

Rules regulating independent support on matters relating to discrimination and investigations of discrimination, and amending the Equal Treatment Act and other acts in connection with the introduction of rules regulating equal treatment in Bonaire, St Eustatius and Saba (BES Protection Against Discrimination Act)

BILL

We, Willem-Alexander, by the grace of God King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

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

Whereas We have considered that it is desirable to declare that the rules concerning equal treatment that apply in the European part of the Netherlands also apply to the Caribbean parts of the Netherlands in order to implement the prohibition of discrimination in article 1 of the Constitution, and there to provide for independent support on matters relating to discrimination and create scope for the Netherlands Institute for Human Rights to make findings on individual cases;

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:

SECTION I Independent support service on matters relating to discrimination

- 1 The Minister of the Interior and Kingdom Relations is responsible for the provision, organisation, maintenance and functioning of a service on Bonaire, St Eustatius and Saba that provides independent support on matters relating to discrimination.
- 2 The service performs the following tasks:
 - a. supporting persons in the settlement of their complaints concerning discrimination as referred to in the Equal Treatment Act, the Equal Treatment (Men and Women) Act, the Equal Treatment (Disabled and Chronically Ill People) Act, the Equal Treatment in Employment (Age Discrimination) Act, section III of the Act of 7 November 2002 implementing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, section V of the Act of 3 July 1996 amending the Civil Code and the Central and Local Government Personnel Act in connection with the prohibition on discrimination between employees on the grounds of their working hours, complaints concerning

- violations of article 1614aa of Book 7a of the BES Civil Code or discrimination as referred to in article 95c of the Criminal Code of Bonaire, St Eustatius and Saba;
- b. recording complaints concerning discrimination as referred to in (a);
 - c. advising persons on the steps they can take;
 - d. referring persons to other support organisations;
 - e. mediation; and
 - f. providing information and guidance.
- 3 The service has a protocol for performing the tasks listed in subsection 2. Further requirements concerning the organisation of the service and performance of the tasks listed in subsection 2 may be laid down by or pursuant to order in council.
- 4 Access to the service is free of charge.
- 5 The service is permitted to process personal data to the extent necessary for the proper performance of the tasks listed in subsection 2. The protocol as referred to in subsection 3 specifies the personal data that may be processed, to whom this personal data may be disclosed and how long the data may be kept.

SECTION II

The Equal Treatment Act is amended as follows:

A

Section 5, subsection 1 (d) is to read as follows:

d. the appointment and dismissal of persons to whom section 3 of the Central and Local Government Personnel Act 2017 applies and the appointment and dismissal of civil servants as referred to in the BES Government Personnel Act;

B

Section 8 is to read as follows:

Section 8

In the event of termination by the employer of an employee's contract of employment in contravention of section 5, or on the grounds that the employee has invoked section 5, either at law or otherwise, or has assisted others in this

connection, article 681, Book 7 of the Civil Code or article 1615s, Book 7a of the BES Civil Code applies *mutatis mutandis*.

C

Section 10, subsection 2 is to read as follows:

2. Subsection 1 applies *mutatis mutandis* to legal actions as referred to in article 305a, Book 3 of the Civil Code or article 305a, Book 3 of the BES 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 or section 7, subsection 1 of the Administrative Procedure (BES) Act.

D

The following section is inserted after section 10:

Section 11

Sections 1 to 10 of this Act also apply in the public bodies Bonaire, St Eustatius and Saba.

SECTION III

Book 7a of the BES Civil Code is amended as follows:

In article 1614aa, paragraph 1`, with the exception of articles 646, paragraph 2, second sentence, 648, paragraph 3, and 649, paragraph 3,` is deleted.

SECTION IV

The Netherlands Institute for Human Rights Act is amended as follows:

A

Section 2 is to read as follows:

Section 2

This Act also applies in the public bodies Bonaire, Saba and St Eustatius.

B

Section 10, subsections 1 and 2 are to read as follows:

Section 10

1. The Institute may, in response to a request in writing, conduct an investigation to determine whether discrimination as referred to in the Equal Treatment Act, the Equal Treatment (Men and Women) Act, article 646, Book 7 of the Civil Code, article 1614aa, Book 7a of the BES Civil Code, the Equal Treatment (Disabled and Chronically Ill People) Act, the Equal Treatment in Employment (Age Discrimination) Act, the Act of 7 November 2002 implementing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, the Act of 3 July 1996 amending the Civil Code and the Central and Local Government Personnel Act in connection with the prohibition on discrimination between employees on the grounds of their working hours, has taken or is taking place or whether a contravention of section 2 of the Equal Treatment (Disabled and Chronically Ill People) Act has occurred, and may publish its findings. The Institute may also conduct an investigation on its own initiative to determine whether such discrimination is systematically taking place and may publish its findings.

2. A request in writing as referred to in subsection 1 may be submitted by:

a. a person who considers that he is or has been a victim of discrimination as referred to in one of the Acts listed in subsection 1;

b. a natural or legal person or competent authority that wishes to know whether they have committed an act of discrimination as referred to in one of the Acts listed in subsection 1;

c. a person responsible for deciding on a dispute concerning discrimination as referred to in one of the Acts listed in subsection 1;

d. a works council or comparable employee participation body which is of the opinion that discrimination as referred to in one of the Acts listed in subsection 1 is taking place in the organisation for which it was established;

e. an association having full legal capacity or a foundation which, in accordance with its constitution, represents the interests of those whose protection is the objective of one of the Acts listed in subsection 1.

C

Section 13, subsection 1 is to read as follows:

Section 13

1. The Institute may bring legal action with a view to obtaining a ruling that conduct contrary to one of the Acts listed in section 10, subsection 1 is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be rectified.

SECTION V

The Equal Treatment (Men and Women) Act is amended as follows:

A

Section 1b, subsection 5 is to read as follows:

Section 1b

In the event of termination by the competent authorities of a public service employee's civil-law contract of employment in contravention of this Act, article 681, Book 7 of the Civil Code or article 1615s, Book 7a of the BES Civil Code applies *mutatis mutandis*.

B

Section 1c is to read as follows:

Section 1c

If a natural person, legal person or competent authority engages a person to perform work under their authority other than pursuant to a civil-law contract of employment or public service appointment, articles 646 and 681, Book 7 of the Civil Code or articles 1614aa or 1615s, Book 7a of the BES Civil Code apply *mutatis mutandis*.

C

Section 12f is to read as follows:

Section 12f

The provisions of article 681, Book 7 of the Civil Code or article 1615s, Book 7a of the BES Civil Code apply *mutatis mutandis* to the termination of employment by an employer on the grounds that the employee has invoked the provisions of

section 12b either at law or otherwise.

D

The following section is inserted after section 23:

Section 23a

1. Sections 1 to 23 of this Act also apply in the public bodies Bonaire, St Eustatius and Saba.
2. Where this Act refers to 'public service' this includes 'public bodies' as referred to in article 132a of the Constitution.

SECTION VI

The Equal Treatment (Disabled and Chronically Ill People) Act is amended as follows:

A

Section 4 (c) is to read as follows:

c. the appointment and dismissal of persons to whom section 3 of the Central and Local Government Personnel Act 2017 applies and the appointment and dismissal of civil servants as referred to in the BES Government Personnel Act;

B

Section 9 is to read as follows:

Section 9

In the event of termination by the employer of an employee's contract of employment in contravention of section 4, or on the grounds that the employee has invoked section 4, either at law or otherwise, or has assisted others in this connection, article 681, Book 7 of the Civil Code or article 1615s, Book 7a of the BES Civil Code applies *mutatis mutandis*.

C

Section 10, subsection 3 is to read as follows:

3. Subsections 1 and 2 apply *mutatis mutandis* to legal actions as referred to in article 305a, Book 3 of the Civil Code or article 305a, Book 3 of the BES 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 or section 7, subsection 1 of the Administrative Procedure (BES) Act.

D

The following section is inserted after section 11:

Section 11a

Sections 1 to 11 of this Act also apply in the public bodies Bonaire, St Eustatius and Saba.

E

Section 12 is repealed.

SECTION VII

The Equal Treatment in Employment (Age Discrimination) Act is amended as follows:

A

Section 3 (d) is to read as follows:

d. the appointment and dismissal of persons to whom section 3 of the Central and Local Government Personnel Act 2017 applies and the appointment and dismissal of civil servants as referred to in the BES Government Personnel Act;

B

Section 11 is to read as follows:

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 or article 1615s, Book 7a of the BES Civil Code applies *mutatis mutandis*.

C

Section 12, subsection 2 is to read as follows:

2. Subsection 1 applies *mutatis mutandis* to legal actions as referred to in article 305a, Book 3 of the Civil Code or article 305a, Book 3 of the BES 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 or section 7, subsection 1 of the Administrative Procedure (BES) Act.

D

The following section is inserted after section 13:

Section 13a:

Sections 1 to 13 of this Act also apply in the public bodies Bonaire, St Eustatius and Saba.

E

Section 14 is repealed.

SECTION VIII

The Act of 3 July 1996, amending the Civil Code and the Central and Local Government Personnel Act in connection with the prohibition on discrimination between employees on the grounds of their working hours is amended as follows.

A

Section III, subsection 3 is repealed.

B

The following section is inserted after section V:

Section Va:

1. Section V of this Act also applies in the public bodies Bonaire, St Eustatius and Saba.
2. Where this Act refers to 'appointment' this includes the appointment of civil servants as referred to in the BES Government Personnel Act.

SECTION IX

The Act of 7 November 2002 implementing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP is amended as follows:

A

Section II is amended as follows:

1 Subsection 1 is to read:

1. It is prohibited to discriminate between employees in their employment conditions on the grounds of whether an employment contract is temporary or permanent, unless such discrimination is objectively justified. The same applies with respect to the employment conditions for a public service appointment as referred to in the BES Government Personnel Act.

2 Subsection 3 is repealed, and subsection 4 is renumbered as subsection 3.

3 Paragraph 3 is to read as follows:

3. The provisions of subsections 1 and 2 do not apply to a temporary employment agency contract as referred to in article 690, Book 7 of the Civil Code nor to the provision of workers as referred to in section 1 of the BES Staffing Services Act.

B

The current text of section III is numbered 1. and a second subsection is added, which reads:

2. Subsection 1 also applies in the public bodies Bonaire, St Eustatius and Saba, on the understanding that article 7:657 of the Civil Code does not apply in the case of a worker provided as referred to in section 1 of the BES Staffing Services Act.

SECTION X Evaluation

The Minister of the Interior and Kingdom Relations must send to the States General a report on the effectiveness and impacts of this Act within five years of its entry into force.

SECTION XI Entry into force

This Act enters into force on a date to be determined by Royal Decree, which may vary for the different sections or points thereof.

SECTION XII Short title

This Act may be cited as the BES Protection Against Discrimination Act.

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

Done

Minister of the Interior and Kingdom Relations

Minister for Poverty Policy, Participation and Pensions

Minister of Education, Culture and Science

Minister for Legal Protection

State Secretary for Kingdom Relations and Digitalisation

Minister of Health, Welfare and Sport