

New anti-discrimination legislation and a new agency, the Equality Ombudsman



REGERINGSKANSLIET

Government Offices
of Sweden

FACT SHEET

Ministry of Integration and
Gender Equality

January 2009

Work to promote equal rights and opportunities is a priority area for the Government. Effective, comprehensive anti-discrimination legislation is necessary to enable us in Sweden to combat actions that directly or indirectly violate the principle of the equal worth of all people.

On 1 January 2009 the new Discrimination Act (Swedish Code of Statutes 2008:567) enters into force. At the same time a new agency, the Equality Ombudsman, will be established to supervise compliance with the Act.

Seven Acts become one

The new Act replaces the following legislation:

- the Equal Opportunities Act (Swedish Code of Statutes 1991:433),
- the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Religious Faith (Swedish Code of Statutes 1999:130),
- the Prohibition of Discrimination in Working Life on Grounds of Disability Act (Swedish Code of Statutes 1999:132),
- the Prohibition of Discrimination in Working Life on Grounds of Sexual Orientation Act (Swedish Code of Statutes 1999:133),
- the Equal Treatment of Students at Universities Act (Swedish Code of Statutes 2001:1286),
- the Prohibition of Discrimination Act (Swedish Code of Statutes 2003:307),
- the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and School Students (Swedish Code of Statutes 2006:67).

The part of the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and School Students concerning degrading treatment other than discrimination (e.g. bullying that is not related to a particular grounds of discrimination) is to be transferred to the Education Act, where the regulations will be brought together in a special chapter.

Grounds of discrimination

The new Act is to combat discrimination on grounds of:

- sex
- transgender identity or expression
- ethnic origin
- religion or other belief
- disability
- sexual orientation
- age

Alongside the current grounds of discrimination, two new grounds are to be added: age and transgender identity or expression.

‘Age’ means length of life to date. Everyone is included in this grounds of discrimination. It applies to children, young people and older people, for example.

‘Transgender identity or expression’ refers to a person who does not identify herself/himself as a woman or a man, or who expresses belonging to another sex through his or her clothing or in some other way. People who identify or express themselves as transvestites will, for example, be able to invoke the prohibition of discrimination.

The concept of ‘race’ that was previously part of the definition of the ‘ethnic origin’ grounds of discrimination is to be removed. This change does not mean that protection against discrimination on grounds of ethnic origin is weakened.

Areas of society covered

The new Act contains prohibitions of discrimination that apply to:

- working life
- educational activities
- labour market policy activities and employment services not under public contract
- starting or running a business
- professional recognition
- membership of certain organisations
- goods, services and housing
- meetings and public events
- health and medical care
- social services
- social insurance
- unemployment insurance
- financial support for studies
- national military service and civilian service
- public employment

The prohibition of discrimination in the above-mentioned areas of society applies to all grounds of discrimination except age. The prohibition of discrimination on grounds of age applies to working life, educational activities, labour market policy activities and employment services not under public contract, starting or running a business, professional recognition and membership of certain organisations.

The new Act means that, for all grounds of discrimination except age, protection against discrimination is extended to new areas of society such as meetings and public events, national military service and civilian service and public employment. The prohibition of discrimination on grounds of gender and of disability are also extended to apply fully within the areas of health and medical care and social services. Social insurance and related benefit systems and unemployment insurance are also new areas in which discrimination on grounds of disability is prohibited.

Protection against discrimination in working life is to be extended. Discrimination is to be prohibited when a person enquires about work and the prohibition can also be invoked by a person applying for or carrying out a traineeship with an employer or performing work as a temporary or borrowed worker.

Protection against discrimination is to be extended to cover all educational activities.

Compensation for discrimination

A new penalty, compensation for discrimination, is to be introduced for infringements of the Discrimination Act. The aim is to avoid a link to the Tort Liability Act and thereby create better conditions for higher levels of compensation for victims of discrimination.

Compensation for discrimination is designed to both compensate for the violation represented by an infringement and act as a deterrent against discrimination.

Right for special interest organisations to bring an action

The new Act introduces a right for non-profit organisations whose statutes state that they are to look after the interests of their members to bring an action on behalf of an individual. This right to bring an action as a party is to be equivalent to the right currently enjoyed by employees' organisations. In order to bring an action, the non-profit organisation must have an interest in the matter and the financial ability to bring the action and be a suitable representative in all other respects.

Requirement for active measures

Under the new Discrimination Act, the previous provisions on active measures in working life and educational activities will, in principle, continue to apply.

However, there will be changes in the area of working life when it comes to drawing up action plans for equal pay and gender equality plans, and requirements for pay reviews. Plans and pay reviews will be required every three years instead of every year. The exception to the obligation to draw up such plans is to change, and will now apply to employers who had fewer than 25 employees at the end of the last calendar year, rather than employers with fewer than ten employees as previously.

In the area of education, there is now an option to impose sanctions against education providers that do not fulfil their obligation to take active measures. Education providers can be ordered to fulfil these obligations or risk having to pay a fine.

A new agency, the Equality Ombudsman

A new agency, the Equality Ombudsman, is to monitor compliance with the Act. In conjunction with the establishment of the new Ombudsman, the four previous offices of the anti-discrimination ombudsmen will be phased out; these are the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination because of Sexual Orientation..

A new agency, the Board against Discrimination, will be tasked with examining applications for financial penalties and appeals against decisions on financial penalty orders. The two previous agencies, the Equal Opportunities Commission and the former Board against Discrimination, are to be phased out.

The Equality Ombudsman will have access to better tools than the previous anti-discrimination ombudsmen to deal with actors that do not fulfil their obligations under the Discrimination Act.

The Equality Ombudsman can apply to the new Board against Discrimination for a financial penalty to be ordered against employers and education providers that do not fulfil their obligation to take active measures.

The Equality Ombudsman can also order financial penalties against employers, education providers, business operators, etc. who refuse to:

- provide information about circumstances in their activities that are of importance for the supervision exercised by the Ombudsman
- provide information about the qualifications of the person or persons who were, for example, selected for a job interview, appointed to a post or admitted to an educational programme
- give the Ombudsman access to workplaces or other premises where activities are conducted
- attend discussions with the Ombudsman.

Future activities

Active measures

An inquiry chair has been tasked with investigating the effects of the provisions on active measures in anti-discrimination legislation. The remit also includes considering how requirements for active measures can be made clear and linked to effective sanctions, and whether the requirements for active measures should be extended to other grounds of discrimination and areas of society. The inquiry is to deliver its report no later than 31 December 2009.

Reasonable accommodation for people with disabilities
Work is ongoing in the Government Offices to determine whether "denial of reasonable accommodation as regards people with disabilities" could be regulated as a form of discrimination.



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Printed by Grafisk Service, Stockholm, Sweden, January 2009.

Fact sheet produced by the Ministry of Integration and Gender Equality. Article no. 2009.02