Consolidation Act no. 1349 of 16 December 2008

Consolidation Act on Prohibition of Discrimination on the Labour Market etc.¹


Part 1

Scope of the Act

1— For the purpose of this Act, discrimination shall mean any direct or indirect discrimination on the grounds of race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin.

(2) Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on the grounds of race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin.

(3) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would place persons of a particular race, colour, religion or belief, political opinion, sexual orientation or national, social or ethnic origin or of a particular age or with a disability at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. See, however, section 2 a.

(4) Harassment shall be considered discrimination when unwanted conduct related to the race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin of a person takes place with the purpose or effect of violating the dignity of the person or of creating an intimidating, hostile, degrading, humiliating or uncomfortable environment for such a person.

(5) An instruction to discriminate against a person on the grounds of race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin shall be considered discrimination.

(6) This Act shall not apply in so far as similar protection against discrimination follows from a collective agreement. See however, section 7.

(7) This Act shall not apply if a prohibition of discrimination on the grounds of age and disability follows from a collective or other agreement which, as a minimum, corresponds to the provisions of Council Directive no. 2000/78/EC establishing a general framework for equal treatment in employment and occupation, reprinted in Schedule 1 to this Act.

1 a— Upon consulting the organisations involved, the Danish Minister of Defence may exclude armed forces on active service from the prohibition of discrimination on the grounds of age and disability under this Act.
Part 2

Prohibition of discrimination

2— An employer may not discriminate against employees or applicants for vacancies in connection with recruitment, dismissal, transfer, promotion or with regard to pay and working conditions.

(2) Discrimination with respect to pay conditions shall be taken to occur in case of failure to provide equal pay for equal work or work of equal value.

(3) An employee whose pay is lower than that of other employees in violation of subsection (1) hereof, shall be entitled to the difference.

2 a— The employer shall take the measures appropriate to the specific needs in order to give a person with a disability access to employment, to be employed, or to have progress in employment or to give a person with a disability access to education and training. However, this shall not apply if a disproportionate burden is thereby imposed on the employer. If such burden is alleviated to a sufficient extent through public measures, the burden shall not be deemed to be disproportionate.

3— An employer shall not discriminate against employees with respect to access to vocational guidance, vocational training, further vocational training and retraining.

(2) The prohibition of discrimination shall also apply to persons engaged in guidance and training activities, as set out in subsection (1) hereof, and to persons engaged in job provision.

(3) The prohibition of discrimination shall also apply to persons laying down provisions and making decisions on access to engage in self-employment.

(4) The prohibition of discrimination shall also apply to persons deciding terms of membership of and participation in workers’ and employers’ organisations and the benefits provided by such organisations to their members.

4— In connection with recruitment or employment of an employee, an employer may not request, obtain or receive or make use of any information concerning such employee’s race, colour, religion or belief, political opinion, sexual orientation or national, social or ethnic origin.

5— Advertisements may not indicate that a person of a particular race, colour, religion or belief, political opinion, sexual orientation or national, social or ethnic origin or of a particular age or with a disability is sought or preferred for employment or vocational training. Nor shall it be indicated that a person with the characteristics set out in the first sentence above is not wanted.

(2) Section (1) does not apply when the exemption orders of this Act allow an employer to prefer employees with a specific characteristic.

5 a— Any provision in individual or collective agreements and in the in-house regulations of enterprises etc. in violation of the prohibition of discrimination in sections 2-5 are invalid. This also applies to provisions in articles of associations etc. for the independent occupations and professions and for employers’ and workers’ organisations.

(2) Provisions in agreements and in the regulations of enterprises etc. which concern more than one employer shall also be invalid if they warrant discrimination on the grounds of one of the criteria covered by section 1(1) within the areas stated in sections 2-5. This also applies to provisions in articles of association etc. for the independent occupations and professions.

(3) Notwithstanding the provision in subsection (1) hereof, this Act shall not prevent the maintenance of current age limits stipulated in or agreed under collective agreements provided that
such age limits are objectively and reasonably justified by a legitimate aim within the framework of Danish law, and the means of achieving that aim are appropriate and necessary.

(4) Notwithstanding section 2 (1), this Act shall not prevent provisions in individual or collective agreements governing the termination of an employment relationship when an employee reaches the age of 70. The provisions laid down in collective agreements governing termination of the employment relationship before the employee reaches the age of 70, which are covered by section 3, may be amended so that the age limit is raised to an age below 70 years.

(5) Notwithstanding the provision laid down in (1), this act does not prevent provisions in collective agreements concerning special rules about remuneration of youths under the age of 18. The prohibition against discrimination due to age when it comes to employment, wage conditions, and dismissal does not apply to youths under the age of 18 whose employment is covered by a collective agreement that contains special rules concerning remuneration of youths under the age of 18.

(6) The prohibition against discrimination on grounds of age when it comes to recruitment, pay and dismissal does not apply to youths under the age of 15 whose employment relationship is not regulated by a collective agreement.

5 b— The provisions of this Act cannot be derogated from to the detriment of the employee.

Part 3

Exemptions

6— The prohibition of discrimination on the grounds of political opinion, religion or belief in sections 2-5 shall not apply to employers whose enterprise has the express object of promoting a particular political or religious viewpoint or a particular religious persuasion, and where the employee’s political opinion, religious conviction or persuasion may be deemed to be of importance to the enterprise.

(2) Where it is of decisive importance to the exercise of certain types of occupational or training activities that the person concerned is of a particular race, political opinion, sexual orientation or national, social or ethnic origin or has a particular colour, age or disability or belongs to a specific religion or religious persuasion, and the requirement for specific affiliation is reasonable relative to the occupational activity concerned, the appropriate Minister may, after having obtained the opinion of the Minister for Employment, grant exemptions from the provisions in sections 2-5.

6 a— Notwithstanding sections 2-5, this Act shall not prevent the stipulation of age limits for admission to occupational social security schemes or the use of age criteria in actuarial calculations within the framework of such schemes. The use of age criteria shall not lead to gender-based discrimination.

Part 4

Compensation, assessment of evidence, etc

7— Any person whose rights have been violated by non-compliance with sections 2-4 may be awarded compensation.

(2) Any person exposed to adverse treatment or adverse consequences because such person has made a demand for equal treatment under sections 2-4 may be awarded compensation.
7 a— If a person who considers himself wronged, see sections 2-4, establishes facts from which it may be presumed that direct or indirect discrimination is occurring, it shall be for the respondent to prove that the principle of equal treatment has not been violated.

8 — Failure to comply with section 5 shall be punishable by a fine.

(2) If the violation is committed by a company, an association, an independent institution, a fund or the like, the fine may be imposed on the legal person per se. If the violation is committed by the government, a local authority or an association of local authorities covered by section 60 of the Act on Local Government, the fine may be imposed on the government, local authority or the association of local authorities per se.

8 a— Complaints of violation of the prohibition of discrimination under this Act and of violations of the prohibition of retaliatory measures under section 7 (2) are being handled by the Danish Board of Equal Treatment.

Part 5

Entry into force and relationship to other legislation, etc.

9 — Section 4 shall not be applicable in so far as other provisions follow from special legislation.

(2) This Act shall not prevent measures from being introduced by virtue of other statutes, by virtue of provisions under the authority of other statutes or otherwise by public measures with the purpose of improving employment opportunities for persons of a particular race, colour, religion or belief, political opinion, sexual orientation or national, social or ethnic origin or with a particular age or disability.

(3) This Act shall not prevent measures from being introduced to promote employment opportunities for older employees and disabled persons.

(4) With a view to protecting children and young employees, the prohibition of discrimination on the grounds of age in sections 2-5 of this Act shall not prevent the stipulation of age limits for access to employment by statute or pursuant to statute.

10 — This Act shall come into force on 1 July 1996.

11— This Act shall not apply to the Faroe Islands and Greenland.

Act no. 253 of 7 April 2004 on Prohibition of Discrimination on the Labour Market etc. amending sections 1, 2(4), 3(4), 5-7 a and 8 a and the heading to Part 4 includes the following provision on entry into force:

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This Act shall come into force on the day following its publication in the Danish Law Gazette.

Act no. 1417 of 22 December 2004 to amend the Act on Prohibition of Discrimination on the Labour Market etc. amending sections 1, 1 a, 2 a, 5, 5 a, 6, 6 a, 9, includes the following provision on entry into force:
This Act shall come into force on the day following its publication in the Danish Law Gazette.

Act no. 240 of 27 March 2006 to amend the Act on Prohibition of Discrimination on the Labour Market etc. (Exception for youths under the age of 18) amending sections 5 and 5 a, includes the following provision on entry into force:

This Act shall come into force on 1 April 2006.

Act no. 1542 of 20 December 2006 to amend the Act on Prohibition of Discrimination on the Labour Market etc. (Raising the age limit for agreements on the termination of an employment relationship) amending section 5 a, includes the following provision on entry into force:

1. This Act shall come into force on 1 January 2008.
2. Provisions laid down in collective agreements governing termination of the employment relationship when the employee reaches the age of 65 or more, concluded after 27 December 2004 but prior to the entry into force of this act, shall, however, remain valid until the date on which the collective agreement can be terminated.

Act no. 387 of 27 May 2008 on the Board of Equal Treatment amending section 8 a, includes the following provision on entry into force:

This Act shall come into force on 1 January 2009.

The Ministry of Employment, 16 December 2008

Claus Hjort Frederiksen

/Lise Fangel

Act no. 253 of 7 April 2004 was published in the Danish Law Gazette on 14 April 2004.

Act no. 1417 of 22 December 2004 was published in the Danish Law Gazette on 27 December 2004.