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Know your rights

protection from
discrimination

Justice
and Consumers

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Know your rights - protection from discrimination – 2015

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Know your rights
protection from
discrimination

This guide is about your right to be protected from discrimination under EU law.

It explains exactly what rights you have¹, and what to do if you think that you have been subjected to discrimination.

The prohibition of discrimination is a fundamental principle of the European Union. The EU adopts legislation against discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

This legislation does not prohibit discrimination in all areas of life, but in a number of specified key areas such as employment. EU Member States have an obligation to implement EU law in their national legislation and to apply it correctly.

Discrimination on the grounds of nationality is also prohibited under EU law, but is not covered in this brochure. More information on your rights is available on the Youreurope portal:

<http://europa.eu/youreurope/index.htm>.

This guide sets out your rights under EU law, which only provides a minimum level of protection. Most Member States provide wider protection against discrimination under national legislation. You can find out more in the ‘useful links’ section below.

1. What are your rights?

1. Which EU laws protect you from discrimination?

Grounds of discrimination	EU legislation
Racial or ethnic origin	<i>Racial Equality Directive 2000/43/EC</i>
Religion or belief, disability, age or sexual orientation	<i>Employment Equality Directive 2000/78/EC</i>
Sex <ul style="list-style-type: none"> • including pregnancy and maternity • including discrimination arising from gender reassignment 	<i>Gender Equality Directive 2006/54/EC</i> <i>(in relation to employment)</i> <i>Gender Equality Directive 2004/113/EC</i> <i>(in relation to goods and services)</i> <i>Gender Equality Directive 79/7/EEC</i> <i>(in relation to social security)</i>

2. What if I am discriminated against on other grounds?

You may still be protected from discrimination on other grounds under national law. You should check whether the national laws in your Member State offer protection in your particular case. Legal protection under national law may include discrimination on grounds of political opinion, marital status, birth, social origin, property, health or physical characteristics. The Charter of Fundamental Rights of the European Union also prohibits discrimination on grounds such as social origin, language, political or other opinion, property and birth. However, this applies to Member States of the EU only when they are implementing EU law.

Nationality: EU citizens and their family members are also protected from discrimination on grounds of nationality within the scope of EU law. The right to equal treatment for nationals of non-EU countries is protected on specific conditions under Directive 2003/109/EC (long-term residents) and a number of other Directives.

3. In which situations in my life am I protected from discrimination under EU law?

The protection provided by EU law covers different fields according to the grounds of discrimination.

Grounds of discrimination	Fields in which you are protected under EU law
Racial or ethnic origin	<p><i>Access to employment (recruitment)</i> <i>Working conditions including pay and dismissal</i> <i>Occupational pensions</i> <i>Vocational training</i> <i>Access to self-employment/other forms of occupation</i> <i>Social protection (including social security and healthcare)</i> <i>Education</i> <i>Access to and supply of goods and services, including housing</i></p>
Sex	<p><i>Access to employment (recruitment)</i> <i>Working conditions including pay and dismissal</i> <i>Occupational pensions</i> <i>Vocational training</i> <i>Access to self-employment/other forms of occupation</i> <i>Social security</i> <i>Access to and supply of goods and services</i></p>
Religion or belief, disability, age, sexual orientation	<p><i>Working conditions, including pay and dismissal</i> <i>Occupational pensions</i> <i>Access to employment (recruitment)</i> <i>Vocational training</i> <i>Access to self-employment/other forms of occupation</i></p>

Many Member States provide wider protection under their national law and also ban discrimination on the grounds of religion or belief, disability, age or sexual orientation in areas such as goods and services.

Know your rights — at work

You are protected from discrimination in all areas of your work life, right from the application stage. When applying for a job, nobody should be excluded because of their sex, age, racial origin or other protected characteristics.

You are entitled to equal treatment in areas such as recruitment, working conditions, promotion, pay, access to vocational training, occupational pensions and dismissal. For example, an employer must not dismiss a female worker because she is pregnant, or pay men higher wages than women for the same work or work of equal value.

Know your rights — when buying or selling goods or services

Discrimination on grounds of racial or ethnic origin and sex is prohibited in services available to the public, whether in the public or private sector. You cannot be refused access to a restaurant, bar, fitness club, hotel, etc. on the basis of your sex or racial or ethnic origin and you cannot be required to pay a higher price for certain services just because of your sex (e.g. in hairdressing services and insurance).

Not all activities fall under EU equality directives. For example, certain activities of public authorities (e.g. the police) are not ‘services’ under EU law and therefore EU anti-discrimination law does not apply. Services that are not made ‘available to the public’ are also exempted (e.g. an elderly lady wishing to rent out a room in her own house can look for a tenant in the limited circle of her family and acquaintances or limit her choice to one sex only).

4. What type of discrimination is prohibited?

Different forms of discrimination, including direct and indirect discrimination, harassment, sexual harassment, victimisation and instructions to discriminate are prohibited under EU law.

Direct discrimination is where a person is treated differently and worse than others on any of the grounds covered by EU law. The following situations would be examples of discrimination:

- a refusal to recruit you because you are Muslim, Jewish, black, male or over 35 years old;
- a refusal to admit your child to a school because you are Roma;
- dismissal where an employer in economic difficulties needs to reduce staff numbers and only chooses people aged over 50;
- an estate agent's refusal to rent to you because of your skin colour or sex.

Indirect discrimination is where a **practice, policy or rule** that applies to everyone has a worse effect on some people compared to others. Some measures may look neutral at first sight, but nevertheless have a discriminatory effect on a particular group of people. For example: a requirement that workers in a supermarket or conference centre are able to carry out their tasks standing up could unnecessarily exclude certain disabled applicants. Certain dress codes could exclude applicants from ethnic minorities or religious groups. Certain physical requirements could exclude female, older or disabled applicants. It does not matter whether discrimination is intentional or not. Statistical information can be useful to demonstrate indirect discrimination. For example, rules that are unfavourable to part-time workers can indirectly discriminate against women, because more women than men tend to work part-time.

Indirect discrimination can be justified in some situations. If:

- there is a legitimate reason or aim behind the practice, policy or rule, and
- the means of achieving that aim are appropriate and necessary,

This is called 'objective justification'. It is assessed on a case-by-case basis.

Harassment is unwanted conduct or behaviour that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. For example, if you are homosexual and your boss and colleagues regularly tell homophobic jokes and exchange homophobic e-mails, this could be harassment and therefore discrimination.

Sexual harassment is unwanted physical, verbal or non-verbal conduct or behaviour of a sexual nature that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. For example, if your boss or one of your co-workers makes physical advances towards you, displays pictures or photographs of a sexual nature or sends you sexually explicit or inappropriate emails or text messages.

Victimisation is when someone treats you badly because you have complained, or helped someone else to complain, about discrimination. For example, if you are dismissed or refused promotion because you have filed a discrimination complaint against your boss or given evidence as a witness in a discrimination case, this is victimisation.

Instruction to discriminate is also a form of discrimination. For example a nightclub owner who instructs his staff to refuse entrance to people of a particular racial or ethnic group, or an employer who asks a temporary work agency only to send young women aged under 30.

5. Are there situations in which different treatment on the basis of the protected grounds is allowed?

Yes, EU law allows for certain exceptions to the general prohibition.

There is a general exception in employment where a specific requirement is necessary for a certain professional activity. For example, a casting director may want an actor of a particular racial origin for a role in a film. Likewise, priests can be required to adhere to the faith of their religious communities. However, this exception does not allow churches or other religious organisations to impose religious requirements for the recruitment of people whose religion or belief is not directly relevant to their activities (such as cleaners or gardeners).

The provision of goods or services exclusively or primarily to one sex is also allowed under certain conditions. For example, health clinics can provide certain services solely to pregnant women.

EU Member States can also allow different treatment on grounds of age, if this is appropriate and necessary to achieve legitimate employment and labour market objectives. For example, subject to certain conditions, Member States can allow for an employment contract to be terminated when workers reach a certain age – in particular if they are already entitled to a pension.

EU law also allows Member States to have rules or policies that prevent or compensate for disadvantages faced by a specific group. This is known as 'positive action'. For example, there can be targets for employers to employ people with disabilities, or to have more women in management positions, if they are under-represented among managers. Most Member States have special rules for the armed forces to allow different treatment on grounds of age and disability.

6. Does everyone in the EU have to respect the prohibition of discrimination?

Yes. Individuals, companies of all sizes (including SMEs), associations, local authorities, the government and all other organisations in both the public and private sectors all have to comply with the prohibition of discrimination.

7. Is everyone in the EU protected from discrimination?

Yes. EU anti-discrimination law protects everyone in the EU, not only EU citizens. However, it only covers discrimination on grounds of racial or ethnic origin, sex, religion or belief, disability, age or sexual orientation. For example, immigrants from non-EU countries must not be discriminated against on grounds of their ethnic origin, age or sex in the workplace. It does not cover differences in treatment resulting from the fact that someone is not an EU citizen, for example different rules in relation to entry to and residence in an EU country.

8. Am I protected only on the basis of my own characteristics?

No, you are also protected from discrimination by association. This covers a situation where you are treated badly because of your links to someone else. For example, if you are discriminated against and harassed in the workplace because you need extra time off to care for your disabled child.

Discrimination on the basis of assumptions or perceptions is also prohibited. For example, if you are not offered a job because the employer mistakenly thinks that you are homosexual or Muslim.

9. What if I am disabled and need my employer to make changes in the workplace for me to be able to work?

If you are disabled, your employer or future employer has to make reasonable changes to your workplace so that you can do your job. 'Reasonable' means, for example, that the changes should not be too expensive relative to the size of the business, nor should they be in breach of workplace health and safety rules.

You should first discuss your needs with your employer who may not even be aware of his or her obligations. Whether certain changes are reasonable is a decision that can only be made on a case-by-case basis. You could also think about contacting an organisation promoting the rights of disabled people for further advice and support.

Know your rights — right to reasonable accommodation in employment

Reasonable adjustments in the workplace to suit your needs as a disabled worker could include providing you with a reserved parking space, an accessible workspace or specially adapted equipment. It does not have to be physical changes. It depends on what you need. It could be making changes to your working hours or the way in which tasks are done.

Your job application cannot be refused on the grounds that the employer would have to make reasonable adjustments to allow you to carry out the job.

2. How can you enforce your rights?

10. Who can help me if I am facing discrimination?

If you know, or suspect, that you have been discriminated against, you can seek advice and assistance from organisations such as equality bodies, trade unions or NGOs.

Member States are responsible for implementing EU law and enforcing it correctly. They must guarantee your rights under EU law at national level. EU law requires that Member States set up national equality bodies for the promotion of equal treatment on the grounds of racial or ethnic origin and sex. They provide independent assistance to victims of discrimination. In practice, in most Member States national equality bodies also cover religion or belief, disability, age and sexual orientation under national law. In many cases they cover nationality, language or political opinion too.

Some national equality bodies may only provide you with useful information, whereas others can help you make a complaint or may even look at your case themselves.

You can consult the website of your own national equality body under 'Useful links' below. These websites provide further information, including details of the assistance they can offer.

In many Member States, **trade unions** and **non-governmental organisations** provide information and assistance to victims of discrimination. Under EU law, organisations having a legitimate interest in the area of equality have a right to support victims in discrimination proceedings, and in many Member States they can make complaints either on behalf of or in support of an individual.

11. If I have suffered discrimination, should I complain?

Yes. You can only get compensation or a declaration that you were discriminated against if you make a complaint. You should be aware that many Member States have strict time limits for making a discrimination claim. Making a complaint will also help others by raising awareness of discrimination and changing attitudes. Real change often requires a critical mass of cases.

12. Who deals with my complaint?

That depends on the national law of the Member States where you are complaining. You should consult national advice services (see Question 10) for more information about the complaints process.

13. How do I complain if my country does not respect EU law?

If you complain to the European Commission that a Member State fails to comply with EU law, the European Commission will examine whether your complaint shows that the Member State is not applying EU law correctly in its national law. If the European Commission finds that a Member State is in breach of EU law, it can decide to take legal action against the Member State in the Court of Justice of the EU.

However, the European Commission cannot intervene in individual cases between victims of discrimination and their employers, service providers or public authorities. The European Commission cannot make a declaration that there has been discrimination, and it cannot order a Member State, or a company or an individual to give you compensation. A complaint to the European Commission is not a substitute for enforcing your rights through national authorities and courts.

14. How do I prove that I have been a victim of discrimination?

If you have reason to believe that you have been treated differently because of your disability, age, ethnic or racial origin, religion or belief, sexual orientation or sex, you should collect all the evidence you can find to support your claim, e.g. letters, e-mails and other documents. Keep a record of relevant conversations or events and check how you can access documents you might need but that you do not have. For example, if your complaint is that you would have been offered a job, or at least an interview for a job, but for your sex, age, disability, sexual orientation, religion or racial or ethnic origin, it might be useful to have information from the employer about the criteria they used to select candidates. Your national equality body may be able to help you get this information or there may be procedures you have to follow in order to get it.

You should seek advice from your national equality body, trade union or a non-governmental organisation on what you have to do to prove your case.

When making a discrimination claim, you need to show that you were treated unfairly and that the reason you were treated unfairly is because of your sex, age, disability, sexual orientation, religion or racial or ethnic origin. You only need to establish facts that create a presumption of discrimination. It is then for the employer, person or organisation about which you are complaining to prove that there was no discrimination. This is known as the 'reversal of the burden of proof'. It is a rule of EU law that makes it easier for victims of discrimination to bring complaints.

15. Can I complain about discrimination affecting someone else?

If your complaint is about a specific individual situation, you should make your complaint at national level in line with national procedures. Your national equality body, trade union or a non-governmental organisation can advise you on whether you can complain even if it does not affect you directly.

If you complain to the European Commission that a Member State has failed to comply with EU law, you do not have to show that you are directly affected by the problem.

16. What methods are available to find a solution?

Member States decide whether discrimination cases are dealt with in criminal, civil or administrative proceedings. Some Member States provide the option for mediation. For example, this could lead to a negotiated solution between you and your employer. If different options are available, you need to decide on the best one for you. If you do not want to wait for the outcome of potentially lengthy court proceedings, you could go for mediation (if available under your national law), which is usually quicker and less costly. Or you may decide to bring a legal action to avoid a situation where you can no longer receive compensation because you brought your claim too late. Your national equality body, trade union or a non-governmental organisation can give you further advice.

17. What are the solutions? Can I receive compensation? Can I have my job back if I have been dismissed for discriminatory reasons?

EU law does not say what compensation or other remedies have to be available in Member States. EU law only says that Member States have to have effective, proportionate and dissuasive penalties in place and to ensure that it is possible to bring a case to

court to enforce your rights under EU law. You should check which remedies are available under your national legislation. Your national equality body, trade union or a non-governmental organisation can give you further advice.

For example, you may be able to ask for a decision of a court, tribunal or equality body that discrimination has occurred. You may be entitled to claim compensation, reinstatement in a job, or an order requiring the person or organisation that has discriminated to take specific action. For example, a court or national equality body may be able to require an employer to change a discriminatory recruitment policy.

18. How much will I have to pay to make a complaint?

If you want to try to resolve the matter informally, for example by writing to the person or organisation that has discriminated against you, this does not necessarily mean you will have legal costs. If you want to bring a claim to court, then for national proceedings, the costs will depend on your national legal system. There may be cheaper or even free alternatives such as mediation. Enquire early on about your entitlement to legal aid and the availability of other legal advice and representation. For example, advice and assistance may be available for free from equality bodies, trade unions, non-governmental organisations or student lawyers.

Useful links:

European Commission, DG Justice, on 'Tackling discrimination':

http://ec.europa.eu/justice/discrimination/index_en.htm

European Commission, DG Justice, on 'Gender equality':

http://ec.europa.eu/justice/gender-equality/index_en.htm

European Commission, DG Justice, on 'Fundamental rights':

http://ec.europa.eu/justice/fundamental-rights/index_en.htm

European Commission, Secretariat-General, on 'Application of EU law':

http://ec.europa.eu/eu_law/index_en.htm

European Network of Equality Bodies (Equinet):

<http://www.equineteurope.org/>

European Court of Human Rights on application to the Court:

http://www.echr.coe.int/Pages/home.aspx?p=applicants&c=#n1365511865464_pointer

European Commission, DG Home, on status of non-EU nationals who are long term residents, including on their right to equal treatment with nationals in certain key areas:

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/long-term-residents/index_en.htm

National equality bodies:

Austria: Ombud for Equal Treatment:

www.gleichbehandlungsanwaltschaft.at

Belgium: Centre for Equal Opportunities and Opposition to Racism:

<http://www.diversite.be/>

Institute for the Equality of Women and Men:

<http://igvm-iefh.belgium.be/>

Bulgaria: Commission for Protection Against Discrimination (CPD)

www.kzd-nondiscrimination.com

Croatia: Office for the Ombudsman:

www.ombudsman.hr

Cyprus: Office for the Commissioner for Administration (Ombudsman)

www.no-discrimination.gov.cy

Czech Republic: Office for the Public Defender of Rights: www.ochrance.cz

Denmark: Danish Institute for Human Rights: www.humanrights.dk
Board of Equal Treatment: <http://www.ligebehandlingsnaevnet.dk/>
Estonia: Gender Equality and Equal Treatment Commissioner: <http://www.svv.ee/>
Finland: Ombudsman for Minorities: <http://www.ofm.fi/>
Ombudsman for Equality: www.tasa-arvo.fi
France: Defender of Rights: www.defenseurdesdroits.fr
Germany: Federal Anti-Discrimination Agency (FADA):
www.antidiskriminierungsstelle.de or www.federal-anti-discrimination-agency.com
Greece: Greek Ombudsman: www.synigoros.gr
Hungary: Equal Treatment Authority: www.egyenlobanasmod.hu
Office of the Commissioner for Fundamental Rights: www.ajbh.hu
Ireland: Equality Authority: www.equality.ie
Italy: National Office against Racial Discrimination (UNAR): www.unar.it
Latvia: Office of the Ombudsman: <http://www.tiesibsargs.lv/eng/>
Lithuania: Office of the Equal Opportunities Ombudsperson: www.lygybe.lt
Luxembourg: Centre for Equal Treatment: www.cet.lu
Malta: National Commission for the Promotion of Equality (NCPE): www.equality.gov.mt
Netherlands: Netherlands Institute for Human Rights: <http://www.mensenrechten.nl/>
Poland: Human Rights Defender: www.rpo.gov.pl
Portugal: Commission for Immigration and Intercultural Dialogue – ACIDI: www.acidi.gov.pt
Commission for Citizenship and Gender Equality – CIG: <http://www.cig.gov.pt/>
Commission for Equality in Labour and Employment – CITE: www.cite.gov.pt
Romania: National Council for Combating Discrimination (CNCD): www.cncd.org.ro
Slovakia: National Centre for Human Rights: <http://www.snslnp.sk>
Slovenia: Advocate of the Principle of Equality: www.zagovornik.net
Spain: Race and Ethnic Equality Council: <http://www.igualdadynodiscriminacion.msssi.es/redOficinas/portada/home.htm>
Sweden: Equality Ombudsman: www.do.se
United Kingdom: Great Britain: Equality and Human Rights Commission (EHRC): www.equalityhumanrights.com
Northern Ireland: Equality Commission for Northern Ireland: www.equalityni.org

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