



Your **EMPLOYMENT** **EQUALITY** Rights Explained

Guide to the **Employment Equality Acts 1998–2008**

PROGRESS

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<http://ec.europa.eu/social/main.jsp?langId=en&catId=327>

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Employment Equality Acts 1998–2008

This booklet sets out the main elements of the Employment Equality Act 1998. The Act was amended by the Equality Act 2004, Section 27 of the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007, Sections 82 and 83 of the Civil Law (Miscellaneous Provisions) Act 2008. The Acts are now known as The Employment Equality Acts 1998–2008.

Copies of the legislation are available from the Government Publications Sales Office, Molesworth Street, Dublin 2 (Tel: 01 647 6000) or on www.oireachtas.ie

They are also available on www.equality.ie

The Equality Act 2004 was enacted to implement the provisions of three European Council Directives.¹

These Directives take precedence over Irish law which should be read and interpreted having regard to the provisions of the Directives.

*This booklet is intended for information purposes only.
This is not a legal document.*

¹ 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 [2002] OJ L 269/15; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

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1. Introduction

The Employment Equality Acts 1998–2008:

- promote equality;
- prohibit discrimination (with some exemptions) across nine grounds;
- prohibit sexual harassment and harassment;
- prohibit victimisation;
- require appropriate measures for people with disabilities in relation to access, participation and training in employment;
- allow positive action measures to ensure full equality in practice across the nine grounds.

1.1 Scope

Aspects of employment that are covered include:

- advertising;
- equal pay;
- access to employment;
- vocational training and work experience;
- terms and conditions of employment;
- promotion or re-grading;
- classification of posts;
- dismissal;
- collective agreements.

The Acts apply to:

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

The Acts also extend to:

- self-employed contractors;
- partners in partnerships;
- state and local authority office-holders.

1.2 Grounds

The legislation prohibits discrimination on the following nine grounds:

- **The gender ground:** A man, a woman or a transsexual² person (specific protection is provided for pregnant employees and in relation to maternity leave);
- **The marital status ground:** Single, married, separated, divorced or widowed;
- **The family status ground:** A parent of a person under 18 years or the resident primary carer or a parent of a person with a disability;
- **The sexual orientation ground:** Gay, lesbian, bisexual or heterosexual;
- **The religion ground:** Different religious belief, background, outlook or none;
- **The age ground:** This applies to all ages above the maximum age at which a person is statutorily obliged to attend school;

² The European Court of Justice in *P v S and Cornwall County Council* held that discrimination against a transsexual constituted discrimination on the grounds of sex.

- **The race ground:** A particular race, skin colour, nationality or ethnic origin;
- **The Traveller community ground:** People who are commonly called Travellers, who are identified both by Travellers and others as people with a shared history, culture and traditions, identified historically as a nomadic way of life on the island of Ireland;
- **The disability ground:** This is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions.

How can disability be described?

Disability means:

- (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body;
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness;
- (c) the malfunction, malformation or disfigurement of a part of a person's body;
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction; or
- (e) a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

1.3 Discrimination

Discrimination has a specific meaning in the Acts.

There are different types of discrimination covered by the Acts including indirect discrimination, discrimination by imputation and discrimination by association.

- **Direct discrimination** is defined as the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation on any of the nine grounds which:
 - exists;
 - existed;
 - may exist in the future;
 - or is **imputed** to the person concerned.

An instruction to discriminate is also prohibited.

- **Indirect discrimination** happens where there is less favourable treatment in effect or by impact. It happens where people are, for example, refused employment or training not explicitly on account of a discriminatory reason but because of a provision, practice or requirement which they find hard to satisfy.

If the provision, practice or requirement puts people who belong to one of the grounds covered by the Acts at a particular disadvantage, then the employer will have indirectly discriminated, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

- **Discrimination by Association** happens where a person associated with another person (belonging to a specified ground) is treated less favourably because of that association.

1.4 Advertising

It is prohibited to publish, display or cause to be published or displayed an advertisement which relates to employment and which indicates an intention to discriminate or might be reasonably understood to indicate such an intention.

1.5 Equal pay

The Act provides for equal pay for like work. Like work is defined as work that is the same, similar or work of equal value. It is a term of everyone's contract of employment that there is an entitlement to equal pay.

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



1.6 Sexual Harassment and Harassment

Sexual harassment and harassment of an employee (including agency workers or vocational trainees) is prohibited in the workplace or in the course of employment by

- (a) another employee;
- (b) the employer;
- (c) clients, customers or other business contacts of an employer.

These include any other person with whom the employer might reasonably expect the victim to come into contact and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to control it.

The Acts prohibit the victim being treated differently by reason of rejecting or accepting the harassment (or where it could reasonably be anticipated that he or she would be so treated).

What is harassment and sexual harassment?

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

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

In both cases it is conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. In both cases the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, emails, text messages, pictures or other material.

Sexual harassment or harassment of an employee is discrimination by the employer. It is a defence for an employer to

- prove that the employer took reasonably practicable steps to prevent the person harassing or sexually harassing the victim; or
- prevent the employee (where relevant) from being treated differently in the workplace or in the course of employment (and to reverse its effects if it has occurred).

The Equality Authority has published a Code of Practice on Sexual Harassment and Harassment at Work, which has been approved by the Minister (S.I. No. 78 of 2002). This is available from the Equality Authority or on www.equality.ie

1.7 Disability – Reasonable Accommodation

An employer is obliged to take appropriate measures to enable a person who has a disability

- to have access to employment;
- to participate or advance in employment; or
- to undertake training unless the measures would impose a disproportionate burden on the employer.

1.8 What are Appropriate Measures?

They are effective and practical measures to adapt the employer's place of business including:

- the adaptation of premises and equipment;
- patterns of working time;
- distribution of tasks; or
- the provision of training or integration resources.

The employer is not obliged to provide any treatment, facility or thing that the person might ordinarily or reasonably provide for himself or herself.

1.9 What is Disproportionate Burden?

In determining whether the measures would impose a disproportionate burden, account is taken of:

- (a) the financial and other costs entailed;
- (b) the scale and financial resources of the employer's business; and
- (c) the possibility of obtaining public funding or other assistance.

1.10 Positive Action

Employers can take steps with a view to ensuring full equality in practice between employees on all of the nine discriminatory grounds.



1.11 Victimisation

It is unlawful for an employer to penalise an employee for taking action around the enforcement of the Employment Equality Acts 1998–2008 or the Equal Status Acts 2000–2008. Victimisation occurs where the dismissal or other adverse treatment of an employee is a reaction by the employer to:

- (a) a complaint of discrimination made by the employee to the employer;
- (b) any proceedings by a complainant;
- (c) an employee having represented or otherwise supported a complainant;
- (d) the work of an employee having been compared with that of another employee, for any of the purposes of these Acts, or any enactment repealed by these Acts;
- (e) an employee having been witness in any proceedings under these Acts or any such repealed enactment;
- (f) an employee having opposed by lawful means an act which is unlawful under these Acts or any such repealed enactment; or
- (g) an employee having given notice or an intention to take any of the actions mentioned in the preceding paragraphs.

1.12 Vicarious Liability

Employers are liable for anything done by an employee in the course of his or her employment, unless the employer can prove that he or she took reasonably practicable steps to prevent the discrimination.

2. General Exemptions

All forms of discrimination may not be covered by the Acts. The prohibition on discrimination is subject to a number of general and specific exemptions. Some of the exemptions apply to

- particular types of employment;
- to all kinds of employment;
- to particular grounds; and
- to provisions in other legislation.

The full number and extent of the exemptions go beyond the scope of this booklet.

2.1 Exemptions in relation to All Types of Employment

(a) Capacity and competence

An employer is not required to employ someone who will not undertake the duties or is not fully competent or capable of doing the job.

However, a person with a disability is fully competent and capable of undertaking any duties, if the person would be so fully competent and capable on reasonable accommodation being provided by the employer.

(b) Educational, technical or professional qualifications

The Acts allow requirements in relation to the holding of specified educational, technical or professional qualifications which are generally accepted qualifications in the State for the post in question.

The Acts allow requirements in relation to the production and evaluation of information about any qualification other than such a specified qualification.

(c) Benefits in respect of an employee's family

The Acts allow employers to provide certain benefits in respect of employee's families and family events and in relation to the provision of childcare or other care provision.

2.2 Exemptions in relation to Occupational Requirements/Particular Types of Employment

(a) In relation to officers or servants of the State. This includes the Garda Síochána and the Defence Forces and officers or servants of a local authority, a harbour authority, a health board or a Vocational Education Committee.

The application of any provision in relation to residence, citizenship and/or proficiency in the Irish language is allowed.

(b) In relation to teachers in primary and post primary schools

The application of any provision in relation to proficiency in the Irish language is allowed.

(c) In relation to the Defence Forces

There is an exemption on the age and disability grounds.

(d) In relation to employment in another person's home for the provision of personal services

There is an exemption in relation to access to such employment (this exemption does not extend to other areas such as conditions of employment etc).

(e) In relation to employment in the Garda Síochána or the Prison Service

There is an exemption on the gender ground in relation to the assignment to a particular post based on issues of privacy or decency, the control of violent individuals or crowds and the rescue of hostages.

There are exemptions in relation to the application of different height criteria for men and women and to the maintenance of a sufficient number of either men or women in the Garda Síochána or Prison Service.

2.3 Ground-based Exemptions

(a) All grounds – Occupational requirement

Difference in treatment is allowed which is based on a characteristic related to any of the nine grounds in respect of access to employment, but only to the extent that the characteristic constitutes a genuine and determining occupational requirement and the objective is legitimate and the requirement proportionate.

(b) The Gender ground and the Marital Status ground – pregnancy, maternity and breastfeeding

Treatment which confers benefits on women in connection with pregnancy and maternity including breastfeeding is allowed.

Anything done in compliance with any provisions of the Maternity Protection and Adoptive Leave legislation is not discrimination on the marital status ground.

(c) The Age ground

An employer may set a minimum age not exceeding eighteen years in recruitment and may offer a fixed term contract to a person over the compulsory retirement age in that employment.

Exemptions are provided in relation to age-based criteria for occupational benefits schemes and entitlement to benefits and severance pay provided it does not constitute discrimination on the gender ground.

Exemptions are provided in relation to terms in collective agreements to the effect that where length of service would otherwise be regarded as equal, seniority may be determined by reference to relative ages of employees.

An employer can set different ages for the retirement of employees.

Anything done in compliance with the Protection of Young Persons (Employment) Act 1996 or the National Minimum Wage Act 2000 is not discrimination on the age ground. A number of other sections of various Acts are also exempted.



(d) The Age ground and the Race ground

Different treatment is allowed by vocational or training bodies in relation to fees and the allocation of places to people who are nationals of an EU member State.

Different treatment is allowed by vocational or training bodies in relation to assistance to particular categories of persons by way of sponsorships, scholarships, bursaries but only to the extent that the assistance is reasonably justified having regard to traditional and historical considerations.

Different treatment is allowed by universities or other third level institutions in relation to allocation of places for mature students.

(e) The Religion ground

Certain religious, educational and medical institutions may give more favourable treatment on the religion ground to an employee or prospective employee, where it is reasonable to do so, in order to maintain the religious ethos of the institution.

Certain religious, educational and medical institutions may take action, which is reasonably necessary to prevent an employee, or a prospective employee, from undermining the religious ethos of the institution.

Certain religious, educational and medical institutions may reserve places on specified vocational training courses and schools of nursing, in such numbers (as seem necessary to the relevant Minister), to ensure the availability of nurses and primary teachers.

(f) The Race ground

There is an exemption for any action taken in accordance with the Employment Permits Act 2003.

(g) The Disability ground

There is an exemption in relation to the provision of a particular rate of remuneration for work of a particular description where, due to disability, the amount of work done during a particular period is less than the amount of similar work done or, which could reasonably be expected to be done over that period, by an employee without a disability.

2.4 State Bodies

There are two State bodies which support the implementation of equality legislation. The Equality Authority acts as a 'prosecutor' in cases and promotes equality compliance. The Equality Tribunal adjudicates or mediates equality cases. These are two separate and distinct bodies whose services are set as follows.



3. Making a Claim

The Equality Tribunal, the Labour Court and the Circuit Court all have roles in relation to claims of discrimination. All claims (except for gender discrimination claims) must be referred in the first instance to the Equality Tribunal. Gender discrimination claims have the option of going to the Circuit Court. The Equality Tribunal is the quasi-judicial body established to investigate, hear and decide on claims of discrimination.

3.1 Step 1: Deciding Whether to Refer a Claim

Right to Look for Information

Any person who believes that they have experienced discrimination may write to the person who may have discriminated against them. The person may ask for certain information which will assist in deciding whether to refer a claim. Employers are not obliged to reply, but an Equality Officer may draw such inferences as seem appropriate from an employer failing to reply or supplying false, misleading or inadequate information.

An employer is not obliged to disclose confidential information. Information should be requested using a standard form of questionnaire and reply (form EE 2 and EE 3 available from the Equality Tribunal, 3 Clonmel Street, Dublin 2, Tel: 01 477 4100 or www.equalitytribunal.ie).

Time Limits

A complaint of discrimination or harassment must be made within the 6-month time limit from the last act of discrimination. The 6-month time limit can be extended up to 12 months by the Director of the Equality Tribunal 'for reasonable cause'.

People with Intellectual or Psychological Difficulties

A parent, guardian or other person acting in place of a parent, can be the complainant, where a person is unable, by reason of an intellectual or psychological disability, to pursue a claim effectively.



3.2 Step 2: At the Equality Tribunal

Mediation

The Director of the Equality Tribunal can at any stage with the consent of both parties appoint an Equality Mediation Officer. If a settlement is reached through mediation then the terms are legally enforceable.

Investigation

If either party does object to mediation or if the process of mediation is unsuccessful, the case will be referred to an Equality Officer for investigation. Investigations are held in private (people can represent themselves or be represented by a trade union or other representative). The Equality Officer will issue a determination which is enforceable through the Circuit Court.

Dismissal of a Claim

Cases can be struck out after a year if the Director of the Equality Tribunal decides they are not being pursued. The Director may dismiss a claim at any stage if of the opinion that

- it has been made in bad faith; or
- is frivolous, vexatious; or
- misconceived; or
- relates to a trivial matter.

Representation and Costs

Complainants may represent themselves or be represented by a lawyer, trade union or other representative. Costs are not awarded. Expenses in respect of travelling and other expenses (except expenses of representatives) can be awarded where a person obstructs or impedes the investigation or appeal.

3.3 Remedies

Where the Equality Officer finds in favour of the complainant, the following orders can be made:

- In equal pay claims, an order for equal pay and arrears in respect of a period not exceeding three years;
- In other cases, an order for equal treatment and compensation for the effects of discrimination of up to a maximum of 2 years pay, or €12,700 where the person was not an employee, can be made. The maximum compensation applies even where there was discrimination on more than one ground. However, separate awards can be made for different forms of discrimination or victimisation;
- An order for reinstatement or re-engagement, with or without an order for compensation;
- An order that a named person or persons take a specific course of action.

There are specific provisions in relation to claims of discrimination by the Civil Service Commissioners, the Local Appointments Commissioners, the Minister for Defence and the Commissioner of the Garda Síochána.

3.4 Gender Claims

In gender discrimination claims which are initiated in the Circuit Court, the Circuit Court, in equal pay claims, may order arrears of pay in respect of 6 years before the date of referral. There is no limit to the amount of compensation that may be ordered by the Circuit Court.

Appeals

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

Enforcement

A final decision of the Director of the Equality Tribunal or the Labour Court may be enforced through the Circuit Court.

Appeal to the High Court on a Point of Law

Where a decision is made by the Director of the Equality Tribunal or a determination is made by the Labour Court on an appeal, either party may appeal to the High Court on a point of law.



Appendix A

A.1 The Equality Authority

The Equality Authority has a broad mandate under the Employment Equality Acts 1998–2008 to

- (i) combat discrimination in employment in the areas covered by the Acts;
- (ii) promote equality of opportunity in employment;
- (iii) provide information on the operation of the Employment Equality Acts 1998–2008;
- (iv) keep the operation of the Employment Equality Acts 1998–2008 under review and make recommendations to the Minister for Community, Equality and Gaeltacht Affairs as appropriate.

A.2 Information and Support

The Equality Authority provides information to the public on the Employment Equality Acts 2000–2008. It has a series of published supports available in a range of formats, including guides to the Acts and training DVDs.

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

- (i) additional information through www.equality.ie;
- (ii) an automated telephone voice message service (LoCall 1890 245 545) which also;
- (iii) refers the caller directly to a Communications Officer who may provide more detailed information on their enquiry;
- (iv) guides to the legislation in various languages and formats.

A.3 Legal Assistance

The Equality Authority may at its discretion, where the case has strategic importance, provide legal assistance to people who wish to bring claims, subject to the criteria set out by the Board of the Equality Authority.

If the Equality Authority does not grant or is unable to offer legal assistance, this does not disqualify the person from taking a case on their own behalf directly to the Equality Tribunal.

A complainant may represent themselves or be represented by a lawyer, trade union or other representative.

A.4 Equality Information

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

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

The Equality Authority
(Dublin Office)
2 Clonmel Street
Dublin 2
Ireland

Times:

Monday to Thursday
Friday

9.15am–5.30pm
9.15am–5.15pm

Contact:

LoCall: 1890 245545

1890 245545

Telephone: +353 0505 24126

+353 01 417 3333

Facsimile: +353 0505 22388

+353 01 417 3331

Text phone: +353 01 417 3385

Email: info@equality.ieWebsite: www.equality.ie***Other booklets available in this series include:***

Guide to the Adoptive Leave Acts 1995–2005

Guide to the Maternity Protection Acts 1994–2004

Guide to the Parental Leave Acts 1998–2006

Guide to the Equal Status Acts 2000–2008

Appendix B

B.1 Useful State Addresses

Equality Tribunal

3 Clonmel Street

Dublin 2

Telephone: 01 477 4100

Fax: 01 477 4141

LoCall: 1890 344 424

Website: www.equalitytribunal.ie

Email: info@equalitytribunal.ie

The Health and Safety Authority

The Metropolitan Building

James Joyce Street

Dublin 1

Telephone: 01 614 7000

Fax: 01 614 7020

LoCall: 1890 289 389

Website: www.hsa.ie

Department of Social Protection

Maternity Benefit Section

McCarter's Road

Ardarvan

Buncrana

Co. Donegal

LoCall: 1890 690 690

Email: maternityben@welfare.ie

National Employment Rights Authority, (NERA)

Headquarters

O'Brien Road

Carlow

Telephone: For callers outside Ireland

+353 59 91 78990

LoCall: 1890 80 80 90

Website: www.employmentrights.ie

Rights Commissioners

Tom Johnson House

Haddington Road

Dublin 4

Telephone: 01 613 6700

Fax: 01 613 6701

LoCall: 1890 220 227

Email: info@lrc.ie

Website: www.lrc.ie

**Department of Community,
Equality & Gaeltacht Affairs**

Equality Division

Bishop's Square

Redmond's Hill

Dublin 2

Telephone: 01 479 0200

LoCall: 1890 555 509

The Equality Authority

Public Information Centre,
Birchgrove House,
Roscrea, Co. Tipperary,
Ireland.

Tel: +353 0505 24126

Fax: +353 0505 22388

Text phone: +353 01 417 3385

Website: www.equality.ie

Dublin Office,
2 Clonmel Street,
Dublin 2,
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+353 01 417 3333

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Email: info@equality.ie

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RIGHTS Rule Book