

Ministry of Employment

This is an unofficial translation. In case of discrepancy, the Danish text prevails.

Consolidation Act No. 899 of 5 September 2008:

Consolidation Act on Equal Pay to Men and Women

This Act consolidates the Danish Act on Equal Pay to Men and Women, cf. Consolidation Act No. 906 of 27 August 2006 with the amendments following Act no. 558 of 17 June 2008.

1.- No discrimination on grounds of gender as regards pay may take place in violation of this Act. This applies to both direct and indirect discrimination.

(2) All employers must pay men and women equally, including providing equal pay conditions, for the same work or work given the same value. Especially when a professional classification system is used to determine pay, this system must be based on the same criteria for male and female employees and be structured so that discrimination on grounds of gender is ruled out.

(3) The assessment of the value of the work shall take place on the basis of a general assessment of relevant qualifications and other relevant factors.

(4) The provisions laid down in this Act shall not be applicable to the extent in which a similar obligation to offer equal pay is laid down in a collective agreement.

(5) The provisions laid down in section 5a shall not be applicable to the extent in which a similar obligation is laid down in a collective agreement.

1.- a Direct discrimination shall be taken to occur when a person on grounds of gender is treated differently than another person is, has or would be treated in a corresponding situation. Any kind of lesser treatment of a woman in connection with pregnancy and during women's 14 weeks of leave after birth is considered direct discrimination.

(2) Indirect discrimination shall be taken to occur when an apparently neutral provision, criteria or practice places people of one gender at a disadvantage compared to members of the other gender, unless that provision, criteria or practice is appropriate and necessary and can be justified by objective factors and the means to achieve them are expedient and necessary.

(3) The concept of pay shall be taken to cover the normal basic or minimum pay and all other payments paid out to the employee by the employer because of the employment relationship, be it payment in cash or in kind.

(4) Harassment is taken to occur upon the exhibition of unwanted behaviour in relation to a person's gender for the purpose or to the effect of violating this person's dignity and create a threatening, hostile, demeaning, humiliating or unpleasant environment.

(5) Sexual harassment is taken to occur when any form of unwanted verbal, non-verbal or physical behaviour with a sexual undercurrent is exhibited for the purpose or the effect of violating a person's dignity, in particular by creating a threatening, hostile, demeaning, humiliating or unpleasant environment.

(6) Harassment and sexual harassment as well as inferior treatment based on a person's refusal or acceptance of such behaviour shall be considered discrimination on grounds of gender.

(7) An instruction to discriminate on grounds of gender shall be considered discrimination.

1.- b It is incumbent upon public authorities to actively take into account the equal pay goal in the making and implementation of legislation and administrative provisions, policies and activities within the areas covered by this Act.

2.- An employee whose pay is lower than that of others in contravention of section 1 of this Act is entitled to the difference.

(2) An employee whose rights have been violated as a result of gender-based wage differentiation may be awarded compensation. When determining the size of the compensation, the length of employment and the individual circumstances of the case will be taken into consideration.

2.-a An employee has the right to pass on information relating to his or her own wage conditions. This information may be passed on to anyone.

(2) This provision shall not apply where a collective agreement gives the employee rights, which, as a minimum, correspond to the rights laid down in section 1.

3.- An employer shall not be allowed to dismiss or treat an employee, including an employee representative, in an unfavourable manner as the reaction to a complaint or because the employee or the employee representative has put forward a claim for equal pay, or because he or she has passed on information regarding pay. An employer may not dismiss an employee or an employee representative because he or she has put forward a claim under section 5a (1).

(2) It is incumbent upon the employer to prove that a dismissal has not been made in violation of the rules laid down in (1). If the dismissal happens more than one year after the employee has made a demand for equal pay, (1) only applies if the employee can demonstrate actual circumstances that give reason to assume that the dismissal has happened in violation of (1).

(3) A dismissal that has occurred in violation of the rules laid down in (1) shall be made invalid upon claim therefore, unless in special cases in which it is, after an evaluation of the interests of the parties, considered obviously unfair to demand that the employment relationship remains or is restored. Instead, a dismissed

employee may claim compensation. The size of the compensation shall be determined in consideration of the length of the employment relationship as well as the matters of the case in general.

4.- Section 3 shall apply correspondingly to sectors covered by collective agreements under which the employees are entitled to equal pay, including equal pay conditions, but which do not have rules on compensation in connection with a dismissal which is not reasonably justified by circumstances of the employee or the enterprise. The claim shall be reviewed under the special procedures for settlement of industrial disputes.

4.- a Any person who finds that they have been offended due to a non-observance of this Act in relation to the person in question, possibly after having submitted the case to other competent institutions, may bring the case before the courts, including, in cases where it may be considered expedient, to conciliatory institutions, for the purpose of enforcement of the duties under this Act, including after the expiration of the circumstances under which the discrimination has allegedly taken place.

5.- An employee cannot waive his or her rights under this Act.

5.-a An employer with a minimum of 35 employees must each year prepare gender-segregated wage statistics for groups of a minimum of 10 persons of each gender, calculated on the basis of the 6-digit DISCO code for the purpose of consulting and informing the employees of wage gaps between men and women in the enterprise. However, this does not extend to companies in the fields of farming, gardening, forestry and fisheries. If the gender-segregated wage statistics are submitted in confidentiality for the good of the company's legitimate interests the information may not be passed on.

(2) The gender-segregated wage statistics under (1) shall be calculated for employee groups with a degree of detail corresponding to the 6-digit DISCO code. The employer also has a duty to give an account of the design of the statistics and for the wage concept applied.

(3) Enterprises that make notification to the annual wage statistics of Statistics Denmark may obtain, without charge, gender-segregated wage statistics under subsection (1) from Statistics Denmark.

(4) The employer's obligation to prepare gender-segregated wage statistics under subsection (1) shall lapse if the employer enters into an agreement with the employees in the enterprise to prepare a report. The report is required to contain a description of the terms which are of significance to the payment of men and women in the enterprise as well as specifically action-oriented initiatives which may run for a course of 3 years, and the more specific follow-up on this in the period of the report. The report is required to comprise all the employees of the enterprise and is required to be considered with in accordance with the rules laid down in section 4 of the Act on Information and Consultation of Employees or the rules in a collective agreement which substitute the Act on Information and Consultation of Employees. The report is required to be prepared, at the latest, within the expiry of the calendar year where the duty to prepare gender-segregated wage statistics existed.

6.- An employee who finds that the employer does not comply with the duty to offer equal pay, including equal pay conditions under the Act may bring legal action to establish the claim.

(2) Where a person who finds that he or she has been discriminated against under section 1 establishes facts which give cause for presuming that direct or indirect discrimination has taken place, it is incumbent on the other party to prove that the principle of equal treatment has not been violated.

6.- a The Minister for Employment and the Minister for Gender Equality shall every third year present a report on measures to guarantee equal pay between men and women.

6.- b Any violation of section 5 subsection (1) first and third sentences will be sanctioned by a fine unless higher punishments are imposed under other legislation.

(2) Enterprises, etc. (legal persons) may be held criminally liable under the provisions of part 5 of the Danish Criminal Code.

7.- This Act may receive the Royal Assent immediately after its adoption.

8.- This Act shall come into force on 9 February 1976 and shall apply to pay relating to the period after the commencement of the Act.

9.- This Act shall not extend to the Faroe Islands.

Act no. 374 of 20 May 1992 contains the following provision on commencement:

3

This Act shall come in to force on the first day following its announcement in the Danish Law Gazette.

Act no. 388 of 30 June 2000 concerning equal opportunities for men and women on the labour market contains the following provision on commencement:

24

The Act shall come into force on 1 June 2000.

Act No 440 of 7 June 2001 on the amendment of the Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave, etc, the Act on Equal Pay to Men and Women, the Act on Child Care Leave, the Act on Equal Opportunities for Men and Women and the Act on Equal Treatment of Men and Women in occupational social security schemes lay down the following commencement provisions:

Section 6

The Act shall come into force on 1 July 2001.

Act no 445 of 7 June 2001 on the amendment of the Act on Equal Pay to Men and Women (information on wages) lays down the following commencement provisions:

2

This Act shall come into force on 1 July 2001. The commencement date concerning section 1 (3)-(5) is laid down by the Minister for Employment.

(2) Section 1 (1) and (2) are applicable to employment relationships commenced before 1 July 2001.

(3) The time for drawing up the report under section 6, as laid down in section 1(5) of this Act for the first time shall be decided by the Minister for Employment.

3

(repealed)

Act no. 562 of 9 June 2006 which amends section 1, section 5a and section 6b, contains the following provisions on commencement:

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The Act shall come into force on 1 January 2007

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Section 6a of the Act on Equal Pay to Men and Women, which was inserted in Act no. 445 of 7 June 2001 and amended by Act no. 358 of 6 June 2002 shall come into force on 1 January 2007, so that the report shall be made for the first time in 2009.

Act no. 558 of 17 June 2008, which amends sections 1, 2, and 3 of the Act, inserts section 1a and 1b and 4a as well as footnote to the title of the Act, contains the following provisions of commencement:

2

The Act shall come into force on 15 August 2008.

3

This Act shall not extend to the Faroe Islands and Greenland.

The Ministry of Employment, 5 September 2008

Claus Hjort Frederiksen