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Your EMPLOYMENT EQUALITY Rights Explained

Plain English Guide to the
Employment Equality Acts 1998 – 2011



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Employment Equality Acts 1998-2011

1. Introduction

This booklet tells you about the main terms of the Employment Equality Acts 1998 – 2011. These Acts aim to protect workers against certain types of discrimination, harassment and sexual harassment that could occur in the course of their working life.

The Employment Equality Acts promote equality in the workplace and ban discrimination across nine different grounds (categories). These nine grounds will be explained in this booklet.

If you want more detailed information about the Employment Equality Acts, copies of the full legislation are available from:

Government Publications Sales Office
Molesworth Street
Dublin 2.

You can also find them online at www.equality.ie

This booklet only gives information – it is not a legal document.

The Employment Equality Acts don't cover discrimination in everyday living – there are separate Equal Status Acts in place for that and a separate information booklet covering Equal Status is available.

What are the aims of the Employment Equality Acts?

The Employment Equality Acts 1998-2011 aim to:

- promote equality;
- ban discrimination across nine grounds;
- ban sexual and other harassment;
- ban victimisation;
- make sure suitable facilities for people with disabilities are available in relation to access, taking part in training in employment; and
- allow positive action to ensure everyone gets full equality across the nine grounds.

Who is protected under the Acts?

The Acts apply to:

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

The Acts also extend to:

- self-employed people;
- partners in partnerships; and
- State and local authority office-holders.

What aspects of employment are covered by the Acts?

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; and
- collective agreements.

What are the nine grounds?

The Gender ground:

You are entitled to equal treatment at work whether you are a man, a woman or a transgender person. Special protection is provided for pregnant employees and in relation to maternity leave.

The Civil Status ground:

You are entitled to equal treatment at work whether or not you are:

- single;
- married;
- separated;
- divorced or widowed; or
- in a civil partnership, or formerly in a civil partnership, that has ended by death or been dissolved.

The Family Status ground:

You are entitled to equal treatment at work whether or not you are:

- a parent of a person under 18 years; or
- the resident primary carer or a parent of a person with a disability.

The Sexual Orientation ground:

You are entitled to equal treatment at work whether or not you are gay, lesbian, bisexual or heterosexual (straight).

The Religion ground:

You are entitled to equal treatment at work no matter what your religious beliefs are or even if you hold no religious beliefs.

The Age ground:

You are entitled to equal treatment at work if you are any age over the legal school-leaving age.

The Race ground:

You are entitled to equal treatment at work no matter what your race, skin colour, nationality or ethnic origin is.

The Traveller community ground:

You are entitled to equal treatment at work if you are a member of the Traveller community and share the traditions and culture of Travellers in Ireland.

The Disability ground:

You are entitled to equal treatment at work if you have a disability, for example physical, intellectual, learning, cognitive or emotional. Disability could also mean that you suffer from a particular medical condition.

What is discrimination under the Employment Equality Acts?

Broadly speaking, discrimination means that you receive different and less favourable treatment to other people because of who you are. However, all forms of discrimination that could occur might not be covered by the Employment Equality Acts.

Discrimination has a specific meaning in the Acts and there are different types of discrimination covered.

What are the different types of discrimination?

Direct discrimination is when a worker is treated less well than another worker in the same situation or circumstances under any of the nine grounds covered in the Acts.

Direct discrimination can also be, for example, an order given by a manager to a worker to discriminate against another worker.

Indirect discrimination happens where a worker or group of workers or job applicants are treated less favourably as a result of requirements that they might find hard to satisfy. For example, if a job advert stated that applicants had to be Chinese, that condition would put people of other races and nationalities at a disadvantage.

However, it requires the employer to prove that the condition is necessary for the job in question, to be unlawful. In the example given, it might be considered a reasonable condition if the job is in a Chinese restaurant.

Discrimination by association happens when a person is treated less well simply because they are associated with or connected to another person who comes under the nine grounds. For example, if someone is being harassed at work because one of their family members is gay, they

are being discriminated against simply because they're related to a gay person.

Discrimination by imputation

This happens when a person is treated less well because they are labelled as belonging to one of the categories covered by the nine grounds. For example, it is discrimination if someone who is heterosexual is assumed to be gay and is treated unfairly because of their sexual orientation.

What about employment equality in advertising?

It is illegal under the Acts to publish or display an employment-related advertisement that gives the impression that certain people or groups would be excluded. For example, if a shop advertised for a 'young, energetic salesgirl', men, older people and possibly disabled people might be discriminated against.

Is the right to equal pay covered in the Acts?

Yes. The Acts protect a person's right to equal pay for equal work. Equal work is also called 'like' work – in other words, a person's work duties might be slightly different to someone else's but the work they do is of the same value to the employer. It is a term of everyone's contract of employment that they are entitled to equal pay for 'like' work.

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

How do the Acts protect against harassment and sexual harassment?

Under the Employment Equality Acts 1998-2011, sexual harassment and harassment of an employee (including agency workers and trainees) in the workplace are against the law.

This includes sexual harassment and harassment by:

- co-workers;
- the employer; or
- clients, customers or other business contacts of the employer including anyone the employer could reasonably expect the worker to come into contact with.

What is harassment and sexual harassment?

Harassment is any form of unwanted conduct related to any of the nine discriminatory grounds.

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

Both types of harassment are:

- behaviour which damages the victim in terms of their dignity, self-esteem, and so on; or
- places them in a hostile situation and/or environment.

The unwanted conduct might take the form of:

- actions;
- gestures;
- spoken words;
- written words;
- emails;
- text messages; or
- pictures.

Sexual harassment or harassment of an employee is discrimination by the employer. It is up to an employer to prove that they took reasonable steps to prevent the victim from being harassed or sexually harassed. In the case of all forms of discrimination against an employee, the employer must prove that they took reasonable steps to prevent the unfair treatment or, if they couldn't prevent it, that they took steps to make amends.

The Equality Authority has published a Code of Practice on Sexual Harassment and Harassment at Work, which has been approved by the Minister for Justice Equality and Defence. This is available from the Equality Authority or on www.equality.ie

Disability – What are ‘appropriate measures’?

An employer must take ‘appropriate measures’ to meet the needs of disabled people in the workforce. This means they must make arrangements that will enable a person who has a disability to:

- have equal opportunities when applying for work;
- be treated the same as co-workers;
- have equal opportunities for promotion; and
- undertake training unless the level of training needed would make unreasonable demands on the employer.

What are examples of appropriate measures?

Appropriate measures are effective and practical changes the employer makes to suit disabled workers. These include:

- adapting the premises and equipment, for example, installing wheelchair ramps, providing special computers for the visually impaired, and so on;
- offering flexible working times;
- distributing tasks to suit disabled workers, for example, a wheelchair user might be more comfortable working at a supermarket checkout than in the stockroom; and
- providing training or other resources that might help.

The employer is not obliged to provide anything that the person would normally provide for themselves. For example, an employer would not be expected to provide hearing aids for a person with impaired hearing.

An employer might not have to provide these types of appropriate measures if it meant that the employer would suffer a 'disproportionate burden'.

What is 'disproportionate burden'?

A 'disproportionate burden' means that it might put unreasonable pressure on some employers to carry out the measures needed. Several things are taken into account when deciding what is reasonable for employers. These include:

- the financial cost of the measures and other costs involved, for example, staff time or productivity; and
- the size of the employer's business.

Before an employer can claim that providing the suitable measures or facilities would place them under a 'disproportionate burden', they must look at the possibility of obtaining public funding, grants and so on. If help is available to them, it might make the changes possible.

What is 'positive action'?

Under the Acts, 'positive action' means that the employer can take steps that are not required under the law to promote equality for all their workers.

For example, it would be a 'positive action' on behalf of an employer if they provided a childcare facility on the premises. This might give someone with a young family the same opportunity of employment as someone without a family.

What is 'victimisation'?

Under the Acts, it is 'victimisation' if an employer penalises an employee because they have taken an action under either the Employment Equality Acts 1998–2011 or the Equal Status Acts 2000-2011. Victimisation is against the law.

It is victimisation if an employee is sacked or penalised in some other way if they have:

- made a complaint of discrimination to the employer;
- been involved in any discrimination proceedings;
- helped a colleague to make a claim;
- been penalised as a result of an unfair comparison with a colleague (known as a 'comparator', see below);
- acted as a witness in legal discrimination proceedings;
- taken a discrimination claim to court under the Acts; or

- informed an employer that they intend to do any of the things mentioned in any of these points.

The term 'comparator' is used for example, when someone takes a case against an employer on the basis of not being appointed a certain job position on gender grounds then the 'comparator' would be the male colleague who got the job. The case being that he got the job because he is male.

What is 'vicarious liability'?

'Vicarious liability' means when someone must take responsibility for someone else's actions. Employers are liable for any act of discrimination by an employee in the course of their employment unless the employer can prove that they took reasonable steps to prevent the discrimination.



2. General exemptions – when the Employment Equality Acts do not apply

Are there exemptions to the Employment Equality Acts?

Yes – there are some general exemptions that apply to all types of employment and there are also exemptions that apply to certain kinds of employment. In other words, some forms of discrimination are allowed.

This booklet aims to give information about the most common exemptions, but there could be others that might apply to you if you're making a claim of discrimination. If you need further information, agencies that can help you are listed at the end of this booklet.

What are the exemptions that apply to all types of employment?

Capacity and competence

This means that an employer is not obliged to hire someone who is unable to do the job properly.

However, if someone with a disability would be able to do the job if reasonable adjustments were made to the workplace, the employer should make the adjustments. For example, a physically disabled person might be able to take on a driving job if a company vehicle was modified to suit them.

Educational, technical or professional qualifications

Under the Acts, employers are allowed to reject job applicants who don't hold the qualifications that are generally accepted as being necessary for the job.

Benefits in respect of an employee's family

The Acts allow employers to provide certain benefits to employees who have families. For example, providing childcare facilities, holding family events and so on.

What are the exemptions in relation to certain kinds of employment?

Officers or servants (employees) of the State

Under the Acts, some workers in these categories might be required to fulfil special requirements, for example, they might have to:

- hold Irish citizenship;
- live in a particular area; or
- be proficient in the Irish language.

Employees in this category include:

- members of An Garda Síochána; and
- members of the Defence Forces.

It also includes officers or employees of a:

- local authority;
- harbour authority;
- health board; or
- Vocational Education Committee.

Primary and post-primary teachers

The Acts allow employers to require that teachers have a proficiency in the Irish language.

Defence Forces

Under the Acts, the Defence Forces are allowed to discriminate on grounds of age and disability.

Employment in another person's home

This relates to workers providing a personal service in a person's private home, for example, childminding, care services and so on. The person employing the worker is entitled to limit access to the job – in other words, they can exclude any applicant they might not be happy to have in their home.

For example, a woman might prefer to have a woman in a personal caregiving role. Once the person is employed, though, they are entitled to regular terms and conditions of employment.

An Garda Síochána and the Prison Service

Both the Gardaí and the Prison Service can assign certain tasks to either men only or women only. These tasks relate to privacy issues (such as body-searching), controlling violent individuals or crowds and rescuing hostages.

These services are also allowed to have a minimum height requirement that is different for men than for women. They are allowed to recruit more employees of one gender than the other if more employees of that gender are needed in the service at that time.

Are there exemptions based on the nine grounds of the Acts?

Yes. The Acts allow for employees to be treated differently in certain circumstances. You can be treated differently on the following grounds.

All grounds

The Acts allow for people to be treated differently on any of the nine grounds if they do not meet a particular requirement that is essential for the job. For example, it might be reasonable to exclude people over the age of 60 from a job that demands a high level of physical fitness.

The Gender ground and the Civil Status ground

The Acts allow for different treatment of women employees who are pregnant or breastfeeding.

In Ireland, there are separate laws regarding Maternity Protection and Adoptive Leave. Anything that is legal under those rules is not discrimination on the marital status ground.

The Age ground

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

- an employer may set a minimum age up to 18 years when recruiting and they may offer a fixed-term contract to a person over the compulsory retirement age;
- occupational benefits (such as illness benefits or severance pay) can be different for individual employees based on their age, however, this different treatment only applies on the age ground.

An employer can set different ages for the retirement of employees

In Ireland, there are separate laws such as the Protection of Young Persons (Employment) Act 1996 and the National Minimum Wage Act 2000. Anything that is legal under those rules is not discrimination on the age ground.

Mixed grounds

Under the Acts, vocational or training bodies are allowed to give different treatment, in relation to fees and allocation of places, to people who are nationals of an EU member State.

Vocational and training bodies are allowed to give different treatment in relation to age and race when awarding sponsorships, scholarships, grants and so on. However, the award must be in keeping with the traditions of the institution. For example, a scholarship paid for by a foreign embassy might only be available to students from that country.

Universities or other third-level institutions can give different treatment in relation to allocating places to mature students.

The Religion ground

Under the Acts, certain religious, educational and medical institutions can give different treatment on the religion ground. Certain employees or job applicants might receive favourable treatment if it were necessary to maintain the religious ethos of the institution.

These institutions can also take action against an employee if they work against the established standards and traditions.

These institutions can also reserve places on certain teaching and nursing courses if the education and health authorities consider this necessary to keep up the numbers of teachers and nurses.

The Race ground

Anything that is legal under the Employment Permits Act 2006 is not discrimination on grounds of nationality.

The Disability ground

Under the Acts, employers are allowed to offer different pay rates to disabled workers if their disability means that they can't do the same amount of work in the same time as a co-worker without a disability.

Which State bodies oversee the equality laws and decide claims?

There are two State bodies responsible for ensuring that the equality laws are promoted and upheld – the Equality Authority and the Equality Tribunal. They are two separate bodies each with different purposes and roles.

The Equality Authority

The Equality Authority acts as a 'prosecutor' in equality cases – in other words, they work to support the person bringing the claim. They are also responsible for promoting equality compliance.

The Equality Tribunal

The Equality Tribunal is similar to a court and it has the power to investigate, judge and decide on equality cases.

Equality claims are also judged by the Labour Court and the Circuit Court but all claims (with the exception of claims on the gender ground) must first pass through the Equality Tribunal.

3. How do I make a claim?

Step 1: Deciding whether to bring a claim

Right to look for information

If you believe you have experienced discrimination at work, you may write to your employer and tell them you feel you have been badly treated. Even though your employer might not be the actual person who discriminated against you or harassed you, they are responsible. You may ask for certain information which might help you to decide whether or not to carry on with your claim. This could include details of pay scales or statistics on gender or nationality of employees.

Your employer is not obliged to reply, but, if they don't, it means that an Equality Officer might view this failure to reply as seriously as if the employer supplied false, misleading or inadequate information.

Your employer is not obliged to disclose confidential information. If you're requesting information from your employer, you use Forms EE2 and EE3, which are available from:

The Equality Tribunal
3 Clonmel Street
Dublin 2.

Phone: +353 (01) 477 4100
or you can download them from www.equalitytribunal.ie

Time limits

You must make your complaint of discrimination or harassment within six months of the date of the latest act of discrimination. The six-month time limit can be extended up to 12 months by the Director of the Equality Tribunal if they consider there is a good reason to do so. The form used for making a complaint to the Equality Tribunal is EE.1

Note: A parent or guardian can make a claim on behalf of a person with an intellectual or psychological disability.

Step 2: At the Equality Tribunal

Mediation

This is where the Director of the Equality Tribunal appoints a mediation officer to help settle the dispute. The mediation officer will be a neutral person and will give both parties an equal chance to give their side of the dispute. Both you and your employer must agree to this. The job of the mediation officer is to work with both parties to help them reach an agreement and settle the claim. If a settlement is reached through mediation, the terms of the settlement are legally binding.

Investigation

If the case is not dealt with by mediation or the mediation fails, the case will be referred to an Equality Officer who will investigate the claim and make a decision. Investigations are held in private – that is, there are no members of the public present. The Equality Officer will issue a decision which is legally binding.

Strike out (dismissal) of a claim

The Director of the Equality Tribunal can strike out (dismiss) a claim if they consider it was not valid – for example, made simply to irritate or annoy somebody or not related to any of the nine grounds. A claim can also be dismissed if, after a year, it appears that the person making the complaint has decided to drop it.

Representation and costs

If you are making a complaint, you may represent yourself or you can choose to be represented by a lawyer, a trade union or some other representative. You do this at your own expense. Travelling and other expenses (except expenses of representatives) can be awarded against a person who gets in the way of an investigation or an appeal or slows it down.

Step 3: Results

If the Equality Officer finds in your favour – in other words, if you win your claim, different types of orders can be made.

Equal pay claims

In equal pay claims, an order may be made that you receive equal pay in future. You may also get pay arrears for a maximum of three years.

Other discrimination claims

In the case of other discrimination claims, an order may be made that you receive equal treatment in future. You might also be awarded compensation for the effects of the discrimination that you have suffered. Compensation of up to a maximum of two years' pay can be ordered or €40,000 if that is greater.

Awards for those who are not employees

If you are not an employee, €12,700 is the maximum compensation you can be awarded. This applies for example if you are applying for a job. These rules about compensation apply even if there was discrimination on more than one of the nine grounds. However, separate awards can be made for different forms of discrimination, for example, harassment or victimisation.

If you lose your job

An order can be made to fully reinstate you in your job or re-engage you if you lost your job. There may or may not be an order for compensation with this.

Action may be ordered

An order can be made that an individual or a group has to carry out a particular course of action.

Public service employment

There are specific procedures for claims of discrimination against the Civil Service Commissioners and the Local Appointments Commissioners of the Garda Síochána.

Obeying the ruling – enforcement

If settlement terms aren't carried out as ordered by the Director of the Equality Tribunal or the Labour Court, the matter can be brought to the Circuit Court, which will 'enforce' the decision – in other words, the Court will order that the settlement terms are carried out.

Are gender claims different?

Yes, gender claims are the only discrimination claims that can be dealt with in the Circuit Court. If the issue at the centre of the gender claim is to do with equal pay, the Circuit Court can order pay arrears of up to six years. Also, there is

no limit to the amount of compensation that may be ordered by the Circuit Court.

Can I appeal a decision?

Decisions of the Tribunal, including decisions on time limits, may be appealed to the Labour Court not later than 42 days from the date of the Tribunal's decision.

Where a decision is made by the Director of the Equality Tribunal or by the Labour Court on an appeal, either party to the dispute may appeal to the High Court on a point of law. This means that there is a question about the interpretation of the law itself and is separate from the facts of your complaint. The Tribunal also has power to refer a case to the High Court on a point of law.



Appendix A

The role of the Equality Authority

The Equality Authority has a broad range of tasks under the Employment Equality Acts 1998-2011. The Equality Authority works towards:

- combating discrimination in employment in the areas covered by the Acts;
- promoting equality of opportunity in employment;
- providing information on the operation of the Employment Equality Acts 1998-2011;
- keeping the operation of the Employment Equality Acts 1998-2011 under review; and
- making recommendations for improvement to the Minister.

Information and support

The Equality Authority provides information to the public on the Employment Equality Acts 2000-2011. It has a series of publications available, including guides to the Acts and training DVDs.

The Public Information Centre of the Equality Authority, which is based in Roscrea Co Tipperary, provides information in various formats. These include:

- additional information available on www.equality.ie;
- an automated telephone voice message service (LoCall 1890 245 545);
- phone access to a Communications Officer who may provide more detailed information; and
- guides to the legislation in different languages and formats.

Legal assistance

The Equality Authority can also provide legal assistance to claimants. The CEO of the Equality Authority will make the decision about whether or not it will do so.

If the Equality Authority does not grant you legal assistance, it doesn't stop you from bringing your case to the Equality Tribunal.

You can represent yourself or be represented by a lawyer, trade union or other representative.

Equality information sources

Further information, publications and training DVDs on aspects of the legislation are available from:

Tipperary office

The Equality Authority
Public Information Centre
Birchgrove House
Roscrea,
Co Tipperary
Ireland

Office hours:

Monday to Thursday:

Friday:

Contact:

LoCall: 1890 245 545

Phone: +353 (0505) 241 26

Facsimile: +353 (0505) 223 88

Email: info@equality.ie

Dublin Office

The Equality Authority
2 Clonmel Street
Dublin 2
Ireland

9.15am – 5.30pm

9.15am – 5.15pm

1890 245 545

+353 (01) 417 3336

+353 (01) 417 3331

Website: www.equality.ie

Other booklets available in this series include:

- Guide to the Adoptive Leave Acts 1995-2005
- Guide to the Maternity Protection Acts 1994-2004
- Guide to the Parental Leave Acts 1998-2006
- Guide to the Equal Status Acts 2000-2011

Appendix B

Useful contacts

Equality Tribunal

3 Clonmel Street

Dublin 2

Phone: +353 (01) 477 4100

Facsimile: +353 (01) 477 4141

LoCall: 1890 344 424

Website: www.equalitytribunal.ie

Email: info@equalitytribunal.ie

Department of Justice and Equality

Equality Division

Bishop's Square

Redmond's Hill

Dublin 2

Phone: +353 (01) 479 0200

LoCall: 1890 555 509

Department of Social Protection

Maternity Benefit Section
McCarter's Road
Ardarvan
Buncrana
Co Donegal
LoCall: 1890 690 690
Email: maternityben@welfare.ie

Rights Commissioners

Tom Johnson House
Haddington Road
Dublin 4
Phone: +353 (01) 613 6700
Facsimile: +353 (01) 613 6701
LoCall: 1890 220 227
Email: info@lrc.ie
Website: www.lrc.ie

National Employment Rights Authority, (NERA)

Headquarters
O'Brien Road
Carlow
Phone: for callers outside
Ireland
+353 (599) 178 990
LoCall: 1890 80 80 90
Website:
www.employmentrights.ie

The Health and Safety Authority

The Metropolitan Building
James Joyce Street
Dublin 1
Phone: +353 (01) 614 7000
Facsimile: +353 (01) 614 7020
LoCall: 1890 289 389
Website: www.hsa.ie

The Equality Authority

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