EQUAL OPPORTUNITIES

Equal Treatment Legislation in Austria
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.

2009 the Lisbon Treaty came into force. Since then, Article 19 of the TFEU (Treaty on the Functioning of the European Union), is the main legal basis for combatting discrimination.

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. In 2013 the Equal Treatment Directive for Self-Employed was implemented. Additionally, there were some more improvements and simplifications in the procedural law.

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 is intended to help to make the equality rights and the prohibition of discrimination better known. 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. The legislation on equality can also be found at www.ris.bka.gv.at.

Alois Stöger
Federal Minister of Labour, Social Affairs and Consumer Protection
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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.

On July 1, 2004, the prohibition of discrimination on grounds of ethnicity was extended to the area outside work.

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.

Since August 1, 2013, it has been made clear that with regard to self-employment all areas covered by the Equal Treatment Directive for self-employed, such as the establishment, equipment or extension of a business as well as the launching or extension of any other form of self-employment are covered by the law. In addition, further improvements were made in the substantive law and the procedure.

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, 2011 and 2013 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 Sozialministeriumservice (former: Federal Social Welfare Office).
EQUAL TREATMENT ACT – PERSONS NOT TO BE DISCRIMINATED AGAINST

Grounds for discrimination – Characteristics

- **Persons on grounds of gender**
  Any kind of unequal treatment on grounds of gender in particular with reference to the marital status or the fact whether someone has children is prohibited. The term “gender” comprises women, men and transsexual persons.

- **Persons on grounds of ethnicity**
  Any kind of unequal treatment on grounds of ethnicity is prohibited. 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**
  Any kind of unequal treatment on grounds of religion or belief is prohibited. 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**
  Any kind of unequal treatment on grounds of sexual orientation is prohibited. Sexual orientation refers to heterosexuality, homosexuality or bisexuality. The protection concerns in particular lesbian and gay persons.
SCOPES 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.

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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.

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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)
- at the establishment, equipment or extension of a business as well as the launching or extension of any other form of self-employment (e.g. operating grants, business license or its extension)
**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, discotheques, recreational facilities)
  
  Not included are services provided by the government without economic consideration in fulfilment of its public functions, e.g. public administration
- 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 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, discotheques, recreational facilities); 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 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.

Marital status, pregnancy and child care

Discrimination against women in the context of pregnancy also constitutes gender-based direct discrimination and is prohibited. This also applies to mothers and fathers who take care of children. Finally, unequal treatment which is based on the fact that a person is single, married, living in a registered partnership, divorced, widowed or a surviving registered partner, the marriage annulled or declared invalid or the registered partnership was dissolved or was declared void, constitutes direct discrimination.

EXAMPLES

- During the probationary month, a female employee notifies the company of her pregnancy. The company terminates her employment.
- A female/male employee returns to her/his job after maternity leave but – in comparison with her/his previous occupation – is given only inferior jobs.
- A father takes care leave for his child and is therefore passed over for the next promotion.
- A female worker who married recently has been given notice because her employer fears that the woman will soon get pregnant.
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.

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<thead>
<tr>
<th>EXAMPLES</th>
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<tr>
<td>• 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.</td>
</tr>
<tr>
<td>• 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.</td>
</tr>
<tr>
<td>• A job advertisement with the note „no foreigners“ may constitute indirect discrimination on grounds of ethnicity.</td>
</tr>
<tr>
<td>• 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).</td>
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Instruction to discriminate

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

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<tr>
<td>An owner of a discotheque 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.</td>
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</table>

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.
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.

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.
EQUAL OPPORTUNITIES – Equal Treatment Legislation in Austria

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, it is also 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 colleague 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.

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 – with the exception of the characteristic of gender – does not constitute discrimination if the respective characteristic is a genuine and essential occupational requirement for the job. With regard to the characteristic of gender a specific gender needs to be an indispensable prerequisite for carrying out the activity.

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<th>EXAMPLES</th>
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<tr>
<td>• 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.</td>
</tr>
<tr>
<td>• A Roman Catholic private school hires only religious education teachers who are members of the Roman Catholic Church.</td>
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<tr>
<td>• 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.</td>
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Achieving a legitimate goal

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

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<tr>
<td>An institution for the protection of victims of sexual or domestic violence is open to women only.</td>
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Objective justification of indirect discrimination

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

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<th>EXAMPLES</th>
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<tr>
<td>• 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.</td>
</tr>
<tr>
<td>• 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.</td>
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**HOW TO DRAW UP AN INCOME REPORT?**

From 2011 onward, companies have been obliged to address the income differences between their female and male employees.

Companies with a certain number of female and male employees must draw up an **income report** (= anonymised statement of the pay earned by women and men) every two years since 2011 – a time phased plan lays down at which number of female and male employees a company is obliged to fulfil the reporting requirements. Since 2014 companies with more than 150 female and male employees have been obliged to 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 (central) 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, as well as 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 (see above, “Grounds for discrimination – Characteristics”) constitutes a genuine and essential occupational requirement. Regarding the characteristic of gender, the prohibition of discrimination may only be discarded if a particular gender is an indispensable condition for carrying out the activity.

**Examples**

- Advertisements for counselling jobs in women's shelters or women's counselling offices may be addressed to women only, which may be allowed.
- 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 obliged to indicate the minimum pay according to the collective agreement, and if applicable, to indicate the possibility of overpayment. In those economic sectors where there is no minimum wage laid down by collective agreements, that amount of salary must be indicated, which will serve as a basis for negotiation for the agreement of the salary. It does not include employee-like persons and workers in high leadership positions (e.g. CEO).
**EXAMPLE**

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

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**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 at the district administrative authority can be initiated 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 “apartment for 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.

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<th>EXAMPLES</th>
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<td>• 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.</td>
</tr>
<tr>
<td>• Educational programmes tailored only to students with migration background.</td>
</tr>
<tr>
<td>• Building projects with preferential allocation of apartments to women.</td>
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PROHIBITION OF UNFAVOURABLE TREATMENT

If an employee complains about discrimination or therefore initiates proceedings, her/his employer is prohibited to give notice, 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 about discrimination or therefore initiates proceedings, of witnesses or informants, also applies to those *areas outside work* where discrimination on grounds of *gender* or *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. The amount of immaterial damages should be assessed so as to really and effectively compensate for the impairment and the compensation for the suffered damage is reasonable and prevents discrimination.

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.

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 and 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 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 discriminatory 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**.

Other job-related areas

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 or claim **damages** and to claim **compensation for sustained personal impairment**.
**Areas 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 as well as to housing, s/he is entitled to *material damages* and *compensation for sustained personal impairment*.

If a person is discriminated against on grounds of his/her *gender* in access to goods and services as well as to housing, he/she is entitled to *compensation for the material damages* and to *compensation for the 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 AND 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 turn to the Equal Treatment Commission and also before, concurrently with or after proceedings in the Equal Treatment Commission take court action.

• 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 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 case of establishing an employment and promotion must be lodged in court within a period of six months.

- Claims related to sexual harassment must be lodged in court within a period of three years.

- Claims related to other forms of harassment must be lodged in court within one year.

- A discriminatory notice of termination or 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 six months.

- Other Claims based on discrimination in job-related areas must be prosecuted in court within three years.

- Claims based on discrimination in areas outside work must be prosecuted in court within three 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 her/his gender, age etc. S/he must give plausible reasons for the discrimination. The alleged discriminator must prove that there are good reasons to believe that there has been no discrimination.
INSTITUTIONS FOR COMBATING DISCRIMINATION

Equal Treatment Commission

The Equal Treatment Commission is an independent board of the Federal Government that focuses on:

- examining every individual case for discrimination
- preparing general expertises on questions of discrimination.

<table>
<thead>
<tr>
<th>THE EQUAL TREATMENT COMMISSION CONSISTS OF 3 SENATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Senate I for equal treatment of women and men at work</td>
</tr>
<tr>
<td>• Senate II for equal treatment at work irrespective of ethnicity, religion or beliefs, age or sexual orientation</td>
</tr>
<tr>
<td>• Senate III for equal treatment irrespective of gender or ethnicity in other areas</td>
</tr>
</tbody>
</table>

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, non-governmental organisations 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. Before interrogating the chairman/chairwoman has to clarify, if there is readiness to make a compromise and, if necessary, to strive to make a compromise.

- Basically, a joint interrogation of the person concerned and the defendant will be held, unless (also) examination of a (sexual) harassment has been requested. In that case, a separate interrogation is provided, unless a joint interrogation was requested and the opposite side has agreed to this.
• In special cases 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 after the decision and must be forwarded to the persons concerned. If the Equal Treatment Commission has found that discrimination has occurred, it must require the person responsible for the discrimination in writing to cease the discrimination.

• Furthermore, the examination results are published anonymously on the homepage of the Federal Ministry of Education and Women’s Affairs.

• 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 the still remaining period.

• 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.
THE OMBUD FOR EQUAL TREATMENT IS DIVIDED INTO

- The Ombud (male or 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 at work
- 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 obliged 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 to show credibly that the person concerned is treated worse because of a disability.

<table>
<thead>
<tr>
<th>EXAMPLES</th>
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<tbody>
<tr>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>
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 applies to

- the affected persons themselves
- persons in their function as witnesses or informants who are subject to the prohibition of unfavourable treatment
- 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 (e.g. prejudices) 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 to the Equal Treatment Act 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 job-related areas.

More details are given 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
- voluntary social benefits (e.g. loyalty bonus, works canteen)
- in-house training and other advanced training
- other working conditions (e.g. design of the work place, specific tasks)
- 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 many other areas of daily life.
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 (e.g. a large part of the school system, social insurance)
- the supply of goods and services available to the public.

<table>
<thead>
<tr>
<th>EXAMPLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• An affected person cannot attend an official hearing because the locality is not accessible to wheelchair users.</td>
</tr>
<tr>
<td>• The owner of a restaurant refuses to admit a group of persons to his premises because of their disability.</td>
</tr>
<tr>
<td>• If the owner of a restaurant harasses a disabled guest because of his/her disability, this constitutes discrimination as defined by law.</td>
</tr>
</tbody>
</table>

**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 chapter „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 Sozialministeriumservice (former: Federal Social Welfare Office) is mandatory in the event of discrimination on grounds of disability.
COUNSELLING FOR AFFECTED PERSONS

is offered by:

- Sozialministeriumservice
- in labour law issues: stakeholder organisations (chambers of labour, trade unions)
- court days at district courts
- Ombud for People with Disabilities

Chamber of labour and trade union can also represent members in court free of charge.

In cases of particular importance the Austrian National Council of Disabled Persons (Österreichische Arbeitsgemeinschaft für Rehabilitation), if the focus is on discrimination in the insurance sector, as well as the Ombud for People with Disabilities (Behindertenanwalt) and the Association for the Enforcement of the Rights of Discrimination Victims (Klagsverband) can bring class action.

Conciliation procedure at the Sozialministeriumservice

The Sozialministeriumservice (former: 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 Sozialministeriumservice, which suspends all time limits for the assertion of claims resulting from discrimination.
- If the procedure is closed, with the Sozialministeriumservice 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. In special cases it can also as mentioned above bring class action.
EQUAL OPPORTUNITIES: ADDRESSES

European Union

European Commission
http://ec.europa.eu/justice/discrimination/index_de.htm

Court of Justice of the European Union

European Commission Representation in Austria
Phone: +43 (0)1 516 18-0
http://ec.europa.eu/austria/index_de.htm

Europe Direct Information Points in Austria
http://www.europainfo.at

European Union Agency for Fundamental Rights
Phone: +43 (0)1 580 30-0
E-mail: information@fra.europa.eu
http://fra.europa.eu/de

Federal Offices

Federal Ministry of Labour, Social Affairs and Consumer Protection
E-mail: buergerservice@sozialministerium.at
https://www.sozialministerium.at/site/Arbeit_Behinderung/Arbeitsrecht/Gleichbehandlung/

Ombud for Equal Treatment
Phone: +43 (0)1 532 02 44 or
free of charge within Austria: 0800 20 61 19
E-mail: 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
Phone: +43 (0)316 72 05 90
E-mail: graz.gaw@bka.gv.at
http://www.gleichbehandlungsanwaltschaft.at

Regional Office for Tyrol, Salzburg and Vorarlberg
Phone: +43 (0)512 34 30 32
E-mail: ibk.gaw@bka.gv.at
http://www.gleichbehandlungsanwaltschaft.at

Regional Office for Carinthia
Phone: +43 (0)463 50 91 10
E-mail: klagenfurt.gaw@bka.gv.at
http://www.gleichbehandlungsanwaltschaft.at

Regional Office for Upper Austria
Phone: +43 (0)732 78 38 77
E-mail: 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 Ministry of Education and Women's Affairs
Phone: +43 (0)1 53 120 2435
E-mail: claudia.hillebrand@bmbf.gv.at
http://www.bmbf.gv.at/frauen

Senate II: Equal treatment at work irrespective of ethnicity, religion or beliefs, age or sexual orientation
Federal Ministry of Education and Women's Affairs
Phone: +43 (0)1 53 120 2431
E-mail: karina.brugger-kometer@bmbf.gv.at
http://www.bmbf.gv.at/frauen
**Senat III:** Equal treatment irrespective of gender or ethnicity in other areas
Federal Ministry of Education and Women's Affairs
Phone: +43 (0)1 53 120 2434
E-mail: dominika.plaschg@bmbf.gv.at
http://www.bmbf.gv.at/frauen

**Equal Treatment Commission for the Federal Public Service**

**Federal Equal Treatment Commission**

**Senate I:** Equal treatment of women and men
Federal Ministry of Education and Women's Affairs
Phone: +43 (0)1 53 120 2433
E-mail: beatrix.gojakovich@bmbf.gv.at
http://www.bmbf.gv.at/frauen

**Senate II:** Equal treatment irrespective of ethnicity, religion or beliefs, age or sexual orientation
Federal Ministry of Education and Women's Affairs
Phone: +43 (0)1 53 120 2433
E-mail: beatrix.gojakovich@bmbf.gv.at
http://www.bmbf.gv.at/frauen

**Discrimination on grounds of disability**

**Federal Ministry of Labour, Social Affairs and Consumer Protection**
Phone: +43 (0)1 711 00-0
http://www.sozialministerium.at

**Ombud for Disabled Persons**
Phone: 0800 80 80 16
E-mail: office@behindertenanwalt.gv.at
http://www.behindertenanwalt.gv.at

**Sozialministeriumservice (Former: Federal Social Welfare Office) and its state offices**
http://www.sozialministeriumservice.at/site/

The Sozialministeriumservice and its 9 state offices can be reached by phone at 05 99 88 within the entire federal territory.
Office for Burgenland
Phone: +43 05 99 88
E-mail: post.burgenland@sozialministeriumservice.at

Office for Carinthia
Phone: +43 05 99 88
E-mail: post.kaernten@sozialministeriumservice.at

Office for Lower Austria
Phone: +43 05 99 88
E-mail: post.niederoesterreich@sozialministeriumservice.at

Office for Upper Austria
Phone: +43 05 99 88
E-mail: post.oberoesterreich@sozialministeriumservice.at

Office for Salzburg
Phone: +43 05 99 88
E-mail: post.salzburg@sozialministeriumservice.at

Office for Styria
Phone: +43 05 99 88
E-mail: post.steiermark@sozialministeriumservice.at

Office for Tyrol
Phone: +43 05 99 88
E-mail: post.tirol@sozialministeriumservice.at

Office for Vorarlberg
Phone: +3 (0)5574 6838
E-mail: post.vorarlberg@sozialministeriumservice.at

Office for Vienna
Phone: +43 05 99 88
E-mail: post.wien@sozialministeriumservice.at
Equal Treatment Offices of the States

Representative for Equal Treatment of the State Government of Burgenland
Phone: +43 (0)2682 600-2254
E-mail: eva.pollak@bgld.gv.at

Representative for Anti-Discrimination of the State Government of Burgenland
Phone: +43 (0)2682 600-2330
E-mail: maria.erdt@bgld.gv.at
http://www.burgenland.at

Office of the State Government of Burgenland
LAD-Women’s Office
Phone: +43 (0)2682 600-2156
E-mail: post.frauenbuero@bgld.gv.at
http://www.burgenland.at/frauen

Section for Women and Equal Treatment of the State Government of Carinthia
Phone: 0800 20 33 88
E-mail: frauen@ktn.gv.at
http://www.frauen.ktn.gv.at

Anti-Discrimination Office of the State Government of Carinthia
Phone: +43 050 536 41326
E-mail: antidiskriminierung@ktn.gv.at
http://www.antidis.ktn.gv.at

Lower Austrian Representative for Equal Treatment - Lower Austrian Anti-Discrimination Office
Phone: +43 (0)2742 9005 16212 or 16217
E-mail: post.gbb@noel.gv.at
http://www.noe.gv.at/gleichbehandlung
Women’s and Seniors Section of the State Government of Lower Austria
Phone: +43 (0)2742 9005 13309
E-mail: post.f3frauenreferat@noel.gv.at
http://www.noe.gv.at/frauen
http://www.noe.gv.at/chancengleich

Anti-Discrimination Office of the State Government of Upper Austria
Phone: +43 (0)732 7720 11737
E-mail: 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 Opportunities, Anti-Discrimination and Women’s Promotion
Phone: +43 (0)662 8042-4041 & -4042
E-mail: 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
Phone: +43 (0)662 8072-2043
E-mail: frauenbuero@stadt-salzburg.at

Representative for Equal Treatment of the State Government of Styria
Phone: +43 (0)316 877-5841
E-mail: gleichbehandlung@stmk.gv.at
http://www.gleichbehandlung.steiermark.at

Representative for Equal Treatment of the City of Graz
Phone: +43 (0)664 60-872 2295
E-mail: gleichbehandlungsbeauftragte@stadt.graz.at
http://www.graz.at/gleichbehandlung
http://www.graz.at

Office for Equal Treatment and Anti-Discrimination of the State Government of Tyrol
Phone: +43 (0)512 508 3799
E-mail: 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
E-mail: frauen@vorarlberg.at
http://www.vorarlberg.at/frauen

State Ombud of Vorarlberg
Phone: +43 (0)5574 47027
E-mail: buero@landesvolksanwaeltin.at
http://www.landesvolksanwaeltin.at

Vorarlberg Office of the Ombud for Patients
Phone: +43 (0)5522 81553
E-mail: anwalt@patientenanwalt-vbg.at
http://www.patientenanwalt-vbg.at

Vienna Anti-Discrimination Office for Same-Sex and Transgender Lifestyles
Phone: +43 (0)1 4000-81449
E-mail: 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
E-mail: 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
E-mail: post@bsb.wien.gv.at
http://www.antidiskriminierung.wien.at

Non-Governmental Organisations

Association for the Enforcement of the Rights of Discrimination Victims
Phone: +43 (0)1 961 05 85-24
E-mail: info@klagsverband.at
http://www.klagsverband.at
Austrian National Council of Disabled Persons – Umbrella Organisation of Austrian Associations of Disabled Persons (ÖAR)
Phone: +43 (0)1 51311533-0
E-mail: dachverband@oear.or.at
http://www.oear.or.at

Social Partners

Austrian Trade Union Federation
Phone: +43 (0)1 53444-0
E-mail: servicecenter@oegb.at
http://www.oegb.at

Federal Chamber of Labour
Phone: +43 (0)1 50165-0
E-mail: akmailbox@akwien.at
http://www.arbeiterkammer.at

Economic Chamber of Austria
Phone: +43 05 90 900
Hotline: 0800 221 223 (free of charge)
E-mail: callcenter@wko.at
http://www.wko.at

Federation of Austrian Industry
Phone: +43 (0)1 711 35-0
E-mail: iv-office@iv-net.at
http://www.iv-net.at
LEGISLATION

Federal Legislation

- Federal Act on Equal Treatment
  BGBl.¹ I No. 66/2004 as amended by BGBl. I No. 107/2013

- Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment
  BGBl. No. 108/1979 as amended by BGBl. I No. 107/2013

- Federal Act on Equal Treatment in Federal Service
  BGBl. No. 100/1993 as amended by BGBl. I No. 120/2012

- Federal Act on Equal Treatment of People with Disabilities
  BGBl. I No. 82/2005 as amended by BGBl. I No. 107/2013

- Federal Act on the Recruitment and Employment of People with Disabilities
  BGBl. No. 22/1970 as amended by BGBl. I No. 107/2013

¹ BGBl. = Bundesgesetzblatt (Federal Law Gazette)
Equal Opportunities – Equal Treatment Legislation in Austria

State Legislation

Burgenland

- The **Burgenland Anti-Discrimination Act**
  Bgld. ADG, LGBl. No. 84/2005 as amended by LGBl. No. 17/2010 as amended by LGBl. No. 22/2013, 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**
  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.

- The **1977 Burgenland Agricultural Labour Code**
  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**
  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.

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2 *LGBl.* = *Landesgesetzblatt (State Law Gazette)*
• The **Carinthian State Act on Equal Treatment**
  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

  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**
  LGBl. No. 9290, it is prohibited to discriminate 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**
  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**
  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**
  LGBl. No. 50/2005 prohibits discrimination and harassment on grounds of ethnic origin, religion, beliefs, disability, age, sexual orientation and gender.

• The **Upper Austrian State Act on Equal Treatment**
  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**
  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**  
  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**  
  LGBl. No. 31/2006 as amended by LGBl. No. 41/2013 prohibits discriminations on grounds of gender,  
  age, disability, ethnic origin, religion or beliefs and sexual orientation.

• The **1995 Salzburg Agricultural Labour Code**  
  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**  
  L-GBG, LGBl. No. 66/04, applies to all employees of the state (including KAGes), the municipalities  
  and associations of municipalities, to teachers at public compulsory schools, agricultural and forestry  
  vocational schools and to all persons who apply there for a job if they are due to their gender, age,  
  disability, religion or belief, race or ethnic origin and sexual orientation are discriminated against or  
  harassed. Furthermore, it also applies to all those who feel discriminated against by their measures,  
  especially with regard to health, social issues, access to and supply with goods and services, including  
  housing and education.

• The **Styrian Agricultural Labour Code**  
  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**  
  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 sec-  
  tor 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
LGBl. No. 1 contains prohibitions of discrimination and harassment for the employees of the local administration and of TILAK (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
LGBl. No. 74, amended by LGBl. No. 150/2012, contains equal treatment principles and discrimination prohibitions for state teachers.

The 2005 Tyrolean Local Government Act on Equal Treatment
LGBl. No. 2 contains the discrimination prohibitions and the principle of promotion for women for local government employees.

The 2000 Tyrolean Agricultural Labour Code
LGBl. No. 27, last amended by LGBl. No. 39/2013, 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
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 state.

The Act Governing the Promotion of Equal Opportunities of Women and Men
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, Contact Point for Equal Opportunities for Women and Men).

The Act Governing the Promotion of Equal Opportunities for People with Disabilities
LGBl. No. 30/2006, aims at ensuring equivalent living conditions for people with disabilities.
Vienna

- **The Act on Combating Discrimination**
  LGBI. No. 35/2004 as amended by LGBI. No. 13/2008, as amended by LGBI. No. 44/2010, as amended by LGBI. No. 88/2012 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 activity, insofar as these matters fall within the regulating competence of the federal state.

- **The Civil Service Code**
  LGBI. No. 56/1994 as amended by LGBI. No. 88/2012 (Anti-Discrimination Amendment) as amended by LGBI. No. 42/2006 (detailed regulations with respect to disabilities) as amended by LGBI. No. 5/2008 as amended by LGBI. No. 2/2010 as amended by LGBI. No. 88/2012: Within the framework of their official capacity, civil servants are prohibited from discriminating against other persons on grounds of ethnic origin, religion, beliefs, disability, age, sexual orientation and gender (unless the Vienna Equal Treatment Act applies) or gender identity; 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, motherhood or parenthood is also deemed to be discrimination.

- **The Code for Employees under Special Contract**
  LGBI. No. 50/1995 as amended by LGBI. No. 36/2004 (Anti-Discrimination Amendment) as amended by LGBI. No. 42/2006 (detailed regulations with respect to disabilities) as amended by LGBI. No. 5/2008 as amended by LGBI. No. 2/2010 as amended by LGBI. No. 88/2012, contains regulations congruent with those of the Civil Service Code and applies to employees under special contract.

- **The Vienna Equal Treatment Act**
  LGBI. No. 18/1996 as amended by LGBI. No. 88/2012, contains prohibitions of gender-based discrimination for employees of the municipal government of Vienna. All employees of the municipal government of Vienna as well as applicants are covered by the Act. Any less favourable treatment of employees in connection with pregnancy or parenthood also constitutes discrimination. In addition to the principle of equal treatment, the Vienna Equal Treatment Act also regulates the promotion of women, which aims at eliminating any existing under-representation of women or of existing discrimination against women with regard to the employment relationship.
• The **Vienna Equal Treatment Act for Agriculture and Forestry**
  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 relevant EU directives dealing with equal treatment and equal opportunities:


- **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 2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (“Anti-Racism Directive”)

- **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”)


EUROPEAN COURT OF JUSTICE: A SELECTION OF CASES

- **Case C-614/11**
  Niederösterreichische Landes-Landwirtschaftskammer v Anneliese Kuso, 12 September 2013
  Social policy – Equal treatment for men and women – Directive 76/207/EEC – Fixed-term employment contract concluded prior to the accession of the Member State – Expiry of the fixed term after the accession – Employment legislation fixing the expiry date for the contract as the last day of the year in which retirement age is reached – **Retirement age for men different from the age set for women**

- **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-104/09**
  Pedro Manuel Roca Álvarez v Sesa Start España ETT SA, 30 September 2010
  Social policy – **Equal treatment for male and female workers** – Directive 76/207/EEC – Articles 2 and 5 – Right to leave for employed mothers – Possible use by an employed mother or an employed father – Mother self-employed – Exclusion of the right to leave for an employed father

- **Case C-506/06**
  Sabine Mayr v Bäckerei und Konditorei Gerhard Flöckner OHG, 26 February 2008
  Social policy – Directive 92/85/EEC – Measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding – Meaning of ‘pregnant worker’ – Prohibition of dismissal of **pregnant workers** during the period from the beginning of their pregnancy to the end of the maternity leave – Woman dismissed where, at the date she was given notice of her dismissal, her ova had been fertilised in vitro, but not yet transferred to her uterus – Directive 76/207/EEC – Equal treatment for men and women – Woman undergoing in vitro fertilisation treatment – Prohibition of dismissal – Scope

- **Case C-147/08**
  Jürgen Römer v Freie und Hansestadt Hamburg, 10 May 2011
the form of a supplementary retirement pension for former employees of a local authority and their sur-
vivors – Method of calculating that pension favouring married recipients over those living in a registered 
life partnership – Discrimination based on sexual orientation

- **Case C-267/12**  
  Frédéric Hay v Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres, 12 December 2013  
  Directive 2000/78/EC – Equal treatment – Collective agreement which restricts a benefit in respect of pay 
and working conditions to employees who marry – Exclusion of partners entering into a civil solidarity 
pact – Discrimination based on sexual orientation

- **Case C-267/06**  
  Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, 1 April 2008  
  Equal treatment in employment and occupation – Directive 2000/78/EC – Survivors’ benefits under a 
compulsory occupational pensions scheme – Concept of ‘pay’ – Refusal because the persons concerned 
were not married – Same-sex partners – Discrimination based on sexual orientation

- **Case C-429/12**  
  Siegfried Pohl v ÖBB-Infrastruktur AG, 16 January 2014  
  Request for a preliminary ruling – Equal treatment in employment and occupation – Article 21 of the Char-
in treatment on grounds of age – Determination of the reference date for the purposes of advancement 
on the salary scale – Limitation period – Principle of effectiveness

- **Case C-132/11**  
  Tyrolean Airways Tiroler Luftfahrt Gesellschaft mbH v Betriebsrat Bord der Tyrolean Airways Tiroler 
Luftfahrt Gesellschaft mbH, 7 June 2012  
  Directive 2000/78/EC – Equal treatment in employment and occupation – Difference of treatment on 
grounds of age – Charter of Fundamental Rights of the European Union – General principles of European 
Union law – Collective agreement – Failure to take into account, for the grading on the salary scale of 
cabin crew members of an airline, professional experience acquired with another airline belonging to the 
same group of companies – Contract clause

- **Case C-447/09**  
  Reinhard Prigge, Michael Fromm, Volker Lambach gegen Deutsche Lufthansa AG, 13 September 2011  
  Directive 2000/78/EC – Articles 2(5), 4(1) and 6(1) – Prohibition of discrimination on grounds of age –  
Airline pilots – Collective agreement – Clause automatically terminating employment contracts at age 60
• Case C-250/09 and C-268/09
Vasil Ivanov Georgiev v Tehnicheski universitet – Sofia, filial Plovdiv, 18 November 2010
Directive 2000/78/EC – Article 6(1) – **Prohibition of discrimination on grounds of age** – University lecturers – National provision providing for the conclusion of fixed-term employment contracts beyond the age of 65 – Compulsory retirement at the age of 68 – Justification for differences in treatment on grounds of age

• Case C-499/08
Ingeniørforeningen i Danmark, acting on behalf of Ole Andersen v Region Syddanmark, 12 October 2010
Directive 2000/78/EC – Equal treatment in employment and occupation – **Prohibition of discrimination on grounds of age** – Non-payment of a severance allowance to workers who are entitled to an old age pension

• Case C-45/09
Gisela Rosenbladt v Oellerking Gebäudereinigungsges. mbH, 12 October 2010
Directive 2000/78/EC – **Discrimination on the grounds of age** – Termination of employment contract on reaching retirement age

• Case C-555/07
Seda Kücükdeveci 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-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-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-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

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-144/04
Werner Mangold v Rüdiger Helm, 22 November 2005

Case C-152/11
Johann Odar v Baxter Deutschland GmbH, 6 December 2012
Equal treatment in employment and occupation – Directive 2000/78/EC – Prohibition against any discrimination on grounds of age or disability – Compensation on termination of employment – Social plan providing for a reduction in the amount of redundancy compensation paid to disabled workers

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-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-415/10**
  Galina Meister gegen Speech Design Carrier Systems GmbH, *19 April 2012*
  Directives 2000/43/EC, 2000/78/EC and 2006/54/EC — Equal treatment in employment and occupation — Worker showing that he meets the requirements listed in a job advertisement — **Right** of that worker to have access to information indicating whether the employer has recruited another applicant

• **Case C-236/09**
  Association Belge des Consommateurs Test-Achats ASBL and Others v Yann van Vugt, Charles Basselier v Conseil des ministers, *1 March 2011*

• **Case C-486/08**
  Zentralbetriebsrat der Landeskrankenhäuser Tirols gegen Land Tirol, *22 April 2010*
  Social policy – Framework agreements on **part-time work** and on **fixed-term work** – Disadvantageous provisions provided for by national legislation for contractual public servants working part-time, on a casual basis, or under a fixed term contract – **Principle of equal treatment**

• **Case C-54/07**
  Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV, *10 July 2008*

• **Case C-286/12**
  Europäische Kommission v Ungarn, *6 November 2012*
  Failure of a Member State to fulfil obligations – Social policy – Equal treatment in employment and occupation – Directive 2000/78/EC – Articles 2 and 6(1) – National scheme requiring compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 – Legitimate objectives justifying a difference in treatment vis-à-vis workers under the age of 62 – **Proportionality of the duration of the transitional period**

Other ECJ rulings as well as national judgments can be found at [www.ris.bka.gv.at](http://www.ris.bka.gv.at).