

Act June 20 2008 No 42 relating to a prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act)

Unofficial translation

Section 1 *Legislative purpose*

The purpose of the Act is to promote equality and ensure equal opportunities for and rights to social participation for all persons regardless of disabilities and to prevent discrimination on the basis of disability.

The Act shall help to dismantle disabling barriers created by society and to prevent new ones from being created.

Section 2 *Scope*

The Act applies to all areas of society with the exception of family life and other relationships of a personal nature.

The Act applies within the Realm. With the exception of sections 3, 9, 10, 11 and 12, the Act also applies on Svalbard and Jan Mayen, on installations and vessels in operation on the Norwegian continental shelf and on Norwegian ships and aircraft regardless of their location. The King may issue regulations concerning the application of the Act's provisions in section 3, 9, 11 and 12 to the areas mentioned in the second sentence.

The King issues regulations concerning the application of the Act's in the case of posted workers, cf section 1-7 of the Working Environment Act.

Section 3 *Duty to make active efforts and to report*

Public authorities are to make active, targeted and systematic efforts to promote the purpose of the Act.

Employers in the private sector that regularly employ more than 50 employees and employers in the public sector shall make active, targeted and systematic efforts to promote the legislative purpose of the Act within their undertaking. The duty to make active efforts applies to fields such as recruitment, pay and working conditions, promotion, development opportunities and protection against harassment. Employee and employer organisations have a corresponding duty to make active efforts in their fields of activity.

Undertakings that are subject to a statutory duty to prepare annual reports shall in the said report give an account of the measures that have been implemented and measures which it is planned to implement in order to promote the Act's purpose.

Public authorities and public undertakings that are not obliged to prepare annual reports shall give a corresponding account in their annual budgets.

The provisions of the Anti-Discrimination Ombud Act shall apply in connection with the enforcement of the third and fourth subsections.

Section 4 *Prohibition against discrimination*

Direct and indirect discrimination on the basis of disability is prohibited.

By direct discrimination is meant that the objective or effect of an act or omission is that persons are, on the basis of a disability, treated in a worse fashion than other people are, have been or would have been treated in a similar situation.

By indirect discrimination is meant any apparently neutral act, provision, practice, act or omission that leads to persons, on the basis of a disability, being placed in a worse position than other people.

Different treatment that is necessary to achieve a legitimate aim and does not disproportionately negatively affect the person or persons that are subject to the unequal treatment is not to be regarded as discrimination pursuant to this Act. Any unequal

treatment in working life must also be necessary for the execution of the work or profession.

The prohibition against discrimination stated in this section relates to discrimination on the grounds of a present disability, assumed disability, past disability, possible future disability as well as discrimination of a person due to their relationship with a person with a disability.

It is prohibited to be an accessory to any breach of the prohibition against discrimination laid down in the present section.

Discrimination which is due to a lack of accommodation is exhaustively regulated in sections 9 and 12.

Section 5 *Positive action*

Specific measures that contribute to promote the purpose of the Act shall not to be regarded as discrimination pursuant to this Act. Such measures shall cease when the purpose of it has been achieved.

Section 6 *Prohibition against harassment*

Harassment on the basis of disability is prohibited.

By harassment is meant acts, omissions or statements that seem or aim to seem offensive, frightening, hostile, degrading or humiliating. The prohibition against harassment in this section covers harassment on the basis of a present disability, assumed disability, past disability or possible future disability, as well as the harassment of a person on the basis of this person's relationship with a person with a disability.

It is prohibited to be an accessory to any breach of the prohibition against discrimination laid down in subsections one to three.

Employers and the managements of organisations and educational institutions shall, within their areas of responsibility, prevent and seek to prevent harassment occurring in contravention of this section.

Section 7 *Prohibition against instructions*

It is prohibited to instruct anyone to carry out discrimination or harassment on such grounds mentioned in sections 4 and 6. It is also prohibited to instruct anyone to carry out an act of reprisal in breach of section 8.

It is prohibited to be an accessory to any breach of the provision laid down in subsection one.

Section 8 *Prohibition against reprisals*

It is prohibited to make use of reprisals against someone who has complained about a breach of the provisions stated in sections 4, 6, 7, 9 or 12, or who has stated that he/she may make a complaint. This does not apply if the complainant has acted with gross negligence.

Subsection one applies correspondingly to witnesses in a complaints case.

It is prohibited to make use of reprisals against anyone who has failed to comply with instructions which contravene section 7.

It is prohibited to be an accessory to any breach of the prohibition against reprisals laid down in this section.

Section 9 *Obligation to ensure general accommodation (universal design)*

Public undertakings are to make active, targeted efforts to promote universal design within the undertaking. The same applies to private undertakings that offer goods or services to the general public.

By universal design is meant designing or accommodating the main solution as regards to physical conditions so that s can be used by as many people as possible.

Public and private undertakings that offer goods or services to the general public are obliged to ensure the universal design of the undertaking's normal function provided this does not entail an undue burden for the undertaking. When assessing whether the design or accommodation entails an undue burden, particular importance shall be attached to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs associated with the accommodation, the undertaking's resources, whether the normal function of the undertaking is of a public nature, safety considerations and cultural heritage considerations.

Any breach of the obligation to ensure universal design pursuant to subsection three is to be regarded as discrimination.

It is not to be regarded as discrimination pursuant to subsection four if the undertaking meets specific provisions laid down in statutes or regulations concerning the content of the obligation to implement universal design.

The King may issue regulations concerning the content of the obligation to ensure universal design in areas that are not covered by the requirements of, or pursuant to, other legislation, cf subsection five.

Section 10 *Universal design of buildings, facilities, etc.*

The requirements regarding universal design stated in or pursuant to the Planning and Building Act apply to buildings, facilities and outdoor areas.

Section 11 *Requirement of universal design of information and communication technology (ICT)*

By information and communication technology (ICT) is meant technology and technology systems that are used to express, create, convert, exchange, store, duplicate or publish information, or which in some other way make information usable.

New ICT solutions that support the undertaking's normal functions and which are the main solution aimed at or made available to the general public are to be universally designed as from 1 July 2011, but nonetheless at the earliest 12 months after standards or guidelines relating to the content of this obligation have been established. For existing ICT solutions, the obligation applies as from 1 January 2021. The obligation does not apply to ICT solutions whose design is regulated by other legislation.

The body appointed pursuant to section 16, subsection two, may grant exemption from the obligation stated in subsection two if there are specially weighty reasons for this.

The King shall issue regulations containing more detailed provisions regarding the delimitation of the scope and content of the obligation to implement universal design pursuant to this section.

Section 12 *Requirement of individual accommodation*

Employers shall, within reason, individually accommodate workplaces and tasks in order to ensure that employees or job-seekers with disabilities can obtain or retain a job, have access to training and other measures to develop their competence and can carry out and have an opportunity to advance in their work in the same way as other people.

Schools and educational institutions shall, within reason, individually accommodate teaching locations and the teaching in order to ensure that pupils and students with disabilities obtain equal training and educational opportunities.

The municipality shall, within reason, individually accommodate Kindergartens in order to ensure that children with disabilities obtain equal opportunities for development and activity.

The municipality shall, within reason, individually accommodate its range of services pursuant to the Social Services Act and Municipal Health Services Act in a way that is permanent for the individual in order to ensure that persons with disabilities obtain an equal service.

The obligations stated in the first to fourth subsections do not include accommodation that entails an undue burden. When considering whether the accommodation leads to an undue burden, particular importance is to be attached to the effect of the accommodation on the dismantling of disabling barriers, the necessary costs of the accommodation, the undertaking's resources. Any breach of the obligation to ensure individual accommodation stated in the first to fifth subsections is to be regarded as discrimination.

Section 13 *Burden of proof*

If there are circumstances that give reason to believe that there has been a breach of the provisions stipulated in sections 4, 6, 7, 8, 9 or 12, such a breach shall be assumed to have taken place unless the person responsible for the act, omission or remark proves it probable that no such breach has occurred.

Section 14 *Employers' obligation to disclose information in matters concerning appointments*

A job applicant who believe himself or herself to have been discriminated against in breach of section 4 or section 12, subsection one, may demand that the employer provide information in writing concerning the education, work experience or other clearly ascertainable qualifications of the appointee for the post in question.

Section 15 *Organisations' opportunity to act as agents, et seq.*

An organisation whose purpose is, wholly or partially, that of combatting discrimination on the basis of disability may be used as an agent in an administrative case pursuant to this Act.

A person appointed by and with links to an organisation whose purpose is, wholly or partially, to work to prevent discrimination on the basis of disability may be used as a legal representative in cases heard by the courts pursuant to this Act. This does not apply in relation to the Supreme Court.

The court may refuse to accept the authorisation of a legal representative if the court believes there is a danger that the legal representative does not have sufficient qualifications to safeguard the party's interests satisfactorily.

A legal representative shall, along with an authorisation as stated in section 3-4 of the Civil Procedure Act, at the same time submit written information from the organisation regarding the legal representative's qualifications.

Section 16 *Enforcement*

The Equality and Anti-Discrimination Ombud and Equality and Anti-Discrimination Tribunal shall, with the exception of sections 10 and 11, monitor and contribute to the implementation of this Act, cf the Anti-Discrimination Ombud Act. Claims pursuant to section 17 are to be brought before the normal courts.

The King shall appoint the body that is to monitor that the requirements stated in section 11 are complied with. This body may order an undertaking that does not fulfil the requirements stated in or pursuant to section 11, subsection two, to order an act to be remedied and may impose a coercive fine in order to ensure that the order is carried out if the deadline for compliance with the order has not been met. The regulations stipulated in section 8, subsections one to three of the Anti-Discrimination Ombud Act apply correspondingly.

The body appointed pursuant to subsection two may demand the information necessary for carrying out its tasks pursuant to the Act, and demand access to ICT solutions as mentioned in section 11. The same applies to the appeals body if there is an appeal against a decision pursuant to subsection two.

Legal proceedings for the review of an administrative decision made by the body appointed pursuant to subsection two or the appeals body must be brought within three months of the information on the decision being received. A decision pursuant to subsection two may not be brought before the courts unless the opportunity to appeal has been utilised and the appeal has been determined.

The King may issue regulations concerning the coercive fine pursuant to subsection two, including regarding the size and duration of the coercive fine and other provisions regarding their determination and execution.

Section 17 *Redress and compensatory damages*

A party who negligently acts in contravention of section 4, section 6, subsections one to four, section 7, section 8 or section 12 may be ordered to pay damages for non-economic loss to the aggrieved party. The damages for non-economic loss are to be determined as being the amount that is found to be reasonable taken into consideration circumstances of the parties and other facts in the case.

A job applicant or employee may demand redress for non-economic loss for a contravention of section 4, section 6, subsections one to four, section 7 or section 8 in working life irrespective of the employers culpability. This applies correspondingly to any person who applies to become, or who is, a member or a participant in an employee's, employer's or professional organization.

Compensation for financial loss a result of a breach of this Act may be claimed pursuant to the ordinary rules governing damages.

Section 18 *Entry into force*

This Act enters into force on the date determined by the King¹. The King may decide that the individual provisions are to enter into force at different times.

¹ The Act enter into force January 1, 2009.