

Equal Treatment Legislation

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Equal treatment act [As in force on 01-01-2005]

This translation is unofficial and is presented here for information purposes on the contents of the Act. It should not be treated as an official legal translation of the Act. Any interpretation of the information should be referred back to the original text.

General rules providing protection against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status (Equal Treatment Act)

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that, having regard *inter alia* to section 1 of the Constitution, it is desirable to provide protection against discrimination on the grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation or civil status, in order to promote equal participation in the life of society, and that it is therefore desirable to prohibit discrimination on these grounds except in such cases as provided for by law, and that to enforce this prohibition it is desirable that an Equal Treatment Commission be established;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Chapter I

Equal treatment of persons irrespective of their religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status

§ 1. General provisions

Section 1

For the purposes of this Act and the provisions based upon it the following definitions shall apply:

- a. discrimination: direct and indirect discrimination, as well as the instruction to discriminate;
- b. direct discrimination: discrimination between persons on the grounds of religion, belief, political opinion, nationality, race, sex, heterosexual or homosexual orientation or civil status;
- c. indirect discrimination: discrimination on the grounds of other characteristics or behaviour than those meant under (b), resulting in direct discrimination.

Section 1a

1. The prohibition on discrimination laid down in this Act shall also include a prohibition on harassment.
2. Harassment as referred to in the first subsection means conduct related to the characteristics or behaviour, as referred to in section 1 under (b), and which has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

3. Section 2, section 5, subsection 2 to 6, section 6a, subsection 2 and section 7, subsection 2 and 3 shall not apply to the prohibition of harassment contained in this Act.

§ 2. General exceptions

Section 2

1. The prohibition on discrimination contained in this Act shall not apply to indirect discrimination if the discrimination is objectively justified by a legitimate aim and the means used to achieve that aim are appropriate and necessary.
2. The prohibition on discrimination on grounds of sex contained in this Act shall not apply:
 - a. in cases in which sex is a determining factor and
 - b. in cases concerning the protection of women, notably in relation to pregnancy and motherhood.
3. The prohibition on discrimination contained in this Act shall not apply if the discrimination concerns a specific measure which has the aim of placing women or persons belonging to a particular ethnic or cultural minority group in a privileged position in order to eliminate or reduce *de facto* disadvantages in relation to the grounds of race or sex and the discrimination is reasonably proportionate to that aim;
4. The prohibition on discrimination on the grounds of race contained in this Act shall not apply:
 - a. in cases where a person's racial appearance is a determining factor, provided that the aim is legitimate and the requirement is proportionate to that aim;
 - b. if the discrimination considers a person's racial appearance and constitutes, by reason of the nature of the concerned particular occupational activity or of the context in which it is carried out, a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate to that objective;
5. The prohibition on discrimination on the grounds of nationality contained in this Act shall not apply:
 - a. if the discrimination is based on generally binding regulations or on written or unwritten rules of international law and
 - b. in cases where nationality is a determining factor.
6. The cases referred to in subsections 2, 4 and 5(b) shall be defined in more detail by order in council.

Section 3

This Act shall not apply to:

- a. legal relations within religious communities and independent sections thereof and within other associations of a spiritual nature;
- b. the office of minister of religion.

Section 4

This Act shall be without prejudice to:

- a. the Equal Opportunities Act;
- b. sections 646, 647, 667 and 670 of book 7 of the Civil Code.

§ 3. Provisions in the field of employment and the liberal professions.

Section 5

1. It shall be unlawful to discriminate with regard to:

- a. public advertising of employment and procedures leading to the filling of vacancies;
- b. job placement;
- c. the commencement or termination of an employment relationship;
- d. the appointment and dismissal of civil servants;
- e. terms and conditions of employment;
- f. permitting staff to receive education or training during or prior to employment;
- g. promotion;
- h. working conditions.

2. Subsection 1 shall not apply to:

- a. the freedom of an institution founded on religious or ideological principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;
- b. the freedom of an institution founded on political principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status and
- c. the freedom of a private educational establishment to impose requirements on the occupancy of a post which, in view of the establishment's purpose, are necessary for it to live up to its founding principles, although such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

3. Subsection 1 shall not apply to requirements which, in view of the private nature of the employment relationship, may reasonably be imposed on the employment relationship.

4. Subsection 1 shall not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to administrative or advisory bodies.

5. Subsection 1 shall not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to confidential posts.

6. Subsection 1 (e) shall not apply to discrimination on the ground of civil status in relation to next of kin pension provision and in relation to claims on pension which were built up before the date on which section I, part B, of the law of 21 December 2000, containing changes to the Pension- and Savings Funds Act and some other Acts relating to the right to chose old-age pension instead of next of kin pension and equal treatment of men and women (Bulletin of Acts and Decrees (*Staatsblad*) 625), entered into force .

Section 6

It shall be unlawful to discriminate with regard to the conditions for and access to the liberal professions and opportunities to pursue the liberal professions or for development within them.

Section 6a

1. It shall be unlawful to discriminate with regard to membership of or involvement in an employers' organisation or trade union, or a professional occupational organisation, as well as the benefits which arise from that membership or involvement.

2. Subsection 1 shall not affect:

a. the freedom of an organisation or association founded on religious or ideological principles to impose requirements which, having regard to its purpose, are necessary to actualise its foundation; such requirements should not justify discrimination on the sole ground of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status and

b. the freedom of an organisation or association founded on political principles to impose requirements which, having regard to its purpose, are necessary to actualise its foundation; such requirements should not justify discrimination on the sole ground of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

§ 4. Other provisions in the socio-economic field

Section 7

1. It shall be unlawful to discriminate in offering or permitting access to goods or services, in concluding, implementing or terminating agreements on the subject, and in providing career orientation and advice or information regarding the choice of educational establishment or career if such acts of discrimination are committed:

a. in the course of carrying on a business or exercising a profession;

b. by the public service;

c. by institutions which are active in the field of housing, social services, health care, cultural affairs or education or

d. by private persons not engaged in carrying on a business or exercising a profession, in so far as the offer is made publicly.

2. Subsection 1 (c) shall not affect the freedom of a private educational establishment to impose requirements governing admission to or participation in the education it provides which, having regard to the establishment's purpose, are necessary for the fulfilment of its principles; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status. Discrimination on the grounds of sex shall be permitted solely if the distinctive nature of the establishment so requires and if equivalent facilities are available for pupils or students of both sexes.

3. Subsection 1 (a and d) shall not apply to requirements which may reasonably be imposed having regard to the private nature of the circumstances to which the legal relationship applies.

Section 7a

1. Without prejudice to section 7, it shall be unlawful to discriminate on the ground of race in social protection, including social security and social advantages.

2. The concepts of social protection, social security and social advantages, mentioned in subsection 1, can be defined by order in council. An order in council determined pursuant to the first sentence, shall not be recommended earlier than four weeks after which the draft has been submitted to both Chambers of the States General.

§ 5. Protection and enforcement

Section 8

1. If an employer terminates an employee's employment in contravention of section 5, on the grounds that the employee has invoked section 5, either at law or otherwise, or has provided assistance in relation to it, such termination shall be invalid.
2. Without prejudice to chapter 8 of the General Administrative Law Act, an employee may invoke subsection 1 within two months of being given notice of termination of employment. Section 55 of Book 3 of the Civil Code shall not apply.
3. A claim in connection with the invocation of invalidity of termination of employment shall lapse six months after the employment has terminated.

Section 8a

Adverse treatment in reaction to a person's reliance either at law or otherwise on this Act or provision of assistance in relation to it shall be prohibited.

Section 9

All contractual provisions which conflict with this Act shall be null and void.

Section 10

1. If a person who considers that he has been wronged through discrimination as referred to in this Act establishes before a court facts from which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that the action in question was not in breach of this Act.
2. Subsection 1 shall apply *mutatis mutandis* to legal actions as referred to in section 305a of Book 3 of the Civil Code and to appeals instituted by interested parties within the meaning of section 1:2, subsection 3 of the General Administrative Law Act.

Chapter 2 The Equal Treatment Commission

Section 11

1. An Equal Treatment Commission shall be established, hereinafter referred to as the Commission.
2. The Commission may establish subcommittees from among its members for the performance of its duties.

Section 12

1. The Commission may, in response to a request in writing, conduct an investigation to determine whether discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code has taken or is taking place, and may publish its findings. The Commission may also conduct an investigation on its own initiative to determine whether such discrimination is systematically taking place in the public service or in one or more sectors of society, and publish its findings.

2. A request in writing as referred to in subsection 1 may be submitted by:
- a. a person who believes that he/she has suffered discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code;
 - b. a natural or legal person or competent authority wishing to know whether they are guilty of discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code;
 - c. a person responsible for deciding on disputes concerning discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code;
 - d. a works council, which believes that discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code is taking place in the company for which it was appointed, or a representative advisory organ similar to that works council, which believes that discrimination as referred to in this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code is taking place in the organ for which it was appointed;
 - e. a legal person with full legal powers which, in accordance with its constitution or statutes, represents the interests of those whose protection is the objective of this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code.

3. If a request in writing as referred to in subsection 2 (d and e) names persons who are said to have been disadvantaged, or if an investigation conducted on the Commission's own initiative relates to such persons, the Commission shall inform the persons concerned of the planned investigation. The Commission shall not have the power to involve persons as referred to in the previous sentence in the investigation or the evaluation if they have stated in writing that they have reservations about such involvement.

Section 13

1. The Commission shall institute an investigation and shall forward its findings, in writing and with reasons, to the petitioner, the person said to be guilty of discrimination and, if relevant, the victim of discrimination.
2. The Commission may make recommendations when forwarding its findings to a person said to be guilty of discrimination.
3. The Commission may forward its findings to such of Our Ministers as may be concerned, and to such organisations of employers, employees, professionals, public servants, consumers of goods and services and relevant consultative bodies as it believes appropriate.

Section 14

1. The Commission shall not institute an investigation if:
 - a. the request referred to in section 12, subsection 2 is manifestly unfounded;
 - b. the interest of the petitioner or the importance of the behaviour concerned is manifestly insufficient;
 - c. the period of time which has elapsed since the discrimination referred to in section 12 took place is such that an investigation can no longer reasonably be conducted.
2. In cases as referred to in subsection 1, the Commission shall notify the petitioner in writing, giving reasons.

Section 15

1. The Commission may bring legal action with a view to obtaining a ruling that conduct contrary to this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be rectified.
2. No conduct may form the subject of action as referred to in subsection 1 if the person affected by that conduct has reservations.

Section 16

1. The Commission shall comprise nine members - including a chair and two assistant chairs - and the same number of deputy members.
2. The chair and the assistant chairs must fulfil the requirements laid down in section 1d of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.
3. The members and deputy members shall be appointed by Our Minister of Justice, in consultation with Our Minister of the Interior, Our Minister of Employment & Social Security, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs.
4. Sections 46c, 46d, subsection 2, 46f, 46g, 46i, with the exception of subsection 1 (c), 46j, 46l, subsection 1, with the exception of (c), and subsection 3, 46m, 46n, 46o and 46p of the Judiciary (Organisation) Act shall apply *mutatis mutandis*, on the understanding that:
 - a. with respect to the members of the Commission, the disciplinary measure referred to in section 46c, subsection 1, shall be imposed by the chair;
 - b. the prohibition to associate during a conversation with parties or their advocates, attorneys or representatives or to accept from them special information or a written piece, as referred to in section 46c, subsection 1(b), does not apply to members of the Commission.
5. The members and deputy members shall be appointed for a maximum of six years. They may be reappointed immediately. The Minister of Justice may accept their resignation, if tendered.

Section 17

1. An office shall be set up to assist the Commission in the performance of its duties.
2. Our Minister of Justice shall, on the recommendation of the Commission, appoint, promote, suspend and dismiss the staff of the office. Our Minister of Justice shall decide in what cases they shall be appointed, promoted, suspended and dismissed.
3. The secretary, who shall also be the head of the office, must fulfil the requirements laid down in section 1(d) of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.

Section 18

1. The Commission may, in the performance of its duties, call on the assistance of civil servants designated by such of Our Ministers as it may concern.
2. The Commission may, in the performance of its duties, seek assistance from one or more persons who can supply the information required by the Commission for that purpose.

Section 19

1. The Commission and the persons referred to in section 17 who are designated by the Commission may call for all the information and documents which may reasonably be considered necessary for the performance of its duties.
2. Everyone shall be obliged, unless they are exempt on the grounds of official or professional confidentiality, to provide the information and documents required pursuant to subsection 1 in full and in accordance with the truth, in the manner and within the time-limit laid down by or on behalf of the Commission. This obligation shall not apply if, in this way, a person would expose themselves or a relative by blood or marriage, in the direct or indirect line to the second or third degree, or his spouse or former spouse to the risk of criminal prosecution for an indictable offence.

Section 20

1. The Commission shall issue an annual report of its activities, which shall be published. It shall forward this report in any event to such of Our Ministers as it may concern and to the advisory bodies concerned.
2. Every five years, calculated from the entry into force of this Act, the Commission shall draw up a report of its findings on the operation in practice of this Act, the Equal Opportunities Act or section 646 of Book 7 of the Civil Code. It shall forward this report to the Minister of the Interior.

Section 21

1. Further rules concerning the working methods of the Commission shall be laid down by order in council, including in any event rules governing:
 - a. the manner in which cases are to be dealt with;
 - b. hearing both parties;
 - c. the public conduct of hearings;
 - e. publication of its findings as referred to in section 13, subsection 3.
2. The salaries, travel and accommodation expenses and other remuneration of the members and deputy members of the Commission shall be laid down by order in council, and rules shall likewise be laid down concerning the entitlement of the members of the Commission to redundancy pay after the expiry of the period for which they were appointed.

Chapter 3

Concluding provisions

Section 22
(Has been deleted)

Section 23
(Has been deleted)

Section 24
(Has been deleted)

Section 25
(Has been deleted)

Section 26
(Has been deleted)

Section 27
(Has been deleted)

Section 28
(Has been deleted)

Section 29
(Has been deleted)

Section 30
(Has been deleted)

Section 31
(Has been deleted)

Section 32
(Has been deleted)

Section 33
Our Minister of the Interior shall, in consultation with Our Minister of Justice, Our Minister for Social Affairs & Employment, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs, forward to the States General as soon as possible after receipt of the report referred to in section 20, subsection 2, a report on the operation in practice of this Act, the Equal Opportunities Act and section 646 of Book 7 of the Civil Code.

Section 34
This Act shall enter into force with effect from the first day of the sixth calendar month after the date of publication of the Bulletin of Acts and Decrees (*Staatsblad*) in which it appears. An earlier date of entry into force may be laid down by Royal Decree.

Section 35
This Act may be cited as the Equal Treatment Act.
Done
The Minister of the Interior
The State Secretary for Social Affairs and Employment

The Minister of Education and Science
The Minister of Welfare, Health and Cultural Affairs

Act on equal treatment on the grounds of disability or chronic illness (*Stb.* 2003, 206) [As in force on 01-01-2005]

This translation is unofficial and is presented here for information purposes on the contents of the Act. It should not be treated as an official legal translation of the Act. Any interpretation of the information should be referred back to the original text.

Act of 3 April 2003 to establish the Act on equal treatment on the grounds of disability or chronic illness

We Beatrix ...

§ 1. General

Section 1

The following definitions apply in this Act:

- a. discrimination: direct and indirect discrimination, as well as the instruction to discriminate;
- b. direct discrimination: discrimination between people on the grounds of a real or alleged disability or chronic illness;
- c. indirect discrimination: discrimination on the grounds of traits or behaviour other than those described at b which results in direct discrimination.

Section 1a

1. The prohibition on discrimination laid down in this Act shall also include a prohibition on harassment.
2. Harassment as referred to in section 1 means conduct related to disability or chronic illness that has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.
3. Section 3 shall not apply to the prohibition of harassment contained in this Act.

Section 2

The prohibition on discrimination also means that the persons on whom this prohibition is imposed are obliged to make reasonable modifications according to need, unless this would impose a disproportionate burden on them.

Section 3

1. The prohibition on discrimination does not apply if:
 - a. the discrimination is necessary to protect health and safety;
 - b. the discrimination relates to a regulation, standard or practice which is aimed at creating or maintaining specific provisions and facilities for the benefit of persons with a disability or chronic illness;
 - c. if the discrimination concerns a specific measure which has the aim of granting persons with a disability or chronic illness a privileged position in order to neutralise or ameliorate existing disadvantages and the discrimination is proportionate to the objective.
2. The prohibition on discrimination contained in this Act shall not apply to indirect discrimination if the discrimination is objectively justified by a legitimate aim and the means used to achieve that aim are appropriate and necessary.

§ 2. Employment

Section 4

Discrimination is prohibited in:

- a. offering a job and the treatment in filling a vacancy;
- b. entering into and terminating an employment relationship;
- c. the appointment as a civil servant and the termination of employment as a civil servant;
- d. assistance with finding work;
- e. terms of employment;
- f. allowing people to attend education and training during and prior to an employment relationship;
- g. promotion;
- h. working conditions.

Section 5

Discrimination is prohibited with regard to the conditions for and access to the professions and for the performance of and development within the professions.

Section 5a

It shall be unlawful to discriminate with regard to membership of or involvement in an employers' organisation or trade union, or a professional occupational organisation, as well as the benefits which arise from that membership or involvement.

Section 5b

It is not allowed to make a distinction when granting access to, offering, administering tests during, and at the completion of, education as referred to in the Primary Education Act and Secondary Education Act, to the extent not included in Article 6, at b.

§ 3. Vocational education

Section 6

Discrimination is prohibited in:

- a. granting access to and the provision of career planning and career choice information;
- c. granting access to, offering, examining and concluding education aimed at entry to and performance in the labour market.

§ 3a. Residence

Section 6a

In this paragraph, residential accommodation is defined as:

- a. immovable property built to be used as a residence that constitutes an independent dwelling, or a part of built immovable property intended to be used as independent or dependent dwelling, including the related communal area;
- b. a caravan, being a building intended for accommodation that is placed on a pitch and that can be moved, in whole or in part;
- c. a houseboat; being a ship that is exclusively or mainly used as or intended as a residence;
- d. a part of an inland waterway vessel intended to be used as a residence.

Section 6b

It is prohibited to make a distinction when :

- a. offering housing for occupation;
- b. concluding, performing, amending or terminating agreements concerning the leasing, buying or occupying of housing for personal use, whereby personal use will include occupation by a person with whom the contracting party, his spouse or registered partner has a family relation or with whom the contracting party, his spouse or registered partner lives as a family;
- c. mediating with respect to an agreement as referred to at b;

- d. drawing up, performing or amending regulations as referred to in Article 111, at d, of Book 5 of the Dutch Civil Code
- e. registering as person looking for a house.

Section 6c

Article 2 does not apply to this paragraph, if it concerns a structural or residence-technical change to the residence.

§ 4. Public transport

Section 7

The following definitions apply in section 8 and the provisions based on it:

- a. public transport: passenger transport open to all in accordance with a timetable by bus, train, metro, tram or a vehicle propelled by means of a guide system;
- b. travel information: information about the timetable with its period of validity, guaranteed connections within the timetable, changes to the timetable and the associated zoning.

Section 8

1. Discrimination is prohibited in:
 - a. granting the access to the buildings and infrastructure associated with the public transport which is required in order to travel;
 - b. offering public transport services and travel information;
 - c. concluding, executing or terminating contracts relating to public transport.
2. Rules will be stipulated by or pursuant to an Order in Council with regard to the modifications to be made under the first paragraph in conjunction with section 2, as described in that section.
3. Subsections 2 and 3 shall also apply to claims as referred to in section 305a of Book 3 of the Civil Code and of appeals lodged by persons with an interest within the meaning of section 1:2, subsection 3, of the General Administrative Law Act.

§ 5. Legal protection

Section 9

1. Termination of the employment relationship by the employer contrary to section 4 or because of the fact that the employee has invoked section 4 at law or otherwise is subject to annulment.
2. Without prejudice to chapter 8 of the General Administrative Law Act, an employee's right to invoke the grounds for annulment described in the first paragraph lapses two months after the termination of the employment relationship. Section 55 of Volume 3 of the Civil Code does not apply.
3. A legal action relating to the annulment will be barred after a period of six months following the day on which the employment relationship has ended.
4. The termination described in the first paragraph does not make the employer liable to pay damages.

Section 9a

Without prejudice to the provisions of Article 9, it is prohibited to disadvantage persons because of the fact that they have invoked this Act, in or out of court, or have provided assistance in respect thereof.

Section 10

1. If a person who believes that they are or will be discriminated against to their disadvantage as described in this Act produces facts in court which can give grounds for

suspecting that such discrimination exists, the counterparty must prove that they have not acted contrary to the law.

2. If a person who believes that they have been disadvantaged by acts contrary to section 2 produces facts in court which can give grounds for suspecting that there has been a failure to make effective modifications, the counterparty must prove that they have not acted contrary to this provision.

3. The first and second paragraph apply accordingly to claims as referred to in Article 305a of Book 3 of the Dutch Civil Code and to appeals submitted by interested parties within the meaning of Article 1:2, third paragraph, of the Dutch General Administrative Law Act.

Section 11

Contractual terms which contradict this Act are invalid.

Section 12

The Equal Opportunities Commission described in section 11 of the General Equal Opportunities Act can investigate whether discrimination is taking place or will take place as described in this Act and whether acts contrary to section 2 of this Act have taken place. Sections 12, 13, 14, 15, 20, second paragraph, and 33 of the General Equal Opportunities Act apply correspondingly.

Section 13

Our Minister of Public Health, Welfare and Sport - in consultation with Our Ministers of the Interior and Kingdom Relations, of Justice, of Social Affairs and Employment, of Traffic and Water Management and of Education, Culture and Sciences - will send a report to Parliament on the effectiveness and effects of this Act in practice within five years of it coming into force

§ 6. Final provisions

Section 14

The sections of the Act come into force at a time to be stipulated by Royal Decree, which can be different for the various sections or components thereof.

Section 15

This Act will be cited as the Act on equal treatment on the grounds of disability or chronic illness.

Charge and command ...

Issued on May twenty-second 2003

Equal treatment irrespective of age in employment, occupation and vocational training (Equal Treatment in Employment (Age Discrimination) Act)

This translation is unofficial and is presented here for information purposes on the contents of the Act. It should not be treated as an official legal translation of the Act. Any interpretation of the information should be referred back to the original text.

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that in order to implement Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ EC, 2000, L303), and in connection with article 1 of the Constitution, it is desirable to prohibit discrimination on the grounds of age in employment, occupation and vocational training;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

§1 General

Definition of discrimination

Section 1

1. In this Act, discrimination means discrimination on the grounds of age or on the grounds of other characteristics, or conduct that results in discrimination on the grounds of age.
2. An instruction to discriminate on the grounds referred to above shall be deemed to be discrimination within the meaning of subsection 1.

Harassment

Section 2

1. The prohibition on discrimination laid down in this Act shall also include a prohibition on harassment.
2. Harassment as referred to in the preceding subsection means conduct related to age that has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

§ 2 Scope of the prohibition

Employment

Section 3

It shall be unlawful to discriminate with regard to:

- a) the recruitment, selection and appointment of personnel;
- b) job placement;
- c) entering into or terminating an employment relationship;
- d) the appointment and dismissal of public servants;
- e) conditions of employment;
- f) education and training during or prior to an employment relationship;
- g) promotion;
- h) working conditions.

The liberal professions

Section 4

It shall be unlawful to discriminate with regard to the conditions for and admission to the liberal professions, and to the opportunities to practise such professions or develop professional skills within them.

Vocational training

Section 5

It shall be unlawful to discriminate with regard to:

- a) access to and provision of careers advice and vocational guidance;
- b) access to and provision of training directed at entering and functioning on the labour market and the holding of tests in connection with and completion of such training.

Membership of organisations

Section 6

It shall be unlawful to discriminate with regard to membership of or involvement in an employers' organisation or trade union, or a professional or occupational association. This shall also apply to the benefits which arise from membership of such organisations and associations.

§ 3 Exceptions to the prohibition on discrimination

Objective justification

Section 7

1. The prohibition on discrimination shall not apply if the discrimination:

- a) is based on employment or labour-market policies to promote employment in certain age categories, provided such policies are laid down by or pursuant to an Act of Parliament;
- b) relates to the termination of an employment relationship because the person concerned has reached pensionable age under the General Old Age Pensions Act (AOW), or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties;
- c) is otherwise objectively justified by a legitimate aim and the means used to achieve that aim are appropriate and necessary.

2. The preceding subsection shall not apply to cases of harassment as referred to in section 2.

Pensions

Section 8

1. For the purposes of this section 'pension scheme' shall mean a pension scheme applying to one or more persons solely in connection with their activities in a company, branch of industry, occupation or public service, which scheme supplements a statutory social security system and, in the case of a scheme applicable to a person, is not arranged privately by the person in question.

2. The prohibition on discrimination shall not apply to the age of admission or to the pensionable age laid down in the pension scheme, nor to the establishment of different ages for admission or entitlement for employees or for groups or categories of employees.

3. The prohibition on discrimination shall not apply to actuarial calculations in the context of pension schemes which make use of age criteria.

§ 4 Stating age limit

Section 9

If a distinction on the grounds of age is made in advertising a vacancy, the grounds for this must be clearly stated.

§ 5 Legal protection

Protection against victimisation

Section 10

Adverse treatment in reaction to a person's reliance either at law or otherwise on this Act or provision of assistance in relation to it shall be prohibited.

Protection against dismissal

Section 11

1. Termination of employment by the employer in breach of section 3 shall be voidable.
2. Termination of employment by the employer in reaction to a person's reliance either at law or otherwise on this Act or provision of assistance in relation to it shall be voidable.
3. Without prejudice to Chapter 8 of the General Administrative Law Act, the employee's right to invoke the grounds referred to in subsections 1 and 2 shall lapse two months after the date of termination of employment. Article 55 of Book 3 of the Civil Code shall not apply.
4. The limitation period on legal claims relating to nullification shall expire six months after the date on which employment was terminated.
5. Termination as referred to in subsections 1 and 2 shall not render the employer liable to pay damages.

Burden of proof

Section 12

1. If a person who considers that he has been wronged through discrimination as referred to in this Act establishes before a court facts from which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that the action in question was not in breach of this Act.
2. Subsection 1 shall apply *mutatis mutandis* to legal actions as referred to in article 305a of Book 3 of the Civil Code and to appeals instituted by interested parties within the meaning of section 1:2, subsection 3 of the General Administrative Law Act.

Invalidity

Section 13

Conditions that are in breach of this Act shall be invalid.

Equal Treatment Commission

Section 14

The Equal Treatment Commission referred to in section 11 of the Equal Treatment Act shall be empowered to investigate whether discrimination within the meaning of this Act has taken place. Sections 12, 13, 14, 15, 20, subsection 2, and 33 of the Equal Treatment Act shall apply *mutatis mutandis*.

Final provisions

Evaluation

Section 15

In consultation with Our Ministers of Justice, of the Interior & Kingdom Relations and of Education, Culture & Science, Our Minister of Social Affairs & Employment shall submit a report to the States General within five years of the entry into force of this Act regarding its effectiveness and impact in practice.

The armed forces

Section 16

This Act shall not apply to military personnel as referred to in the Military Personnel Act 1931, to conscripts as referred to in section 1 of the Compulsory Military Service Framework Act and to reservists as referred to in section 2 of the Armed Forces (Reserve Personnel) Act.

Amendments to other legislation

Section 17

In section 5 of the Council of State Act the words 'who are at least thirty-five years of age' shall be deleted.

Section 18

In section 42, subsection 1 of the Government Accounts Act, the words 'who are at least thirty years of age' shall be deleted.

Date of entry into force

Section 19

This Act shall enter into force on a date to be determined by Royal Decree.

Title

Section 20

This Act may be cited as the Equal Treatment in Employment (Age Discrimination) Act.

AVT, Ministry of Foreign Affairs of the Netherlands, May 2002.

Equal Treatment (Men and Women) Act

Source: Vertaalbank kenniscentrum wetgeving (www.kc-wetgeving.nl)

Act of 1 March 1980 harmonising Dutch legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women

We Juliana, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is necessary to harmonise Dutch legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as we hereby approve and decree:

Division 1 General

Section 1

For the purposes of this Act, discrimination between men and women means direct and indirect discrimination. Direct discrimination shall include discrimination on the grounds of pregnancy, childbirth or motherhood. Indirect discrimination means discrimination on the grounds of characteristics other than sex, such as marital status or family circumstances, resulting in discrimination on the grounds of sex.

Section 1a

1. In public service the competent authorities may not discriminate between men and women when making appointments as public servants or by civil-law contracts of employment, in terms and conditions of employment, in training, in promotions or in the termination of an employment relationship.
2. Public service, as referred to in subsection 1, includes all institutions, services and undertakings that are managed by the state and public bodies.
3. A derogation from subsection 1 shall be permitted in matters concerning the protection of women, particularly with regard to pregnancy and motherhood.
4. The competent authorities shall not terminate the employment of anyone employed in public service by appointment or under a civil-law contract of employment on the grounds that the person concerned has invoked the provisions of subsection 1 either at law or otherwise.
5. The termination by the competent authorities of a public service employee's civil-law contract of employment in contravention of this Act shall be invalid. Article 647, Book 7 of the Civil Code shall apply *mutatis mutandis*.
6. Any provision that is contrary to subsection 1 shall be null and void.

Section 1b

If a natural person, legal person or competent authority engages a person to perform work under their authority other than pursuant to a civil-law contract of employment or

appointment as a public servant, articles 646 and 647, Book 7 of the Civil Code shall apply *mutatis mutandis*.

Section 2

1. It is forbidden to discriminate between men and women with regard to the conditions for access to the liberal professions and opportunities to pursue the liberal professions or for development within them, or with regard to social insurance arrangements between fellow professionals not constituting pension schemes as referred to in section 12a.
2. If an arrangement as referred to in subsection 1 relates to sickness or invalidity, it shall not make any exceptions for pregnancy and childbirth, without prejudice to the power to include provisions preventing abuse and improper use.
3. Any provision of an arrangement as referred to in subsection 1 that is contrary to the provisions of subsection 1 or 2 shall be null and void.

Section 3

1. It is forbidden to discriminate between men and women in advertisements for job vacancies and procedures leading to the filling of vacancies.
2. A derogation from subsection 1 shall be permitted in cases where this or any other Act of Parliament allows discrimination between men and women in advertisements for job vacancies and, in so far as the vacancy is being advertised publicly, the grounds for such discrimination are stated explicitly.
3. Advertisements for job vacancies, as referred to in subsection 1, shall be written and designed in such a way that it is quite clear that the vacancy is open to both men and women.
4. If a job title is used for the job being advertised, both the masculine and the feminine form shall be used, or it shall be expressly stated that the vacancy is open to both men and women.
5. If a person brings an action for tort against another on account of a job advertisement that contravenes the provisions of this Act, a court may also order the latter, on the application of the former, to publish a rectification in a manner to be prescribed by the court.

Section 4

1. Natural persons or legal persons providing vocational courses, advanced vocational courses or further training or retraining, however styled, and natural persons and legal persons holding examinations relating to such courses, may not discriminate between men and women with regard to criteria or standards, in admitting persons to the course, their treatment during the course or in the holding of examinations.
2. A derogation from subsection 1 shall be permitted, with the exception of the holding of examinations, and providing students of both sexes have access to equivalent facilities, if they conflict with the distinctive nature of a private educational establishment.
3. Any provision that is contrary to the provisions of subsection 1 shall be null and void.

Section 5

1. A derogation from sections 1a, 2, 3 and 4 shall be permitted if the aim of the discrimination is to place women in a privileged position in order to eliminate or reduce existing inequalities and the discrimination is in reasonable proportion to that aim.
2. A derogation from sections 1a, 2, 3 and 4 shall be permitted with regard to access to occupations or courses required for these occupations in cases where sex is a determining factor because of the nature of or the conditions laid down for practising the occupation in question.

3. The only occupations and courses required for these occupations for which sex can be considered a determining factor because of their nature or the conditions laid down for practising them shall be those that belong to or provide training for one or more of the following categories:
 - a. the office of minister of religion;
 - b. actor, singer, dancer or artist, in so far as their activities relate to the interpretation of specific roles;
 - c. other occupational activities to be designated by or pursuant to order in council.

Section 6

The prohibition on discrimination laid down by this Act shall not apply to indirect discrimination that is objectively justified.

Section 6a

If a person who believes that he/she has suffered discrimination as referred to in this Act adduces facts at law that give rise to suspicion that such discrimination has indeed taken place, the other party must prove that no contravention of this Act has occurred.

Division 2

Equal pay for work of equal value

Section 7

1. For the purposes of article 646, Book 7 of the Civil Code, the basis for comparing the terms and conditions of employment referred to in that article shall be, as far as pay is concerned, the pay normally received by a worker of the other sex for work of equal value or, in the absence of such work, for work of approximately equal value, in the undertaking where the worker on whose behalf the comparison is made is employed.
2. Pay as referred to in subsection 1 means the remuneration payable by the employer to the employee for the work performed by the latter.

Section 8

For the purposes of section 7, work shall be assessed in accordance with a reliable system of job evaluation, adhering as far as possible to the system customary at the undertaking where the employee concerned works. In the absence of such a system, the work shall be fairly assessed in the light of the available information.

Section 9

1. For the purposes of section 7, the pay received by the employee concerned shall be deemed to be equal to the pay that a worker of the other sex normally receives for work of equal value if it is calculated on the basis of equivalent criteria.
2. For the purposes of section 7, non-cash salary components shall be taken into account as pay at the market value that can be assigned to them.
3. Where shorter working hours have been agreed than those that are in principle deemed to constitute full-time work in a corresponding employment relationship, pay shall be reduced proportionately in so far as it is calculated on the basis of hours worked.

Section 10

Further rules may be laid down by order in council concerning the provisions of sections 7, 8 and 9.

Section 11

The right to take legal action to claim pay under this division shall lapse two years after the date on which payment should have been made.

Section 12

For the purposes of sections 1a and 1b of this Act, this division shall apply *mutatis mutandis*.

Division 3

Equal treatment with regard to pension schemes

Section 12a

For the purposes of the provisions of this division, a pension scheme means a pension scheme for one or more people, exclusively in connection with their work at an undertaking, in an industry, a profession or public service, supplementing a statutory system of social insurance and, in the case of a scheme for an individual, not set up by that individual.

Section 12b

1. Persons other than the employer referred to in article 646, Book 7 of the Civil Code or the competent authorities referred to in section 1a shall also be prohibited from discriminating between men and women when deciding who may participate in a pension scheme, the content of a pension scheme, or the way in which it is implemented.
2. For the purposes of article 646, Book 7 of the Civil Code, section 1a and subsection 1, provisions pursuant to which the accrual of pension entitlements is interrupted during pregnancy and maternity leave on the basis of a statutory provision or agreement shall be deemed contrary to the prohibition on the unequal treatment of men and women.

Section 12c

1. If a pension is not calculated on the basis of the cash contribution by the employer for the benefit of the person in its employ or belonging to the occupational sector in question, the size of the employer's cash contribution shall not be taken into account for the purposes of article 646, Book 7 of the Civil Code and sections 1a and 12b, in so far as this is justified by the differing actuarial calculations for men and women.
2. If a pension is calculated, either wholly or in part, on the basis of the cash contribution by the employer for the benefit of the person in its employ, the size of the employer's cash contribution shall not be taken into account for the purposes of article 646, Book 7 of the Civil Code and sections 1a and 12b and either:
 - a. the size of men's and women's pensions shall be equalised, or
 - b. the cash contribution shall be set at a level that equalises the size of men's and women's pensions in accordance with opinion at the time the contribution is set.
3. If a pension is not calculated on the basis of the cash contribution by the person belonging to the occupational sector in question, the size of the cash contribution shall not be taken into account for the purposes of section 12b, in so far as this is justified by the differing actuarial calculations for men and women.
4. If a pension is calculated, either wholly or in part, on the basis of the cash contribution by the person belonging to the occupational sector in question, the size of the pension and the cash contribution shall not be taken into account for the purposes of section 12b, in so far as this is justified by the differing actuarial calculations for men and women and the aim in so doing is to equalise the size of men's and women's pensions or to harmonise them to a greater extent.
5. Further rules shall be laid down by or pursuant to order in council concerning subsection 2.

Section 12d

Notwithstanding section 12b, provisions concerning the protection of women, particularly in connection with pregnancy and motherhood, shall be permitted.

Section 12e

Any provision that is contrary to the prohibition on the unequal treatment of men and women as referred to in section 12b shall be null and void.

Section 12f

The provisions of article 647, Book 7 of the Civil Code shall apply *mutatis mutandis* to the termination of employment by an employer on the grounds that the person concerned has invoked the provisions of section 12b either at law or otherwise.

Sections 13-20a

[These sections have lapsed.]

Division 4

Concluding provisions

Section 21

1. Responsibility for supervising compliance with article 646, Book 7 of the Civil Code and the provisions by or pursuant to this Act shall be vested in officials designated for this purpose by order of Our Minister of Social Affairs and Employment. Our Minister of Social Affairs and Employment may arrange for these officials to carry out an investigation in the interests of such supervision. For matters relating to the public service, Our Minister of the Interior may request Our Minister of Social Affairs and Employment to institute an investigation as referred to in the second sentence. Orders as referred to in the first sentence shall be published in the Government Gazette.
2. If an investigation reveals that discrimination as referred to in article 646, Book 7 of the Civil Code or in this Act has taken or is taking place, Our Minister of Social Affairs and Employment shall notify the natural person, legal person or competent authority that has discriminated or is discriminating and, in the case of discrimination as referred to in article 646, Book 7 of the Civil Code or section 1a or 1b of this Act, the relevant works council or comparable employee participation body, and, as appropriate, the relevant employers', employees', professional or civil service organisation. Notification given to the relevant works council or comparable employee participation body, or, as appropriate, the relevant, employers', employees', professional or civil service organisation, shall not include any information that may betray the identity of the person involved in the investigation who has been or is being discriminated against.

Section 22

[Lapsed.]

Section 23

A recommendation for an amendment to an order in council as referred to in section 5, subsection 3, point c and a recommendation for an order in council as referred to in section 10 shall not be made before the draft thereof has been published in the Government Gazette and all interested parties have been given the opportunity to express any wishes or reservations to Our Minister within four weeks of the date of publication. The draft shall be presented to both houses of the States General at the same time as it is published in the Government Gazette.

Section 24

1. This Act may be cited as the Equal Treatment (Men and Women) Act.
2. This Act shall enter into force on the second day after the date of the Bulletin of Acts and Decrees in which it is published.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

Done at Lech on 1 March 1980

Juliana

J. de Ruiter
Minister of Justice

W. Albeda
Minister of Social Affairs

A. Pais
Minister of Education and Science

J.G. Kraaijeveld-Wouters
State Secretary for Culture, Recreation and Social Work

H. Wiegel
Minister of the Interior

Published on the thirteenth of March 1980

J. de Ruiter
Minister of Justice

Civil Code

Section 7:646

(1) It is prohibited for employers to discriminate between men and women in entering into an employment agreement, providing training and instruction to an employee, in the conditions of employment, in granting promotion and in terminating an employment agreement.

(2) Derogation from subsection 1 is permitted in entering into an employment agreement and in providing training and instruction in those cases in which the sex is determining. Section 5(3) of the Equal Opportunities Act applies *mutatis mutandis* in those cases.

(3) Derogation from subsection 1 is permitted in case of stipulations relating to the protection of women, in particular in connection with pregnancy or motherhood,.

(4) Derogation from subsection 1 is permitted in case of stipulations aimed at placing female employees in a preferred position in order to remove or reduce actual inequalities and provided that the different treatment is reasonably proportionate to the intended purpose.

(5) For the purposes of this section discrimination between men and women is understood to mean both direct and indirect discrimination between men and women. Direct discrimination is understood to include discrimination on the grounds of pregnancy, childbirth and motherhood. Indirect discrimination is understood to mean discrimination on the grounds of other qualities than sex, for example married state or family circumstances, resulting in discrimination on the grounds of sex.

(6) The prohibition on discrimination contained in subsection 1 does not apply to indirect discrimination which is objectively justified.

(7) Any stipulation contrary to subsection 1 is null and void.

(8) If a person who believes he has been or is being discriminated against as referred to in this Section, alleges facts at law which can found a presumption of such discrimination, it lies with the other party to prove that he has not acted in contravention of this Section.

Section 7:647

(1) The termination of an employment agreement by the employer in contravention of Section 646(1) or on account of the fact that the employee has invoked Section 646(1) either at law or otherwise, is voidable.

(2) If the employee has not invoked this ground for annulment within two months after the notice of termination, his right to do so lapses. Section 55 of Book 3 is not applicable.

(3) The right of action in connection with the annulment is prescribed by the lapse of six months after the day as of which the employment agreement was terminated.

(4) Termination as referred to in Section 646(1) does not result in the employer being liable to pay compensation.

Section 7:648

(1) It is prohibited for employers to discriminate between employees in the conditions under which an employment agreement is entered into, renewed or terminated, on the

grounds of a difference in working hours unless such discrimination is objectively justified. Any termination of the employment agreement by the employer in contravention of the preceding sentence or on account of the fact that the employee has invoked the provision of the preceding sentence either at law or otherwise, is voidable. Section 647, subsections (2) and (3) apply *mutatis mutandis*.

(2) Any stipulation in contravention of subsection (1) is null and void.

(3) Termination as referred to in the first sentence of subsection (1) does not result in the employer being liable to pay compensation

(4) The Equal Treatment Commission, mentioned in Section 11 of the Equal Treatment Act, is competent to examine whether discrimination as referred to in subsection (1) occurs or has occurred. Sections 12, 13, 14, 15, 20(2) and 33 of the Equal Treatment Act apply *mutatis mutandis*.

Section 7:649

(1) It is prohibited for employers to discriminate between employees in the conditions of employment on the grounds of the employment agreement being either for a fixed period or permanent, unless such discrimination is objectively justified.

(2) Termination of the employment agreement by the employer on account of the fact that the employee has invoked the provision of subsection (1) either at law or otherwise, is voidable. Section 647, subsections (2) and (3) are applicable.

(3) Any stipulation in contravention of subsection (1) is null and void.

(4) The Equal Treatment Commission, mentioned in Section 11 of the Equal Treatment Act, is competent to examine whether discrimination as referred to in subsection (1) occurs or has occurred. Sections 12, 13, 14, 15, 20(2) and 33 of the Equal Treatment Act apply *mutatis mutandis*.

5. The provisions of subsections (1) through (4) do not apply to temporary employment agreements referred to in Section 690.

Central and Local Government Personnel Act

Section 125g

1. It is prohibited for the competent authorities to discriminate between civil servants on the grounds of a difference in working hours in the conditions under which an employment agreement is entered into, renewed or terminated, unless such discrimination is objectively justified.
2. It is prohibited for the competent authorities to terminate the employment relation with a civil servant on account of the fact that the civil servant has invoked the first subsection either at law or otherwise.
3. The Equal Treatment Commission, mentioned in Section 11 of the Equal Treatment Act, is competent to examine whether discrimination as referred to in this Section occurs or has occurred. Sections 12, 13, 14, 15, 20(2) and 33 of the Equal Treatment Act apply *mutatis mutandis*.

Section 125h

1. It is prohibited for the competent authorities to discriminate between civil servants in the conditions of employment on the grounds of the employment agreement being either for a fixed period or permanent, unless such discrimination is objectively justified.
2. The competent authorities shall give a civil servant appointed in temporary employment timely and clear notice of any vacancy for employment under a permanent employment agreement.
3. It is prohibited for the competent authorities to terminate the employment relation with a civil servant on account of the fact that the civil servant has invoked the provision of the first subsection either at law or otherwise.
4. The Equal Treatment Commission, mentioned in Section 11 of the Equal Treatment Act, is competent to examine whether discrimination as referred to in this Section occurs or has occurred. Sections 12, 13, 14, 15, 20(2) and 33 of the Equal Treatment Act apply *mutatis mutandis*.