

The Netherlands: Gender discrimination in the field of employment

This document outlines legislation in Belgium that prohibits discrimination on the basis of race and national origin in the provision of goods and services.

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I. Introduction

According to a June 2006 survey, approximately 54% of Dutch women actively participate in the workforce. This statistic indicates that while women have been successful in combating gender discrimination in employment practices over recent decades, there is still improvement to be made. The Netherlands addresses fundamental rights against discrimination more broadly in the national Constitution and the Dutch Civil Code. The Equal Treatment (Men and Women) Act or Equal Opportunities Act of 1980 sets the foundation for addressing the debate on gender discrimination in employment. Subsequent legislation has expanded upon this Act. More recently, the Dutch Parliament has created legislation supporting women in the workforce. This includes legislation focusing on decreasing discrimination against part-time employees (women are more likely to work part-time than men) and increasing employers' childcare responsibilities so that women are not tied to the home.

II. Legislation

A. Article 1 of the Constitution (Adopted on February 17, 1983)

i. Summary

1. Discusses fundamental rights accorded to all citizens of The Netherlands. More specifically, Article 1 of the Constitution states

that people cannot be treated unequally by reason of their religion, personal beliefs, political beliefs, race, gender, nationality, sexual orientation, civil status, working hours (full-time or part-time work), disability or chronic illness, type of contract (permanent or temporary) and age.

ii. Links

1. English Translation

- a. <http://www.oefre.unibe.ch/law/icl/nl00000.html>

B. The Dutch Civil Code

i. Section 7:646 – 7:649 of the Dutch Civil Code

1. Summary

- a. Prohibits employers from discriminating between men and women in hiring and promotion practices. Also prohibits discrimination on the grounds of working hours. This is relevant to women as there is a higher percentage of women who work part-time than men.
- b. The Equal Treatment Commission examines whether discrimination has occurred or is occurring.
- c. Burden of proof is on the respondent in question.
- d. Defines “direct discrimination” vs. “indirect discrimination”:
 - i. Direct discrimination is defined “to include discrimination on the grounds of pregnancy, childbirth and motherhood.”
 - ii. Indirect discrimination is defined “as discrimination on the grounds of other characteristics rather than sex, for example civil status or family circumstances, resulting in discrimination on the grounds of sex.”

2. Limitations

- a. Article 1 does not apply to indirect discrimination (as defined above) because it is “objectively justified”
- b. Derogation from the law is allowed for the following stipulations:

- Those relating to pregnancy or motherhood.
 - Those that put female employees in a “privileged position” in order to eliminate or reduce “*de facto* inequality” and that the unequal treatment is “reasonably proportionate” to the intended goal.
- c. A terminated employee only has two months to file a discriminatory complaint against his or her employer.

3. Links

a. English Translation

- i. <http://www.cgb.nl/cgb251.php>

ii. Section 7:670 of the Dutch Civil Code

1. Summary

- a. An employer cannot terminate a woman’s employment contract during pregnancy or maternity leave, after the employee has resumed work, during the six weeks following that maternity leave or following a period of incapacity as a result of the pregnancy.
- b. An employer cannot terminate an employee’s employment contract based on the circumstances of the employee’s parental leave.

2. Limitations

- a. The employer may ask for a certificate from a doctor confirming the pregnancy.

3. Links

a. English Translation

- i. http://www.ser.nl/downloadpdf.asp?filename=/upload/databank_engels/2003_or_b5.pdf

C. Equal Treatment (Men and Women) Act or Equal Opportunities Act (March 1, 1980)

i. Summary

- 1. Act covers both direct and indirect discrimination.

- a. Direct discrimination is defined as including “discrimination on the grounds of pregnancy, childbirth or motherhood.”
 - b. Indirect discrimination is defined as including “discrimination on the grounds of characteristics other than sex, such as marital status or family circumstances, resulting in discrimination on the grounds of sex.”
2. Public service authorities cannot discriminate between men and women in hiring procedures and access to professions.
3. Men and women must be afforded the same access and opportunities to professions, as well as the opportunity to develop within the profession. This includes not discriminating between men and women in advertisements for and the procedures of filling job vacancies.
4. Difference in salary is not based on gender, race, national, disability or chronic illness, working hours or a temporary contract; “equal pay for work of equal value.”
5. Employers cannot discriminate between men and women when deciding to participate in a pension scheme, the content of the pension scheme or the way in which the pension scheme is implemented.
 - a. Pension scheme means “a pension scheme for one or more people, exclusively in connection with their work at an undertaking, in an industry, a profession or public service, supplementing a statutory system of social insurance and, in the case of a scheme for an individual, not set up by that individual.”
 - b. Provisions regarding the protection of women, particularly in regard to pregnancy and maternity leave, are permitted in the implementation of pension schemes.

ii. Limitations

1. Sex can be considered a determining factor because of the nature or conditions of the following positions:
 - a. The office of minister of religion;
 - b. Actor, singer, dancer or artist, if their activities relate to the interpretation of specific roles; and

- c. Other occupational activities that may be designated by order of the council.

iii. Links

1. English Translation

- a. http://web20.s112.typo3server.com/fileadmin/pdfs/Nationale_Inhalte/Netherlands/Legislation/EqualTr_Gender_NL.pdf

D. Working Conditions Act (1988)

i. Summary

1. Requires employers to protect employees against sexual harassment and aggression and violence at the workplace to the best of their ability.
2. Employers must also pursue a formal policy on sexual harassment. In conducting risk analysis and evaluations of the workplace, employers must study sexual harassment as mandated by the Act.
3. Employers who do not comply with this Act may be fined.

ii. Links

1. Summary of the Act

- a. http://www.ilo.org/public/english/employment/gems/eoo/law/nether/l_wca.htm

E. General Equal Treatment Act (March 2, 1994)

i. Summary

1. Defines “direct” vs. “indirect” discrimination:
 - a. Direct discrimination means “discrimination between persons on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.”
 - b. Indirect discrimination means “discrimination on the grounds of characteristics or behavior other than those

referred to under [the definition of “direct discrimination”],
resulting in direct discrimination.”

2. Establishes protection against harassment and discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.
3. Cannot discriminate in regard to:
 - a. Advertisements for job vacancies;
 - b. Job placement;
 - c. Hiring or firing practices;
 - d. Hiring or firing civil servants;
 - e. Terms and conditions of employment;
 - f. Education or training benefits during employment;
 - g. Promotions; and
 - h. Working conditions.
4. Defines “harassment”:
 - a. Harassment means “conduct related to the characteristics or behavior referred to under [the definition of “direct discrimination”] which has the purpose or effect of undermining the dignity of a person and creating a threatening, hostile, degrading, humiliating or offensive environment.”
5. Employers cannot discriminate in regard to membership or involvement in organizations, trade unions, and/or professional associations. This also includes discrimination concerning benefits that may arise from such membership or involvement.
6. Companies and individuals cannot discriminate in terms of the transaction of their businesses.
7. Also establishes the Equal Treatment Commission
 - a. The Commission has the ability to conduct investigations of reported discriminatory behavior and publish its findings.

- b. Everyone is required to aid the Commission with any investigations by providing the necessary information it requires, unless exempt due to official or professional confidentiality.
- c. The Commission must issue an annual report, and every five years must compile a report of its findings on the operation of the Act.
- d. The Commission is composed of nine members
 - i. Section 48 of the Judicial Officers (Legal Status) Act determines the requirements for the chair and two assistant chairs of the Commission.
 - ii. Other members are appointed by the Minister of Justice, with advice from the Minister of the Interior, the Minister of Social Affairs & Employment, the Minister of Education & Science and the Minister of Welfare, Health & Cultural Affairs.

ii. Limitations

1. Prohibition on discrimination on the grounds of sex does not apply in the following cases:
 - a. When sex is a determining factor;
 - b. When the protection of women is concerned, specifically in pregnancy and maternity cases; and
 - c. When the aim of the measure is to place women in a privileged position in order to eliminate or reduce existing inequalities and the discrimination is reasonably proportional to the intended effect.
2. Act does not apply to legal matters involving religious communities or the office of the minister of religion.

iii. Links

1. English Translation
 - a. <http://www.cgb.nl/cgb170.php>

F. Advisory Bodies Framework Act (July 3, 1996)

i. Summary

1. Requires advisory bodies of the government and Parliament to ensure equal participation by women and/or ethnic minorities. (Section 12)

ii. Links

1. English Translation

- a. <http://cms.web-beat.nl/ContentSuite/upload/aiv/pag/Advisory%20Bodies%20Framework%20Act.pdf>

G. Working Hours Adjustment Act (2000)

i. Summary

1. Gives employees the right to request shortening or lengthening of normal working hours.
2. This helps women to care for their child and still work flexible hours.

ii. Limitations

1. Only applies to employees who have worked for their employer for at least a year.
2. Requests to change working hours can only be made once every two years.
3. Employers with less than ten employees are exempt but must have their own internal policy on the matter.
4. The employer does not have to grant the request if it conflicts with company interests, including (but not excluding):
 - a. There is no suitable replacement for the employee,
 - b. If the adjustment of working hours leads to safety problems, or
 - c. If the adjustment of working hours causes serious financial or organizational problems.

iii. Links

1. Summary of the Act

- a. http://www.ilo.org/public/english/employment/gems/eeo/law/nether/l_wa.htm

H. Childcare Act (January 1, 2005)

i. Summary

1. Act regulates the quality of childcare on a national basis. It also splits the cost of childcare among parents, employers, and the government. Sets target figure of 90% of all parents to get a full contribution of child care costs from their employer by 2008.

ii. Links

1. Summary of Act and Example of Calculations of Childcare Costs

- a. <http://www.expatax.nl/taxnewschildcare.htm>