrian Industrialists;
 4. Two members seconded by the Austrian Trade Union Confederation;
 5. One member, appointed by the Federal Chancellor;
 6. One member appointed by the Federal Minister for Economics and Labour.
- (4) The additional members of Senate III shall be:
 1. Two members seconded by the Austrian Federal Chamber of Commerce;
 2. Two members seconded by the Federal Chamber of Labour;
 3. One member appointed by the Federal Minister for Education, Science and Culture;
 4. One member appointed by the Federal Chancellor;
 5. One member appointed by the Federal Minister of the Interior;
 6. One member appointed by the Federal Minister of Justice;
 7. One member appointed by the Federal Minister of Social Security, Generations and Consumer Protection;
 8. One member appointed by the Federal Minister of Economics and Labour.
- (5) Whenever a Senate deliberates on promotion guidelines or promotion measures of a Federal Ministry, a representative of the Federal Ministry concerned shall join the Senate members.
- (6) Senate meetings shall be chaired by a federal officer assigned by the Federal Minister for Health and Women. If required, another federal officer shall be similarly assigned to deputise for the official assigned as chairperson. The organised interest groups entitled to second Senate members shall be consulted prior to the assignment of Senate chairpersons.
- (7) At least one alternate shall be seconded and/or appointed for each additional Senate member. The term of office of members and alternates is four years. Re-secondment or re-appointment is admissible. In cases of members resigning, of secondments being revoked, of gross breach or continued dereliction of duty, the assignments of members and/or alternate members shall be terminated by the Federal Minister for Health and Women before their term of office is completed. If required, new members shall be seconded or appointed for the remaining term of office. If the right to second or appoint members is not exercised within two months after the request was made, the Federal Minister for Health and Women shall appoint the relevant members and/or alternate members.
- (8) Before assuming their functions, the members and alternate members seconded by the organised interest groups shall pledge to perform their duties conscientiously and impartially.
- (9) Each of the bodies seconding or appointing two members, should second or appoint at least one woman. When seconding or appointing alternate members, the female quota should be at least 50 %. Federal Ministries appointing members should appoint at least one woman either as a member or as an alternate member.

National Equality Body

Section 3

- (1) National Equality Body (Ombud for Equal Treatment) shall be set up at the Federal Ministry of Health and Women.
- (2) The Ombud for Equal Treatment consists of:
 1. The Ombud for equal treatment between women and men in employment (Title One of the Equal Treatment Act);

2. The Ombud for equal treatment irrespective of ethnic belonging, religion or belief, age or sexual orientation in employment (Title Two of the Equal Treatment Act);
 3. The Ombud for equal treatment irrespective of ethnic belonging in other areas (Title Three, Part One of the Equal Treatment Act)
 4. The Regional Ombuds and Regional Representatives;
 5. The alternates for the persons listed in sub-paragraphs one to four;
 6. The required number of staff.
- (3) The Ombud for equal treatment between women and men in employment shall coordinate the activities of the National Equality Body.
- (4) The National Equality Body is entrusted with the tasks of counselling and supporting persons who feel discriminated within the intent of the Equal Treatment Act. In the performance of these tasks the Office can arrange for consultations throughout the federal territory.
- (5) The National Equality Body can conduct independent investigations into discrimination matters and publish reports and recommendations on all issues related to discrimination.
- (6) The Ombud for the equal treatment between women and men in employment, the Ombud for equal treatment on the grounds of ethnic belonging, religion or belief, age or sexual orientation in employment and the Ombud for equal treatment irrespective of ethnic belonging in other areas as well as their deputies shall be appointed by the Federal Minister for Health and Women after consultation with the statutory interest groups entitled to second members. The Federal Minister for Health and Women shall assign these functions to federal officers
- (7) The functions under paragraph two, sub-paragraphs one to five are suspended:
1. From institution of disciplinary proceedings until their final and absolute conclusion and
 2. During periods of
 - a) Suspension,
 - b) Removal from office,
 - c) Extended paid leave of absence or a holiday of more than three months and
 - d) Military, national or alternative service.
- (8) The functions under paragraph two, sub-paragraphs one to five end:
1. With the final and absolute imposition of disciplinary measures,
 2. With transfer abroad,
 3. With the resignation or retirement from federal service,
 4. With (voluntary) renunciation.
- (9) The Federal Minister for Health and Women shall remove the Ombud for equal treatment between women and men in employment, the Ombud for equal treatment irrespective of ethnic belonging, religion or belief, age or sexual orientation in employment and the Ombud for equal treatment irrespective of ethnic belonging in other areas as well as their alternates and the Regional Ombuds and Regional Representatives from their functions, if they:
1. Are no longer able to perform their duties for health reasons, or
 2. If they have grossly breached or persistently neglected their official duties.
- (10) The members of the National Equal Body listed under paragraph two, sub-paragraphs one to five, are entitled to attend meetings of the Senates of the Equal Treatment Commission and of its working groups, whenever matters relating to their sphere of action are up for discussion. They shall be given the floor upon request.
- (11) The alternates listed in paragraph two, sub-paragraph five, have the same rights and duties as the members of the National Equal Body they are assigned to deputise for.

Ombud for Equal Treatment between Women and Men in Employment

Section 4

- (1) The Ombud for equal treatment between women and men in employment is entrusted with the task of counselling and supporting persons who feel discriminated within the intent of Title One of the Equal Treatment Act. She acts on her own initiative and independently.
- (2) In the case of an alleged infringement of the equality principle, the Ombud may, if required, ask for a written statement from the employer. She may, moreover, request additional information from the employer, the works council / shop steward or the staff employed by the enterprise concerned. These persons are obliged to pass on the information required by the Ombud in the performance of her duty.
- (3) If the Ombud assumes that the equality principle has not been complied with and proves it to the satisfaction of the Senate, the latter shall – proprio motu – institute proceedings in accordance with Section 11 or Section 12. The Senate shall deal with the case submitted by the Ombud at its next meeting, but not later than within one month.
- (4) The Senate may request the Ombud to carry out the investigation. By authority of the Senate, the Ombud may enter the premises of the enterprises and inspect the records. At her request copies or photocopies of such records or of excerpts therefrom shall be made available to her. The Ombud shall involve the works council in her investigative activities. The visit to an enterprise shall be announced with due notice, so that the employer can be personally present or name a representative who is present during the visit.
- (5) Section 12 paragraph five shall apply, if – in a case submitted by the Ombud or Regional Ombud – the decision of the Senate differs from the opinion of the Ombud or the Regional Ombud.

Ombud for Equal Treatment irrespective of Ethnic Belonging, Religion or Belief, Age or Sexual Orientation in Employment

Section 5

- (1) The Ombud for equal treatment irrespective of ethnic belonging, religion or belief, age or sexual orientation in employment is entrusted with the task of counselling and supporting persons who feel discriminated within the intent of Title One, Part Two of the Equal Treatment Act. He/she acts on his/her own initiative and independently.
- (2) In the case of an alleged infringement of the equal treatment principle, the Ombud may, if required, ask for a written statement from the employer or the organisation concerned. He/she may, moreover, request/obtain additional information from the employer, the works council or the staff employed by the enterprise concerned. These persons are obliged to pass on the information required by the Ombud in the performance of his/her duty.
- (3) If the Ombud assumes that the equality principle has not been complied with and proves it to the satisfaction of the Senate, the latter shall – proprio motu – institute proceedings in accordance with Section 11 or Section 12. The Senate shall deal with the case submitted by the Ombud at its next meeting, but not later than within one month.
- (4) The Senate may request the Ombud to carry out the investigation. By authority of the Senate, the Ombud may enter the premises of the enterprises and inspect the records. At his/her request copies or photocopies of such records or excerpts therefrom shall be made available to him/her. The Ombudsperson shall involve the works council in his/her investigative activities. The visit to an enterprise shall be announced with due notice, so that the employer can be personally present or name a representative who is present during the visit.

- (5) Section 12 paragraph five shall apply, if – in a case submitted by the Ombud or Regional Ombud – the decision of the Senate differs from the opinion of the Ombud or the Regional Ombud.

Ombud for Equal Treatment, irrespective of Ethnic Belonging, in other Areas

Section 6

- (1) The Ombud for equal treatment, irrespective of ethnic belonging, in other areas is entrusted with the task of counselling and supporting persons who feel discriminated within the intent of Title Two, Part One of the Equal Treatment Act. He/she acts on his/her own initiative and independently.
- (2) In the case of an alleged infringement of the equal treatment principle, the Ombud may, if required, collect information. The people contacted are obliged to pass on the information required by the Ombud in the performance of his/her duty.
- (3) If the Ombud assumes that the equality principle has not been complied with and proves it to the satisfaction of the Senate, the latter shall – proprio motu – institute proceedings in accordance with Section 11 or Section 12. The Senate shall deal with the case submitted by the Ombud at its next meeting, but not later than within one month.
- (4) The Senate may request the Ombud to carry out the investigation.
- (5) Section 12 paragraph 5 shall apply, if – in a case submitted by the Ombud or Regional Ombud – the decision of the Senate differs from the opinion of the Ombud or the Regional Ombud.

Regional Offices

Section 7

- (1) If it is deemed necessary in the interest of improving the counselling of and support to persons in equality matters within the purview of the present Federal Act, the Federal Minister for Health and Women may, by way of statutory regulation, set up Regional Offices for the equal treatment between women and men in employment in the Laender as well as additional Regional Offices of the National Equal Body and may appoint Regional Representatives (possibly alternates) to head the Regional Offices. The Regional Representatives in charge of equal treatment between women and men in employment shall be designated as Regional Ombuds. The geographical sphere of action of the Regional Offices shall be defined in the statutory regulation. In the performance of his/her tasks the Regional Representative may arrange consultation hours and days.
- (2) The Regional Offices are entrusted with the task of:
1. Counselling and supporting persons who feel discriminated within the intent of the Equal Treatment Act;
 2. Gathering written statements and information as provided for by Sections 4 paragraph two, five paragraph two and six paragraph two as directed by the responsible member of the National Equal Body. In these cases the obligation to furnish information extends to the Regional Representative;
 3. Carrying out investigations in accordance with Sections 4 paragraph four, five paragraph four and six paragraph 4 as directed by the responsible Senate of the Equal Treatment Commission;
 4. Submitting relevant requests to the district authority in accordance with Sections 9 and 23 of the Equal Treatment Act;
 5. Requesting the Equal Treatment Commission to institute, proprio motu, proceedings in accordance with Sections 4 paragraph 3, 5 paragraph 3 and 6 paragraph 3.

Tasks of the Senates of the Equal Treatment Commission

Section 8 Within their terms of reference (Section 1) the Senates of the Equal Treatment Commission shall deal with all issues relating to discrimination and with cases of non-compliance with the promotion guidelines that govern compliance with the equality obligation.

Internal rules

Section 9 The internal rules of the Senates and their committees shall be specified by statutory regulation issued by the Federal Minister for Health and Women.

Opinions

Section 11

- (1) At the request of one of the organised interest groups represented on the respective Commission Senate, at the request of the Ombud for equal treatment of women and men in employment, of a Regional Ombud, of the Ombud for equal treatment in accordance with Section 5 or Section 6, of a Regional Representative or in cases in which it has to act proprio motu, the responsible Senate shall render an opinion on infringement of the equality obligation.
- (2) If an opinion to be rendered in accordance with paragraph one relates to discrimination in collective labour law regulations, the responsible Senate may – as a preliminary to a decision – set up a working group which shall include, apart from the Chair, one member each of the organised interest groups represented in the respective Senate. Representatives of the parties to the collective agreement shall be called in and take part in the deliberations. Section 14 paragraphs two to five shall apply mutatis mutandis.
- (3) The full, anonymised texts of Senate opinions shall be made accessible free of charge by the Equal Treatment Commission on the homepage of the Federal Ministry of Health and Women.

Examination of Particular Cases

Section 12

- (1) At the request of an employee, an employer, a works council / shop steward, of one of the organised interest groups represented in the respective Commission Senate, of a person affected by discrimination as defined in Title Three, Part One of the Equal Treatment Act, at the request of the Ombud for the equal treatment between women and men in employment, of a Regional Ombud, of the Ombud for Equal Treatment under Section 5 or Section 6, of a Regional Representative or, when acting proprio motu, the responsible Senate shall examine, in each particular case, whether the equality obligation has been infringed.
- (2) The employee or the person affected by discrimination as defined in Title Three, Part One of the Equal Treatment Act is entitled to be represented in proceedings instituted before the Commission by a person enjoying his/her confidence, in particular by a representative of one of the organised interest groups or of a non-governmental organisation. Upon application by the employee or the person affected by discrimination as defined in Title Three, Part One of the Equal Treatment Act, the Senate shall, in accordance with Section 14 paragraph 4, call in a representative of a non-governmental organisation nominated by the person affected. When initiating the examination of a particular case, the Senate shall concurrently and expressly advise the employee or the person affected of his/her right to such application.

- (3) If the Senate holds that the equality obligation has been infringed, it shall forward a written proposal of how to implement equal treatment to the employer or, in cases related to some other discrimination in employment, to the person responsible for the discrimination or to the person responsible for the discrimination within the purview of Title Three, Part One of the Equal Treatment Act, and request him/her to put an end to the discrimination.
- (4) If an application made in accordance with paragraph three is not complied with, each organised interest group represented in the respective Senate may bring an action for declaratory judgement establishing infringement of the equality obligation before the Labour Tribunal having jurisdiction or before a Civil Court. Time ceases to run for limitation purposes under collective agreements until the end of the month following the date on which the decisions become final and absolute.
- (5) In proceedings instituted at the request of the Ombud for equal treatment between women and men in employment, of the Ombud for equal treatment under Section 5 or Section 6, of the Regional Ombud or of one of the Regional Representatives, the right of action in accordance with paragraph four can also be exercised by the Ombud for equal treatment, the Ombud for equal treatment under Section 5 or Section 6, the Regional Ombud or the Regional Representative. Such action can only be brought with the agreement of the employee or the person concerned.
- (6) The Senate shall make the full, anonymised texts of final and absolute court judgments as defined by paragraphs four and five accessible free of charge on the homepage of the Federal Ministry of Health and Women.

Obligation to Report

Section 13

- (1) If a communication submitted for the purpose of establishing the validity of alleged facts by a person entitled to make an application in accordance with Section 12, paragraph one, by the Ombud for the equal treatment between women and men in employment or by the Ombud for Equal Treatment in accordance Section 5 or Section 6, leads to the presumption that the equality obligation has not been complied with, a written report shall be submitted – upon request – to the Commission, either
 1. By the employer, in equality cases relating to employment relationships, or by the person allegedly responsible for the alleged discrimination, in cases of other discriminations in employment,
 2. By the person allegedly responsible for the alleged discrimination, in cases falling under Title Three, Part One of the Equal Treatment Act.

If an employer is requested to submit a report, he/she shall facilitate comparison of employment conditions, initial and advanced training measures, opportunities for advancement, employment period and the way of terminating the employment of women and men or of other allegedly discriminating characteristics by furnishing a numerical breakdown for the company/operational area in question, taking into account the alleged non-compliance with the equality obligation. If required, the report shall also shed light on the linkage between initial and advanced training measures and opportunities for promotion. If such a report is requested in the case of discrimination as defined in Title Three, Part 1 of the Equal Treatment Act from the allegedly responsible person, the latter shall give a comprehensive and detailed account of all the circumstances of the case.

- (2) If the Senate has ascertained an infringement of the equality principle, the report requested may have to cover one or several consecutive years.
- (3) Based on the reports, the Commission can draw up opinions (Section 11) on compliance with the equality obligation in the enterprise.
- (4) If the employer or the person allegedly responsible for discrimination fails to comply with his/her obligation as defined in paragraphs one and two, the Commission shall publish this fact on the homepage of the Federal Ministry of Health and Women.

Administration of the Commission

Section 14

- (1) The Chair shall convene the Senate whenever required. The Senate shall also be convened, if more than one third of its members, the Ombud for the equal treatment between women and men in employment or the Ombud for equal treatment under Section 5 or Section 6 so request.
- (2) The members (alternate members) shall be convened in good time by written notice including an agenda of the meeting.
- (3) The Senate constitutes a quorum, if more than half of its members (alternate members) are present. Decisions of the Senate require a majority of the votes cast. In case of a tie, the opinion backed by the vote of the Chair shall be considered adopted.
- (4) Meetings of the Senate are confidential, non-public meetings. The Chair can call in external experts in an advisory capacity. The Chair shall comply with a request by more than one third of the members, of the Ombud for the equal treatment between women and men in employment or of the Ombud for equal treatment under Section 5 or Section 6 for calling in specific experts.
- (5) The management of the Senate's day-to-day business, the preparation of meetings and administrative tasks of the Senate may be performed by one or, if required, by several federal officers under the direction of the Chair.
- (6) Persons who follow the summons to supply information to the Senate, are, upon application, entitled to reimbursement for reasonable expenses incurred when traveling to the place where they are questioned, by having to stay at that place and for the return journey. The amount reimbursed is determined by the regulations currently applying to witnesses under the Act on Expense Claims 1975. No charges or administrative fees are imposed on the filing of expense claims.

Senate Committees

Section 15

- (1) The Senate may set up one or, if required, several ad hoc committees to deal with particular cases.
- (2) Every committee shall consist of at least three members. Meetings shall be presided over by the Senate Chair or by one of the federal officers assigned by him/her; the other members shall be selected by the Senate Chair from among the members or alternate members seconded to the respective Senate by organised interest groups.
- (3) Section 14 paragraphs one to five apply mutatis mutandis to the administration of the committees.

Application of the General Administrative Procedure (Allgemeines Verwaltungsvorfahrensgesetz, AVG)

Section 16 Proceedings before the Senates of the Equal Treatment Commission shall be governed by Section 6 paragraphs one, seven, 13, 14 to 16 and 18 to 22, 32 and 33 as well as – pursuant to Sections 20 paragraph 12 and 30 paragraph 3 of the Equal Treatment Act – Sections 45 and 46 AVG, Federal Law Gazette No. 51/1991. The costs of calling in interpreters and translators are ex-officio costs in accordance with Sections 39a, 52 paragraphs three and four as well as 53 AVG.

9. The headings "Title Three" and "Final Provisions" are cancelled.

10. The following paragraph 8 is added to Section 21:

"(8) Sections 1 to 16 and 22 to 24 in the version of the Federal Act, Federal Law Gazette I No. 66/2004, and the omission of the headings "Title One", "Title Three" and "Final Provisions" shall enter into force on 1 July 2004. Sections 10a to 10d and the previous Title Two shall be void as of 30 June 2004. "

11. Section 22 reads:

"**Section 22** The following shall be responsible for the implementation of this Federal Act: the Federal Minister of Justice for Sections 4 paragraph five, 5 paragraph five, six-paragraph 5 and 12 paragraphs four and five, the Federal Minister for Health and Women in agreement with the Federal Minister for Economics and Labour for Section 24, the Federal Minister for Health and Women's Affairs for the remainder."

12. Section 23 – heading included – reads:

"References

Section 23 References in this Federal Act to other Federal Acts are to current versions of such acts."

13. Section 24 – heading included – reads:

"Reports to National Assembly

Section 24 Every two years, the Federal Minister for Health and Women and the Federal Minister for Economics and Labour shall submit a report on the implementation of the Equal Treatment Act to the National Assembly. This report shall, in particular, contain information on the activities of the National Equality Body and the observations made in the discharge of its duties, on the proceedings before the Commission and on other activities of the Commission. Comments of the organised interest groups shall be added on every second occasion to the biennial report and submitted to the National Assembly."

Klestil

Schüssel

This brochure may be ordered from:

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