

THE EMPLOYMENT EQUALITY ACTS 1998-2015

A guide to your rights if you are
discriminated against in the
workplace or in seeking work



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Published by the Irish Human Rights and Equality Commission.

2nd edition, October 2020.

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

ISBN 978-0-9957296-5-0

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Introduction

INTRODUCTION

The Irish Human Rights and Equality Commission (IHREC) was established on 1 November 2014 as the independent statutory body to protect and promote human rights and equality in Ireland. We have a specific role to work to combat discrimination and promote equal opportunities in the areas covered by the Employment Equality Acts 1998-2015 (the 'Acts'). We also have a role to provide information on the Acts.

This information booklet explains the main elements of the Employment Equality Acts. These Acts aim to protect individuals from certain kinds of discrimination, harassment and sexual harassment that can happen in the workplace. The booklet also offers individuals a step by step guide to claiming their rights under the Acts, if they feel they have been discriminated against in the workplace.

This booklet sets out the main elements of the Employment Equality Acts 1998-2015 and is intended for information purposes. It is not a legal document.

Overview of the Acts

SCOPE OF THE EMPLOYMENT EQUALITY ACTS

Definition of the Employment Equality Acts

The Employment Equality Acts 1998–2015:

- promote equality;
- prohibit discrimination (with some exemptions) across nine grounds;
- prohibit sexual harassment and harassment across nine grounds;
- prohibit victimisation;
- require reasonable accommodation for people with disabilities in relation to access, participation and training in employment;
- allow positive action measures to ensure full equality in practice across nine grounds.

The Acts also implement the following EU Directives¹ – The Framework Directive, the Gender Recast Directive², and the Race Directive³.

1. 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

2. 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

3. 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

Aspects of employment that are covered include:

- job advertising;
- equal pay;
- access to employment;
- vocational training and work experience;
- terms and conditions of employment;
- promotion or re-grading;
- classification of posts;
- dismissal;
- collective agreements.

The Acts apply to:

- full-time, part-time and temporary employees;
- public and private sector employees;
- vocational training bodies;
- recruitment and employment agencies;
- trade unions, professional and trade bodies.

The Acts also extend to:

- self-employed contractors;
- partners in partnerships;
- state and local authority office-holders.

The Acts do not extend to volunteers.

DISCRIMINATORY GROUNDS

The Acts prohibit discrimination on specific grounds.

Generally, discrimination occurs where one person is treated less favourably than another person in a comparable situation, because they differ under any of the following grounds:

The **'gender ground'** – Discrimination on the 'gender ground' happens where there is less favourable treatment of one person compared to another, because one is a woman and the other is a man.

Pregnant women or women on maternity leave are also protected under the gender ground.

Under EU law, a transgender person who experiences discrimination arising from their gender reassignment, or transition, is also protected under the gender ground.

The **'civil status ground'** – Discrimination on the 'civil status ground' happens where there is less favourable treatment of one person compared to another person because they are of different civil status. Under the Acts 'civil status' is defined as being single, married, separated or divorced, widowed, in a civil partnership, or being a former civil partner in a civil partnership that has ended by death or been dissolved.

The **'family status ground'** – Discrimination on the 'family status ground' occurs where there is less favourable treatment of one person compared to another person because one person has a family status and the other does not. 'Family status' means responsibility as a parent or person in *loco parentis* for a person under the age of 18 years or responsibility as a parent or resident primary carer of a person of 18 years or over with a disability requiring care or support.

The **'sexual orientation ground'** – Discrimination on the 'sexual orientation ground' happens where there is less favourable treatment of one person compared to another person because they are of different sexual orientation.

'Sexual orientation' is defined as heterosexual, bisexual or homosexual orientation.

The **'religion ground'** – Discrimination on the 'religion ground' happens where there is less favourable treatment of one person compared to another person because one has a different religious belief, background or outlook from the other, or that one has a religious belief, background or outlook and the other has not.

The **'age ground'** – Discrimination on the 'age ground' occurs where there is less favourable treatment of one person compared with another person because they are of different ages. 'Age' applies to employees over the maximum age at which a person is statutorily obliged to attend school. (The minimum school leaving age is currently 16 years, or the completion of three years of post-primary education, whichever is later).

The **'disability ground'** – Discrimination on the 'disability ground' occurs where there is less favourable treatment of one person compared to another person because one has a disability and the other has not, or the other has a different disability. 'Disability' is defined broadly to include physical, intellectual, learning, cognitive or emotional and medical conditions.

The **'race ground'** – Discrimination on the 'race ground' occurs where there is less favourable treatment of one person compared to another person because they are of different race, colour, nationality or ethnic or national origins.

The **'Traveller community ground'** – Discrimination on the 'Traveller community ground' occurs where one person is treated less favourably than another because one is a member of the Traveller community and the other is not. 'Member of the Traveller community' is defined as a member of a community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

TYPES OF DISCRIMINATION

Different types of discrimination are prohibited under the Acts. These include:

Direct discrimination

This is defined as the treatment of a person in a less favourable way than another person who is in a comparable situation, because they differ on any of the nine grounds described above.

This is a difference which:

- exists;
- existed but no longer exists;
- may exist in the future; or
- is imputed to the person concerned (this occurs where a person is labelled as differing under the specified grounds even though this is not the case).

Discrimination by association

This occurs when a person who associates with another person is treated less favourably because that other person differs under any of the nine grounds.

Indirect discrimination

This happens where an apparently neutral provision, criterion or practice which appears unproblematic at first sight, puts a person differing under any of the nine grounds at a particular disadvantage, compared with another person.

This provision, criterion or practice will not amount to discrimination where the employer can show:

1. that the provision, criterion or practice is objectively justified by a legitimate aim; and
2. that the means of achieving that aim are appropriate; and
3. that the means of achieving that aim are necessary.

Instructing discrimination

This occurs when someone gives an order or instructs another person who is in some way dependent, such as an employee, to discriminate against another person.

EQUAL PAY

The Acts provide for equal pay for like work. Like work is defined as work that is the same, similar or work of equal value. It is a term of everyone's contract of employment that there is an entitlement to equal pay.

Equal pay claims can be taken on any of the nine protected grounds.

SEXUAL HARASSMENT AND HARASSMENT

Sexual harassment and harassment of an employee (including agency workers or trainees) is prohibited in the workplace or in the course of employment by:

- (a) another employee;
- (b) the employer;
- (c) clients, customers or other business contacts of an employer. These include any other person with whom the employer might reasonably expect the victim to come into contact and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to control it.

The Acts prohibit the victim from being treated differently by reason of rejecting or accepting the harassment (or where it could reasonably be anticipated that he or she would be so treated).

What is harassment and sexual harassment?

Harassment is any form of unwanted verbal, nonverbal or physical conduct related to any of the nine grounds.

Sexual harassment is any form of unwanted verbal, nonverbal or physical conduct of a sexual nature.

In both cases, it is conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. In both cases, the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, emails and text messages, pictures or other material.

Sexual harassment or harassment of an employee by another employee, employer, client, customer or other business contact, is discrimination by the employer.

It is a defence for an employer to prove that the employer took reasonably practicable steps to prevent the person harassing or sexually harassing the victim.

DISABILITY: REASONABLE ACCOMMODATION

An employer is obliged to provide reasonable accommodation to enable a disabled person:

- to have access to employment;
- to participate or advance in employment; or
- to undertake training.

This is unless the accommodation would impose a disproportionate burden on the employer.

What is reasonable accommodation?

Reasonable accommodations are effective and practical measures taken by the employer to adapt their place of business including:

- the adaptation of premises and equipment;
- patterns of working time;
- distribution of tasks; or
- the provision of training or integration resources.

The employer is not obliged to provide any treatment, facility or thing that the person might ordinarily or reasonably provide for himself or herself.

What is a disproportionate burden?

In determining whether the measures would impose a disproportionate burden, account is taken of:

- (a) the financial and other costs entailed;
- (b) the scale and financial resources of the employer's business; and
- (c) the possibility of obtaining public funding or other assistance.

POSITIVE ACTION

In addition to prohibiting discrimination, the Acts also aim to ensure full equality in practice through positive actions (i.e. more favourable treatment to persons who differ under any of the grounds).

In practice, this means that employers can adopt and maintain specific policies and practices to prevent or compensate for disadvantages linked to any of the grounds. This might include, for example, providing flexible working hours, e-working, or offering work internships and/or training programmes, or other work benefits that attach to any of the nine grounds.

VICTIMISATION

It is unlawful for an employer to penalise an employee for making a complaint under either the Employment Equality Acts 1998–2015 or the Equal Status Acts 2000–2018.

Victimisation occurs where the dismissal or other adverse treatment of an employee is a reaction by the employer to:

- (a) a complaint of discrimination made by the employee to the employer;
- (b) any proceedings by a complainant;
- (c) an employee having represented or otherwise supported a complainant;
- (d) the work of an employee having been compared with that of another employee, for any of the purposes of these Acts, or any enactment repealed by these Acts;
- (e) an employee having been witness in any proceedings under these Acts or any such repealed enactment;
- (f) an employee having opposed by lawful means an act which is unlawful under these Acts or any such repealed enactment; or
- (g) an employee having given notice or an intention to take any of the actions mentioned in the paragraphs (a) to (f) above.

VICARIOUS LIABILITY

Employers are liable for any acts of discrimination by an employee, or third parties (such as service users, contractors and other business contacts) in the course of his or her employment.

However, it is a defence if the employer can prove that he or she took reasonably practicable steps to prevent the discrimination.

DISCRIMINATORY ADVERTISING

It is prohibited to publish, display or cause to be published or displayed an advertisement or statement which relates to employment and which indicates an intention to discriminate or might be reasonably understood to indicate such an intention.

The Irish Human Rights and Equality Commission ('IHREC') has the power to refer a complaint of discriminatory advertising to the Workplace Relations Commission (the 'WRC') for adjudication.

The WRC is the quasi-judicial body established to investigate, mediate, hear and decide claims of discrimination.

Exemptions

EXEMPTIONS

The prohibition on discrimination is subject to a number of general and grounds-based exemptions.

This booklet aims to give information about the most common exemptions and does not provide an exhaustive list of exemptions provided for under the Acts.

Exemptions in relation to all types of employment

Capacity and competence

An employer is not required to employ someone who will not undertake the duties or is not fully competent or capable of doing the job.

However, a person with a disability is fully competent and capable of undertaking any duties, if the person would be so fully competent and capable on reasonable accommodation being provided by the employer.

Educational, technical or professional qualifications

The Acts allow requirements in relation to the holding of specified educational, technical or professional qualifications which are generally accepted qualifications for the post in question.

Benefits in respect of an employee's family

The Acts allow employers to provide certain benefits in respect of employee's families and family events and in relation to the provision of childcare or other care provision.

Exemptions in relation to occupational requirements and particular types of employment

Officers or servants of the State

It is not discrimination under the Acts for civil service employers, including An Garda Síochána, the Defence Forces and the civil service more generally to require employees to fulfil any or all of the following requirements – residence, citizenship and proficiency in the Irish language.

Teachers in primary and post primary schools

The application of any provision in relation to proficiency in the Irish language is allowed.

The Defence Forces

There is an exemption on the age and disability grounds.

Employment in another person's home for the provision of personal services

There is an exemption in relation to access to such employment. However, this exemption does not extend to other areas such as conditions of employment, etc.

Employment in the Garda Síochána or the Prison Service

Both An Garda Síochána and the Prison Service can assign certain tasks to either men or women only. These tasks relate to privacy issues, such as body searching, controlling violent prisoners and quelling riots, etc.

There are exemptions in relation to the application of different height criteria for men and women and to the maintenance of a sufficient number of either men or women in An Garda Síochána or Prison Service.

Grounds-based exemptions

All grounds – occupational requirement

The Acts allow for difference in treatment which is based on a characteristic related to any of the nine grounds, if the employer can demonstrate that:

1. the characteristic constitutes a genuine and determining occupational requirement; and
2. the objective is legitimate; and
3. the requirement proportionate.

The gender ground and the civil status grounds

Treatment which confers benefits on women in connection with pregnancy and maternity, including through breastfeeding, is allowed.

Anything done in compliance with any provisions of the Maternity Protection and Adoptive Leave legislation is not discrimination on the civil status ground.

The age ground

The Acts allow for employees to be treated differently on the age ground in several circumstances:

- An employer may set a minimum age up to 18 years when recruiting for a position.
- An employer can set different ages for retirement of employees if the retirement age can be objectively justified by a legitimate aim and the means to achieving that aim are appropriate and necessary.
- An employer may offer a fixed-term contract to a person over the compulsory retirement age if it is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary.

- Occupational benefits (such as illness benefits, or severance pay) can be different for individual employees based on their age. However, this difference in treatment applies only to the age ground.
- If a term in a collective agreement provides that the length of service would otherwise be regarded as equal, seniority may be determined by reference to relative ages of employees.
- Anything done in compliance with employment law, including the Protection of Young Persons (Employment) Act 1996 and the National Minimum Wages Act 2000 is not discrimination under the Acts.

The age ground and the race ground

Different treatment is allowed by vocational or training bodies in relation to fees and the allocation of places to people who are Irish citizens or EU nationals and those who are not.

Different treatment is allowed by vocational or training bodies in relation to assistance to particular categories of persons by way of sponsorships, scholarships, bursaries but only to the extent that the assistance is reasonably justified having regard to traditional and historical considerations.

Different treatment is allowed by universities or other third level institutions in relation to the allocation of places for mature students.

The religion ground

Certain religious, educational and medical institutions may give more favourable treatment on the religion ground to an employee or prospective employee, where it is reasonable to do so, in order to maintain the religious ethos of the institution.

However, an education or medical institution that is whole or in part publicly funded cannot provide more favourable treatment on the religion ground unless;

- i. it can demonstrate that the treatment is necessary by reason of the nature of the institution's activities, and therefore the religion or belief of the employee or prospective employee constitutes a genuine, legitimate and justified occupational requirement, having regard to the institution's ethos; and
- ii. the institution must ensure that the treatment does not constitute discrimination on any of the other discriminatory grounds.

These institutions can also reserve places on certain teaching and nursing courses on religious grounds if the education and health authorities consider it to be reasonably necessary to ensure the religious ethos is preserved.

The race ground

There is an exemption for any action taken in accordance with the Employment Permits Act 2003-2014.

The disability ground

There is an exemption in relation to the provision of a particular rate of remuneration for work of a particular description where, due to disability, the amount of work done during a particular period is less than the amount of similar work done or which could reasonably be expected to be done over that period, by an employee without a disability.

Making a Claim

MAKING A CLAIM

If you think you have been discriminated against under the Employment Equality Acts, both the Work Place Relations Commission (WRC) and the courts (on appeal) have roles in relation to making claims under the Acts.

All claims (except for gender discrimination claims) must be referred in the first instance to the WRC. Gender discrimination claims have the option of going to the Circuit Court.

Set out in the following sections are the steps involved in making a claim to the WRC. For more detailed information on the claims process, contact the WRC Information and Customer Service Line Lo-call: **1890 80 80 90**. T: **059 9178990**.



Step 1: Written Notification

Right to look for information

Any person who believes that they have experienced discrimination may write to the person who may have discriminated against them. The person may ask for certain information which will assist in deciding whether to refer a claim. Employers are not obliged to reply, but the WRC may draw such inferences as seem appropriate from an employer failing to reply or supplying false, misleading or inadequate information.

An employer is not obliged to disclose confidential information.

If you are requesting information from your employer you can access the relevant form Statutory Instrument No 321/1999 – the Employment Equality Act, 1998 (section 76 Right to Information) 1999, at Schedule A.

The form is available on-line at **www.statutebook.ie**



Step 2: Making a Claim

A claim of discrimination or harassment must be referred to the WRC within six months from the last act of discrimination. The six month time limit can be extended up to twelve months by the Director of the WRC 'for reasonable cause'.

There are specific procedural requirements in relation to claims of discrimination by the Civil Service Commissioners, the Local Appointments Commissioners, the Minister for Defence and the Commissioner of the Garda Síochána.

A parent, guardian or other person acting in place of a parent, can be the complainant, where a person is unable, by reason of an intellectual or psychological disability, to pursue a claim effectively.

Gender claims

Claims made under the gender ground can be initiated in the Circuit Court. There is no limit to the amount of compensation that may be ordered by the Circuit Court. However, unlike claims before the WRC, legal costs may be awarded against the unsuccessful party in the Circuit Court.



Step 3: At the WRC

Mediation

The Director of the WRC can at any stage, with the consent of both parties, appoint a mediation officer. If a settlement is reached through mediation then the terms are legally enforceable.

Adjudication

If either party does object to mediation or if the process of mediation is unsuccessful, the case will be referred to an adjudication officer of the WRC for investigation and decision.

The adjudication may be based on the written evidence of both parties or may involve an oral hearing. The adjudication officer will issue a decision which is legally binding.

Decisions of adjudication officers will be published on the WRC website and parties are generally named. However, a complainant can make an application at the time of the hearing that parties are anonymised. This might arise where e.g. a complainant has a specific medical condition that s/he does not want to be made public. However, the decision to anonymise parties lies at the discretion of the adjudicating officer in a particular complaint.

Dismissal of a claim

Cases can be struck out after a year if the WRC decides they are not being pursued.

The Director of the WRC may dismiss a claim at any stage if of the opinion that:

- it has been made in bad faith; or
- is frivolous, vexatious; or
- misconceived; or
- relates to a trivial matter.

Representation and costs

Complainants may represent themselves or be represented by a lawyer, trade union or other representative. Costs are not awarded. Expenses in respect of travelling and other expenses (except expenses of representatives) can be awarded where a person obstructs or impedes the investigation or appeal.

Remedies

Where the WRC finds in favour of the complainant, the following orders can be made:

- In equal pay claims, an order for equal pay and arrears in respect of a period not exceeding three years;
- In other cases, an order for equal treatment and compensation for the effects of discrimination of up to a maximum of 2 years pay, or €40,000 (whichever is higher) or €13,000 where the person was not an employee (for example, where the complaint concerns recruitment), can be made.
- An order for reinstatement or re-engagement, with or without an order for compensation;
- An order that a named person or persons take a specific course of action.

The Irish Human Rights and Equality Commission

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

The Irish Human Rights and Equality Commission (IHREC) has a statutory mandate to promote and protect human rights and equality and to work towards the elimination of human rights abuses, discrimination and prohibited conduct.

Your Rights

IHREC can provide information on your rights and the remedies available to you under equality and human rights law in Ireland.

This includes information on:

- The Employment Equality Acts, 1998-2015
- The Equal Status Acts, 2000-2018
- Human Rights protections under Irish law
- The Intoxicating Liquor Acts, 2003-2008
- EU Free-movement of workers' rights

Information is available on our website at **www.ihrec.ie**. You can also seek information by telephone, email or post from:

Your Rights

Irish Human Rights and Equality Commission
16-22 Green Street
Dublin 7
D07 CR20

Contact:

LoCall: 1890 245545
Telephone: +353 1 8583000
Email: YourRights@ihrec.ie
Website: **www.ihrec.ie**

Your Rights operates a telephone service during the following times:

Monday to Friday: 9-1pm and 2pm-5pm

Other booklets available in this series include:

The Equal Status Acts 2000-2018: A Guide to Your Rights If You Are Discriminated Against in Accessing Goods or Services

Legal Assistance

The Irish Human Rights and Equality Commission may provide legal assistance to members of the public in connection with certain legal proceedings.

The legal proceedings must relate to discrimination under the equality enactments or human rights law that has been given force under Irish law.

Before the Irish Human Rights and Equality Commission decides on whether it can grant legal assistance it must consider:

- whether legal assistance could be obtained by another means, including under the civil legal aid or criminal legal aid scheme; and
- whether the power to award redress or grant relief stands vested in any tribunal or other person, for example another statutory body.

Even if an applicant meets all of the above criteria, IHREC will only provide legal assistance where certain additional statutory criteria are met, including for example whether the proceedings raise a question of principle or where IHREC deems it unreasonable to expect the person to deal with the matter without IHREC's assistance because of its complexity. IHREC will also consider the availability of funding and other resource implications when deciding whether or not it can grant legal assistance in any particular case.

IHREC has adopted Guidelines for Applications for Legal Assistance available online at www.ihrec.ie. These Guidelines provide additional information on IHREC's legal assistance function and the process applied.

If IHREC does not grant or is unable to offer legal assistance, this does not disqualify the person from taking a case on their own behalf directly to the WRC. A complainant may represent themselves or be represented by a lawyer, trade union or other representative.



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