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LABOUR, SOCIAL AFFAIRS AND
CONSUMER PROTECTION

EQUAL OPPORTUNITIES

EQUAL TREATMENT LEGISLATION
IN AUSTRIA



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FOREWORD

Over the years, the equal treatment laws have continuously developed both on the international and European levels and in Austria.

The principle of **equal pay for equal work irrespective of gender** has been part of the EC Treaty since 1957. The first EU directives on the equal treatment of women and men were adopted in the nineteen-seventies.

In 1999, **Article 13 of the EC Treaty** became effective, empowering the EU to take measures for combating discrimination on grounds of **gender, “race“, ethnic origin, religion or beliefs, disability, age or sexual orientation**.

Articles 13 and 141 of the EC Treaty served as the basis for the adoption of a number of EU directives.

These directives establish minimum standards for all European countries and need to be implemented in national legislation. In Austria, implementation was carried out through a number of statutory provisions on the federal and state levels. All pertinent legal texts are listed in the Annex.

Relevant Austrian legislation revolves around the **Equal Treatment Act** which dates back to 1979 and originally dealt only with equal treatment of women and men at work. The prohibition of discrimination at work on grounds of religion, beliefs, age, sexual orientation and ethnicity followed in 2004. Discrimination on grounds of ethnicity is also prohibited in areas outside work. Since 2008, the prohibition of gender-based discrimination has also included several areas outside work. Selective measures for improving the income transparency between women and men were included in 2011.

The prohibition of discrimination on grounds of disability at work and outside work was regulated in 2006 in a separate **Package for Equal Treatment of People with Disabilities**.

This brochure was designed to increase public awareness of the rights to equal opportunities and the discrimination prohibitions. A comprehensive list of references to legal foundations and a list of contacts were added to facilitate the access to information and counselling. However, the brochure is no substitute for legal advice. Information on equal treatment is also supplied under www.chancen-gleichheit.at.

Rudolf Hundstorfer
Federal Minister of Labour, Social Affairs and
Consumer Protection

EQUAL TREATMENT LEGISLATION IN AUSTRIA

RELEVANT REGULATIONS

Since **1979**, the **Equal Treatment Act** has regulated equal treatment of **women and men** at work in private enterprises. In line with EU legislation, the Act was extended to include the discrimination grounds of **ethnicity, religion or beliefs, age and sexual orientation**. The new regulations took effect on **1 July 2004**.

As of **1 August 2008**, the prohibition of **discrimination on grounds of gender** was extended to apply **outside work**, while improvements were made with respect to both substantive and procedural law.

Selective measures for improving the **income transparency** between women and men were included with effect as of **1 March 2011**. In addition, further improvements were made with respect to both substantive and procedural law.

Equal treatment legislation currently comprises the following areas:

- » Equal treatment of women and men at work
- » Equal treatment at work irrespective of ethnicity, religion or beliefs, age or sexual orientation
- » Equal treatment irrespective of ethnicity outside work
- » Equal treatment of women and men in the access to and supply of goods and services
- » Principles concerning the regulation of equal treatment at work in agriculture and forestry.

The Act Governing the Equal Treatment Commission and the Ombud for Equal Treatment deals with the institutions for combating discrimination. Persons feeling discriminated against can appeal to them.

The **Federal Equal Treatment Act** applies to all persons employed with federal authorities or applying for employment or training with federal authorities; it forbids discrimination on grounds of gender, age, sexual orientation, ethnicity, religion or beliefs.

Its provisions apply in particular to the establishment of employment or training relationships, fixing of pay, promotion, and termination of the employment or training relationship.

Equal treatment in areas falling within the competence of the states is regulated by individual **state laws**.

The **legislation governing equal treatment of people with disabilities** covers the following areas:

The **Act Governing the Hiring of People with Disabilities** implements the principle of equal treatment at work of persons with disabilities.

The **Federal Act on Equal Treatment of People with Disabilities** includes the protection from discrimination in everyday life. Both acts took effect on **1 January 2006** and apply both to the private sector and to federal institutions.

Both acts were **amended in 2008 and 2011** to further improve the situation of persons affected by discrimination.

This **brochure** provides an overview of the regulations defined by the **Equal Treatment Act** for the private sector, of the **Equal Treatment Commission** and the **Ombud for Equal Treatment**, as well as of the **legislation on the equal treatment of people with disabilities** and the **conciliation procedure at the Federal Social Welfare Office**.

EQUAL TREATMENT ACT

PERSONS NOT TO BE DISCRIMINATED AGAINST

GROUNDINGS FOR DISCRIMINATION – CHARACTERISTICS

» **Persons on grounds of gender**

Any kind of unequal treatment on grounds of gender is prohibited. The term “gender“ comprises women, men and transsexual persons.

» **Persons on grounds of ethnicity**

» Due to the negative connotation of the term “race“ in German usage, the original wording of the EU directive has been discarded in favour of the term “ethnicity“. In any case, discrimination motivated by racism is prohibited. Discrimination on grounds of ethnicity may also include discrimination related to skin colour, affiliation/ nationality, language, name or other external characteristics.

» **Persons belonging to a specific religious community or denomination, or persons holding specific beliefs or opinions**

This definition does not refer solely to churches and recognised religious communities, but also to other religious groups. The prohibition of specific sects, parties or other groups holding specific beliefs or opinions remains unaffected.

» **Persons on grounds of age**

The prohibition of discrimination applies to all age groups, forbidding discrimination against both older and younger persons.

» **Persons on grounds of sexual orientation**

“Sexual orientation“ refers to heterosexuality, homosexuality or bisexuality. The protection concerns in particular lesbian and gay persons.

SCOPE OF THE DISCRIMINATION PROHIBITION

EMPLOYMENT IN THE PRIVATE SECTOR

The discrimination prohibition extends to **employees** as well as **homeworkers** and **persons with status assimilated to employment**.

THE DISCRIMINATION PROHIBITION APPLIES TO THE FOLLOWING:

- » Establishment of an employment relationship (e.g. job applications)
- » Pay (also including company pension funds)
- » Voluntary social benefits (e.g. fidelity bonuses, company cafeteria)
- » In-house special and advanced training
- » Promotion
- » Other working conditions (e.g. workplace design, specific job assignments)
- » Termination of employment (this also applies in the event of an employment being terminated in a discriminatory manner during the probationary period or failure to renew a temporary employment contract on discriminatory grounds, e.g. when a female employee has become pregnant).

OTHER JOB-RELATED AREAS

This refers to areas **not directly related to an employment relationship**.

IT IS PROHIBITED TO DISCRIMINATE AGAINST ANYONE:

- » In job counselling, job training, advanced vocational training outside employment (e.g. training under Public Employment Service schemes)
- » With respect to membership in an employees' or employers' organisation and in the access to the services provided by such organisations (e.g. joining and participation)
- » In the access to self-employment (e.g. operating permits)

AREAS OUTSIDE WORK

In addition to work, the prohibition to discriminate against anyone on grounds of **ethnicity** also applies to the following areas:

IT IS PROHIBITED TO DISCRIMINATE AGAINST ANYONE:

- » In **social protection** (e.g. access to and services provided by public health insurance, public pension insurance and work accident insurance, such as diverse health services, sickness benefit, confinement benefit, childcare benefit, unemployment benefit, family allowance, social assistance provided by the states, long-term care benefit)
- » With respect to **means-tested social benefits** (e.g. housing assistance, exemption from prescription charges for pharmaceuticals)
- » In **education and training** (e.g. access to schools and scholarships)
- » With respect to **publicly offered goods and services** (e.g. in shops, restaurants, bars, recreational facilities)
- » Not included are services provided by the government without economic consideration in fulfilment of its public functions, e.g. public administration, public school system

- » With respect to **housing**: This refers both to purchasing and renting of apartments. Once the offer to let or sell an apartment has been made known to the wider public (e.g. by advertising in a newspaper or on a notice board in a department store, university etc.), no one must be discriminated against on grounds of ethnicity. The note “no foreigners“ in advertisements may also be considered indirect discrimination on grounds of ethnicity.

In addition to work, the prohibition to discriminate against anyone on grounds of **gender** also applies to the following areas:

IT IS PROHIBITED TO DISCRIMINATE AGAINST ANYONE:

With respect to **publicly offered goods and services** (e.g. in shops, restaurants, bars, recreational facilities). The goods and/or services concerned must be identical. The term “publicly offered goods“ is also meant to include housing.

WHAT IS THE MEANING OF DISCRIMINATION?

Forms of discrimination

Direct discrimination

A person is treated worse than someone else in a comparable situation on grounds of his/her gender, ethnicity, religion, beliefs, age or sexual orientation.

EXAMPLES

- » A company rejects a job applicant on account of his/her age.
- » The owner of a house does not let apartments to dark-skinned people.

- » Company social benefits are granted to heterosexual but not to homosexual partnerships.
- » A hairdresser's shop offers low-cost men's haircuts exclusively for men, while women are charged more for identical services (same duration, identical haircare products).
- » A bank refuses to grant a loan to a person with migration background on account of his/her foreign origin, without any factual reason such as insufficient credit rating.
- » A customer with migration background is "overlooked" by the sales staff in a shop.

PREGNANCY OR MOTHERHOOD

Discrimination against women in the context of pregnancy or motherhood also constitutes gender-based direct discrimination and is prohibited.

EXAMPLES

- » During the probationary month, a female employee notifies the company of her pregnancy. The company terminates her employment.
- » A female employee returns to her job after maternity leave but – in comparison with her previous occupation – is given only inferior jobs.

Indirect discrimination

Here, unequal treatment is not the consequence of one of the discrimination grounds enumerated above, but a per se **neutral regulation** typically has **discriminatory effects** on a certain group of persons.

EXAMPLES

- » In a company, part-time work is predominantly performed by women. If part-time employees have no access to management positions or are excluded from company social benefits, this may be considered gender-based indirect discrimination.
- » For a specific job (e.g. warehouse work), a company demands specific skills (e.g. perfect knowledge of German) that are not essential for the performance of this function. As a consequence, persons with migration background and imperfect knowledge of German are systematically excluded. Depending on the individual circumstances, this may be deemed indirect discrimination on grounds of ethnicity.
- » A job advertisement with the note „no foreigners“ constitutes indirect discrimination on grounds of ethnicity.
- » An employer’s instruction to wear middle-European clothing usual in the respective line of business may conflict with religious dress codes and may be deemed indirect discrimination unless objectively justified (e.g. for safety reasons).

Instruction to discriminate

Instructing or instigating a person to discriminate against another person is also deemed to be discrimination and is prohibited.

EXAMPLE

A bar owner instructs the doorman to deny entry to dark-skinned people. In this case, both the doorman and the bar owner discriminate against persons on grounds of ethnicity.

Discrimination by association

Persons associated with a member of the protected class (characteristics of gender, ethnicity, religion and denomination, belief, age, sexual orientation) also enjoy protection against discrimination and harassment.

EXAMPLES

- » A man's work colleagues speak to him about his girlfriend's large breasts or firm buttocks (characteristic: gender). This may constitute sexual harassment on grounds of the man's association with his girlfriend.
- » A group of friends want to enter a restaurant. The dark-skinned persons are not admitted, while the non-dark-skinned are. The non-dark-skinned persons suffer discrimination because, due to their friendly relations with the dark-skinned persons (characteristic: ethnicity), they do not enter the restaurant either.

Harassment and sexual harassment

If a person is harassed or sexually harassed for any of the discrimination grounds listed above, this is also deemed to be discrimination.

HARASSMENT IS A PERSON'S UNWANTED BEHAVIOUR THAT:

- » violates or is intended to violate the **dignity** of some other person,
- » is **unwanted, inappropriate** or **offensive** to that other person, and
- » thereby creates or is intended to create an **intimidating, hostile** or **offensive** environment.

Thus it constitutes harassment if the objectionable behaviour – irrespective of the harassing person’s intention – is subjectively perceived as such by the person concerned. However, it may also constitute harassment if the harassing person intends to detract from the dignity of some other person, who – while not subjectively perceiving this as insulting – wants to act against such behaviour all the same.

Harassment by the **employer himself/herself** or by **third persons** (e.g. colleagues, customers, suppliers etc.) is prohibited. If an employee is being harassed by third persons, the employer is obligated to intervene and to take appropriate measures.

EXAMPLES

- » Employees make fun of their homosexual colleague, send him anti-gay emails and tell anti-gay jokes in his presence or make depreciative remarks about his sexual orientation. If the employee complains to his superior, the latter is obligated to stop this behaviour.
- » This also applies if, for example, a supplier or customer tells such jokes or makes depreciative remarks about gays.

The harassment prohibition also applies to lecturers in a vocational training scheme or to counsellors of the Public Employment System or similar institutions.

Outside work, too, it is forbidden to harass anyone on grounds of **ethnicity** or **gender**.

EXAMPLES

- » In a car repair shop, the employees tell misogynist jokes in a clearly audible voice in the presence of a female customer who has brought her car for repair.
- » In a shop, a customer suffers racist verbal abuse from the sales staff.

Sexual harassment implies that a person behaves in a harassing manner that affects the **sexual sphere** of another person. This is also prohibited.

EXAMPLE

At work, a man sends a female colleague sexist emails or, in passing, touches her breasts or buttocks “by accident”.

WHAT IS NOT CONSIDERED DISCRIMINATION?

NATIONALITY

The protection afforded by the Equal Treatment Act extends not only to EU citizens but also to **third-country nationals** or **stateless persons**. **Unequal treatment** on grounds of **nationality**, in particular of non-EU nationals, is permitted only if there are **objective reasons** for such treatment. Distinguishing between nationals and non-nationals frequently leads to indirect discrimination on grounds of ethnicity.

However, regulations concerning the entry and stay of third-country nationals or stateless persons and their access to the job market are permitted.

ESSENTIAL OCCUPATIONAL REQUIREMENT

Unequal treatment at work on the discrimination grounds listed above does not constitute discrimination if the **respective characteristic** is a **genuine** and **essential occupational requirement for the job**.

EXAMPLES

- » Casting a young actor in the role of a young lover for a theatre performance does not constitute age-related discrimination vis-à-vis older applicants.
- » A counselling office for female victims of violence may decide to have only women counsellors.
- » A Roman Catholic private school hires only religious education teachers who are members of the Roman Catholic Church.
- » This exemption provision must be narrowly interpreted. Corporate marketing concepts (e.g. young and dynamic team) or specific customer wishes (such as the refusal to be serviced by dark-skinned staff) are no justification for unequal treatment.

ACHIEVING A LEGITIMATE GOAL

In certain – objectively justified – cases, a service or good may be reserved exclusively for women or men.

EXAMPLE

An institution for the protection of victims of sexual or domestic violence is open to women only.

OBJECTIVE JUSTIFICATION OF INDIRECT DISCRIMINATION

Indirectly discriminatory regulations, criteria or procedures may be objectively justified by a legitimate goal.

EXAMPLES

- » The requirement to wear a hard hat on a building site may possibly constitute an indirect discrimination of persons wearing specific clothes because of their religion (e.g. Sikh turbans). However, this requirement is justified on grounds of safety.
- » The rejection of a 55-year old man wishing to train as a pilot may be justified on account of his age due to the long training required.

HOW TO DRAW UP AN INCOME REPORT

From 2011 onward companies are obligated to address the income differences between their female and male employees.

Companies of a certain size must draw up an **income report** (anonymised statement of the pay earned by women and men) every two years – the first in 2011 for the year 2010. From 2014 onward, companies with more than 150 employees must also submit income reports. The income reports must state how many women and men are classified in an assignment category under the collective agreement, as well as the average income, adjusted for working time, of women and men in the respective group. The report must indicate the total pay, i.e. including allowances, supplements, remunerations and similar benefits.

Basically, the (central) works council is entitled to information and consultation with regard to these reports. In companies that do not have a works council, the report must be made available in a room accessible to all employees.

The works council and/or the employees may bring action in court to enforce the compilation of the income report up to three years after its due date.

Employees are obliged to keep the content of the income report confidential. This is not in conflict with the obtaining of legal advice by special interest groups and other persons or institutions also required to observe confidentiality, the initiation of court proceedings or a procedure before the Equal Treatment Commission.

In the event of a violation of the duty to observe confidentiality, the employer may file a demand with the district authority to impose an administrative penalty amounting to a maximum of EUR 360. The authority can refrain from imposing a penalty if the employee's fault is negligible and the consequences of the violation of the duty to observe confidentiality are insignificant. However, it may admonish the employee per official notice about the unlawfulness of this conduct, provided that this is necessary.

POINTS TO BE CONSIDERED FOR JOB ADVERTISEMENTS

Companies and job placement agencies (Public Employment Service, private job placement agencies) must formulate internal or external job advertisements in a discrimination-free manner.

EXAMPLE

Advertisements such as “nationals only“ or “looking for a secretary, maximum age 40 years“ are prohibited.

GENUINE AND ESSENTIAL OCCUPATIONAL REQUIREMENT

This principle may be discarded only if the respective **characteristic** constitutes a **genuine** and **essential occupational requirement**.

EXAMPLES

- » Advertisements for counselling jobs in women's shelters or women's counselling offices may be addressed to women only.
- » An advertisement for a management position requiring specific job experience may constitute discrimination against young applicants. However, this is justified by the fact that job experience is normally an essential occupational requirement for a management position.

INDICATION OF PAY

For job advertisements, companies and job placement agencies are obligated to indicate the minimum pay according to the collective agreement, and, if applicable, to indicate the possibility of overpayment.

EXAMPLE

An advertisement in a newspaper reads as follows:
Vacancy for salesperson at EUR xxxx.xx per month. Overpayment is possible.

SANCTIONS

The **first offence** against the principle of discrimination-free job advertisement will entail a **reprehension** by the district administrative authority; **further contraventions** will be fined an **administrative penalty of up to EUR 360**. The criminal complaint can be initiated at the district administrative authority by the applicant or by the Ombud for Equal Treatment.

POINTS TO BE CONSIDERED FOR ADVERTISEMENTS OF HOUSING VACANCIES

Advertisements of housing vacancies must be formulated in a discrimination-free manner. However, this provision applies only to the characteristics of gender and ethnicity.

EXAMPLE

Advertisements stating “Natives only” are prohibited.

EXCEPTION

It does not constitute discrimination if the indication of gender or ethnicity is justified by a legitimate goal and the means for achieving this goal are appropriate and necessary. This applies in particular if the provision of housing establishes a particular close relationship or bond of trust of the parties or their relatives.

EXAMPLES

- » It is possible to design housing projects that take the needs of a specific population group into account (e.g. women).
- » It does not constitute discrimination if a woman who wants to let a room in her apartment addresses the advertisement to women only.

SANCTIONS

The **first offence** against the principle of discrimination-free advertisement of housing vacancies may entail a **reprehension** by the district administrative authority; **further contraventions** may be fined an **administrative penalty of up to EUR 360**. The criminal complaint can be initiated at the district administrative authority by the interested person or by the Ombud for Equal Treatment.

WHAT IS POSITIVE DISCRIMINATION?

Measures intended to promote equality and eliminate unfavourable treatment are permitted because they are not considered to constitute discrimination.

EXAMPLES

- » Companies are permitted to provide promotion programmes exclusively for older employees or for the members of specific ethnic groups, or special vocational and advanced training for female management trainees only.
- » Educational programmes tailored to students with migration background.
- » Building projects with preferential allocation of apartments to women.

PROHIBITION OF UNFAVOURABLE TREATMENT

If an employee complains about discrimination or initiates proceedings, her/his employer is prohibited to give notice, summarily dismiss or otherwise unfavourably treat her/him.

EXAMPLE

A female employee complains to her superior about sexual harassment by a colleague. As a consequence, she is passed over for promotion.

The prohibition of unfavourable treatment also extends to **witnesses** or **informants** who support other persons' complaints or testify in proceedings.

Violation of the prohibition of unfavourable treatment is subject to the same sanctions as discrimination.

EXAMPLE

A female employee of a company is given notice of dismissal without indication of reasons. She has recently given evidence for a sexually harassed colleague. She has the same rights as in the event of discriminatory termination of the employment.

The prohibition of unfavourable treatment of a person who complains or initiates proceedings, of witnesses or informants, also applies to those **areas outside work** where discrimination on grounds of **ethnicity** is prohibited.

EXAMPLE

A dark-skinned man suffers highly impolite treatment in a shop, evidently on account of his skin colour. When he complains, he is forced to leave the shop.

CLAIMS ARISING FROM DISCRIMINATION

Depending on the kind of discrimination, persons discriminated against can bring a claim in court requesting

- » **Elimination of the discrimination**, or
- » **Material damages**.

Moreover, s/he may in **both cases** request damages for the sustained personal impairment (**immaterial damages** = compensation for humiliation). The amount is assessed by the court as a lump sum.

Essential criteria are the duration and intensity of the discrimination as well as the need of protection of the affected person (e.g. apprentice). Multiple discrimination must also be taken into consideration for the assessment of the amount of immaterial damages.

EXAMPLE

A male employee is passed over for promotion because he is of foreign origin and the human resource managers think he is too old.

CLAIMS IN DETAIL

EMPLOYMENT IN THE PRIVATE SECTOR

EXAMPLE: ESTABLISHMENT OF THE EMPLOYMENT

All applications by persons over 40 are rejected immediately without closer examination.

The applicant who would have got the job in the event of discrimination-free recruitment is entitled to damages amounting to a **minimum of two monthly salaries**.

Besides, s/he is also entitled to compensation for **sustained personal impairment**.

Applicants whose applications were not taken into consideration but would have been discarded even in the event of discrimination-free recruitment are entitled to damages **of up to EUR 500**.

EXAMPLE: FIXING THE PAY

An employee is treated unfavourably with respect to pay.

S/he is entitled to **payment of the difference** and to compensation for **sustained personal impairment**.

EXAMPLE: PROMOTION

All applications of female employees for a management position are discarded immediately because they are women.

Applicants who would have been promoted in the event of discrimination-free selection are entitled to damages amounting to **a minimum of 3 monthly salaries**.

Employees who were discriminated against in respect of promotion but who would not have got the job even in the event of discrimination-free selection are entitled to damages **of up to EUR 500**.

EXAMPLE: TERMINATION OF EMPLOYMENT

An employee is given notice of termination or is summarily dismissed due to one of the discrimination grounds listed above.

The affected person has the following options:

S/he can contest the termination or dismissal **in court**. This also applies in the event that the employment is terminated on discrimi-

natory grounds during the probationary period. If a fixed-term employment contract has not been renewed in a discriminatory manner, the employee can sue for declaration of the existence of an open-ended employment contract.

Alternatively, the employee can accept the termination of the employment, whereupon s/he is entitled to claim **damages** and compensation for **sustained personal impairment**.

AT WORK

If a person is discriminated against in any of the other areas of work listed above, s/he is entitled to request **elimination of discrimination** or claim **material damages** as well as **compensation for sustained personal impairment**.

EXAMPLE

On account of her age, a female employee is not invited to attend a specific training programme.

She is **entitled to be included** in this specific training programme and to claim **compensation for sustained personal impairment**.

OUTSIDE WORK

If a person is discriminated against on grounds of his/her **ethnicity** with respect to social protection, social benefits, education and training and access to goods and services and housing, s/he is **entitled to material damages** and **compensation for sustained personal impairment**.

HARASSMENT AND SEXUAL HARASSMENT

In the event of harassment or sexual harassment, the affected person is entitled to damages amounting to a **minimum of EUR 1,000**.

ADVICE AND SUPPORT FOR AFFECTED PERSONS HOW TO ENFORCE CLAIMS

- » The **Ombud for Equal Treatment** offers affected persons free and confidential advice and support. It is also entitled to represent affected persons in the **Equal Treatment Commission**.
- » Persons feeling discriminated against can also take **court action before, concurrently with or after** proceedings in the Equal Treatment Commission.
- » **Trade unions** and **chambers of labour** as well as **non-governmental organisations** offer help and advice.
- » **District courts** also offer advice on court days.
- » **Multiple discrimination** that also involves the discrimination ground of **disability** is additionally covered by the Federal Equal Treatment Act for People with Disabilities and the Act Governing the Recruitment of People with Disabilities.

RELEVANT TIME LIMITS

- » Claims related to discrimination
 - › in the **establishment of an employment**
 - › in **promotion**must be lodged in court within a period of **6 months**.
- » Claims related to **(sexual) harassment** must be lodged in court within a period of **one year**.
- » A **discriminatory notice of termination or summary dismissal** – also during the probationary period – must be contested in court within **14 days**.

- » If a **fixed-term employment contract** is not renewed in a discriminatory manner, the employee can **within 14 days** sue for determination of the existence of an open-ended employment contract.
- » If the employee accepts the **termination of the employment** and claims damages, action must be brought within **6 months**.
- » Claims based on discrimination in **other areas** must be prosecuted in court within **3 years**.

BURDEN OF PROOF

If a person feels discriminated against and appeals to court and/or the Equal Treatment Commission, s/he must show **credibly** that s/he was discriminated against on account of his/her gender, age etc. S/he must give plausible reasons for the discrimination. The burden of **proof** is on the discriminating person to show that discrimination did not occur.

INSTITUTIONS FOR COMBATING DISCRIMINATION

EQUAL TREATMENT COMMISSION

The Equal Treatment Commission is an independent board at the Federal Ministry for Women and Civil Service that focuses on:

- » Examining every **individual case** for discrimination
- » Preparing general **expertises** on questions of discrimination.

THE EQUAL TREATMENT COMMISSION CONSISTS OF 3 SENATES

- » **Senate I** for equal treatment of women and men at work
- » **Senate II** for equal treatment at work irrespective of ethnicity, religion or beliefs, age or sexual orientation
- » **Senate III** for equal treatment irrespective of gender or ethnicity in other areas

In the performance of their duties, the chairperson and her/his deputy as well as the members (substitute members) of the Equal Treatment Commission act **independently** and are **not bound by instructions**.

REGULATIONS FOR PROCEEDINGS

- » **Proceedings are initiated** by filing a request with the Equal Treatment Commission. The request can be filed by the affected person, works councils, representatives of the Social Partners or the Ombud for Equal Treatment.
- » **Senate I** is in charge of **gender-related multiple discrimination** (e.g. discrimination on grounds of gender and ethnicity).
- » Proceedings are **free of charge** and **closed**. They have the purpose of determining whether or not discrimination has occurred.
- » The Equal Treatment Commission invites all persons involved and **interrogates** them **in the presence of all invited persons**. However, each person may demand to be interrogated separately.
- » **Separate interrogation** takes place in proceedings of presumed (sexual) harassment if nothing else has been agreed.
- » The affected person can bring a **person of trust**. The latter may also be the representative of a non-governmental organisation. Upon request of the affected person, it is also possible to call in a **specialist** from a non-governmental organisation.

- » In the event of a **presumed discrimination with regard to pay**, the senates of the Equal Treatment Commission can obtain the reference person's income data from the respective social insurance institution.
- » The examination results must be finalised **within three months** of the decision and are **publicised anonymously** on the homepage of the Federal Minister for Women and Civil Service.
- » If the Equal Treatment Commission has found that discrimination has occurred, it must require the person responsible for the discrimination to **cease the discrimination**.
- » The **examination result** is sent **in writing** to the persons involved. The writing includes a suggestion of how to realise equal treatment in the given situation.
- » The Equal Treatment Commission **cannot award damages**. This lies within the competence of the **courts**.
- » The decision of the Equal Treatment Commission is **not binding** on the court. If, however, the court departs from the findings of the Equal Treatment Commission, it must give reasons for its decision.
- » Submitting a request to the Equal Treatment Commission **interrupts the periods specified for the assertion of claims in court (= suspension of the time limits)**. This suspension ends upon the delivery of the examination result. Thereafter, the employee can assert his/her claims in court within a period of three months.
- » Interpreting costs will be paid if required.

OMBUD FOR EQUAL TREATMENT

The Ombud for Equal Treatment is a federal institution for the implementation of the equal treatment principle. It has been established at the Federal Ministry for Women and Civil Service.

THE OFFICE OF THE OMBUD FOR EQUAL TREATMENT HAS THREE SUBDIVISIONS:

- » **The Ombud (female)** for equal treatment of women and men at work
- » **The Ombud (male or female)** for equal treatment at work irrespective of ethnicity, religion or beliefs, age or sexual orientation
- » **The Ombud (male or female)** for equal treatment irrespective of gender or ethnicity in other areas

In the performance of their duties, the ombuds act **independently** and are **not bound by instructions**.

ESSENTIAL DUTIES OF THE OMBUD FOR EQUAL TREATMENT

- » It **advises** and **assists** persons or relatives of persons who feel discriminated against and **accompanies** them in **proceedings before the Equal Treatment Commission**.
- » Advice is also provided for persons wishing to avoid discrimination (e.g. employers, members of works councils). Counselling is **free of charge and confidential**.

FURTHER DUTIES OF THE OMBUD FOR EQUAL TREATMENT

- » Obtaining **information** from employers, works councils, employees and other informants, all of whom are obligated to provide information
- » Negotiations in the run-up to proceedings
- » Support with the handling/prevention of conflicts
- » In the event of a **presumed discrimination with regard to pay**, the ombuds can obtain the reference person's income data from the respective social insurance institution.

- » Right to submit **requests** to the **Equal Treatment Commission**
- » Right to **attend** and **speak** at the sessions of the **Equal Treatment Commission**
- » Performance of **investigating activities** on behalf of the Equal Treatment Commission
- » Submission of **requests to the district administrative authority** in the event of discriminatory job advertisements
- » Performance of **independent investigations** on the subject of discrimination
- » Preparation of **independent reports** and recommendations on all questions related to discrimination
- » Information work, lectures, workshops

SPECIAL REGULATIONS FOR PEOPLE WITH DISABILITIES (LEGISLATION ON EQUAL TREATMENT OF PEOPLE WITH DISABILITIES)

The prohibition of discrimination on grounds of disability has been regulated by special laws:

- » A comprehensive amendment to the **Act Governing the Recruitment of People with Disabilities** implemented the prohibition of discrimination **at work**.
- » The **Federal Equal Treatment Act for People with Disabilities** regulates the prohibition of discrimination on grounds of disability in many **other areas of everyday life**.

DISCRIMINATION ON GROUNDS OF DISABILITY

All physical, intellectual, mental and sensory disabilities are covered by the discrimination prohibition. The degree of severity is irrelevant. All that is required is to show credibly that the person concerned is treated worse because of a disability.

EXAMPLES

- » If the owner of a nail studio gives notice to a manicurist who has lost a fingertip in an accident, claiming that this is unacceptable to the customers, this constitutes discrimination on grounds of disability.
- » If a department with 30 employees is closed down and all employees are given notice, it does not constitute discrimination if a wheelchair user is among them.

PROVISIONS APPLYING BOTH TO PEOPLE WITH DISABILITIES AND PERSONS PROTECTED BY THE EQUAL TREATMENT ACT

The protection afforded in connection with discrimination on grounds of disability does not apply solely to

- » The affected persons themselves and
- » Persons subject to the discrimination prohibition in their function as witnesses or informants, but – under certain conditions – also to
- » Persons associated with the affected person.

EXAMPLE

The father of a disabled child does not get promotion because the employer fears that he will take care leave more often due to the child's disability.

The following forms of discrimination are also prohibited in respect of people with disabilities:

- » Direct discrimination
- » Indirect discrimination
- » Instruction to discriminate
- » Discrimination by association
- » Harassment

To a large extent, the discrimination prohibition is subject to the same regulations with regard to work (see below, “**Prohibition of discrimination at work**“).

The **regulation of the burden of proof** when asserting claims in court also applies to people with disabilities.

WHAT ARE THE DIFFERENCES TO THE EQUAL TREATMENT ACT?

People with disabilities are protected by a number of regulations that go beyond or deviate from the rights defined by the **Equal Treatment Act**.

DISCRIMINATION BY BARRIERS

In the context of so-called indirect discrimination, we must not forget that discrimination grounds – unlike with other affected groups – do not exist solely “in the mind“ of the discriminating person but occur in the form of barriers in everyday life itself. **Structural barriers or communication barriers** can act as indirect discrimination if they result in less favourable treatment of people with disabilities, even if this is not the intention.

EXAMPLES

- » If a wheelchair user cannot enter the company cafeteria, this may constitute discrimination.
- » If a mail order company offers its merchandise on the internet but its website cannot be read by blind people, this may constitute discrimination.

However, it is important to note that only a **court** can determine whether discrimination has in fact occurred. The court examines whether it would have been reasonable for the employer or the company to remove the barriers (**reasonableness test**).

ASSERTION OF CLAIMS

There are also differences with regard to the assertion of claims based on discrimination established by a court (see below, **“Claims and how to assert them”**)

AREAS COVERED BY THE DISCRIMINATION PROHIBITION

PROHIBITION OF DISCRIMINATION AT WORK

Work-related regulations are largely the same as those of the Equal Treatment Act. The prohibition of discrimination on grounds of disability applies to:

- » All employment and training relationships based on a contract, as well as persons whose status is assimilated to employment
- » Federal employees and all federal training relationships
- » Other areas of work.

More details are given above in the chapter **“Scope of the discrimination prohibition”**.

The occasions covered by the discrimination prohibition are also the same, e.g.

- » Establishment of an employment
- » Pay
- » Promotion
- » In-house training and other advanced training
- » Termination of employment (this also applies in the event of an employment being terminated in a discriminatory manner during the probationary period or failure to renew a temporary employment on discriminatory grounds).

The Act Governing the Recruitment of People with Disabilities does not cover employees of state and local authorities and agricultural labourers. The rights of these groups are regulated by **state legislation**.

THE DISCRIMINATION PROHIBITION IN EVERYDAY LIFE

For the protection of people with disabilities, a discrimination prohibition has been specified not only for work, but also for a number of areas subject to federal competence.

SCOPE OF THE PROHIBITION OF DISCRIMINATION ON GROUNDS OF DISABILITY UNDER THE FEDERAL ACT ON EQUAL TREATMENT OF PEOPLE WITH DISABILITIES

The prohibition of discrimination on grounds of disability applies to:

- » The entire federal administration
- » The supply of goods and services available to the public.

EXAMPLES

- » An affected person cannot attend an official hearing because the locality is not accessible to wheelchair users.
- » The owner of a restaurant refuses to admit a group of persons to his premises because of their disability.
- » If the owner of a restaurant harasses a disabled guest because of his/her disability, this constitutes discrimination as defined by law.

TRANSITIONAL LAW

Since it is evidently impossible to remove all barriers forthwith, transitional provisions were introduced with regard to discrimination resulting from structural barriers and barriers related to traffic and transport. For these areas, the **Federal Act on Equal Treatment of People with Disabilities** will apply without restrictions as of **1 January 2016**.

There is no such restriction with respect to the **Act Governing the Recruitment of People with Disabilities**.

CLAIMS AND HOW TO ASSERT THEM

If a person with a disability is discriminated against, s/he may claim damages in the same way as under the Equal Treatment Act. These also include immaterial damage on account of sustained personal impairment. For more details, see the chapter entitled **“Claims arising from discrimination”**.

Persons with disabilities can also assert their claims in **court**.

Exception: Civil servants must take administrative action at the civil service authority to assert their claims resulting from discrimination in an employment relationship.

If someone is discriminated against outside employment by public authority, resulting claims must be asserted via **official liability**.

For people with disabilities, there is one significant **difference vis-à-vis the Equal Treatment Act**: while the latter permits taking court action at any time without first appealing to the Equal Treatment Commission, an **attempt at conciliation at the Federal Social Welfare Office** is mandatory in the event of discrimination on grounds of disability.

COUNSELLING FOR AFFECTED PERSONS

is offered by:

- » Federal Social Welfare Offices
- » In labour law issues: stakeholder organisations (chambers of labour, trade unions)
- » Court days at district courts
- » Ombud for people with disabilities

Chambers of labour and trade unions can also represent members in court free of charge.

In cases of special significance, the **Austrian National Council of Disabled Persons** (Österreichische Arbeitsgemeinschaft für Rehabilitation) can bring **class action**.

CONCILIATION PROCEDURE AT THE FEDERAL SOCIAL WELFARE OFFICE

The Federal Office of Social and Disability Affairs (Federal Social Welfare Office) is the central contact point for all questions related to discrimination on grounds of disability.

- » **Prior to court action, a mandatory conciliation procedure** takes place at the Federal Social Welfare Office, which suspends all time limits for the assertion of claims resulting from discrimination.
- » If the procedure is closed, with the Federal Social Welfare Office issuing a confirmation that the parties failed to reach an agreement, legal action can be brought in court (civil servants must appeal to the civil service authority).
- » With the aid of the conciliation procedure, the parties concerned can reach an agreement without incurring the costs of a lawsuit.
- » Within the scope of conciliation, **mediation** by independent mediators is also offered free of charge.
- » If no agreement is possible, it is recommended to seek comprehensive advice prior to bringing legal action.

OMBUD FOR PEOPLE WITH DISABILITIES

The Ombud for People with Disabilities provides advice for people who feel discriminated against on grounds of disability. S/he holds periodical consultations in the entire federal territory.

EQUAL OPPORTUNITIES: ADDRESSES

EUROPEAN UNION

EUROPEAN COMMISSION

Directorate General for Employment, Social Affairs
and Equal Opportunities

Email: empl-info@ec.europa.eu

Email: empl-antidiscrimination@ec.europa.eu

http://ec.europa.eu/employment_social/index_de.html

COURT OF JUSTICE OF THE EUROPEAN UNION

L-2925 Luxembourg

Phone: +352/ 4303-1, Fax: +352/ 4303-2600

EUROPEAN COMMISSION REPRESENTATION IN AUSTRIA

Wipplingerstrasse 35 , 1010 Vienna

Phone: +43/ (0)1 516 18-0, Fax: +43/ (0)1 513 42 25

Email: comm-rep-vie@ec.europa.eu

<http://ec.europa.eu/austria/>

EUROPE DIRECT INFORMATION POINTS IN AUSTRIA

Locally in all federal states:

<http://www.europainfo.at>

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Rahlgasse 3, 1060 Vienna

Phone: +43/ (0)1 580 30 – 60, Fax: +43/ (0)1 580 30 - 699

Email: information@fra.europa.eu

<http://www.fra.europa.eu>

FEDERAL OFFICES

FEDERAL MINISTRY OF LABOUR, SOCIAL AFFAIRS AND CONSUMER PROTECTION

Stubenring 1, 1010 Vienna

Free service hotline: 0800 / 20 16 11

Email: sozialtelefon@bmask.gv.at

<http://www.bmask.gv.at/cms/site/liste.html?channel=CHO672>

<http://www.chancen-gleichheit.at>

OMBUD FOR EQUAL TREATMENT

OMBUD FOR EQUAL TREATMENT

Taubstummengasse 11, 1040 Vienna

Phone: +43/ (0)1 532 02 44 or

free of charge within Austria: 0800-206119

Fax: +43/ (0)1 532 02 46

Email: gaw@bka.gv.at

<http://www.gleichbehandlungsanwaltschaft.at>

REGIONAL OFFICES OF THE OMBUD FOR EQUAL TREATMENT IN CHARGE OF EQUAL TREATMENT OF WOMEN AND MEN AT WORK:

REGIONAL OFFICE FOR STYRIA

Europaplatz 12, 8020 Graz

Phone: +43/ (0)316 72 05 90, Fax: +43/ (0)316 72 05 90 4

Email: graz.gaw@bka.gv.at

<http://www.gleichbehandlungsanwaltschaft.at>

REGIONAL OFFICE FOR TYROL, SALZBURG AND VORARLBERG

Leipzigerplatz 2, 6020 Innsbruck

Phone: +43/ (0)512 34 30 32, Fax: +43/ (0)512 34 30 32 10

Email: ibk.gaw@bka.gv.at

<http://www.gleichbehandlungsanwaltschaft.at>

REGIONAL OFFICE FOR CARINTHIA

Kumpfgasse 25, 9020 Klagenfurt

Phone: +43/ (0)463 50 91 10, Fax: +43/ (0)463 50 91 10 15

Email: klagenfurt.gaw@bka.gv.at

<http://www.gleichbehandlungsanwaltschaft.at>

REGIONAL OFFICE FOR UPPER AUSTRIA

Mozartstrasse 5/3, 4020 Linz

Phone: +43/ (0)732 78 38 77, Fax: +43/ (0)732 78 38 77 3

Email: linz.gaw@bka.gv.at

<http://www.gleichbehandlungsanwaltschaft.at>

EQUAL TREATMENT COMMISSION FOR THE PRIVATE SECTOR

Senate I: Equal treatment of women and men at work

Federal Chancellery

Minoritenplatz 3, 1010 Vienna

Phone: +43/ (0)1 53 115 – 7532, Fax: +43/ (0)1 53 115 - 7545

Email: karin.burger@bka.gv.at

<http://www.frauen.bka.gv.at>

Senate II: Equal treatment at work irrespective of ethnicity, religion or beliefs, age or sexual orientation

Federal Chancellery

Minoritenplatz 3, 1010 Vienna

Phone: +43/ (0)1 53 115 – 7531, Fax: +43/ (0)1 53 115 - 7545

Email: karina.brugger-kometer@bka.gv.at

<http://www.frauen.bka.gv.at>

Senate III: Equal treatment irrespective of gender or ethnicity
in other areas

Federal Chancellery

Minoritenplatz 3, 1010 Vienna

Phone: +43/ (0)1 53 115 – 7534, Fax: +43/ (0)1 53 115 - 7545

Email: dietmar.hillbrand@bka.gv.at

<http://www.frauen.bka.gv.at>

EQUAL TREATMENT COMMISSION FOR THE FEDERAL PUBLIC SERVICE

FEDERAL EQUAL TREATMENT COMMISSION

Senate I: Equal treatment of women and men

Federal Chancellery

Minoritenplatz 3, 1010 Vienna

Phone: +43/ (0)1 53 115 – 7533, Fax: +43/ (0)1 53 115 - 7545

Email: beatrix.gojakovich@bka.gv.at

<http://www.frauen.bka.gv.at>

Senate II: Equal treatment irrespective of ethnicity, religion or beliefs, age or sexual orientation

Federal Chancellery

Minoritenplatz 3, 1010 Vienna

Phone: +43/ (0)1 53 115 – 7533, Fax: +43/ (0)1 53 115 - 7545

Email: beatrix.gojakovich@bka.gv.at

<http://www.frauen.bka.gv.at>

DISCRIMINATION ON GROUNDS OF DISABILITY**FEDERAL MINISTRY OF LABOUR, SOCIAL AFFAIRS AND CONSUMER PROTECTION**

Stubenring 1, 1010 Vienna

Phone: +43/ (0)1 711 00-0

<http://www.bmask.gv.at>

<http://www.gleichundgleich.gv.at>

OMBUD FOR DISABLED PERSONS

Babenbergerstrasse 5, 1010 Vienna

Phone: +43/ 0800 80 80 16, Fax: +43/ (0)1 711 00-2237

Email: office@behindertenanwalt.gv.at

<http://www.behindertenanwalt.gv.at>

FEDERAL SOCIAL WELFARE OFFICE AND ITS STATE OFFICES

<http://www.bundessozialamt.gv.at>

The Federal Social Welfare Office and its 9 state offices can be reached by phone at 05 99 88 within the entire federal territory.

OFFICE FOR BURGENLAND

Hauptstrasse 33a, 7000 Eisenstadt

Phone: +43/ 05 99 88, Fax: +43/ 05 99 88-7412

Email: bundessozialamt.bgl1@basb.gv.at

OFFICE FOR CARINTHIA

Kumpfgasse 23, 9010 Klagenfurt

Phone: +43/ 05 99 88, Fax: +43/ 05 99 88-5888

Email: bundessozialamt.ktn@basb.gv.at

OFFICE FOR LOWER AUSTRIA

Grenzgasse 11/3, 3100 St. Pölten

Phone: +43/ 05 99 88, Fax: +43/ 05 99 88-7699

Email: bundessozialamt.noel1@basb.gv.at

OFFICE FOR UPPER AUSTRIA

Gruberstrasse 63, 4021 Linz

Phone: +43/ 05 99 88, Fax: +43/ 05 99 88-4400

Email: bundessozialamt.ooe@basb.gv.at

OFFICE FOR SALZBURG

Auerspergstrasse 67a, 5020 Salzburg

Phone: +43/ 05 99 88, Fax: +43/ 05 99 88-3499

Email: bundessozialamt.sbg1@basb.gv.at

OFFICE FOR STYRIA

Babenbergerstrasse 35, 8021 Graz

Phone: +43/ 05 99 88, Fax: +43/ 05 99 88-6899

Email: bundessozialamt.stmk1@basb.gv.at

OFFICE FOR TYROL

Herzog Friedrich-Strasse 3, 6020 Innsbruck

Phone: +43/ 05 99 88, Fax: +43/ (0)512 582609

Email: bundessozialamt.tirol1@basb.gv.at

OFFICE FOR VORARLBERG

Rheinstrasse 32/3, 6900 Bregenz

Phone: +43/ 05 99 88, Fax: +43/ 05 99 88-7205

Email: bundessozialamt.vlbg@basb.gv.at

OFFICE FOR VIENNA

Babenbergerstrasse 5, 1010 Vienna

Phone: +43/ 05 99 88, Fax: +43/ (0)1 586 20 16

Email: bundessozialamt.wien1@basb.gv.at

EQUAL TREATMENT OFFICES OF THE STATES

REPRESENTATIVE FOR EQUAL TREATMENT OF THE STATE GOVERNMENT OF BURGENLAND

Europaplatz 1, 7000 Eisenstadt
Phone: +43/ (0)2682 600-2254
Email: eva.pollak@bgld.gv.at

OFFICE OF THE STATE GOVERNMENT OF BURGENLAND ANTI-DISCRIMINATION

Phone: +43/ (0)2682 600-2330, Fax: +43/ (0)2682 600-2865
Email: maria.erdt@bgld.gv.at
<http://www.burgenland.at>

OFFICE OF THE STATE GOVERNMENT OF BURGENLAND LAD-WOMEN'S OFFICE

Europaplatz 1, 7000 Eisenstadt
Phone: +43/ (0)2682 600-2156, Fax: + 43/ (0)2682 600-2769
Email: post.frauenbuero@bgld.gv.at
<http://www.burgenland.at/frauen>

SECTION FOR WOMEN AND EQUAL TREATMENT OF THE STATE GOVERNMENT OF CARINTHIA

Miesstaler Strasse 1, 9020 Klagenfurt am Wörthersee
Phone: 0800 20 33 88, Fax: + 43/ 050 536 31381
Email: frauen@ktn.gv.at
<http://www.frauen.ktn.gv.at>

ANTI-DISCRIMINATION OFFICE OF THE STATE GOVERNMENT OF CARINTHIA

Administrative Centre
Miesstaler Strasse 1, 9020 Klagenfurt am Wörthersee
Phone: +43/ 050 536 41326, Fax: +43/ 050 536 41370
Email: antidiskriminierung@ktn.gv.at
<http://www.antidis.ktn.gv.at>

**LOWER AUSTRIAN REPRESENTATIVE FOR EQUAL TREATMENT
LOWER AUSTRIAN ANTI-DISCRIMINATION OFFICE**

Tor zum Landhaus, Rennbahnstrasse 29, 3109 St. Pölten

Phone: +43/ (0)2742 9005 16212 or 16217,

Fax: +43/ (0)2742 9005 16279

Email: post.gbb@noel.gv.at

<http://www.noel.gv.at/gleichbehandlung>

WOMEN'S SECTION OF LOWER AUSTRIA

Office of the Lower Austrian State Government

Landhausplatz 1, 3109 St. Pölten

Phone: +43/ (0)2742 9005 13309

Email: post.f3frauenreferat@noel.gv.at

<http://www.noel.gv.at/frauen>

<http://www.noel.gv.at/chancengleich>

**ANTI-DISCRIMINATION OFFICE OF THE
STATE GOVERNMENT OF UPPER AUSTRIA**

Landhausplatz 1, 4021 Linz

Phone: +43/ (0)732 7720 11446, Fax: +43/ (0)732 7720 11621

Email: as.post@ooe.gv.at

<http://www.land-oberoesterreich.gv.at/thema/antidiskriminierung>

**REPRESENTATIVE FOR EQUAL TREATMENT OF THE STATE
GOVERNMENT OF SALZBURG/OFFICE FOR EQUAL OPPORTU-
NITIES, ANTI-DISCRIMINATION AND WOMEN'S PROMOTION**

Michael-Pacher-Strasse 28, 5020 Salzburg

Phone: +43/ (0)662 8042-4041 & -4042,

Fax: +43/ (0)662 8042-4050

Email: frauen@salzburg.gv.at

<http://www.salzburg.gv.at/frauen>

<http://www.salzburg.gv.at/chancengleichheit>

REPRESENTATIVE FOR EQUAL TREATMENT OF THE CITY OF SALZBURG

Schloss Mirabell, 5024 Salzburg

Phone: +43/ (0)662 8072-2043, Fax: +43/ (0)662 8072-2066

Email: frauenbuero@stadt-salzburg.at

REPRESENTATIVE FOR EQUAL TREATMENT OF THE STATE GOVERNMENT OF STYRIA

Phone: +43/ (0)316 877-5841, Fax: +43/ (0)316 877-4827

Email: gleichbehandlung@stmk.gv.at

<http://www.gleichbehandlung.steiermark.at>

REPRESENTATIVE FOR EQUAL TREATMENT OF THE CITY OF GRAZ

Phone: +43/ (0)664 60-872 4666, Fax: +43/ (0)316 872-5409

Email: gleichbehandlungsbeauftragte@stadt.graz.at

<http://www.graz.at>

OFFICE FOR EQUAL TREATMENT AND ANTI-DISCRIMINATION OF THE STATE GOVERNMENT OF TYROL

Phone: +43/ (0)512 508 3052, Fax: +43/ (0)512 508 3055

Email: servicestelle.gleichbehandlung@tirol.gv.at

<http://www.tirol.gv.at/gleichbehandlung>

<http://www.tirol.gv.at/antidiskriminierung>

WOMEN'S SECTION OF THE STATE GOVERNMENT OF VORARLBERG

Phone: +43/ (0)5574 511 24113, Fax: +43/ (0)5574 511 24195

Email: frauen@vorarlberg.at

<http://www.vorarlberg.at/frauen>

STATE OMBUD OF VORARLBERG

Römerstrasse 14, 6900 Bregenz

Phone: +43/ (0)5574 47027, Fax: +43/ (0)5574 47028

Email: buero@landesvolksanwaeltin.at

<http://www.landesvolksanwaeltin.at>

VORARLBERG OFFICE OF THE OMBUD FOR PATIENTS

Marktplatz 8, 6800 Feldkirch

Phone: +43/ (0)5522 81553, Fax: +43/ (0)5522 81553-15

Email: anwalt@patientenanwalt-vbg.at

<http://www.patientenanwalt-vbg.at>

VIENNA ANTI-DISCRIMINATION OFFICE FOR SAME-SEX LIFESTYLES

Phone: +43/ (0)1 4000-81449, Fax: +43/ (0)1 4000-99 81448

Email: wast@gif.magwien.gv.at

<http://www.queer.wien.at>

REPRESENTATIVE FOR EQUAL TREATMENT OF THE CITY OF VIENNA

Phone: +43/ (0)1 4000-83140, Fax: +43/ (0)1 4000-99 83140

Email: post@gbb.wien.gv.at

<http://www.wien.gv.at/menschen/gleichbehandlung>

**OFFICE OF THE INDEPENDENT REPRESENTATIVE FOR THE PROTECTION OF EMPLOYEES
OFFICE FOR COMBATING DISCRIMINATION**

Phone: +43/ (0)1 4000-38954 or 38951,

Fax: +43/ (0)1 4000-99 38951

Email: post@bsb.wien.gv.at

<http://www.antidiskriminierung.wien.at>

NON-GOVERNMENTAL ORGANISATIONS

**ASSOCIATION FOR THE ENFORCEMENT OF THE RIGHTS OF
DISCRIMINATION VICTIMS**

Luftbadgasse 14-16, 1060 Vienna

Phone: +43/ (0)1 961 05 85-24, Fax: +43/ (0)1 961 05 85-99

Email: info@klagsverband.at

<http://www.klagsverband.at>

**AUSTRIAN NATIONAL COUNCIL OF DISABLED PERSONS –
UMBRELLA ORGANISATION OF AUSTRIAN ASSOCIATIONS OF
DISABLED PERSONS (ÖAR)**

Stubenring 2/1/4, 1010 Vienna

Phone: +43/ (0)1 5131533-0, Fax: +43/ (0)1 5131533-150

Email: dachverband@oear.or.at

<http://www.oear.or.at>

SOCIAL PARTNERS

AUSTRIAN TRADE UNION FEDERATION

Johann-Böhm-Platz 1, 1020 Vienna

Phone: +43/ (0)1 53 444-0

Email: servicecenter@oegb.at

<http://www.oegb.at>

FEDERAL CHAMBER OF LABOUR

Prinz Eugen Strasse 20-22, 1040 Vienna

Phone: +43/ (0)1 50165-0

Email: akmailbox@akwien.at

<http://www.arbeiterkammer.at>

ECONOMIC CHAMBER OF AUSTRIA

Wiedner Hauptstrasse 63, 1045 Vienna

Phone: +43/ 05 90 900

Hotline: 0800 221 223 (free of charge)

Email: callcenter@wko.at

<http://www.wko.at>

FEDERATION OF AUSTRIAN INDUSTRY

Schwarzenbergplatz 4, 1031 Vienna

Phone: +43/ (0)1 711 35-0

Email: iv-office@iv-net.at

<http://www.iv-net.at>

LEGISLATION

FEDERAL LEGISLATION

- » **Federal Act on Equal Treatment**
(Bundesgesetz über die Gleichbehandlung / Gleichbehandlungsgesetz / GlBG), BGBl. ¹ I No. 66/2004 as amended by BGBl. I No. 7/2011
- » **Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment**
(Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft / GBK/GAW-Gesetz), BGBl. No. 108/1979 as amended by BGBl. I No. 7/2011
- » **Federal Act on Equal Treatment in Federal Service**
(Bundesgesetz über die Gleichbehandlung im Bereich des Bundes/Bundes-Gleichbehandlungsgesetz / B-GlBG), BGBl. No. 100/1993 as amended by BGBl. I No. 6/2011
- » **Federal Act on Equal Treatment of People with Disabilities**
(Bundesgesetz über die Gleichstellung von Menschen mit Behinderungen / Bundes-Behindertengleichstellungsgesetz / BGStG), BGBl. I No. 82/2005 as amended by BGBl. I No. 7/2011
- » **Federal Act on the Recruitment and Employment of People with Disabilities**
(Bundesgesetz über die Einstellung und Beschäftigung Behinderter / Behinderteneinstellungsgesetz / BEinstG), BGBl. No. 22/1970 as amended by BGBl. I No. 7/2011

¹ BGBl. = Bundesgesetzblatt (Federal Law Gazette)

STATE LEGISLATION

BURGENLAND

- » The **Burgenland Anti-Discrimination Act** (Burgenländisches Antidiskriminierungsgesetz / Bgld. ADG) as amended by LGBL. ² No. 17/2010, regulates equal treatment irrespective of ethnicity, religion or beliefs, disability, age or sexual orientation in employment with state or local authorities and in matters of health, social affairs, access to and supply of goods and services available to the public, including housing, education and access to self-employed and dependently employed occupation as well as membership and involvement in a workers' or employers' organisation or an organisation whose members belong to a specific occupational group.

- » The **Burgenland State Act on Equal Treatment** (Burgenländisches Landes-Gleichbehandlungsgesetz / Bgld. L-GBG), LGBL. No. 59/1997 as amended by LGBL. No. 18/2010, standardises the equal treatment of women and men who are in or apply for an employment or training relationship with Burgenland's state or local authorities or an association of local authorities, and of apprentices, and in matters of health, social affairs, access to and supply of goods and services available to the public, including housing, education and access to self-employed and dependently employed occupation as well as membership and involvement in an employees' or employers' organisation or an organisation whose members belong to a specific occupational group. Moreover, the Act specifies the principle of the promotion of women designed to eliminate the present under-representation of women in employment with state and local authorities.

² LGBL. = Landesgesetzblatt (State Law Gazette)

- » The **1977 Burgenland Agricultural Labour Code** (Burgenländische Landarbeitsordnung 1977, LArbO), LGBL. No. 37/1977 as amended by LGBL. No. 63/2010, contains prohibitions of discrimination on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

CARINTHIA

- » The **Carinthian Anti-Discrimination Act** (Kärntner Antidiskriminierungsgesetz), LGBL. No. 63/2004 as amended by LGBL. No. 11/2010, contains prohibitions of discrimination concerning the employees of state and local authorities (public sector employment law) on grounds of ethnicity, religion or beliefs, disability, age or sexual orientation. Public authorities are prohibited from discriminating against persons on account of their ethnicity, religion or beliefs, disability, age, sexual orientation or gender in the public sector.
- » The **Carinthian State Act on Equal Treatment** (Kärntner Landes-Gleichbehandlungsgesetz), LGBL. No. 56/1994 as amended by LGBL. No. 11/2010, applies to employees of state and local authorities (public sector employment law) and refers to gender-based discrimination.
- » The **Carinthian Agricultural Labour Code** (Kärntner Landarbeitsordnung), LGBL. No. 97/1995 as amended by LGBL. No. 102/2010, contains the prohibition of discrimination on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

LOWER AUSTRIA

- » Under the **Lower Austrian Anti-Discrimination Act** (NÖ Antidiskriminierungsgesetz), LGBL. No. 9290, it is prohibited to discrimi-

minate against citizens in their dealings with Lower Austrian state and local authorities, Lower Austrian associations of local authorities and with (natural/legal) persons whose activity is regulated by state law.

- » The **Lower Austrian Equal Treatment Act** (NÖ Gleichbehandlungsgesetz), LGBl. No. 2060, contains prohibitions of discrimination for employees of state and local authorities (public sector employment law) on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.
- » The **1973 Lower Austrian Agricultural Labour Code** (NÖ Landarbeitsordnung 1973), LGBl. No. 9020, regulates the prohibition of discrimination on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

UPPER AUSTRIA

- » The **Upper Austrian Anti-Discrimination Act** (OÖ Antidiskriminierungsgesetz), LGBl. No. 50/2005, prohibits discrimination and harassment on grounds of ethnic origin, religion, beliefs, disability, age or sexual orientation.
- » The **Upper Austrian State Act on Equal Treatment** (OÖ Landes-Gleichbehandlungsgesetz), LGBl. No. 8/1995 as amended by LGBl. No. 73/2006, contains the prohibition of discrimination for employees of state authorities (public sector employment law) on grounds of gender.
- » The **Upper Austrian Local Government Act on Equal Treatment** (OÖ Gemeinde-Gleichbehandlungsgesetz), LGBl. No. 63/1999 as amended by LGBl. No. 73/2006, prohibits discriminations against employees of local authorities (public sector employment law) on grounds of gender.

- » The **Upper Austrian Agricultural Labour Code** (OÖ Landarbeitsordnung), LGBL. No. 25/1989 as amended by LGBL. No. 136/2007, contains prohibitions of discrimination on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

SALZBURG

- » The **Salzburg Equal Treatment Act** (Salzburger Gleichbehandlungsgesetz), S-GBG, LGBL. No. 31/2006 as amended by LGBL. No. 44/2009, prohibits discriminations on grounds of gender, age, disability, ethnic origin, religion or beliefs and sexual orientation. It applies to all employees of the state and local authorities and associations of local authorities, Salzburg state hospitals (SALK) and to state teachers. Besides, it contains promotional measures for women (promotion schemes for women) and employees with disabilities.
- » The **1995 Salzburg Agricultural Labour Code** (Salzburger Landarbeitsordnung), LGBL. No. 7/1996 as amended by LGBL. No. 7/2011, contains prohibitions of discrimination on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

STYRIA

- » The **Styrian State Act on Equal Treatment** (Steiermärkisches Landes-Gleichbehandlungsgesetz), L-GBG, LGBL. No. 66/04, regulates equal treatment on grounds of gender, „race“ and ethnic origin, religion and beliefs, disability, age and sexual orientation. It applies to citizens and all employees of state and local authorities and associations of local authorities and to persons applying for employment or training with the latter.

Protects citizens of the state and of local communities from measures of state or local authorities that have a discriminatory effect.

- » The **Styrian Agricultural Labour Code** (Steirische Landarbeitsordnung), LGBl. No. 39/2002 as amended by LGBl. No. 55/2006, contains prohibitions of discrimination on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

TYROL

- » The **2005 Tyrolean Anti-Discrimination Act** (Tiroler Antidiskriminierungsgesetz 2005), LGBl. No. 25, applies to all state and local government bodies, associations of local authorities and the self-administration bodies established by state acts (e.g. Mountain Rescue Service, Chamber of Agriculture etc.). In the performance of their duties within the scope of the sovereign and private sector administration, they are prohibited from discriminating against anyone on grounds of gender, age, disability, religion or beliefs, sexual orientation or ethnicity.
- » The **2005 Tyrolean State Act on Equal Treatment** (Tiroler Landes-Gleichbehandlungsgesetz 2005), LGBl. No. 1, contains prohibitions of discrimination and harassment for the employees of the local administration and of TILAK (Tiroler Landeskrankenanstalten / Tyrolean state hospitals) as well as the promotion scheme for women and the principle of promotion of persons with disabilities.

- » The **1998 Tyrolean Employment Sovereignty Act for State Teachers** (Tiroler Landeslehrer Diensthoheitsgesetz 1998), LGBl. No. 74, last amended by the Act LGBl. No. 82/2005, contains equal treatment principles and discrimination prohibitions for state teachers.
- » The **2005 Tyrolean Local Government Act on Equal Treatment** (Tiroler Gemeinde-Gleichbehandlungsgesetz 2005), LGBl. No. 2, contains the discrimination prohibitions and the principle of promotion for women for local government employees.
- » The **2000 Tyrolean Agricultural Labour Code** (Tiroler Landarbeitsordnung 2000), LGBl. No. 27, last amended by the Act LGBl. No. 1/2007, contains prohibitions of discrimination on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

VORARLBERG

- » The **Act on the Prohibition of Discrimination** (Gesetz über das Verbot der Diskriminierung / Antidiskriminierungsgesetz - ADG), LGBl. No. 17/2005 as amended by LGBl. No. 49/2008, prohibits discrimination on grounds of ethnicity, religion or beliefs, disability, age, sexual orientation and gender. It applies generally to all aspects of work, social protection, social benefits, publicly available goods and services and to education, insofar as these issues fall within the regulating competence of the federal state.
- » The **Act Governing the Promotion of Equal Opportunities of Women and Men** (Gesetz zur Förderung der Chancengleichheit von Frauen und Männern / Landes-Frauenförderungsgesetz), LGBl. No.1/1997

as amended by LGBL No.73/1997, comprises the promotion of women in general (applies to all women living in Vorarlberg, in all relevant areas of society); promotion of women in state employment (increase of the proportion of women in all deployment groups and in leading positions etc.) and provisions on institutions for women (Forum for Women's Politics / Frauenpolitisches Forum, Contact Point for Equal Opportunities for Women and Men).

» **The Act Governing the Promotion of Equal Opportunities for People with Disabilities**

(Gesetz zur Förderung der Chancengleichheit von Menschen mit Behinderung), LGBL No. 30/2006, aims at ensuring equivalent living conditions for people with disabilities. Provision of help with integration is intended to further the participation in social life of people with disabilities.

VIENNA

» **The Act on Combating Discrimination**

(Gesetz zur Bekämpfung von Diskriminierung / Wiener Antidiskriminierungsgesetz), LGBL No. 35/2004 as amended by LGBL No. 13/2008 as amended by LGBL No. 44/2010, prohibits discrimination on grounds of ethnicity, religion, beliefs, disability, age, sexual orientation, sexual identity and gender, and in particular on grounds of pregnancy and parenthood. It applies to social affairs and matters of health, education, access to and supply of goods and services as well as access to self-employed gainful activity, insofar as these matters fall within the regulating competence of the federal state.

» **The Civil Service Code**

(Dienstordnung), LGBL No. 56/1994 as amended by LGBL No. 36/2004 (Anti-Discrimination Amendment) as amended by

LGBL. No. 42/2006 (detailed regulations with respect to disabilities) as amended by LGBL. No. 5/2008 as amended by LGBL. No. 2/2010: Within the framework of their official capacity, civil servants are prohibited from discriminating against other persons on grounds of “race“, ethnic origin, religion, beliefs, disability, age, sexual orientation and gender (unless the Vienna Equal Treatment Act applies); in particular, civil servants are prohibited from discriminating against anyone in the context of an employment relationship with the municipal government of Vienna. Any unfavourable treatment of a woman in connection with her pregnancy or motherhood is also deemed to be discrimination.

- » The **Code for Employees under Special Contract** (Vertragsbedienstetenordnung) LGBL. No. 50/1995 as amended by LGBL. No. 36/2004 (Anti-Discrimination Amendment) as amended by LGBL. No. 42/2006 (detailed regulations with respect to disabilities) as amended by LGBL. No. 5/2008 as amended by LGBL. No. 2/2010, contains regulations congruent with those of the Civil Service Code and applies to employees under special contract.
- » The **Vienna Equal Treatment Act** (Wiener Gleichbehandlungsgesetz), LGBL. No. 18/1996 as amended by LGBL. No. 49/2005, contains prohibitions of gender-based discrimination for employees of the municipal government of Vienna.
- » The **Vienna Equal Treatment Act for Agriculture and Forestry** (Wiener land- und forstwirtschaftliches Gleichbehandlungsgesetz), LGBL. No. 25/1980 as amended by LGBL. No. 45/2006, prohibits discrimination in agricultural work on grounds of gender, ethnicity, religion or beliefs, disability, age or sexual orientation.

EU DIRECTIVES

Below you will find the relevant EU directives dealing with equal treatment and equal opportunities:

- » **Directive 2006/54/EC** of the European Parliament and of the Council 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 (“**New Version of the Equal Treatment Directive 76/207/EEC**“)
- » **Council Directive 2004/113/EC** of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (“**Extended Equal Treatment Directive**“)
- » **Directive 2002/73/EC** of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
- » **Directive 2002/22/EC** of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (“**Universal Service Directive**“)
- » **Council Directive 2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (“**Anti-Racism Directive**“)
The Directive forbids discrimination on grounds of **racial** and **ethnic origin**. It applies to **occupation** and **employment, social protection, social benefits, education** and **access** to and **supply** of **goods** and **services**, including **housing**.

- » **Council Directive 2000/78/EC** of 27 November 2000 establishing a general framework for the implementation of equal treatment in employment and occupation (“**Equal Treatment Framework Directive**“)
The Directive forbids discrimination on grounds of **religion or belief, disability, age** or **sexual orientation**. It applies to **occupation** and **employment**.
- » **Council Directive 97/80/EC** of 15 December 1997 on the burden of proof in cases of discrimination based on sex (“**Burden of Proof Directive**“)
- » **Council Directive 96/97/EC** of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes (“**Directive Amending the Occupational Pension Directive**“)
- » **Council Directive 96/34/EC** of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC (“**Parental Leave Directive**“)
- » **Council Directive 92/85/EEC** of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers (“**Maternity Protection Directive**“)
- » **Council Directive 86/613/EEC** of 11 December 1986 on the application of the principle of equal treatment for men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (“**Equal Treatment Directive – Self-Employed Workers**“)

- » **Council Directive 86/378/EEC** of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (“**Occupational Pension Directive**“)
- » **Council Directive 79/7/EEC** of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (“**Equal Treatment Directive - Social Security**“)

EUROPEAN COURT OF JUSTICE: A SELECTION OF CASES

Case C-144/04

Werner Mangold v Rüdiger Helm

Judgment of the Court (Grand Chamber) of 22 November 2005

Directive 1999/70/EC - Clauses 2, 5 and 8 of the Framework Agreement on fixed-term work - Directive

2000/78/EC - Article 6 - Equal treatment as regards employment and occupation - **Age discrimination**

Case C-411/05

Félix Palacios de la Villa v Cortefiel Servicios SA

16 October 2007

Directive 2000/78/EC - Equal treatment in employment and occupation - Scope - Collective agreement providing for automatic termination of employment relationship where a worker has reached 65 years of age and is entitled to a retirement pension - **Age discrimination** - Justification

Case C-388/07

The Queen, on the application of The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform
5 March 2009
Directive 2000/78/EC - Equal treatment in employment and occupation - **Age discrimination** - Dismissal by reason of retirement - Justification

Case C-88/08

David Hütter v Technische Universität Graz
18 June 2009
Directive 2000/78/EC - Equal treatment in employment and occupation - **Age discrimination** - Determining the pay of contractual employees of the State - Exclusion of professional experience acquired before the age of 18

Case C-341/08

Domnica Petersen v Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe
12 January 2010
Directive 2000/78/EC - Articles 2(5) and 6(1) - **Prohibition of discrimination on grounds of age** - Provision of national law setting a maximum age of 68 for practice as a panel dentist - Aim pursued - Measure necessary for the protection of health - Consistency - Appropriateness of the measure

Case C-229/08

Colin Wolf v Stadt Frankfurt am Main

12 January 2010

Directive 2008/78/EC - Article 4(1) - **Prohibition of discrimination on grounds of age** - National provision setting a maximum age of 30 years for the recruitment of officials to posts in the fire service - Aim pursued - Genuine and determining occupational requirement

Case C-555/07

Seda Küçükdeveci v Swedex GmbH & Co. KG

19 January 2010

Principle of **non-discrimination on grounds of age** - Directive 2000/78/EC - National legislation on dismissal not taking into account the period of employment completed before the employee reaches the age of 25 for calculating the notice period - Justification for the measure - National legislation contrary to the directive - Role of the national court

Case C-356/09

Pensionsversicherungsanstalt v Christine Kleist

18 November 2010

Social policy - **Equal treatment of men and women in matters of employment and occupation** - Directive 76/207/EEC - Article 3(1)(c) - National rules facilitating the dismissal of workers who have acquired the right to draw their retirement pension - Objective of promoting employment of younger persons - National rules setting the age conferring entitlement to a retirement pension at 60 years for women and 65 years for men

Case C-13/05

Sonia Chacón Navas v Eurest Colectividades SA

11 July 2006

Directive 2000/78/EC - Equal treatment in employment and occupation - Concept of **disability**

Case C-303/06

S. Coleman v Attridge Law and Steve Law

17 July 2008

Social policy - Directive 2000/78/EC - Equal treatment in employment and occupation - Articles 1, 2(1), (2)(a) and (3) and 3(1) (c) - Direct discrimination on grounds of disability - **Harassment related to disability** - Dismissal of an employee who is not himself disabled but whose child is disabled - Included - Burden of proof

Case C-54/07

Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV

10 July 2008

Directive 2000/43/EC - Discriminatory criteria for selecting staff - **Burden of proof – Penalties**

Case C-236/09

Association Belge des Consommateurs Test-Achats ASBL and Others v Yann van Vugt, Charles Basselier v Conseil des ministres

1 March 2011

Reference for a preliminary ruling - Fundamental rights - Combating discrimination - Equal treatment for men and women - **Access to and supply of goods and services** - Insurance premiums and benefits - Actuarial factors - Sex as a factor in the assessment of insurance risks - Private life assurance contracts - Directive 2004/113/EC - Article 5(2) - Derogation not subject to any temporal limitation - Charter of Fundamental Rights of the European Union - Articles 21 and 23 - Invalidity



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