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Gender Equality Act¹

Passed 07.04.2004
RT I 2004, 27, 181
Entry into force 01.05.2004

Amended by the following acts

Passed	Published	Entry into force
11.12.2008	RT I 2008, 56, 315	01.01.2009
24.09.2009	RT I 2009, 48, 323	23.10.2009
14.06.2012	RT I, 02.07.2012, 8	01.08.2012

Chapter 1 GENERAL PROVISIONS

§ 1. Purpose and scope of Act

[RT I 2008, 56, 315 - entry into force 01.01.2009]

(1) The purpose of this Act is to ensure equal treatment of men and women as provided for in the Constitution of the Republic of Estonia and to promote equality of men and women as a fundamental human right and for the public good in all areas of social life.

(2) To achieve this purpose, this Act provides for:

- 1) the prohibition of discrimination on the grounds of sex in the private and public sectors;
- 2) the obligation of state and local government authorities, educational and research institutions and employers to promote equality between men and women;
- 3) the right to claim compensation for damage.

§ 2. Scope of application of Act

[RT I 2008, 56, 315 - entry into force 01.01.2009]

(1) This Act applies to all areas of social life.

(2) The requirements of this Act do not apply to:

- 1) professing and practising faith or working as a minister of a religion in a registered religious association;
- 2) relations in family or private life.

(3) The Administrative Procedure Act applies to administrative proceedings prescribed by this Act, taking into account the specifications provided for in this Act.

§ 3. Definitions

(1) In this Act, the following definitions are used:

- 1) "gender equality" means the equal rights, obligations, opportunities and responsibility of men and women in professional life, upon acquisition of education and participation in other areas of social life;
- 2) "equal treatment of men and women" means that there is no discrimination whatsoever based on sex, either directly or indirectly;
- 3) "direct discrimination based on sex" occurs where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation. Direct discrimination based on sex also means less favourable treatment of a person in connection with pregnancy and child-birth, parenting, performance of family obligations or other circumstances related to gender, as well as gender-based harassment and sexual harassment and less favourable treatment of a person due to rejection of or submission to harassment;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

4) “indirect discrimination based on sex” occurs where an apparently neutral provision, criterion, practice or activity would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion, practice or activity is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

5) “sexual harassment” occurs where any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

6) “gender-based harassment” occurs where unwanted conduct or activity related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

(2) For the purposes of this Act:

1) “employee” means a person employed under an employment contract or a contract for the provision of services or a public servant within the meaning of the Public Service Act. Persons applying for employment or service are also deemed to be employees;

2) “employer” means a natural or legal person who provides employment on the basis of an employment contract or a contract for the provision of services, or a state authority or a local government authority.

[RT I 2008, 56, 315 - entry into force 01.01.2009]

§ 4. Shared burden of proof

(1) An application of a person addressing a court, a labour dispute committee or the Gender Equality and Equal Treatment Commissioner shall set out the facts on the basis of which it can be presumed that discrimination based on sex has occurred.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

(2) In the course of proceedings, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. If the person refuses to provide proof, such refusal shall be deemed to be equal to acknowledgement of discrimination by the person.

[RT I 2008, 56, 315 - entry into force 01.01.2009]

(3) The shared burden of proof does not apply in administrative or criminal proceedings.

[RT I 2008, 56, 315 - entry into force 01.01.2009]

Chapter 2 PROHIBITION OF DISCRIMINATION BASED ON SEX

§ 5. Discrimination based on sex

(1) Direct and indirect discrimination based on sex, including giving orders therefor, is prohibited.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

(1¹) Adverse treatment of a person, as well as causing negative consequences for the person due to the fact that the person has relied on the rights and obligations provided for in this Act or has supported another person upon the protection of his or her rights provided for in this Act shall also be deemed to be discrimination.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

(2) The following are not deemed to be direct or indirect discrimination based on sex:

1) provisions concerning the special protection of women in connection with pregnancy and child-birth;

2) establishment of compulsory military service only for men;

3) acceptance of only women or only men into the membership of a non-profit association if this is provided for in the articles of association of the association;

4) as regards access to employment, including to training required for employment, differences in treatment due to the sex of persons where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, the sex of a person constitutes a material and determining requirement, and such difference in treatment is justified by a legitimate aim and the requirement is proportional to the aim;

4¹) differences in the treatment of persons due to their sex upon supplying goods and services pursuant to subsection 14¹(2) of the Insurance Activities Act and in cases where the provision of goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are proportional to the aim;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

5) application of temporary specific measures that promote gender equality and give advantages to the less-represented sex or reduce gender inequality.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

§ 6. Discrimination in professional life

(1) In professional life, cases in which an employer selects for employment or a position, hires or admits to practical training, promotes, selects for training or performance of a task or sends for training a person of one sex and overlooks a person with higher qualifications and of the opposite sex shall be deemed to be discriminatory, unless there are strong reasons for the decision of the employer or such decision arises from circumstances not related to gender.

(2) The activities of an employer shall also be deemed to be discriminatory if the employer:

1) upon making a decision listed in this section, overlooks a person or treats a person less favourably in any other way due to pregnancy, child-birth, parenting, performance of family obligations or other circumstances related to gender;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

2) upon hiring, establishes conditions which put persons of one sex at a particular disadvantage compared with persons of the other sex;

3) establishes conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship which are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

4) directs work, distributes work assignments or establishes working conditions such that an employee or employees of one sex are put at a particular disadvantage compared with an employee or employees of the other sex;

5) harasses a person in relation to the sex of the person or sexually, or fails to perform the obligation provided for in clause 11 (1) 4) of this Act. An employer is responsible for failure to perform the duty of care if the employer was aware or should have been aware that gender-based harassment or sexual harassment occurred and failed to apply the necessary measures to terminate such harassment;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

6) [Repealed - RT I 2009, 48, 323 – entry into force 23.10.2009]

7) punishes an employee under disciplinary procedure, transfers an employee to another position, terminates an employment relationship or promotes the termination thereof due to reasons connected with gender.

(3) Less favourable treatment of a person on grounds of sex in connection with his or her membership in an organisation of employees or employers, or in any organisation whose members are engaged in a particular profession, including in connection with the person's participation in its work and the benefits provided for by such organisation shall also be deemed to be discrimination.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

(4) Employers and legal persons in private law or sole proprietors entered in the register of economic activities as labour market service providers shall not request information concerning the circumstances specified in clause (2) 1) of this section from persons wishing to find employment.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

§ 7. Duty of employer to provide explanations

(1) When a person suspects discriminatory behaviour specified in subsection 6 (1) of this Act in respect of him or her, the employer is required to provide a written explanation to the person at the person's request within ten working days as of submission of such written application. In the explanation the employer shall submit the following information concerning the person who was selected:

1) length of employment;

2) education;

3) work experience and other skills required for the work;

4) other skills or reasons which give the person a clear advantage.

(2) Within fifteen working days as of submission of an application, the employer is required to provide a written explanation concerning the activities of the employer to the person who believes that he or she has been discriminated against on a basis specified in subsection 6 (2) of this Act.

(3) An employee has the right to demand that the employer explain the bases for calculation of salaries and obtain other necessary information on the basis of which it is possible to decide whether discrimination specified in clause 6 (2) 3) of this Act has occurred.

§ 7¹. Duty of supplier of goods or services to provide explanations

Within fifteen working days as of receipt of a written application describing the facts relating to a possible case of discrimination, a supplier of goods or services is required to provide a written explanation concerning the activities of the supplier to a person who believes that he or she has been discriminated against in relation to access to or supply of goods or services on the grounds of sex.

[RT I 2009, 48, 323 - entry into force 23.10.2009]

§ 8. Discriminatory offer of employment or training

Offers of employment and training which are directed at persons of one sex only are prohibited unless the reasons specified in clauses 5 (2) 4) and 5) of this Act exist.

Chapter 3 PROMOTION OF GENDER EQUALITY

§ 9. State and local government authorities as promoters of gender equality

(1) State and local government authorities are required to promote gender equality systematically and purposefully. Their duty is to change the conditions and circumstances that hinder the achievement of gender equality.

(2) Upon planning, implementation and assessment of national, regional and institutional strategies, policies and action plans, the authorities specified in subsection (1) of this section shall take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society.

(2¹) Upon planning the performance of the obligations imposed in subsections (1) and (2) of this section and upon performance of such obligations, the state and local government authorities shall, if necessary, consult the relevant interest groups and non-profit organisations that have a legitimate interest in helping to combat discrimination based on sex in order to support compliance with the principle of equal treatment.
[RT I 2009, 48, 323 - entry into force 23.10.2009]

(3) The Minister of Social Affairs shall make recommendations concerning performance of the obligations set out in subsections (1) and (2) of this section. The recommendations shall be published on the website of the Ministry of Social Affairs.

(4) The membership of committees, councils and other collegial bodies formed by state and local government authorities shall, if possible, include both sexes.

§ 10. Promotion of gender equality in education and training

Educational and research institutions and institutions engaged in the organisation of training shall ensure equal treatment of men and women in vocational guidance, acquisition of education, professional and vocational development and re-training. The curricula, study materials used and research conducted shall facilitate abolishment of the unequal treatment of men and women and promote equality.

§ 11. Employers as promoters of gender equality

(1) Upon promotion of equal treatment of men and women, an employer shall:

1) act such that the activities of the employer would support that both men and women apply for vacant positions and that persons of both sexes are employed to fill vacant positions;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

2) ensure that the number of men and women hired to different positions is as equal as possible and ensure equal treatment of them upon promotion;

3) create working conditions which are suitable for both women and men and enhance the reconciliation of work and family life, taking into account the needs of employees;

4) ensure that employees are protected from gender-based harassment and sexual harassment in the working environment;

[RT I 2009, 48, 323 - entry into force 23.10.2009]

5) inform employees of the rights ensured by this Act;

6) regularly provide relevant information to employees and/or their representatives concerning equal treatment of men and women in the organisation and measures taken to promote equality.

(2) An employer shall collect sex-disaggregated statistical data concerning employment that allow, if necessary, the relevant institutions to monitor and assess whether the principle of equal treatment is complied with in employment relationships. The procedure for the collection of data and a list of data shall be established by the Government of the Republic by a regulation.

Chapter 4

RESOLUTION OF DISPUTES CONCERNING DISCRIMINATION BASED ON SEX

§ 12. Resolution of disputes concerning discrimination based on sex

Discrimination disputes shall be resolved by a court or a labour dispute committee. Discrimination disputes shall be resolved by the Chancellor of Justice by way of conciliation proceedings.
[RT I 2008, 56, 315 - entry into force 01.01.2009]

§ 13. Compensation for damage

(1) If the rights of a person have been violated due to discrimination, he or she may demand from the person who has violated the rights that the harmful activity be terminated and that the damage be compensated for on the bases of and pursuant to the procedure provided by law.
[RT I 2009, 48, 323 - entry into force 23.10.2009]

(2) An injured party may demand that, in addition to as provided for in subsection (1) of this section, a reasonable amount of money be paid to the party as compensation for non-patrimonial damage caused by the violation.

(3) Upon determination of the amount of compensation, a court or a labour dispute committee shall take into account, *inter alia*, the scope, duration and nature of the discrimination.
[RT I 2008, 56, 315 - entry into force 01.01.2009]

(4) Persons applying for employment or service with whom the employer did not enter into an employment contract or a contract for the provision of services or who were not appointed or elected to office on grounds of sex shall not have the right to demand entry into an employment contract or a contract for the provision of services or appointment or election to office.
[RT I 2008, 56, 315 - entry into force 01.01.2009]

§ 14. Expiry of claim for compensation for damage

A claim provided for in § 13 of this Act expires in one year after the date when the injured party became aware or should have become aware of the damage caused.

Chapter 5 GENDER EQUALITY AND EQUAL TREATMENT COMMISSIONER

[RT I 2008, 56, 315 - entry into force 01.01.2009]

§ 15. Gender Equality and Equal Treatment Commissioner

(1) The Gender Equality and Equal Treatment Commissioner (hereinafter Commissioner) is an independent and impartial expert who acts independently, monitors compliance with the requirements of this Act and the Equal Treatment Act and performs other functions imposed by law.

(2) Appointment of the Commissioner to office, termination of his or her mandate, restrictions on his or her activities and the competence of the Commissioner are provided for in the Equal Treatment Act.
[RT I 2008, 56, 315 - entry into force 01.01.2009]

§ 16.–§ 21.[Repealed - RT I 2008, 56, 315 – entry into force 01.01.2009]

Chapter 6 DUTIES OF MINISTRY OF SOCIAL AFFAIRS UPON IMPLEMENTATION OF GENDER EQUALITY ACT

§ 22. Duties of Ministry of Social Affairs

The Ministry of Social Affairs shall:

1) provide consultations on matters related to implementation of the principle of equal treatment and issue guidelines for the implementation of this Act;

- 2) analyse the effect of Acts and legislation on the situation of men and women in society;
- 3) publish reports on implementation of the principle of equal treatment of men and women.

§ 23. Consultations

(1) An official of the structural unit of the Ministry of Social Affairs which deals with gender equality (hereinafter consultant) shall provide consultations to all persons on matters related to implementation of the principle of equal treatment of men and women. Consultations shall be provided orally or in writing. [RT I 2009, 48, 323 - entry into force 23.10.2009]

(2) If necessary, the consultant shall explain to a person which institution is competent to resolve a possible case of discrimination. At the request of a person, assistance shall be provided upon preparation of a written application, and the application shall be submitted to the competent body. Applications shall not be submitted to courts or labour dispute committees.

Chapter 7 GENDER EQUALITY COUNCIL

§ 24. Gender Equality Council

(1) The Gender Equality Council is an advisory body within the Ministry of Social Affairs which:

- 1) approves the general objectives of gender equality policy and performs the duties prescribed in this Act and its statutes;
- 2) advises the Government of the Republic in matters relating to strategies for the promotion of gender equality;
- 3) presents its opinion to the Government of the Republic concerning the compliance of national programmes presented by the ministries with § 9 of this Act.

(2) The rules of procedure of the Gender Equality Council shall be provided for in its statutes. The Government of the Republic shall establish the statutes of the Gender Equality Council.

(3) The Government of the Republic shall approve the composition of the Gender Equality Council.

Chapter 8 IMPLEMENTING PROVISIONS

§ 25. Entry into force of Act

This Act enters into force on 1 May 2004.

¹Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.01.1979, p. 24–25); Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1–7); Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37–43); Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.07.2006, p. 23–36); Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.07.2010, p. 1–6). [RT I, 02.07.2012, 8 – entry into force 01.08.2012]