
Equal Treatment in Employment (Age Discrimination) Act
Consulted on 07-07-2022
Applicable since 01-01-2020

Act of 17 December 2003, providing for equal treatment irrespective of age in employment, occupation and vocational training (Equal Treatment in Employment (Age Discrimination) Act)

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who see or hear these presents! Be it known:

Whereas We have considered that in order to implement Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ EC, 2000, L303), and in connection with article 1 of the Constitution, it is desirable to prohibit discrimination on the grounds of age in employment, occupation and vocational training;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

§1 General

Definition of discrimination

Section 1

For the purposes of this Act the following definitions apply:

- a. discrimination: direct or indirect discrimination, or an instruction to discriminate directly or indirectly;
- b. direct discrimination: where a person is, has been or would be treated differently from another in a comparable situation on the grounds of age;
- c. indirect discrimination: where an apparently neutral provision, criterion or practice particularly affects persons of a particular age in comparison with other persons.

Harassment

Section 2

1. The prohibition of discrimination laid down in this Act also includes a prohibition of harassment.
2. Harassment as referred to in subsection 1 means conduct related to age that has the purpose or effect of undermining the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

§ 2 Scope of the prohibition of discrimination

Employment

Section 3

It is prohibited to discriminate in or with regard to:

- a. advertisements for job vacancies and procedures for the filling of vacancies;
- b. job placement;
- c. entering into or terminating an employment relationship;
- d. the appointment and dismissal of persons to whom section 3 of the Central and Local Government Personnel Act 2017 applies;
- e. conditions of employment;
- f. permission to receive education or training during or prior to employment;
- g. promotion;
- h. working conditions.

The liberal professions

Section 4

It is prohibited to discriminate with regard to the conditions for and access to the liberal professions, and to the opportunities to pursue such professions or for development within them.

Vocational training

Section 5

It is prohibited to discriminate with regard to:

- a. access to and provision of careers advice and vocational guidance;
- b. access to and provision of training directed at entering and functioning on the labour market and the administering of tests in connection with and completion of such training.

Membership of organisations

Section 6

It is prohibited to discriminate with regard to membership of or involvement in a employers' or employees' organisation or an occupational association. This also applies to the benefits ensuing from membership of such organisations and associations.

§ 3 Exceptions to the prohibition of discrimination

Objective justification

Section 7

1. The prohibition of discrimination does not apply if the discrimination:

- a. is based on employment or labour-market policies to promote participation in employment in certain age categories, provided such policies are laid down by or pursuant to an Act of Parliament;
- b. relates to the termination of either an employment relationship or the appointment of a public servant because the person concerned has reached pensionable age under the General Old Age

Pensions Act (AOW), or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties;

c. is otherwise objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary.

2. Subsection 1 does not apply to cases of harassment as referred to in section 2.

Pensions

Section 8

1. For the purposes of this section 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 security and, in the case of a scheme for an individual, not set up by that individual.

2. The prohibition of discrimination does not apply to the age of admission or the pensionable age laid down in the pension scheme, nor to the establishment of different ages for admission or entitlement for employees or for groups or categories of employees.

3. The prohibition of discrimination does not apply to actuarial calculations in the context of pension schemes which make use of age criteria.

§ 4 Stating age limit

Section 9

If discrimination on the grounds of age takes place in advertising a vacancy, the grounds for this must be stated explicitly.

§ 5 Legal protection

Protection against victimisation

Section 10

It is prohibited to disadvantage persons because they have invoked this Act, either at law or otherwise, or have assisted others in this connection.

Protection against dismissal

Section 11

In the event of termination by the employer of an employee's contract of employment in contravention of section 3, or on the grounds that the employee has invoked this Act, either at law or otherwise, or has assisted others in this connection, article 681, Book 7 of the Civil Code applies *mutatis mutandis*.

Burden of proof

Section 12

1. If a person who considers that he is or has been a victim of discrimination as referred to in this Act adduces before a court facts from which it may be presumed that such discrimination has taken place, the other party must prove that no contravention of this Act has occurred.

2. Subsection 1 applies *mutatis mutandis* to legal actions as referred to in article 305a, Book 3 of the Civil Code and to review or appeal proceedings instituted by interested parties within the meaning of section 1:2, subsection 3 of the General Administrative Law Act.

Invalidity

Section 13

Contractual provisions which conflict with this Act are null and void.

Netherlands Institute for Human Rights

Section 14

The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in this Act is occurring or has occurred. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.

§6 Transitional and final provisions

Evaluation

Section 15

Within five years of this Act entering into force, Our Minister of Social Affairs and Employment, in consultation with Our Ministers of Justice, of the Interior and Kingdom Relations and of Education, Culture and Science, will submit a report to the States General on the effectiveness and effects of this Act in practice.

Transitional provisions for retirement

Section 16

Until 2 December 2006, the prohibition of discrimination laid down in this Act does not apply to discrimination relating to the termination of either an employment relationship or the appointment of a public servant when the person concerned reaches a pensionable age that is lower than the AOW pensionable age, as agreed in a contract of employment, included in a pension undertaking or laid down in an order issued by a competent administrative authority, provided that the age in question had been stated in the contract of employment, the pension undertaking or the order issued by the administrative authority before the entry into force of this Act.

Transitional provisions for the armed forces

Section 17

The prohibition of discrimination laid down in this Act does not apply to military personnel as referred to in section 1 of the Military Personnel Act 1931 until 1 January 2008, or until any earlier date on which provision is made in the Military Personnel Act 1931 for the application of age limits in the armed forces in relation to commissions, assignments, training and discharge.

Amendments to other legislation

Section 18

[Amends the Council of State Act.]

Section 19

[Amends the Government Accounts Act.]

Date of entry into force

Section 20

This Act enters into force on a date to be determined by Royal Decree.

Title

Section 21

This Act may be cited as: the Equal Treatment in Employment (Age Discrimination) Act.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministerial departments, authorities, bodies and officials whom it may concern diligently implement it.

Done at The Hague on 17 December 2003

Beatrix

A. J. de Geus
Minister of Social Affairs and Employment

J.P.H. Donner
Minister of Justice

T.C. de Graaf
Minister for Government Reform and Kingdom Relations

M.J.A. van der Hoeven
Minister of Education, Culture and Science

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Minister of Justice
J.P.H. Donner