

The Prohibition of Discrimination Act

As of 1 July 2005

The purpose of the Act

Section 1. The purpose of this Act is to combat discrimination based on any of the following grounds: sex, ethnic origin, religion or other belief, sexual orientation or disability. (2005:480)

Other provisions prohibiting discrimination

Section 2. Provisions prohibiting discrimination are also found in

- the Equal Opportunities Act (1991:433),
- the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (1999:130),
- the Prohibition of Discrimination in Working Life on Grounds of Disability Act (1999:132),
- the Act on a Ban against Discrimination in Working Life on Grounds of Sexual Orientation (1999:133),
- the Equal Treatment of Students at Universities Act (2001:1286), and,
- the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and Pupils (2006:67)

Chapter 16 Section 9 of the Swedish Penal Code contains provisions on unlawful discrimination. (2006:69)

Definitions

Discrimination

Section 3. In this Act discrimination is defined as follows:

1. *direct discrimination*: when an individual is disadvantaged by being treated less favourably than someone else is being, has been or would have been treated in a comparable situation, if such treatment is associated with the person's sex, ethnic origin, religion or other belief, sexual orientation or disability;
2. *indirect discrimination*: when an individual is disadvantaged by the application of provisions, criteria or practices that are apparently neutral but in practice are particularly disadvantageous to individuals of a particular sex, ethnic origin, religion or other belief, sexual orientation or disability, in so far as these provisions, criteria or practices cannot be justified by legitimate aims and the means are appropriate and necessary for achieving these aims;
3. *harassment*: conduct that violates a person's dignity and that is associated that person's sex, ethnic origin, religion or other belief, sexual orientation or disability;

4. *sexual harassment*: any type of conduct of a sexual nature that violates a person's dignity;

5. *instructions to discriminate*: orders or instructions to discriminate against an individual as described in Subsections 1–4 that are given to someone who is either in a subordinate or dependent position relative to the person who gives the orders or instructions or who has undertaken to act on that person's behalf. (2005:480)

Ethnic origin, sexual orientation and disability

Section 4. In this Act the following definitions apply:

1. *ethnic origin*: the condition of belonging to a group of persons of the same national or ethnic origin, race or skin colour;

2. *sexual orientation*: homosexual, bisexual or heterosexual orientation;

3. *disability*: permanent physical, mental or intellectual limitation of a person's functional capacity that as a consequence of injury or illness was present at birth, has arisen since or may be expected to arise.

Prohibition of discrimination

Labour market

Section 5. Discrimination against employees or job seekers that is associated with a person's sex, ethnic origin, religion or other belief, sexual orientation or disability, is prohibited

1. in job placement services offered by public employment offices or other organisations or parties offering employment services, and

2. in connection with other measures included in labour market policy activities.

The prohibition against discrimination does not, however, constitute an obstacle to the application of provisions that are integral to efforts to promote equal opportunities regardless of ethnic origin. (2005:480)

Starting or running a business

Section 6. Discrimination that is associated with a person's sex, ethnic origin, religion or other belief, sexual orientation or disability is prohibited in connection with financial support, permits, registration or similar arrangements that are needed or may be of importance in enabling an individual to start or run a business. (2005:480)

Occupation

Section 7. Discrimination that is associated with sex, ethnic origin, religion or other belief, sexual orientation or disability is prohibited in connection with qualification, certification, authorisation, registration, approval or similar arrangements that are needed or may be of importance in enabling an individual to engage in a certain occupation. (2005:480)

Membership etc.

Section 8. Discrimination that is associated with a person's sex, ethnic origin, religion or other belief, sexual orientation or disability is prohibited in connection with

1. membership of or participation in an employees' organisation, employers' organisation or occupational organisation, and
2. benefits that any such organisation may provide to its members.

The prohibition on sex discrimination does not however apply in respect of benefits that an organisation provides to the members of a particular sex as part of efforts to promote equality between women and men. (2005:480)

Goods, services and housing

Section 9. Discrimination that is associated with a person's sex, ethnic origin, religion or other belief, sexual orientation or disability is prohibited in connection with the professional provision of goods, services or housing.

The prohibition against sex discrimination does not however apply in connection with the provision of

- insurance services, or
- other services or housing, if the different treatment accorded to women and men respectively can be justified by a legitimate aim and the means are appropriate and necessary for achieving this aim. (2005:480)

Social services etc.

Section 10. Discrimination that is associated with ethnic origin, religion or other belief or sexual orientation is prohibited in connection with

1. services provided by the social services, and
2. entitlement to local and national transport services for disabled people, and housing adaptation allowances. (2004:1089)

Social insurance system

Section 11. Discrimination that is associated with a person's sex, ethnic origin, religion or other belief or sexual orientation is prohibited in connection with the social insurance system and related benefit systems.

The prohibition against sex discrimination does not however represent an obstacle to application of the provisions concerning

- widow's pension, under the Act (2000:461) concerning Survivors' Pensions and Child Survivors' Support and under the Act (2000:462) concerning Introduction of the Act (2000:461) concerning Survivors' Pensions and Child Survivors' Support,

– wife’s supplement, under the Act (1962:392) concerning Wife’s Supplement and Municipal Housing Supplement to Basic Pensions, or

– child allowance payments, under the Child Allowance Act (1947:529) and the Act on Extended Child Allowance (1986:378). (2005:480)

Unemployment insurance

Section 12. Discrimination that is associated with a person’s sex, ethnic origin, religion or other belief or sexual orientation is prohibited in connection with unemployment insurance. (2005:480)

Study support

Section 12 a. Discrimination that is associated with a person’s sex, ethnic origin, religion or other belief or sexual orientation is prohibited in connection with state study support. (2006:69)

Health and medical care

Section 13. Discrimination that is associated with ethnic origin, religion or other belief or sexual orientation is prohibited in connection with health and medical care and other medical services. (2005:453)

Prohibition of victimisation

Section 14. A person who has allegedly discriminated against someone under the terms of this Act may not subject an individual to victimisation because he or she has reported or drawn attention to the discrimination or taken part in an investigation into the discrimination.

Invalidity and damages

Invalidity

Section 15. If a person is discriminated against by a provision in a contract in a manner that is prohibited under this Act, the provision shall be adjusted or declared invalid if so requested by the aggrieved person. If the provision is of such importance for the contract that it is unreasonable to demand that the said contract shall apply as to the rest without material changes, the contract may also be adjusted in other respects or be declared invalid in its entirety.

If a person is discriminated against in a manner prohibited under this Act by termination of a contract or by some other such legal document, the legal document shall be declared invalid if so requested by the aggrieved person.

Damages

Section 16. Anyone discriminating against a person in a manner that is prohibited under this Act shall pay damages for the violation that the discrimination involves. If an employee discriminates against a person, the damages shall be paid by the party in whose service the employee is engaged.

Section 17. Anyone subjecting a person to victimisation in a manner that is prohibited under Section 14 shall pay damages for the violation that the victimisation involves. If an employee subjects a person to victimisation, the damages shall be paid by the party in whose service the employee is engaged.

Section 18. Damages under Section 16 or 17 can be reduced or cancelled if such a course is deemed reasonable.

Supervision

Section 19. The Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination on grounds of Sexual Orientation and the Disability Ombudsman are to supervise compliance with this Act.

The Ombudsmen shall seek to induce parties covered by the prohibitions against discrimination and victimisation to comply with the Act voluntarily. (2005:480)

Legal proceedings

Applicable rules

Section 20. Cases concerning application of the prohibitions against discrimination and the prohibition against victimisation under this Act shall be dealt with in accordance with the provisions of the Swedish Code of Judicial Procedure concerning procedures in civil cases where conciliation in the matter is permitted.

The Court may, however, order that each party shall bear its own litigation costs if the person who considers that he or she has been discriminated against or subjected to victimisation has lost the case and had reasonable cause to have the dispute examined. However, this does not apply when one of the Ombudsmen brings the action in accordance with Section 22.

Burden of proof

Section 21. If a person who feels that he or she has been discriminated against or subjected to victimisation can point to circumstances that support such a claim, it is up to the respondent to show that discrimination or victimisation has not occurred.

Right to bring an action

Section 22. In a dispute under this Act, the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination on grounds of Sexual Orientation or the Disability Ombudsman may bring an action on behalf of an individual who considers that he or she has been discriminated against or subjected to victimisation, if the said individual consents to such a course. An Ombudsman bringing such an action may also in the same judicial proceedings bring another action as representative for that person. (2005:480)

Statutory limitation etc.

Section 23. Legal proceedings in a case under this Act must be initiated within two years from the date of the alleged offence or from the last date on which an obligation should have been fulfilled. Otherwise the right to initiate legal proceedings is forfeit.

Section 24. The provisions of the Swedish Code of Judicial Procedure concerning parties with respect to disqualification, pending proceedings, personal appearance and examination on oath, as well as other matters relating to evidence, shall also apply to the person on whose behalf the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination on grounds of Sexual Orientation or the Disability Ombudsman brings an action under this Act.

The provisions of the Swedish Code of Judicial Procedure concerning pending proceedings for an individual bringing an action under this Act shall also apply to an Ombudsman bringing an action on behalf of the individual under this Act. (2005:480)

Section 25. The decision of the Court in a case in which the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Ombudsman against Discrimination on grounds of Sexual Orientation or the Disability Ombudsman brings an action on behalf of an individual has legal force in relation to this person. The decision may be appealed by the individual. (2005:480)