

L.N. 461 of 2004

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002

(ACT NO. XXII OF 2002)

Equal Treatment in Employment Regulations, 2004

IN exercise of the powers conferred by articles 31 and 48(2) of the Employment and Industrial Relations Act, 2002, the Minister of Education, Youth and Employment has made the following regulations:-

1. (1) The title of these regulations is the Equal Treatment in Employment Regulations, 2004. Title and Scope

(2) These regulations give effect to the relevant provisions of Council Directive 2000/78/EC and 2000/43/EC.

(3) The purpose of these regulations is to put into effect the principle of equal treatment in relation to employment by laying down minimum requirements to combat discriminatory treatment on the grounds of religion or religious belief, disability, age, sexual orientation, and racial or ethnic origin.

(4) These regulations shall be applicable to all persons in relation to: -

(a) conditions for access to employment, including the advertising of opportunities for employment, selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotions;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and conditions of employment, including remuneration and dismissals;

(d) membership of, and involvement in, any organization of employees and employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations.

(5) These regulations shall not apply to:

(a) any differences of treatment based on nationality and are without prejudice to laws and conditions relating to the entry into and residence of third country nationals and stateless persons in Malta and to any treatment which arises from the legal status of these individuals concerned;

(b) the armed forces of Malta in so far as discriminatory treatment on the grounds of disability and age is concerned.

(6) These regulations shall be without prejudice to:

(a) any law necessary for public security, for maintaining public order, for the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others;

(b) the introduction and implementation of provisions in collective agreements or any other agreement entered into between employers and employees, which lay down anti-discrimination rules in the areas referred to in sub-regulation (3) of this regulation which respect the minimum requirements in these regulations.

Definitions

2. (1) For the purposes of these regulations: -

‘the Act’ means the Employment and Industrial Relations Act, 2002;

‘benefit’ includes facilities and services;

‘disability’ shall have the same meaning as assigned to it by article 2 of the Equal Opportunities (Persons with Disabilities) Act, 2000;

‘discriminatory treatment’ means any distinction, exclusion, restriction or difference in treatment, whether direct or indirect, on any of the grounds mentioned in regulation 1(3) which is not justifiable in a democratic society and includes harassment;

‘employment’ means employment under a contract of service and includes an apprentice as defined by article 29 of the Employment and Training Services Act as well as the process of recruitment or training of any person with a view to engagement in employment, and in regard to a person already in employment, includes also a promotion to a higher grade or engagement in a different class of employment or appointment to an office or post;

‘employment agency’ means a person who, or an association of persons that, whether for profit or otherwise, provides services related to the purpose of finding employment for workers or for supplying workers to employers, and includes guidance on careers and other services related to employment but excludes educational establishments;

‘principle of equal treatment’ shall mean the absence of direct or indirect discriminatory treatment on any of the grounds referred to in regulation 1(3).

(2) Subject to the provisions of sub regulation 1 of this regulation, terms and expressions used in these regulations shall, unless the context requires otherwise, have the meaning assigned to them by the Act.

3. (1) It shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly, on the grounds of a particular religion or religious belief, disability, age, sexual orientation, or racial or ethnic origin in any situation referred to in regulation 1(4).

Concept of
discriminatory
treatment.

(2) For the purpose of these regulations:

(a) direct discriminatory treatment shall be taken to occur where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation on any of the grounds referred to in sub-regulation (1) of this regulation;

(b) indirect discriminatory treatment shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular race or ethnic origin or having a particular religion or religious belief, disability, age, or sexual orientation at a disadvantage when compared with other persons unless: -

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; or

(ii) with regards to persons with a particular disability, the employer or any person or organization to whom these regulations apply, is obliged, under any law, to take appropriate measures in line with the principles contained in regulation 6 so as to eliminate disadvantages entailed by such provision, criterion or practice.

(3) No person shall harass another person by subjecting him to unwanted conduct or requests relating to any of the grounds referred to in sub-regulation(1) of this regulation, when such conduct or request takes place with the purpose, or which has the effect of:

(a) violating the dignity of the person who is so subjected, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected;

and for the purposes of these regulations, harassment shall be deemed to be a form of discriminatory treatment.

(4) For the purposes of these regulations, employers or any persons or organisation to whom these regulations apply shall also be deemed to have discriminated against a person if they:

(a) instruct any person to discriminate against another person;

(b) neglect their obligation to suppress any form of harassment at their workplace or within their organisation, as the case may be.

Difference in treatment on occupational requirements.

4. (1) Notwithstanding regulation 3(1) and 3(2), any difference of treatment based on a characteristic related to any of the grounds mentioned in regulation 1(3) shall not constitute discriminatory treatment 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 the objective is legitimate and the requirement is proportionate.

(2) When an employer has an ethos based on religion or religious belief, and having regard to that ethos, the nature of the employment or the context in which it is carried out constitute a sufficiently genuine and legitimate justification for the employer to require that such work is carried out by a person with a particular religion or religious belief, any difference of treatment based on a person's religion or religious belief shall not constitute discriminatory treatment, provided that it is proportionate to apply that requirement in that particular case.

(3) Employers whose ethos is based on religion or religious belief, shall have the right to require individuals working for them to act in good faith and with loyalty to the organisation's ethos, provided that the provisions in these regulations are complied with.

5. (1) Notwithstanding regulation 3(1) and (2), difference of treatment on the ground of age shall not constitute discriminatory treatment if: - Difference of treatment on grounds of age.

(a) such differences are objectively and reasonably justified by a legitimate aim, including a legitimate employment policy, labour market and vocational training objectives; and

(b) if the means of achieving that aim are appropriate and necessary.

(2) Non-discriminatory differences of treatment referred to in sub-regulation (1) of this regulation may include: -

(a) the setting of special conditions on access to employment and vocational training, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

6. (1) Nothing in these regulations shall render unlawful any act done in or in connection with: Positive action.

(a) affording persons of a particular religion or religious belief, disability, age, sexual orientation, or racial or ethnic origin, access to benefits relating to training which would help prepare them for a particular work; or

(b) encouraging such persons referred to in sub-regulation (1) (a) of this regulation to take advantage of opportunities for doing a particular work,

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to any of the grounds referred to in regulation 1(3).

(2) With regards to disabled persons, the principle of equal treatment shall be without prejudice to measures taken at the workplace aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

Employees' and
employers'
organizations.

7. Without prejudice to any relevant provisions of the Act, it shall be unlawful for a registered organization under the Act, or for the governing body or any officer or official representative of such organization:

(a) to subject a person to discriminatory treatment:

(i) by refusing or failing to accept an application for membership, or

(ii) in the terms or conditions on which such organization is prepared to accept applications for membership;

(b) to subject a member to discriminatory treatment:

(i) by denying access to any benefit provided by the organization or limiting access to such benefit, or

(ii) by depriving membership of the organization or varying the terms of such membership, or

(iii) by subjecting him to any other detriment.

Employment
agencies.

8. (1) It shall be unlawful for an employment agency to subject a person to discriminatory treatment:-

(a) by refusing to provide any of its services; or

(b) in the terms or conditions it offers to provide any of its services; or

(c) in the manner in which it provides any of its services.

(2) For the purposes of this regulation, an employment agency shall not be deemed to effect discriminatory treatment against a person if, taking into account training, qualifications and experience relevant to the work sought, and all other relevant factors that it finds reasonable to take into account, such person would be unable to carry out the inherent requirements of the work sought.

Request of report

9. (1) Where an allegation is made that some form of discriminatory treatment has occurred, the person making the allegation, or the Director, if either deems fit, shall have the right to send a written notification to the employer or any person or organisation to whom these regulations apply, hereafter referred to as the respondent, of the alleged discriminatory treatment received, giving any relevant details

and requesting a reply. On receipt of such notification, the respondent shall submit a written reply within ten working days of the date of receipt of such notification, giving the respondent's version of events and any grounds for disputing the allegations, as well an explanation of any relevant procedures adopted by the respondent to prevent discriminatory treatment.

(2) Any correspondence referred to in sub-regulation (1) of this regulation shall be admissible in proceedings brought before the Industrial Tribunal or other Court, and if it appears to the Tribunal or Court that the respondent deliberately, and without reasonable excuse, omitted to reply within ten working days of the date of receipt of such notification or that his reply was evasive or equivocal, the Tribunal or Court may draw any inference from that fact that it considers just and equitable to draw, including an inference that he committed an unlawful act.

(3) The provisions in sub-regulation (1) of this regulation requiring the respondent to submit a reply shall not apply if, on the date that the request was made, proceedings had already been initiated on the matter in front of the Industrial Tribunal or other Court.

10. (1) A person claiming to have been subjected to discriminatory treatment in relation to his employment in terms of these regulations may, within four months of the alleged breach, refer the matter to the Industrial Tribunal for redress, as provided for by article 30 of the Act.

Industrial Tribunal
and
other civil
proceedings

(2) Without prejudice to sub-regulation (1) of this regulation, a person who alleges that any other person has committed in his or her regard any unlawful act under these regulations shall, within four months of the alleged breach, have a right of action before the competent Court of civil jurisdiction requesting the Court to order the defendant to desist from such unlawful act and, where applicable, to order the payment of compensation for such damage suffered through such unlawful act.

(3) In any proceedings mentioned in sub-regulations (1) and (2) of this regulation, it shall be sufficient for the plaintiff to prove that he or she has suffered discriminatory treatment and it shall become incumbent on the defendant to prove that such treatment was justified in accordance with these regulations, in the absence of which, the Tribunal or Court shall uphold the complaint of the plaintiff.

11. Nothing shall prevent any association, organization or other legal entity, having a legitimate interest in ensuring that these regulations are complied with, to engage itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure provided for the enforcement of obligations under these regulations.

Defence of rights.

Dissemination of
information.

12. It shall be the duty of the employer or any person or organisation to whom these regulations apply, to use appropriate means to bring the provisions of these regulations as well as of any measure taken to further the aim of these regulations to the attention of his employees, or of the organisation's members, as the case may be, or to any other persons who may be affected by the actions of the employer or the organisation concerned.

Provisions in
contracts,
agreements or other
rules.

13. Any provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings, or rules governing any registered organisation in terms of the Act, shall, on entry into force of these regulations, be considered null and void.

Offences.

14. Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding one thousand liri (Lm 1000) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.