

Complete legal framework for the Federal Act Governing Equal Treatment (Equal Treatment Act), as amended on 01 January 2014

Full title

Federal Act Governing Equal Treatment (Equal Treatment Act)

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Federal Law Gazette I No. 82/2005 (NR: GP XXII RV 836 AB 1028 p. 115. BR: AB 7341 p. 724.)

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Federal Law Gazette I No. 98/2008 (NR: GP XXIII RV 415 AB 559 p. 63. BR: AB 7968 p. 757.)

[CELEX-No.: 32004L0113]

Federal Law Gazette I No. 7/2011 (NR: GP XXIV RV 938 AB 1047 p. 93. BR: AB 8449 p. 793.)

Federal Law Gazette I No. 71/2013 (NR: GP XXIV RV 2193 AB 2226 p. 194. BR: AB 8934 p. 819.)

Federal Law Gazette I No. 107/2013 (NR: GP XXIV RV 2300 AB 2326 p. 204. BR: AB 9004 p. 821.)

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Preamble/Promulgation clause

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1 StF = original version

2 NR = National Council

3 GP = legislative period

4 BR = Federal Council

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Title I

Equal Treatment Between Women and Men in Employment and Occupation

Scope

Section 1.

- (1) The provisions of Title I shall apply to the field of employment and occupation, including:
1. all types of employment relationships established under private-law contracts;
 2. access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 3. membership of, and involvement in, an organisation of employees or employers, or any organisation whose members belong to a particular professional or occupational group, including the benefits provided for by such organisations;
 4. the foundation, establishment or expansion of an enterprise as well as the commencement or expansion of the scope of any type of self-employed activity

provided that the Republic of Austria has regulatory competence.

- (2) These provisions do not apply to employment relationships
1. of workers in agriculture and forestry within the meaning of the Act Governing Agricultural Labour of 1984, Federal Law Gazette No. 287;
 2. with a Land (province of Austria), an association of local authorities or a single local authority;
 3. with the Federal Republic of Austria.
- (3) The provisions set forth in Title I also apply to
1. employment relationships governed by the Act on Home Working of 1960, Federal Law Gazette No. 105/1961, and
 2. employment relationships of persons who have no employment contract but perform work by order and for account of specific individuals and which shall be considered quasi-employee relationships due to the person's economic dependence.

For the scope of this Act, the employment relationships referred to in subparagraphs 1 and 2 above are considered labour relationships.

- (4) The provisions of Title I also apply to the employment of employees who were posted to Austria
1. under temporary employment arrangements or
 2. for continued work

for the duration of the employee's posting by employers having no corporate seat in Austria.

Equality

Section 2. The aim of this Part is to achieve equality between women and men.

Principle of Equal Treatment in the Context of Employment Relationships

Section 3. In the context of employment relationships no person shall be subject to discrimination on grounds of sex either directly or indirectly, in particular by reference to marital status or the fact whether a person has children; this shall apply in particular to the following:

1. the establishment of an employment relationship,
2. the fixing of pay,
3. the granting of voluntary social benefits which do not represent pay,
4. vocational training, advanced vocational training and retraining,
5. career advancement, in particular promotion
6. other working conditions,
7. termination of employment.

Principle of Equal Treatment in Other Labour Market Areas

Section 4. No person shall be subject to discrimination on grounds of sex either directly or indirectly, in particular by reference to marital status or the fact whether a persons has children, with regard to

1. vocational guidance, vocational training, advanced vocational training and retraining outside of an employment relationship;
2. membership of, and involvement in, an organisation of employees or employers, or any organisation whose members belong to a certain professional or occupational group, including the benefits provided for by such organisations;
3. the foundation, establishment or expansion of an enterprise as well as the commencement or expansion of the scope of any type of self-employed activity.

Definitions

Section 5

- (1) Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of sex.
- (2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice puts persons of one sex at a particular disadvantage compared with persons of the other sex, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (3) Instructions to discriminate against a person shall also be deemed to be discrimination.
- (4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds of the sex of the respective person.

Sexual harassment

Section 6

- (1) Discrimination on grounds of sex shall also be taken to have occurred if a person is
 1. sexually harassed by his/her employer,
 2. discriminated against by an employer culpably failing to take the appropriate remedial action in accordance with legal provisions, requirements under collective labour legislation or employment contracts in the case of sexual harassment by a third party (subparagraph 3);
 3. harassed by a third party in the context of his/her employment relationship, or
 4. is harassed by a third party outside of the employment relationship (Section 4).
- (2) Sexual harassment shall be taken to have occurred where any form of conduct related to the sexual sphere occurs that has the effect or purpose of violating the dignity of a person, that is unwanted, inappropriate or offensive for the person concerned, and
 1. has the effect or purpose of creating an intimidating, hostile or humiliating work environment for the person concerned, or
 2. if a person's rejection of, or admission to, such conduct related to the sexual sphere by an employer, or a supervisor or a colleague is expressly or tacitly used as a basis for a decision affecting the person's access to vocational training, employment, continued

employment, promotion or pay, or as a basis for any other decision related to employment and occupation

- (3) Instructions to sexually harass a person shall also be deemed to be discrimination.
- (4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her relationship with another person on grounds of the sex of the respective person.

Harassment

Section 7.

- (1) Discrimination on grounds of sex shall also be taken to have occurred where a person is exposed to conduct related to his/her sex
 - 1. by his/her employer,
 - 2. where a person is discriminated against by an employer culpably failing to take the appropriate remedial action in accordance with legal provisions, requirements under collective labour legislation or employment contracts in the case of harassment by a third party (subparagraph 3),
 - 3. by a third party in the context of his/her employment relationship,
 - 4. by a third party outside of the employment relationship (Section 4).
- (2) Gender-related harassment shall be taken to have occurred where any form of gender-related conduct occurs that has the effect or purpose of violating the dignity of a person, is unwanted for the person concerned, and
 - 1. has the effect or purpose of creating an intimidating, hostile or humiliating work environment for the person concerned, or
 - 2. if a person's rejection of, or admission to, such gender-related conduct by an employer, or a supervisor or a colleague is expressly or tacitly used as a basis for a decision affecting the person's access to vocational training, employment, continued employment, promotion or pay, or as a basis for any other decision related to employment and occupation.
- (3) Instructions to harass a person shall also be deemed to be discrimination.
- (4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds of the sex of the respective person.

Positive Action

Section 8. Measures laid down in laws, decrees, collective labour legislation or in general directions of employers applying to several employees with a view to promoting equality between women and men, in particular by eliminating existing inequalities within the meaning of Article 7, paragraph 2, of the Federal Constitution shall not be taken as discriminatory within the meaning of this Act. This shall also apply to measures promoting equality between women and men in the areas mentioned in Section 4. The Federal Republic of Austria may grant subsidies to employers for extraordinary expenditure incurred in implementing such measures.

Principle of Gender-Neutral Job Advertisements

Section 9.

(1) Employers or private placement agencies as defined in Sections 2ff of the Labour Market Promotion Act, Federal Law Gazette No. 31/1969, or public legal entities entrusted with job placement tasks may not advertise a position publicly or within a company (enterprise) exclusively for men or women, or have such job advertisements placed by third parties, unless being a member of one sex is an indispensable prerequisite for performing the activity concerned. Furthermore, the job advertisement shall not contain any references from which it could be inferred that members of one sex would be preferred.

(2) Employers or private placement agencies as defined in Sections 2ff of the Labour Market Promotion Act or public legal entities entrusted with job placement tasks shall state the minimum pay applicable to the vacancy advertised in accordance with collective agreements or the law or other requirements of collective labour legislation in the job advertisement and, if applicable, indicate their willingness to make payments in excess of the minimum pay. This shall apply mutatis mutandis to employment contracts in economic sectors where no minimum pay has been laid down in collective agreements or laws or other norms of collective labour legislation; this shall not apply to employees in accordance with Section 10, paragraph 2, subparagraph 2 of the Act on the Chamber of Labour 1992, Federal Law Gazette No. 626/1991. The job advertisement shall include information on the pay which is to be used as a minimum basis for the respective employment contract negotiations.

Penal Provisions

Section 10

(1) Any job placement agency advertising a job only for men or women contrary to the provisions of Section 9, paragraph 1 shall be fined up to 360 euros by the competent district authority upon request of a job applicant, the Ombud for Equal Treatment between Women and Men in Employment and Occupation, or the Regional Ombud.

(2) Any job placement agency not including the information required in accordance with paragraph 2 contrary to the provisions of Section 9, paragraph 2 shall be reprimanded by the competent district authority upon request of a job applicant, the Ombud for Equal Treatment between Women and Men in Employment and Occupation or the Regional Ombud if the principle of gender-neutral job advertisements is violated for the first time; in case of subsequent violations a fine of up to 360 euros shall be imposed on such an employer.

(3) Any employer

1. advertising a job only for men or only for women contrary to the provisions of Section 9, paragraph 1, or
2. not including the information required in accordance with Section 9, paragraph 2 contrary to the provisions of Section 9, paragraph 2,

shall be reprimanded by the competent district authority upon request of a job applicant, the Ombud for Equal Treatment between Women and Men in Employment and Occupation or the Regional Ombud if the principle of gender-neutral job advertisements is violated for the first time; in the case of subsequent violations a fine of up to 360 euros shall be imposed on such an employer.

(4) In administrative penal procedures instituted upon request of the Ombud for Equal Treatment between Women and Men in Employment and Occupation or the Regional Ombud for a violation of Section 9, the Ombud for Equal Treatment between Women and Men in Employment or Occupation or a Regional Ombud shall be a party to the procedure. The Ombud for Equal Treatment between Women and Men in Employment and Occupation or the Regional Ombud have the right to appeal against decisions and to lodge objections against penalties imposed by administrative authorities.

Pay Criteria

Section 11. For the purpose of defining pay criteria, company classification schemes and requirements of collective labour legislation shall comply with the principle of equal pay for equal work or work to which equal value is attributed, and may not set out separate criteria for the work of men on the one hand and the work of women on the other which lead to discrimination.

Income Report

Section 11a. (1) Any employer permanently employing the number of employees laid down in Section 63, paragraph 6 shall prepare a report for income analysis at two-year intervals. This report shall contain details regarding

1. the number of women and the number of men assigned to individual employment categories under collective labour law or – if available – company classification systems;
2. the number of women and the number of men assigned to specific employment category years, if available;
3. the average or median earned income of women and men assigned to individual employment categories and employment category years, if available, under collective labour law or – if available – company classification systems in the respective calendar year.

The pay of part-time workers shall be converted into full-time equivalents and that of temporary workers into full-year equivalents. If there is no employment category scheme under collective labour law or under company classification systems, functional groups based on the structure of corporate activities shall be established instead of employment categories.

(2) The report shall be drawn up in anonymised form. It shall not contain any information allowing the re-identification of specific individuals.

(3) The report shall be submitted to the central works council or – if there is no central works council – to the works committees or – if no works committee has been set up – to the works council representatives in the first quarter of the calendar year following the year under review. The (central) works council or works committee may request consultation in this matter. In enterprises subject to the Constitutional Act Governing the Employee Representation of the Austrian Mail Services, Federal Law Gazette No. 326/1996, these responsibilities shall rest with the central works council and – if there is no central works council – with the personnel committees and – if there is no personnel committee – with the committees of confidential representatives. The employee representative bodies may provide relevant information to employers within the framework of the activities. If there is no employee representative

body or if there is no such body for a specific group of employees, the report shall be made available for inspection in a room of the enterprise which is accessible to all employees or all employees belonging to the specific group. This fact shall be notified in an internal memorandum. Section 13 shall apply mutatis mutandis.

(4) The employee shall treat the content of the income report strictly confidentially. This shall not preclude interest representations and other persons or institutions that are also under an obligation to maintain secrecy from obtaining legal information or legal advice. Furthermore, this shall not prevent the institution of proceedings to enforce claims pursuant to this Federal Act or of a procedure before the Equal Treatment Commission.

(5) In the event of violations of the obligation to maintain secrecy in accordance with paragraph 4, a fine of up to 360 euros shall be imposed on the employee by the competent district authority unless the offence is punishable by a more severe sanction under other laws provided that the employer lodges a complaint within six weeks as from the date on which he/she was informed of the violation and of the name of the offender (private party). Section 56, paragraphs 2 to 4 of the Administrative Penal Act 1991, Federal Law Gazette No. 52 shall be applied to the criminal proceedings. The authority may decide not to impose a penalty without any procedure being necessary provided that the offence committed by the employee is insignificant and that the consequences of the violation of the obligation to maintain secrecy are insignificant. It may, however, reprimand the employee in an administrative decision if this is deemed necessary to prevent the employee from further violations of the obligation to maintain secrecy in accordance with Section 5.

(6) The employee representative bodies mentioned in paragraph 3 or – if such bodies do not exist – the employee shall have a right in accordance with paragraph 3 to demand the preparation and submission of as well as information about an income report. This right shall be asserted before a court. It is subject to a three-year period of limitation in accordance with Section 1486 of the Austrian Civil Code; the period of limitation commences at the end of the first quarter of the calendar year following the year under review.

Legal Consequences of a Violation of the Principle of Equal Treatment

Section 12. (1) If an employment relationship was not established due to a violation of the principle of equal treatment pursuant to Section 3, subparagraph 1, the employer shall be liable to pay compensation to the job applicant for the economic loss and personal damage suffered. The compensation shall amount to

1. a minimum of two monthly salaries if the job applicant would have been awarded the position had the selection not been discriminatory, or
2. a maximum amount of 500 euros if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.

(2) If due to a violation by an employer of the principle of equal treatment pursuant to Section 3, subparagraph 2, an employee receives lower pay than an employee of the other sex for equal work or work to which equal value is attributed, he/she shall be entitled to claim payment of the income difference from the employer and compensation for the personal damage suffered.

(3) In case of a violation of the principle of equal treatment pursuant to Section 3, subparagraph 3, the employee shall be entitled to be granted the respective social benefit or compensation for the economic loss and personal damage suffered.

(4) In case of a violation of the principle of equal treatment pursuant to Section 3, subparagraph 4, the employee shall be entitled to claim inclusion in the respective internal training and further training measures of the company or compensation for the economic loss and personal damage suffered.

(5) If an employee has not been promoted due to a violation of the principle of equal treatment pursuant to Section 3, subparagraph 5, an employer shall be liable for paying compensation to such employee for the economic loss or personal damage suffered. The compensation shall correspond to

1. the income difference for at least three months if the employee would have been promoted had the selection not been discriminatory, or
2. a maximum amount of 500 euros if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.

(6) In case of a violation of the principle of equal treatment pursuant to Section 3, subparagraph 6, the employee concerned shall be entitled to enjoy the same working conditions as an employee of the other sex or to compensation for the economic loss and personal damage suffered.

(7) In case that the employment relationship was ended through dismissal or otherwise prematurely terminated by the employer due to the sex of an employee or due to claims pursuant to this Act asserted for not manifestly unfounded reasons or in case that the probationary employment relationship was terminated due to such a cause (Section 3, subparagraph 7), such notice of dismissal, dismissal or termination of a probationary employment relationship may be challenged in court. In case a fixed-term employment designed to be converted into a permanent employment relationship ended on the specified date due to the sex of an employee or due to claims pursuant to this Act asserted for not manifestly unfounded reasons, an action for declaratory judgement may be brought to declare that the employment relationship is not limited in time. If the employee accepts the end of his/her employment relationship, he/she shall be entitled to compensation for the economic loss and personal damage suffered.

(8) In case of a violation of the principle of equal treatment pursuant to Section 4, subparagraph 1, the person concerned shall be entitled to claim inclusion in the respective vocational guidance, vocational training, further training and retraining measures or compensation for the economic loss and personal damage suffered.

(9) In case of a violation of the principle of equal treatment pursuant to Section 4, subparagraph 2, the person concerned shall be entitled to membership of, and involvement in, the respective organisation and to the benefits provided by such organisation, or compensation for the economic loss and personal damage suffered.

(10) In case of a violation of the principle of equal treatment pursuant to Section 4, subparagraph 3, the person concerned shall be entitled to compensation for the economic loss and personal damage suffered.

(11) In case of sexual harassment pursuant to Section 6 or gender-related harassment pursuant to Section 7, the person concerned shall be entitled to compensation for the damage sustained from the harasser, and, in case of harassment in accordance with Section 6, paragraph 1, subparagraph 2, or Section 7, paragraph 1, subparagraph 2, also from his/her employer. In so far as the disadvantage has not only resulted in economic loss, the person concerned shall be entitled to adequate compensation for the personal damage suffered, which in any case shall be at least 1 000 euros.

(12) In so far as the person concerned invokes a fact of discrimination within the meaning of Sections 3, 4, 6 or 7 in a legal dispute, he/she shall substantiate this credibly. If Sections 3 or 4 are invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that another motive substantiated credibly by the respondent has resulted in unequal treatment, or that the other sex was an indispensable requirement for exercising the activity, or that there is another justification within the meaning of Section 5, paragraph 2. If Sections 6 or 7 are invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that the facts credibly substantiated by the respondent are the truth.

(13) In case multiple discrimination occurs, this shall be taken into account in calculating compensation for the personal damage suffered.

(14) In calculating compensation for any personal damage suffered, it is necessary to ensure a real and effective compensation for the damage suffered; furthermore the compensation shall be proportionate to the damage suffered and prevent discrimination.

Victimisation

Section 13. In response to a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment, an employee must not be dismissed, given notice of dismissal or otherwise be put at a disadvantage within the respective enterprise (company). Another employee heard as a witness or informant in legal proceedings or supporting the complaint of another employee must not be dismissed, given notice of dismissal or be otherwise put at a disadvantage in response to such a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment. Section 12 shall apply mutatis mutandis.

Promotion Measures

Section 14. The guidelines on the granting of subsidies to enterprises by the Federal Republic of Austria shall stipulate that subsidies may be granted exclusively to enterprises complying with the provisions of Title I.

Time Limits for Asserting Claims

Section 15. (1) Claims pursuant to Section 12, paragraphs 1 and 5, shall be lodged with a court within a period of six months. The period for asserting claims in accordance with Section 12, paragraphs 1 and 5, commences on the date of rejection of a job application or promotion. Claims on grounds of gender-related harassment pursuant to Section 12, paragraph 11, shall be lodged with a court within a period of one year. Claims on grounds of sexual harassment pursuant to Section 12, para. 11, shall be lodged with a court within a period of three years. The period of limitation of three years set forth in Section 1486 of the Austrian Civil Code shall apply to claims pursuant to Section 12, paragraphs 2, 3, 4, 6, 8, 9 and 10.

(1a) Notice of dismissal, dismissal or termination of a probationary employment relationship in accordance with Section 12, paragraph 7, shall be challenged in court within fourteen days after having been received by the claimant; an action for declaratory judgement in accordance with Section 12, paragraph 7, second sentence, shall be brought within 14 days after the employment relationship ended due to the expiry of the contractual period. Claims pursuant to Section 12, paragraph 7, last sentence, shall be lodged within 6 months after receipt of the notice of dismissal, dismissal or the termination of the probationary employment relationship due to expiry of the contractual period.

(2) Applications submitted or a request made by an Ombud for Equal Treatment for the examination of an infringement of the principle of equal treatment or an action taken proprio motu by the Commission to examine a violation of the principle of equal treatment result in a suspension of the time limits for lodging complaints with a court.

(3) If the employee is provably delivered

1. the result of the examination by the Commission in a particular case, or
2. a letter from the executive body of the Commission stating that the prerequisites for examining an infringement of the principle of equal treatment do not or do no longer exist in a particular case, the suspension of time limits for asserting claims before court will be terminated upon delivery of the letter. After delivery of the letter, the employee may still bring action within a period of three months. If the original period was shorter, the employee shall observe this period.

(4) Claims pursuant to Section 12, which may be based not only on the grounds of discrimination enumerated in this Federal Act but also on grounds of discrimination of disability, can be enforced only after completion of an arbitration procedure with the Federal Office for Social Affairs and People with Disabilities. Enforcement of these claims is subject to Sections 7k, 7n and 7o of the Disability Employment Act, Federal Law Gazette No. 22/1970.

Title II

Equal Treatment in Employment and Occupation irrespective of Ethnicity, Religion or Belief, Age or Sexual Orientation (Anti-Discrimination)

Scope

Section 16.

- (1) The provisions of Title II shall apply to the field of employment and occupation, including
1. all types of employment relationships established under private-law contracts;
 2. all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 3. membership of, and involvement in, an organisation of employees or employers, or any organisation whose members belong to a particular professional or occupational group, including the benefits provided for from such organisations;
 4. the foundation, establishment or expansion of an enterprises as well as the commencement of or expansion of the scope of any type of self-employed activity
- provided that this falls within the regulatory competence of the Federal Republic of Austria.
- (2) These provisions do not apply to employment relationships
1. of workers in agriculture and forestry within the meaning of the Act Governing Agricultural Labour of 1984, Federal Law Gazette No. 287;

2. with a Land (province of Austria), an association of local authorities or a single local authority;
 3. with the Federal Republic of Austria.
- (3) The provisions set forth in Title II also apply to
1. employment relationships governed by the Act on Home Working of 1960, Federal Law Gazette No. 105/1961, and
 2. employment relationships of persons who have no employment contract but perform work by order and for account of specific individuals and that have to be considered quasi-employee relationships due to the person's economic dependence.
- For the scope of this Act, the employment relationships referred to in subparagraphs 1 and 2 above are considered labour relationships.
- (4) The provisions of Title II also apply to the employment of employees who were posted to Austria
1. under temporary employment arrangements or
 2. for continued work
- for the duration of the employee's posting by employers having no corporate seat in Austria.

Principle of Equal Treatment in the Context of Employment Relationships

Section 17.

(1) In the context of employment relationships no person shall be subject to discrimination on grounds of ethnicity, religion or belief, age or sexual orientation either directly or indirectly; this shall apply in particular to the following:

1. the establishment of an employment relationship,
2. the fixing of pay,
3. the granting of voluntary social benefits which do not represent pay,
4. vocational training, advanced vocational training and retraining,
5. career advancement, in particular promotion
6. other working conditions,
7. termination of employment

(2) Paragraph 1 shall not apply to the provisions and conditions governing the entry of third-country nationals or stateless persons or their residence as well as to any treatment resulting from the legal status of third-country nationals or stateless persons.

Principle of Equal Treatment in Other Labour Market Areas

Section 18. No person shall be subject to discrimination on any of the grounds specified in Section 17, either directly or indirectly, with regard to

1. vocational guidance, vocational training, advanced vocational training and retraining outside of an employment relationship;
2. membership of, and involvement in, an organisation of employees or employers, or any organisation whose members belong to a certain professional or occupational group, including the benefits provided for by such organisations;
3. the foundation, establishment or expansion of an enterprises as well as the commencement of or expansion of the scope of any type of self-employed activity.

Definitions

Section 19.

(1) Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on one of the grounds specified in Section 17.

(2) Indirect discrimination shall be taken to occur where apparently neutral provisions, criteria or practices may put persons belonging to an ethnic group or persons having a particular religion or particular belief, or a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless such provisions, criteria or practices are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Instructions to discriminate against a person shall also be deemed to be discrimination.

(4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds of the ethnicity, religion or belief, age or sexual orientation of the respective person.

Exemptions

Section 20.

(1) Unequal treatment based on a characteristic related to one of the grounds for discrimination specified in Section 17 shall not be deemed to be discrimination where by reason of the nature of specific occupational activities or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

(2) Discrimination on grounds of religion or belief shall not be deemed to have occurred with regard to occupational activities pursued within Churches and other public or private organisations, the ethos of which is based on religious principles or belief, where the religion or belief of the person concerned constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

(3) Discrimination on grounds of age shall not be deemed to have occurred if unequal treatment is

1. objective and appropriate,
2. justified by a legitimate aim, especially lawful objectives set in the spheres of employment policy, labour market and vocational training, and
3. if the means for achieving these objectives are appropriate and necessary.

(4) Unequal treatment pursuant to paragraph 3 may include, in particular,

1. the setting of special conditions on access to employment and vocational training as well as specific employment and working conditions, including those relating to dismissal and pay, so as to promote the inclusion of young people, older workers and persons with caring responsibilities or to ensure their protection;
2. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
3. the fixing of a maximum age for recruitment which is based on the specific training requirements of the post in question or the need for a reasonable period of employment prior to retirement.

(5) Discrimination on grounds of age shall not be deemed to have occurred with regard to occupational social security schemes due to setting age limits as a prerequisite for membership of, or entitlement to, retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, provided that this does not result in discrimination on grounds of sex.

Harassment

Section 21.

(1) Discrimination pursuant to Section 17 is also deemed to have occurred if a person is

1. harassed by his/her employer;
2. discriminated against by an employer culpably failing to take the appropriate remedial action in accordance with legal provisions, requirements under collective labour legislation or employment contracts in the case of harassment by a third party (subparagraph 3);
3. harassed by a third party in the context of his/her employment relationship,
4. by a third party outside of the employment relationship (Section 18).

(2) Harassment shall be taken to have occurred where a person is exposed to unwanted conduct related to one of the grounds specified in Section 17, which

1. has the effect or purpose of violating the dignity of the person concerned,
2. is unwanted, inappropriate or offensive for the person concerned,
3. has the effect or the purpose of creating an intimidating, hostile, degrading, offensive or humiliating environment for the person.

(3) Instructions to discriminate against a person shall be deemed to be discrimination.

(4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds of the ethnicity, religion or belief, age or sexual orientation of the respective person.

Positive Action

Section 22. Specific measures for the promotion of equality in employment and occupation, which aim at the elimination of or compensation for discrimination on grounds of discrimination within the meaning of Section 17 and are provided for in laws, decrees or in collective labour legislation or in general directions of employers affecting several employees, shall not be deemed to be discrimination within the meaning of this Act. This shall also apply to measures promoting equality in employment and occupation in the areas mentioned in Section 18.

Principle of Non-Discriminatory Job Advertisements

Section 23.

(1) Employers or private placement agencies as defined in Sections 2ff of the Labour Market Promotion Act, Federal Law Gazette No. 31/1969, or public legal entities entrusted with job placement tasks may not advertise a position publicly or within a company in a discriminatory manner, or have such job advertisements placed by third parties, unless the special characteristic is an essential and decisive prerequisite for performing the activity concerned because of the type of occupational or professional activity and provided that it serves a lawful purpose and constitutes a reasonable requirement.

(2) Employers or private placement agencies as defined in Sections 2ff of the Labour Market Promotion Act or public legal entities entrusted with job placement tasks shall state the minimum pay applicable to the vacancy advertised in accordance with collective agreements or the law or other requirements of collective labour legislation in the job advertisement and, if applicable, indicate their willingness to make payments in excess of the minimum pay. This shall apply mutatis mutandis to employment contracts in economic sectors where no minimum pay has been laid down in collective agreements or laws or other requirements of collective labour legislation; this shall not apply to employees in accordance with Section 10, paragraph 2, subparagraph 2 of the Act on the Chamber of Labour 1992, Federal Law Gazette No. 626/1991. The job advertisement shall include information on the pay which is to be used as a minimum basis for the respective employment contract negotiations

Penal Provisions

Section 24.

(1) Any job placement agency advertising a job in a discriminatory manner contrary to the provisions of Section 23, paragraph 1 shall be fined up to 360 euros by the competent district authority upon request by a job applicant, the Ombud for Equal Treatment irrespective of Ethnicity, Religion or Belief, Age or Sexual Orientation in Employment and Occupation, or a Regional Ombud.

(2) Any job placement agency not including the information specified in Section 23, paragraph 2 contrary to the provisions of Section 23, paragraph 2 shall be reprimanded by the competent district authority upon request by a job applicant, the Ombud for Equal Treatment irrespective of Ethnicity, Religion or Belief, Age or Sexual Orientation in Employment and Occupation, or a Regional Ombud if the principle is violated for the first time; in case of subsequent violations a fine of up to 360 euros shall be imposed on such a job placement agency.

(3) Any employer

1. advertising a job in a discriminatory manner contrary to the provisions of Section 23, paragraph 1 or
2. not including the information specified in Section 23, paragraph 2 contrary to the provisions of Section 23, paragraph 2,

shall be reprimanded by the Ombud for Equal Treatment irrespective of Ethnicity, Religion or Belief, Age or Sexual Orientation in Employment and Occupation or the Regional Ombud if one of these principles is violated for the first time; in the case of subsequent violations a fine of up to 360 euros shall be imposed on such an employer.

(4) In administrative penal procedures instituted upon request of the Ombud for Equal Treatment irrespective of Ethnicity, Religion or Belief, Age or Sexual Orientation in Employment and Occupation or the Regional Representative, the Ombud for Equal Treatment irrespective of Ethnicity, Religion or Belief, Age or Sexual Orientation in Employment and Occupation or the Regional Ombud shall be a party to the procedure. The Ombud for Equal Treatment or the Regional Ombud have the right to appeal against decisions and to lodge objections against penalties imposed by administrative authorities.

Pay Criteria

Section 25. For the purpose of defining pay criteria, company classification schemes and requirements of collective labour legislation shall comply with the principle of equal pay for equal work or work to which equal value is attributed, and may not set out separate criteria which lead to discrimination due to one of the grounds specified in Section 17.

Legal Consequences of a Violation of the Principle of Equal Treatment

Section 26.

(1) If an employment relationship was not established due to a violation of the principle of equal treatment pursuant to Section 17, paragraph 1, subparagraph 1, the employer shall be liable to pay compensation to the job applicant for the economic loss and personal damage suffered. The compensation shall amount to

1. a minimum of two monthly salaries if the job applicant would have been awarded the position had the selection not been discriminatory, or
2. a maximum amount of 500 euros if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.

(2) If due to a violation by an employer of the principle of equal treatment pursuant to Section 17, paragraph 1, subparagraph 2, an employee receives lower pay than an employee not discriminated against on one of the grounds specified in Section 17 for equal work or work to which equal value is attributed, he/she shall be entitled to claim payment of the income difference from the employer and compensation for the personal damage suffered.

(3) In case of a violation of the principle of equal treatment pursuant to Section 17, paragraph 1, subparagraph 3, the employee shall be entitled to be granted the relevant social benefit or compensation for the economic loss and personal damage suffered.

(4) In case of a violation of the principle of equal treatment pursuant to Section 17, paragraph 1, subparagraph 4, the employee shall be entitled to claim inclusion in the respective internal training and further training measures of the company or compensation for the economic loss and personal damage suffered.

(5) If an employee has not been promoted due to a violation of the principle of equal treatment pursuant to Section 17, paragraph 1, subparagraph 5, an employer shall be liable for paying compensation to such employee for the economic loss or personal damage suffered. The compensation shall correspond to

1. the income difference for at least three months if the employee would have been promoted had the selection not been discriminatory, or
2. a maximum amount of 500 euros if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.

(6) In case of a violation of the principle of equal treatment pursuant to Section 17, paragraph 1, subparagraph 6, the employee concerned shall be entitled to enjoy the same working conditions as an employee not subject to discrimination on one of the grounds specified in Section 17 or to damages for economic loss and personal damage suffered.

(7) In case the employment relationship was ended through dismissal or otherwise prematurely terminated by the employer on one of the grounds specified in Section 17 or due to claims pursuant to this Act asserted for not manifestly unfounded reasons or if the probationary employment relationship was terminated due to such a cause (Section 17, paragraph 1, subparagraph 7), such notice of dismissal, dismissal or termination of a probationary employment relationship may be challenged in court. In case a fixed-term employment designed to be converted into a permanent employment relationship ended on the specified date on one of the grounds specified in Section 17 or due to claims pursuant to this Act asserted for not manifestly unfounded reasons, an action for declaratory judgement may be brought to declare that

the employment relationship is not limited in time. If the employee accepts the end of his/her employment relationship, he/she shall be entitled to compensation for the economic loss and personal damage suffered.

(8) In case of a violation of the principle of equal treatment pursuant to Section 18, subparagraph 1, the person concerned shall be entitled to claim inclusion in the respective vocational guidance, vocational training, further training and retraining measures of the company or compensation for the economic loss and personal damage suffered.

(9) In case of a violation of the principle of equal treatment pursuant to Section 18, subparagraph 2, the person concerned shall be entitled to membership of, and involvement in, the respective organisation and to the benefits provided for by such organisation, or compensation for the economic loss and personal damage suffered.

(10) In case of a violation of the principle of equal treatment pursuant to Section 18, subparagraph 3, the person concerned shall be entitled to compensation for the economic loss and personal damage suffered.

(11) In case of harassment pursuant to Section 21, the person concerned shall be entitled to compensation for the damage sustained from the harasser, and, in case of harassment in accordance with Section 21, paragraph 1, subparagraph 2, also from his/her employer. In so far as the disadvantage has not only resulted in economic loss, the person concerned shall be entitled to adequate compensation for the personal damage suffered, which in any case shall be at least 1 000 euros.

(12) In so far as the person concerned invokes a fact of discrimination within the meaning of Sections 17, 18 or 21 in a legal dispute, he/she shall substantiate this credibly. If Section 17 or 18 is invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that another motive substantiated credibly by the respondent has resulted in unequal treatment or that there is another justification within the meaning of Section 19, paragraph 2 or Section 20. If Section 21 is invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that the facts credibly substantiated by the respondent are the truth.

(13) In case multiple discrimination occurs, this shall be taken into account in calculating compensation for the personal damage suffered.

(14) In calculating compensation for any personal damage suffered, it is necessary to ensure a real and effective compensation for the damage suffered; furthermore the compensation shall be proportionate to the damage suffered and prevent discrimination.

Victimisation

Section 27. In response to a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment, an employee must not be dismissed, given notice of dismissal or otherwise be put at a disadvantage within the respective company. Another employee heard as a witness or informant in legal proceedings or supporting the complaint of another employee must not be dismissed, given notice of dismissal or be otherwise put at a disadvantage in response to such a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment. Section 26 shall apply mutatis mutandis.

Promotion Measures

Section 28. The guidelines on the granting of subsidies to enterprises by the Federal Republic of Austria shall stipulate that subsidies may be granted exclusively to enterprises complying with the provisions of Title II.

Time Limits for Asserting Claims

Section 29.

(1) Claims pursuant to Section 26, paragraphs 1 and 5, shall be lodged with a competent court within a period of six months. The period for asserting claims in accordance with Section 26, paragraphs 1 and 5, commences on the date of rejection of a job application or promotion. Claims pursuant to Section 26, paragraph 11, shall be lodged with a competent court within a period of one year. The period of limitation of three years set forth in Section 1486 of the Austrian Civil Code shall apply to claims pursuant to Section 26, paragraphs 2, 3, 4, 6, 8, 9 and 10.

(1a) Notice of dismissal, dismissal or termination of a probationary employment relationship in accordance with Section 26, paragraph 7, shall be challenged in court within fourteen days after having been received by the claimant; an action for declaratory judgement in accordance with Section 26, paragraph 7, second sentence, shall be brought within 14 days after the employment relationship ended

due to the expiry of the contractual period. Claims pursuant to Section 26, paragraph 7, last sentence, shall be lodged within 6 months after receipt of the notice of dismissal, dismissal or the termination of the probationary employment relationship due to expiry of the contractual period.

(2) Applications submitted or a request made by a representative of the Ombud for Equal Treatment for the examination of an infringement of the principle of equal treatment or an action taken proprio motu by the Commission with a view to examining a violation of the principle of equal treatment result in a suspension of the time limits for lodging complaints with a court.

(3) If the employee is provably delivered

1. the result of the examination by the Commission in a particular case, or
2. a letter from the executive of the Commission stating that the prerequisites for examining an infringement of the principle of equal treatment do not or do no longer exist in a particular case,

the suspension of time limits for asserting claims before court will be terminated upon delivery of the letter. After delivery of the letter, the employee may still bring action within a period of three months. If the original period was shorter, the employee shall observe this period.

(4) Claims pursuant to Section 26, which may be based not only on the grounds of discrimination enumerated in this Federal Act but also on grounds of discrimination of disability, can be enforced only after completion of an arbitration procedure with the Federal Office for Social Affairs and People with Disabilities. The enforcement of these claims is subject to Sections 7k, 7n and 7o of the Disability Employment Act, Federal Law Gazette No. 22/1970.

Title III

Equal Treatment irrespective of Sex or Ethnicity in Other Areas

Part 1

Scope

Section 30. (1) As far as the characteristic of sex is concerned, the provisions of this Part shall apply to legal relationships, including their preparation and establishment, as well as to the use of services or assertion of claims to services outside a legal relationship, with regard to the access to, and supply of, goods and services which are available to the public, including housing provided that this falls within the direct regulatory competence of the Federal Republic of Austria.

(2) As far as the characteristic of ethnicity is concerned, the provisions of this Part shall apply to legal relationships, including their preparation and establishment, as well as to the use of services or assertion of claims to services outside a legal relationship, with regard to the access to, and supply of, goods and services which are available to the public, including housing, as well as legal relationships, including their preparation and establishment as well as to the use of services or assertion of claims outside a legal relationship, in the areas of

1. social protection, including social security and public health services,
2. social advantages,
3. education,

provided that these areas fall within the direct regulatory competence of the Federal Republic of Austria.

(3) The provisions of this Part shall not apply to legal relationships, including their preparation and establishment, or to the use of services and assertion of claims within the meaning of paragraph 1, which

1. are related to the private and family life,
2. deal with media and advertising content.

(4) Insofar as special rules for insurance contracts are included in the Insurance Contract Act 1958, Federal Law Gazette No. 2/1959, and the Insurance Supervision Act, Federal Law Gazette No. 569/1978, these special rules shall be applicable.

Principle of Equal Treatment

Section 31. (1) No person shall be subject to direct or indirect discrimination with regard to the access to, and supply of, goods and services available to the public, including housing on grounds of sex, in particular by reference to his/her marital status or the fact whether a person has children, or on grounds

of ethnicity. Discrimination against women on grounds of pregnancy or motherhood is considered direct discrimination on grounds of sex.

(2) The aim is equality between women and men as well as elimination of other types of discrimination.

(3) Furthermore, no person shall be subject to direct or indirect discrimination on grounds of ethnicity with regard to

1. social protection, including social security and public health services,
2. social advantages,
3. education.

(4) Paragraphs 1 and 3 shall not apply to the provisions and conditions governing the entry of third-country nationals or stateless persons or their residence as well as to any treatment resulting from the legal status of third-country nationals or stateless persons.

Definitions

Section 32. (1) Direct discrimination shall be taken to occur where a person is treated less favourably than another is, has been or would be treated in a comparable situation on account of a ground mentioned in Section 31.

(2) Indirect discrimination shall be taken to occur where apparently neutral provisions, criteria or practices put persons of one sex or persons belonging to a specific ethnic group at a particular disadvantage, unless the respective provisions, criteria or practices are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Instructions to discriminate against a person shall also be deemed to be discrimination.

(4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds of the sex or ethnicity of the respective person.

Exemptions

Section 33. The provision of goods or services, including housing, exclusively or predominantly for persons of one sex is not deemed to be discrimination if this complies with the principle of proportionality, i.e. if this is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Positive Action

Section 34. Measures promoting equality provided for in laws, decrees or by other means which aim at the elimination of, or compensation for, discrimination on grounds of ethnicity, shall not be deemed to be discrimination within the meaning of this Act.

Harassment and Sexual Harassment

Section 35. (1) Unwanted, inappropriate or offensive conduct related to one of the grounds in accordance with Section 31 or the sexual sphere, which aims at, or results in,

1. violating the dignity of the person concerned, and
2. creating an intimidating, hostile, degrading, offensive or humiliating environment for the person concerned

is deemed to be discrimination.

(2) The following shall also be deemed discrimination:

1. instructions to harass or sexually harass a person or
2. if the rejection of, or submission to harassment or sexual harassment by the person harassed is used as a basis for a decision affecting that person.

(3) Discrimination shall also be taken to occur where a person is harassed or sexually harassed due to his/her close relationship with another person on grounds of the sex or ethnicity of the respective person.

Principle of Non-Discriminatory Housing Advertisements

Section 36. Nobody may place housing advertisements or have housing advertisements placed by third parties in a discriminatory manner. No discrimination shall be taken to have occurred where requirements concerning the respective characteristic are justified by a legitimate aim and the means of

achieving that aim are appropriate and necessary. Discrimination shall in particular not be taken to occur where a very close or confidential relationship between the parties or their dependants is established by providing housing.

Penal Provisions

Section 37.

(1) Anybody placing housing advertisements in a discriminatory manner contrary to the provisions of Section 36, shall be reprimanded by the competent district authority upon request of an interested party, the Ombud for Equal Treatment irrespective of Sex or Ethnicity in Other Areas or the Regional Ombud if the principle is violated for the first time; in the case of subsequent violations a fine of up to 360 euros shall be imposed.

(2) In administrative penal procedures instituted upon the request of the Ombud for Equal Treatment irrespective of Sex or Ethnicity in Other Areas or a Regional Ombud for a violation of Section 36, the Ombud or Regional Ombud shall be a party to the procedure. The Ombud or Regional Ombud has the right to appeal against decisions and to lodge objections against penalties.

Legal Consequences of a Violation of the Principle of Equal Treatment

Section 38.

(1) In case of a violation of the principle of equal treatment pursuant to Section 31, the person concerned is entitled to compensation for the economic loss and personal damage suffered.

(2) In case of harassment or sexual harassment pursuant to Section 35, the person concerned is entitled to claim compensation for the damage suffered from the harasser. In so far as the disadvantage has not only resulted in economic loss, the person concerned shall be entitled to adequate compensation for his/her personal damage suffered, which in any case shall be at least 1 000 euros.

(3) In so far as the person concerned invokes a fact of discrimination within the meaning of Sections 31 or 35 in a legal dispute, he/she shall substantiate this credibly. If Section 31 is invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that another motive substantiated credibly by the respondent has resulted in unequal treatment or that there is another justification within the meaning of Section 32, paragraph 2 or Section 33. If Section 35 is invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that the facts credibly substantiated by the respondent are the truth.

(4) Applications submitted for the examination of a violation of the principle of equal treatment or an action taken proprio motu by the Commission to examine a violation of the principle of equal treatment result in a suspension of the time limits for lodging complaints with a court.

(5) If the person affected by discrimination is provably delivered

1. the result of the examination by the Commission in a particular case, or
2. a letter from the executive of the Commission stating that the prerequisites for examining an infringement of the principle of equal treatment do not or do no longer exist in a particular case,

the suspension of time limits for asserting claims before court will be terminated upon delivery of the letter. After delivery of the letter, the person concerned may still bring action within a period of three months. If the original period was shorter, the person concerned shall observe this period.

(6) Claims in accordance with paragraphs 1 and 2, which may be lodged also based on discrimination on grounds of disability, may be enforced only after completion of an arbitration procedure with the Federal Office for Social Affairs and People with Disabilities. The enforcement of these claims is subject to Sections 10 and 11 of the Federal Disability Equality Act, Federal Law Gazette I No. 82/2005.

(7) In calculating compensation for any personal damage suffered, it is necessary to ensure a real and effective compensation for the damage suffered; furthermore the compensation shall be proportionate to the damage suffered and prevent discrimination.

Victimisation

Section 39. In response to a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment, an individual person must not be discriminated against. Any other person heard as a witness or informant in legal proceedings or supporting the complaint must not be put at a

disadvantage in response to such a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment. Section 38 shall apply mutatis mutandis.

Promotion Measures

Section 40. The guidelines on the granting of subsidies to natural persons or legal entities by the Federal Republic of Austria shall stipulate that subsidies may be granted exclusively to natural persons or legal entities complying with the provisions of Title III.

With regard to the following provision, please note:

Basic provision

Part 2

Principles Applying to Equal Treatment irrespective of Ethnicity in Other Areas

The principles set forth in the following shall apply to the regulation of equal treatment irrespective of ethnicity in other spheres, provided that this falls within the competence to enact basic laws of the Federal Republic of Austria:

Scope

Section 40a. The provisions of this Part shall apply to legal relationships, including the preparation and establishment of these, as well as the use of services and the assertion of claims to services outside of legal relationships, in the areas of

1. social protection, including social security and public health services,
2. social advantages,
3. education,
4. access to, and supply of goods and services, which are available to the general public, including housing,

provided that this falls within the competence to enact basic laws of the Federal Republic of Austria.

With regard to the following provision, please note:

Basic provision

Principle of Equal Treatment, definitions, legal consequences

Section 40b. Sections 31 to 35 and Sections 38 to 39 shall apply.

With regard to the following provision, please note:

Basic provision

Obligation to Establish or Designate an Independent Body

Section 40c. (1) By creating the necessary legislation at the Länder level, independent bodies shall be established or designated to promote, analyse, monitor and support the implementation of the principle of equal treatment of all persons without discrimination on grounds of ethnicity in other areas.

(2) Legislation at the Länder level shall ensure that the scope of responsibilities of the bodies mentioned in paragraph 1 will include the following tasks:

1. to advise and support persons feeling discriminated against within the meaning of paragraph 1,
2. to conduct independent research on the issue of discrimination,
3. to publish independent reports and to make recommendations on all issues affecting discrimination.

With regard to the following provision, please note:

Basic provision

Title IV

Principles Applying to Equal Treatment in Employment and Occupation in Agriculture and Forestry

In accordance with Article 12, paragraph 1, subparagraph 6, of the Federal Constitution, the following principles have been established:

Scope

Section 41. The provisions of Title IV shall apply to employment relationships of workers in agriculture and forestry within the meaning of the Act Governing Agricultural Labour of 1984, Federal Law Gazette No. 287.

With regard to the following provision, please note:

Basic provision

Equality

Section 42. The aim is to achieve equality between women and men as well as to eliminate other forms of discrimination.

With regard to the following provision, please note:

Basic provision

Principle of Equal Treatment

Section 43. (1) In the context of employment relationships no person shall be subject to discrimination on grounds of sex either directly or indirectly, in particular by reference to his/her marital status or the fact whether a person has children; this shall apply in particular to the following:

1. the establishment of an employment relationship,
2. the fixing of pay,
3. the granting of voluntary social benefits which do not represent pay,
4. vocational training, advanced vocational training and retraining,
5. career advancement, in particular promotion
6. other working conditions,
7. termination of employment.

(2) In the context of employment relationships no person shall be subject to discrimination on grounds of ethnicity, religion or belief, age or sexual orientation, either directly or indirectly; this shall apply in particular to the following:

1. the establishment of an employment relationship,
2. the fixing of pay,
3. the granting of voluntary social benefits which do not represent pay,
4. vocational training, advanced vocational training and retraining,
5. career advancement, in particular promotion,
6. other working conditions,
7. termination of employment.

(3) Paragraph 2 shall not apply to unequal treatment on grounds of nationality as well as to any treatment resulting from the legal status of third-country nationals or stateless persons.

With regard to the following provision, please note:

Basic provision

Definitions

Section 44.

(1) Direct discrimination shall be taken to occur where a person is treated less favourably on grounds of sex or on any of the grounds enumerated in Section 43, paragraph 2, than another is, has been or would be treated in a comparable situation.

(2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice puts persons of one sex or persons belonging to a particular ethnic group, or persons having a particular religion or belief, a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless such provisions, criteria or practices are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Instructions to discriminate against a person shall also be deemed to be discrimination.

(4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds of the sex, ethnicity, religion or belief, age or sexual orientation of the respective person.

With regard to the following provision, please note:

Basic provision

Exemptions

Section 45.

(1) Unequal treatment based on a characteristic related to one of the grounds for discrimination specified in Section 43, paragraph 2 shall not be deemed to be discrimination where by reason of the nature of specific occupational activities or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

(2) Discrimination on grounds of religion or belief shall not be deemed to have occurred with regard to occupational activities pursued within Churches and other public or private organisations, the ethos of which is based on religious principles or belief, where the religion or belief of the person concerned constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

(3) Discrimination on grounds of age shall not be deemed to have occurred if unequal treatment is

1. objective and appropriate,
2. justified by a legitimate aim, especially lawful objectives set in the spheres of employment policies, labour market and education, and
3. if the means for achieving these objectives are appropriate and necessary.

(4) Unequal treatment pursuant to paragraph 3 may include, in particular,

1. the setting of special conditions on access to employment and vocational training as well as specific employment and working conditions, including those relating to dismissal and pay, so as to promote the inclusion of young people, older workers and persons with caring responsibilities or to ensure their protection;
2. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
3. fixing of a maximum age for recruitment which is based on the specific training requirements of the post in question or the need for a reasonable period of employment prior to retirement.

(5) Discrimination on grounds of age shall not be deemed to have occurred with regard to occupational social security schemes due to setting age limits as a prerequisite for membership of, or entitlement to, retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, provided that this does not result in discrimination on grounds of sex.

With regard to the following provision, please note:

Basic provision

Sexual Harassment

Section 46.

(1) Discrimination on grounds of sex shall also be taken to have occurred if a person is

1. sexually harassed by his/her employer,
2. discriminated against by an employer culpably failing to take the appropriate remedial action in accordance with legal provisions, requirements under collective labour legislation or employment contracts in the case of sexual harassment by a third party (paragraph 3);
3. harassed by a third party in the context of his/her employment relationship, or

(2) Sexual harassment shall be taken to have occurred where any form of conduct related to the sexual sphere occurs that has the effect or purpose of violating the dignity of a person or is unwanted, inappropriate or offensive, and

1. has the effect or purpose of creating an intimidating, hostile or humiliating work environment for the person concerned, or
2. if a person's rejection of, or admission to, such conduct related to the sexual sphere by an employer, or a supervisor or a colleague is expressly or tacitly used as a basis for a decision affecting the person's access to vocational training, employment, continued employment, promotion or pay, or as a basis for any other decision related to employment and occupation.

(3) Instructions to sexually harass a person shall also be deemed to be discrimination.

(4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds the sex of the respective person.

With regard to the following provision, please note:

Basic provision

Harassment

Section 47.

(1) Discrimination shall also be taken to have occurred if a person, as a result of gender-related conduct or conduct related to one of the grounds specified in Section 43, paragraph 2, in employment and occupation

1. is harassed by his/her employer,
2. discriminated against by an employer culpably failing to take the appropriate remedial action in accordance with legal provisions, requirements under collective labour legislation or employment contracts in the case of harassment by a third party (subparagraph 3),
3. by a third party in the context of his/her employment relationship,

(2) Harassment shall be taken to have occurred where a person is exposed to gender-related conduct or conduct related to one of the grounds specified in Section 43, paragraph 2, which has the effect or purpose of violating his/her dignity, is unwanted by the person concerned and

1. has the effect or purpose of creating an intimidating, hostile or humiliating work environment for the person concerned, or
2. if a person's rejection of, or admission to, such conduct by an employer, or a supervisor or a colleague is expressly or tacitly used as a basis for a decision affecting the person's access to vocational training, employment, continued employment, promotion or pay, or as a basis for any other decision related to employment and occupation.

(3) Instructions to harass a person shall also be deemed to be discrimination.

(4) Discrimination shall also be taken to occur where a person is discriminated against due to his/her close relationship with another person on grounds of the sex, ethnicity, religion or belief, age or sexual orientation of the respective person.

With regard to the following provision, please note:

Basic provision

Positive Action

Section 48. Specific measures for the promotion of equality in employment and occupation, which aim at the elimination of or compensation for discrimination on grounds of sex or on grounds of discrimination within the meaning of Section 43, paragraph 2 and are provided for in laws, decrees or collective labour legislation or in general directions of employers affecting several employees, shall not be deemed to be discrimination within the meaning of this Act.

With regard to the following provision, please note:

Basic provision

Principle of Gender-Neutral and Non-Discriminatory Job Advertisements

Section 49.

(1) Employers may not advertise a position publicly or within a company exclusively for men or women, or have such job advertisements placed by third parties, unless being a member of one sex is an indispensable prerequisite for performing the activity concerned. Furthermore, the job advertisement shall not contain any references from which it could be inferred that members of one sex would be preferred.

(2) Employers may not advertise a position publicly or within a company in any other discriminatory manner, or have such job advertisements placed by third parties, unless the special characteristic constitutes an essential and decisive prerequisite for performing the activity concerned because of the type of occupational or professional activity or the conditions under which such activity is performed and provided that it serves a lawful purpose and constitutes a reasonable requirement.

(3) The principle of gender-neutral and non-discriminatory job advertisements shall equally apply to private job placement agencies pursuant to Sections 2ff of the Labour Market Promotion Act and to public legal entities entrusted with job placement tasks.

(4) Employers or private placement agencies as defined in Sections 2ff of the Labour Market Promotion Act or public legal entities entrusted with job placement tasks shall state the minimum pay applicable to the vacancy advertised in accordance with collective agreements or the law or other requirements of collective labour legislation in the job advertisement and, if applicable, indicate their willingness to make payments in excess of the minimum pay. Section 9, paragraph 2, last and penultimate sentences, shall apply mutatis mutandis.

With regard to the following provision, please note:

Basic provision

Pay Criteria

Section 50. For the purpose of defining pay criteria, company classification schemes and requirements of collective labour legislation shall comply with the principle of equal pay for equal work or work to which equal value is attributed, and may not set out separate criteria for the appraisal of work of men on the one hand and the work of women on the other which lead to discrimination or criteria which lead to discrimination on one of the grounds specified in Section 43, paragraph 2.

With regard to the following provision, please note:

Basic provision

Legal Consequences of a Violation of the Principle of Equal Treatment

Section 51.

(1) If an employment relationship was not established due to a violation of the principle of equal treatment pursuant to Section 43, paragraph 1, subparagraph 1, or Section 43, paragraph 2, subparagraph 1, the employer shall be liable to pay compensation to the job applicant for the economic loss and personal damage suffered. The compensation shall amount to

1. a minimum of two monthly salaries if the job applicant would have been awarded the position had the selection not been discriminatory, or

2. a maximum amount of 500 euros if the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her application into consideration.

(2) If due to a violation of the principle of equal treatment pursuant to Section 43, paragraph 1, subparagraph 2, or Section 43, paragraph 2, subparagraph 2 by an employer, an employee receives lower pay than an employee of the other sex or lower pay than an employee who is not discriminated against on one of the grounds enumerated in Section 43, paragraph 2, for equal work or work to which equal value is attributed, he/she shall be entitled to claim payment of the income difference from the employer and compensation for the personal damage suffered.

(3) In case of a violation of the principle of equal treatment pursuant to Section 43, paragraph 1, subparagraph 3, or Section 43, paragraph 2, subparagraph 3, the employee shall be entitled to be granted the respective social benefit or compensation for the economic loss and personal damage suffered.

(4) In case of a violation of the principle of equal treatment pursuant to Section 43, paragraph 1, subparagraph 4, or Section 43, paragraph 2, subparagraph 4, the employee shall be entitled to claim inclusion in the respective internal training and further training measures of the company or compensation for the economic loss and personal damage suffered.

(5) If an employee has not been promoted due to a violation of the principle of equal treatment pursuant to Section 43, paragraph 1, subparagraph 5 or Section 43, paragraph 2, subparagraph 5, the employer shall be liable for paying compensation to such employee for the economic loss or personal damage suffered. The compensation shall correspond to

1. the income difference for at least three months if the employee would have been promoted had the selection not been discriminatory, or
2. a maximum amount of 500 euros if the employer can prove that the only damage suffered by an employee as a result of discrimination was the refusal to take his/her application into consideration.

(6) In case of a violation of the principle of equal treatment pursuant to Section 43, paragraph 1, subparagraph 6 or Section 43, paragraph 2, subparagraph 6, the employee concerned shall be entitled to enjoy the same working conditions as an employee of the other sex or an employee not subject to discrimination on one of the grounds specified in Section 43, paragraph 2, or to compensation for the economic loss and personal damage suffered.

(7) In the case that the employment relationship was ended through dismissal or otherwise prematurely terminated by the employer due to the sex of the employee or on one of the grounds specified in Section 43, paragraph 2 or due to claims pursuant to this Act asserted for not manifestly unfounded reasons or in case that the probationary employment relationship was terminated due to such a cause (Section 43, paragraph 1, subparagraph 7 or Section 43, paragraph 2, subparagraph 7), such notice of dismissal, dismissal or termination of probationary employment may be challenged in court. In case a fixed-term employment designed to be converted into a permanent employment relationship ended on the specified date due to the sex of an employee or due to a cause stated in Section 43, paragraph 2 or due to claims pursuant to this Act asserted for not manifestly unfounded reasons, an action for declaratory judgement may be brought to declare that the employment relationship is not limited in time. If the employee accepts the end of his/her employment relationship, he/she shall be entitled to compensation for the economic loss and personal damage suffered.

(8) In case of sexual harassment pursuant to Section 46 or harassment pursuant to Section 47, the person concerned shall be entitled to claim compensation for the damage sustained from the harasser, and, in case of harassment in accordance with Section 46, paragraph 1, subparagraph 2, or Section 47, paragraph 1, subparagraph 2, also from his/her employer. In so far as the disadvantage has not only resulted in economic loss, the person concerned shall be entitled to adequate compensation for the personal damage suffered, which in any case shall be at least 1 000 euros.

(9) In so far as the person concerned invokes a fact of discrimination within the meaning of Sections 43, 46 or 47 in a legal dispute, he/she shall substantiate this credibly. If Section 43 is invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that another motive substantiated credibly by the respondent has resulted in unequal treatment, or that the other sex was an indispensable requirement for exercising the activity, or that there is another justification within the meaning of Section 44, paragraph 2 or Section 45. If Sections 46 or 47 are invoked, it shall be for the respondent to prove that when considering all facts and circumstances it appears more probable that the facts credibly substantiated by the respondent are the truth.

(10) In case multiple discrimination occurs, this shall be taken into account in calculating compensation for the personal damage suffered.

(11) In calculating compensation for any personal damage suffered, it is necessary to ensure a real and effective compensation for the damage suffered; furthermore the compensation shall be proportionate to the damage suffered and prevent discrimination.

With regard to the following provision, please note:

Basic provision

Victimisation

Section 52. In response to a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment, an employee must not be dismissed, given notice of dismissal or otherwise be put at a disadvantage within the respective company. Another employee heard as a witness or informant in legal proceedings or supporting the complaint of another employee must not be dismissed, given notice of dismissal or be otherwise put at a disadvantage in response to such a complaint or to legal proceedings instituted to enforce compliance with the principle of equal treatment. Section 51 shall apply mutatis mutandis.

With regard to the following provision, please note:

Basic provision

Tasks of an Equal Treatment Commission

Section 53.

(1) In so far as the Laender legislation provides for the establishment of an Equal Treatment Commission, the latter shall deal with all issues related to discrimination within the meaning of Sections 43 to 47.

(2) The Commission may prepare expert opinions on discrimination issues within the meaning of Sections 43 to 47. Expert opinions shall, in particular, be drawn up in cases of infringement of the principle of equal treatment in collective labour legislation.

With regard to the following provision, please note:

Basic provision

Section 54.

(1) The Commission may examine on a case-by-case basis whether the principle of equal treatment has been violated. If the Commission determines that a violation of the principle of equal treatment has occurred, it may inform the employer of this fact and request that he/she put an end to such discrimination.

(2) Laender legislation shall contain a provision to the effect that the employee is entitled to be represented in proceedings instituted before the Commission by a person enjoying his/her confidence, in particular by a representative of one of the organised interest groups or of a non-governmental organisation; furthermore that upon application by the employee, the Commission shall call in a representative of a non-governmental organisation nominated by the person affected as an informant; and that, upon initiation of the examination of a particular case, the Commission shall expressly advise the employee of his/her right to such application.

(3) If the employer fails to comply with the Commission's request pursuant to paragraph 1, the competent bodies authorised to conclude collective agreements or the Ombud for Equal Treatment or an Equal treatment representative may bring action for declaratory judgement establishing infringement of the principle of equal treatment before a court.

(4) In case of an alleged infringement of the principle of equal treatment, the Commission may, if required, ask for a written report from the employer. Such a report shall contain all the details necessary to assess compliance with the principle of equal treatment.

With regard to the following provision, please note:

Basic provision

Ombud for Equal Treatment; Equal Treatment Representative

Section 55. (1) If Laender legislation stipulates that an Ombud for Equal Treatment or an Equal Treatment Representative shall be represented in the Equal Treatment Commission as an independent body, it shall be responsible for counselling and supporting persons feeling discriminated against within the meaning of this Act. The Laender legislation may also give such institutions other designations.

(2) The employer, the works council and all employees of the company affected shall have the obligation under the Laender legislation to provide all information required by an Ombud for Equal Treatment or an Equal Treatment Representative to fulfil his/her tasks.

(3) In the case that an Ombud for Equal Treatment or an Equal Treatment Representative presumes an infringement of the principle of equal treatment and credibly substantiates the allegations before the Commission, the Commission shall – proprio motu – institute proceedings.

(4) Laender legislation shall contain a provision to the effect that an Ombud for Equal Treatment or an Equal Treatment Representative, may – by order of the Commission – enter the premises of the companies, inspect the records of the companies and make (photo) copies of such records.

(5) Laender legislation shall contain a provision to the effect that an Ombud for Equal Treatment or an Equal Treatment Representative may involve the works council in investigative activities.

With regard to the following provision, please note:

Basic provision

Publication

Section 56. Laender legislation may contain a provision to the effect that the Commission shall publish its expert opinions as well as final judgments establishing violations of the principle of equal treatment in one of the publication media of the respective Land. Publication may also be required In case of non-compliance with the request pursuant to Section 54, paragraph 3 by the employer.

With regard to the following provision, please note:

Basic provision

Obligation to Furnish Information

Section 57. The employers and all employees of the companies concerned shall have the obligation under Laender legislation to provide all information required by an Equal Treatment Commission to fulfil its tasks.

With regard to the following provision, please note:

Basic provision

Penal Provisions

Section 58. The Implementing Acts shall stipulate that on request of an applicant or the Ombud for Equal Treatment or an Equal Treatment Representative a fine shall be imposed by the competent district authority in respect of job advertisements of private job placement agencies in accordance with Sections 2ff of the Labour Market Promotion Act or legal entities under public law entrusted with the task of job placement or employers, which do not comply with the provisions of Laender legislation implementing Section 49, provided that the Laender legislation provides for such a fine. The amount shall be laid down in the Implementing Acts.

Title V

Final Provisions

References

Section 59. References in this Federal Act to other Federal Acts are to current versions of such an Act.

Access to the Act

Section 60. Every employer shall make a printed copy of this Federal Act available at an appropriate place in the company, which is easily accessible to the employees, or shall make it available by means of a data carrier including a reading device, by means of appropriate data processing or by means of appropriate telecommunications devices.

Obligation of the Court to State Reasons

Section 61. In court proceedings for the violation of the principle of equal treatment, the court shall consider in the individual case the expert opinion or result of examination submitted by the Equal Treatment Commission and shall state reasons for a dissenting judgment.

Third-Party Intervention

Section 62. If a party concerned so requires, the Association of Plaintiffs for the Enforcement of the Rights of Victims of Discrimination may join litigation as a third-party plaintiff to seek enforcement of claims under this Federal Act (Sections 17 to 19 Austrian Code of Civil Procedure).

Dialogue with Non-Governmental Organisations

Section 62a. The Federal Chancellor shall hold a dialogue meeting with non-governmental organisations committed to combating discrimination within the meaning of this Federal Act and to promoting the principle of equal treatment at least once a year.

Entry into Force

Section 63.

(1) This Federal Act shall enter into force on 1 July 2004.

(2) The Implementing Acts of the Laender regarding the principles laid down in Title III, Part 2 and in Title IV shall be passed within six months from the day following promulgation.

(3) Section 12, paragraph 12, Section 22, Section 26, paragraph 12, Section 35, paragraph 3, Section 41, Section 44, paragraphs 1 and 2, Section 48, Section 49, paragraph 3, Section 51, paragraph 9 as well as Section 58, as amended in Federal Law Gazette I No. 82/2005 enter into force on 1 July 2004, Section 15, paragraph 4, Section 29, paragraph 4 as well as Section 35, paragraph 4, as amended in Federal Law Gazette I, No. 82/2005 enter into force on 1 January 2006. The Implementing Acts corresponding to Section 41, Section 44, paragraphs 1 and 2, Section 48, Section 49, paragraph 3, Section 51, paragraph 9 and Section 58 shall be passed within six months from the day following promulgation.

(4) Section 6, paragraph 2, Section 7, paragraph 2, Section 8, Section 12, paragraph 1, subparagraphs 1, 7, 8, 11 and 13, Section 13, last sentence, Section 15, paragraphs 1 and 1a, Section 17, paragraph 2, Section 21, paragraph 2, Section 22, Section 26, paragraph 1, subparagraphs 1, 7, 8, 11 and 13, Section 27, Section 29, paragraphs 1 and 1a, Section 31, paragraph 2, Section 35, paragraphs 2, 5 and 6, Section 36, Title III(a) as well as Section 46, paragraph 2, Section 47, paragraph 2, Section 51, paragraph 1, subparagraphs 1, 7, 8 and 10 as well as Section 52, last sentence as amended in Federal Law Gazette I No. 98/2008 enter into force on 1 August 2008. The Implementing Acts corresponding to Section 46, paragraph 2, Section 47, paragraph 2, Section 51, paragraph 1, subparagraphs 1, 7, 8 and 10 as well as Section 52, last sentence, shall be passed within six months after the day following promulgation.

(5) The table of contents, Section 5, paragraph 4, Section 6, paragraph 4, Section 7, paragraph 4, Section 9, Section 10, paragraph 1, paragraph 3, subparagraph 1 and paragraph 4, Section 11a, Section 12, paragraph 11, last sentence, Section 19, paragraph 4, Section 21, paragraph 4, Section 23, Section 24, paragraph 1, paragraph 3, subparagraph 1 and paragraph 4, Section 26, paragraph 11, last sentence, Title III as well as Section 44, paragraph 4, Section 46, paragraph 4, Section 47, paragraph 4, Section 49, paragraphs 3 and 4, Section 51, paragraph 8, last sentence, Section 58, the headings of Section 63 and Section 64, as amended in Federal Law Gazette I No. 7/2011 enter into force on 1 March 2011. Section 10, paragraphs 2 and 3, subparagraph 2 as well as Section 24, paragraphs 2 and 3, subparagraph 2 enter into force on 1 January 2012. Title IIIa will be repealed with effect 28 February 2011, 12 p.m. The Implementing Acts corresponding to Section 44, paragraph 4, Section 46, paragraph 4, Section 47, paragraph 4, Section 49, paragraphs 3 and 4, Section 51, paragraph 8, last sentence and Section 58 shall be passed within six months as from the day following promulgation.

(6) For employers employing permanently more than 1 000 employees the obligation to prepare an income report pursuant to Section 11a, as amended in Federal Law Gazette I No. 7/2011, will become effective on 1 March 2011; the report shall be prepared for the year 2010. The report for the year 2010 shall be submitted or made available for inspection no later than on 31 July 2011 in the manner specified

in Section 11a, paragraph 3. For employers employing permanently less than 1 001 but more than 500 employees the obligation to prepare an income report pursuant to Section 11a, as amended in Federal Law Gazette I No. 7/2011 will become effective on 1 January 2012; the report shall be prepared for the year 2011. For employers employing permanently less than 501 but more than 250 employees the obligation to prepare an income report pursuant to Section 11a, as amended in Federal Law Gazette I No. 7/2011, enters into force on 1 January 2013; the report shall be prepared for the year 2012. For employers employing permanently less than 251 but more than 150 employees the obligation to prepare an income report pursuant to Section 11a, as amended in Federal Law Gazette I No. 7/2011, enters into force on 1 January 2014; the report shall be prepared for the year 2013.

(7) Section 10, paragraph 4, Section 24, paragraph 4 and Section 37, paragraph 2, as amended in Federal Law Gazette I No. 71/2013 enter into force on 1 January 2014.

(8) The table of contents, Section 1, paragraph 1, subparagraphs 2 and 4, Section 3, Section 4, Section 9, paragraph 2, Section 10, Section 12, paragraph 14, Section 15, paragraphs 1 and 2, Section 16, paragraph 1, subparagraphs 2 and 4, Section 18, subparagraphs 1 and 3, Section 23, paragraph 2, Section 24, paragraphs 1 to 4, Section 26, paragraph 14, Section 31, paragraph 1, Section 37, Section 38 paragraphs 4, 6 and 7, Section 43, paragraph 1, Section 49, paragraph 4, last sentence, Section 51 paragraph 11, Section 62, Section 62a as well as Section 64, paragraph 1, subparagraphs 1 and 2a, as amended in Federal Law Gazette I No. 107/2013 enter into force on 1 August 2013. The Implementing Acts corresponding to Section 43, paragraph 1, Section 49, paragraph 4, last sentence and Section 51, paragraph 11 shall be passed within six months as from the day following promulgation.

Implementation

Section 64.

(1) The following shall be responsible for implementing this Federal Act:

1. with regard to Sections 14, 28 und 37, the Federal Minister responsible for subsidies,
2. with regard to Sections 61 and 62, the Federal Minister of Justice,
- 2a. with regard to Section 62a, the Federal Chancellor

3. with regard to the remaining Act, the Federal Minister for Labour, Social Affairs and Consumer Protection.

(2) The Federal Minister for Labour, Social Affairs and Consumer Protection shall be responsible for safeguarding the rights of the Federal Republic of Austria under Article 15, paragraph 8 of the Federal Constitution in respect of Title III, Part 2. The Federal Minister of Justice shall be responsible for safeguarding the rights of the Federal Republic of Austria under Article 15, paragraph 8 of the Federal Constitution in respect of Title IV, Section 54, paragraph 3. As far as the remaining Act is concerned, the Federal Minister for Labour, Social Affairs and Consumer Protection shall be responsible.