

L.N. 338 of 2007

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

**Equal Treatment in Employment (Amendment) (No. 2)
Regulations, 2007**

IN exercise of the powers conferred by articles 31 and 48 (2) of the Employment and Industrial Relations Act, the Minister of Education, Youth and Employment has made the following regulations –

1. The title of these regulations is the Equal Treatment in Employment (Amendment) (No. 2) Regulations, 2007 and they shall be read and construed as one with the Equal Treatment in Employment Regulations, 2004, hereinafter referred to as “the principal regulations”. Title.
L.N. 461 of 2004.

2. Regulation 1 of the principal regulations shall be amended as follows: Amends regulation
1 of the principal
regulations.

(a) for sub-regulation (2) thereof there shall be substituted the following:

“(2) These regulations give effect to the relevant provisions of Council Directives 76/207/EEC, 2000/78/EC, 2000/43/EC, 2002/73/EC and 2006/54/EC.”; and

(b) in sub-regulation (3), after the word “age,” there shall be inserted the word “sex,”.

3. Regulation 2 of the principal regulations shall be amended as follows: Amends regulation
2 of the principal
regulations.

(a) in the definition “discriminatory treatment” the words “and includes harassment” shall be replaced by the following:

“and includes:

“(a) harassment and sexual harassment, as well as any less favourable treatment based on a person’s rejection of or submission to such conduct;

(b) instruction to discriminate against persons on grounds of sex;

(c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC”; and

(b) immediately after the definition “employment agency” there shall be inserted the following new definition:

“ “pay” means the ordinary basic salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his or her employment from his or her employer;”.

Amends regulation 3 of the principal regulations.

4. Regulation 3 of the principal regulations shall be amended as follows:

L.N. 439 of 2003.

(a) in sub-regulation (1), after the word “age”, there shall be inserted the words “sex, including discriminatory treatment related to pregnancy or maternity leave as referred to in the Protection of Maternity (Employment) Regulations, 2003,”;

(b) in sub-regulation (2)(b), after the word “age”, there shall be inserted the word “sex,”;

(c) in sub-regulation (3)(a), the words “so subjected, or” shall be substituted with the words “so subjected, and”;

(d) in sub-regulation (3), for the words “so subjected; and for the purposes of these regulations, harassment shall be deemed to be a form of discriminatory treatment.”, there shall be substituted the words “so subjected.”; and

(e) immediately after sub-regulation (4) a new sub-regulation shall be inserted as follows:

“(5) No person shall sexually harass another person by subjecting him to any form of unwanted verbal, non-verbal or physical conduct or request of a sexual nature, when such conduct or request takes place with the purpose, or which has the effect of violating the dignity of the person who is so subjected, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected.”.

Adds new regulation 3A to the principal regulations.

5. Immediately after regulation 3 of the principal regulations, there shall be inserted a new regulation as follows:

“Prohibition
of
discrimination
on grounds
of sex.

3A. (1) It shall be the duty of the employer to ensure that for the same work or for work to which equal value is attributed, there shall be no direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

(2) The employer shall ensure, in particular, that where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.”.

6. Regulation 4 of the principal regulations shall be amended as follows: Amends regulation 4 of the principal regulations.

(a) in sub-regulation (1) the words “any of the grounds mentioned in regulation 1(3)” shall be substituted with the words “grounds of religion or religious belief, disability, age, sexual orientation, and racial or ethnic origin”; and

(b) immediately after sub-regulation (3) there shall be inserted a new sub-regulation as follows:

“(4) With regards to access to employment, including the training leading thereto, a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate.”.

7. Regulation 6 of the principal regulations shall be amended as follows: Amends regulation 6 of principal regulations.

(a) in sub-regulation (1) thereof, the words “any of the grounds referred to in regulation 1(3)” shall be substituted with the words “grounds of religion or religious belief, disability, age, sexual orientation, and racial or ethnic origin”; and

(b) immediately after sub-regulation (2) there shall be inserted a new sub-regulation as follows:

“(3) Nothing in these regulations shall render unlawful any act done in connection with maintaining or adopting measures providing for specific advantages in order to make

it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers with a view to ensuring full equality in practice between men and women in working life.”.

Amends regulation 10 of the principal regulations.

8. In regulation 10 of the principal regulations, immediately after sub-regulation (3) there shall be inserted a new sub-regulation as follows:

“(4) Sub-regulation (3) hereof shall, insofar as discrimination based on sex is concerned, also apply to situations covered by the Protection of Maternity (Employment) Regulations, 2003, the Parental Leave Entitlement Regulations, 2003 and the Urgent Family Leave Regulations, 2003.”.

L.N. 439 of 2003.
L.N. 225 of 2003.
L.N. 296 of 2003.

Adds new regulation 12A to the principal regulations.

9. Immediately after regulation 12 of the principal regulations, there shall be inserted a new regulation 12A as follows:

“Prevention of discrimination on grounds of sex. 12A: It shall be the duty of the employer to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.”.

Amends regulation 13 of the principal regulations.

10. In regulation 13 of the principal regulations, immediately after the words “treatment in” there shall be inserted the words “any law,”.

Adds new regulation 15 to the principal regulations.

11. Immediately after regulation 14 of the principal regulations, there shall be inserted a new regulation 15 as follows:

“Link to other laws. 15. These regulations shall be without prejudice to the Protection of Maternity (Employment) Regulation, and by Parental Leave Entitlement Regulations, 2003 and the Urgent Family Leave Regulations, 2003.”.

L.N. 439 of 2003.
L.N. 225 of 2003.
L.N. 296 of 2003.