



Federal
Anti-Discrimination
Agency



Guide to the General Equal Treatment Act

Explanations and Examples

Guide to the General Equal Treatment Act

Explanations and Examples



Contents

I. The Legal Basis for Protection against Discrimination in Germany _____	7
1.1 Human Rights in the Basic Law: The Fundamental Right to Equal Treatment in Germany _____	7
1.2 The Protection of Human Rights in the European Union _____	8
1.3 Implementation in Germany: The General Equal Treatment Act (<i>Allgemeines Gleichbehandlungsgesetz</i>) _	9
II. Areas of Application _____	10
2.1 Personal Scope – To whom does the law apply? _____	10
2.2 Material Scope – In which situations does the General Equal Treatment Act apply? _____	16
2.2.1 Employment and Occupation _____	16
2.2.1.1 Admissible Difference of Treatment and Exceptions in the Context of Employment and Occupation _____	18
2.2.2 Access to and Supply of Goods and Services _____	20
2.2.2.1 Admissible Difference of Treatment and Exceptions in Civil Law _____	20

III. The Concept of Discrimination in the General Equal Treatment Act _____	23
3.1 Unjustified Difference of Treatment _____	23
3.2 Justified Difference of Treatment _____	26
IV. Courses of Action in the Event of Existing or Threatened Breaches of the General Equal Treatment Act _____	27
4.1 Preventing Discrimination _____	27
4.2 Stopping Discrimination _____	28
4.3 Positive Measures _____	28
4.4 Legal Remedies for Unlawful Discrimination _____	29
V. Further Areas of Protection _____	30
VI. Support in Cases of Discrimination: The Federal Anti-Discrimination Agency ____	32
Appendix: General Equal Treatment Act _____	34
Index _____	50

I. The Legal Basis for Protection against Discrimination in Germany

1.1 Human Rights in the Basic Law: The Fundamental Right to Equal Treatment in Germany

The principle of equality and the prohibition of discrimination play important roles in both international and German constitutional law.

The United Nations General Assembly adopted the Universal Declaration of Human Rights as early as 10 December 1948. It acknowledges that each and every human being has the same rights.

The most essential statements of equality contained in the Universal Declaration of Human Rights were included within the Basic Law (constitution) of the Federal Republic of Germany (German: *Grundgesetz*), which was ratified in 1949.

In Article 1 of the Basic Law, the state pledges to honour and protect the dignity of every human being and to acknowledge human rights as the basis of every community.

The **equality** of all human beings before the law is anchored in Article 3 of the Basic Law. The equality of women and men is prescribed by Article 3(2), which was inserted during a constitutional reform in 1994. It stipulates that the state shall promote the implementation of equal rights for women and men and take steps to eliminate pre-existing disadvantages. Article 3(3) addresses diverse characteristics and states that no person shall be favoured or disfavoured because of their sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. This prohibition was augmented in 1994 with the inclusion of discrimination against disabled persons.

The most important fundamental rights are enumerated in these first Articles of the Basic Law. They are accorded the highest priority, and the German state is charged with ensuring that they are given full effect.

German legislation to ensure equal treatment and to prevent discrimination has been developed on the basis of these equality rights.

1.2 The Protection of Human Rights in the European Union

In 1999, the **Treaty of Amsterdam** empowered the Council of the European Union to undertake unanimous legislative measures to combat discrimination on grounds of race, sex, ethnic origin, religion or belief, disability, age, or sexual orientation.

Subsequently, European Union legislators passed four pieces of legislation on the basis of Articles 13 and 141 (regulating equality in the workplace, including equal pay for women and men), of the Treaty establishing the European Community (now Articles 19 and 157 of the Treaty on the Functioning of the European Union):

1. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment irrespective of race or ethnic origin (**Racial Equality Directive**).
2. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Through the **Framework Directive on Employment**, the EU pursues the objective of creating a general framework to combat discrimination on grounds of religion or belief, disability, age, or sexual orientation in employment and occupation.
3. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (**Equal Treatment in Goods and Services Directive**).

4. Directive 2006/54/EC of 5 July 2006 of the European Parliament and Council (formerly Council Directive 2002/73/EC amending Council Directive 76/207/EEC) on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (**Equal Treatment Directive**).

These EU equality directives designate certain groups of people as requiring special protection. The objective of the legislation is to improve their integration into the labour market and to prevent or eliminate discrimination in access to and supply of goods and services.

1.3 Implementation in Germany: The General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*)

These four EU directives have been incorporated into German law via the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*). In all situations governed by private or civil law, which means in access to goods and services, the scope of the Act extends beyond that of the EU directives, as it applies to religion/belief, age, disability, and sexual orientation, as well as race/ethnic background.

In its rationale for the Act, the German Federal Parliament (*Bundestag*) pointed out that not everyone in Germany has the same opportunities. Hence, the General Equal Treatment Act's objective is to prevent and eliminate discrimination. The protection offered by the Act extends to unequal treatment on a number of grounds, known as "multiple discrimination".

II. Areas of Application

The Act draws a distinction between the personal and the material scope of application.

2.1 Personal Scope – To whom does the law apply?

The Act protects people who are discriminated against on the grounds of race or ethnic background, gender, religion or belief, disability, age, or sexual orientation.

Given the corresponding provisions in the EU Racial Equality Directive, the most extensive type of protection in the General Equal Treatment Act is reserved for discrimination on the grounds of race and ethnic origin. This protection extends to *all* types of contracts for goods, services, and accommodation. On the other hand, EU law provides less extensive protection or, in some cases, none at all, for the other characteristics.

Protection against discrimination on the other grounds (except belief) is limited to so-called **bulk business**. Concerning discrimination on the grounds of belief, parties to a contract do not receive any legal protection.

Nationality

A person's **nationality** is not included within the Act's protected characteristics. However, if a person experiences unequal treatment because their nationality is connected to a particular ethnic background, this would constitute direct discrimination.

A landlord who states that he does not want to rent to “Turks” generally does not mean that he does not want to rent to Turkish nationals, but rather people with this ethnic background. A German national with Turkish roots would therefore not be offered the flat. This would amount to a case of direct discrimination on the ground of ethnic background.

However, different consequences would arise if a person is treated differently specifically because of his/her nationality. For example, a bank might refuse to allow people of a particular nationality to open a bank account. This raises the possibility of *indirect* discrimination on the grounds of ethnic background, which is only permissible if it can be objectively justified.

Sex

The Act’s protection against discrimination on the basis of sex extends to women, men, intersex, and transsexual persons.

Intersex people are those born with both male and female physical characteristics.

The term “trans” is used to describe many different forms of gender identity and expression. For example, it includes people who do not self-identify with the gender with which they were assigned at birth. Often they wish to undergo, or are already undergoing, gender reassignment (via the legal, social, or medical aspects of the process). However, the term also includes people, who cannot or do not want to be assigned to a specific gender. So far, the Court of Justice of the European Union, which has ultimate jurisdiction over the interpretation of EU law, has only considered cases in which a claimant had already undergone gender reassignment surgery or was intending to do so. The extent to which other kinds of trans people are legally protected against discrimination is, as yet, unclear.

Pregnancy and Motherhood

Special protection extended to employees during **pregnancy** and **motherhood** is specifically regulated in the Act. If a woman is treated unfavourably as a result of pregnancy or motherhood, this is deemed to be discrimination on the grounds of sex. Treating a woman less favourably because she wishes to become pregnant would likewise constitute discrimination.

At the end of her maternity leave, a woman has the right to return to her previous job or to a comparable job under conditions that are no less favourable than they would be for any other person. In addition, she is entitled to benefit from all improvements in working conditions from which she would have benefited during her absence.

If a female employee working on a limited-term contract is denied a contract renewal due to pregnancy, this represents a form of direct discrimination on grounds of sex.

Religion or Belief

The text of the Act deals jointly with the matter of discrimination on the grounds of “**religion or belief**”. According to a judgment of the German Federal Constitutional Court, religion and belief are characterised by a sense of certainty with regard to assertions concerning heaven and earth, as well as to the origin and the purpose of human life.

While religion is based here on a reality that transcends the sphere of human perception, belief is limited to relationships within the material world.

Protection against discrimination on grounds of belief is reserved solely for the context of employment law, while protection for religion applies to all areas of civil law.

With regard to discrimination on grounds of religion, it is not always possible to determine from the facts whether it is, in fact, a case of discrimination on the grounds of ethnic origin. Many situations involve both, for example in the case of an African Muslim. In a legal dispute, however, drawing a distinction is important, since the protection against discrimination on grounds of ethnic origin offered by the Act is more extensive than that offered with respect to belief.

Under certain conditions within the context of work and employment, differences of treatment by religious communities and their facilities are permissible. The courts have, however, not clarified the extent to which such deviations are allowed.

A Catholic school is permitted to recruit its religious education teachers exclusively from members of the Catholic Church.

Disability

Since the United Nations Convention on the Rights of Persons with Disabilities 2009 came into force, the term “disability” within the Act has been given a broad definition. As such, a person is considered disabled when bodily functions, mental capacity or mental health are impaired for a long period of time and negotiation with barriers in the person’s surroundings substantially limits their ability to participate in society.

The Act makes no differentiation in this context with regard to the degree of disability. Therefore, people with disabilities varying in severity will benefit from the protection provided by the Act.

The distinction between a temporary and/or not debilitating illness and a disability can be difficult to discern in a particular case. An HIV-positive individual, who does not show any symptoms, is treated as disabled within the meaning of the Act. This is due to the fact that such individuals experience societal prejudice and exclusion which greatly limit their chances of participating in society. Indeed, other chronic diseases can, due to the barriers they create in a person’s life, also be regarded as a form of disability.

Providing support for disabled people does not represent a form of discrimination against those without disabilities. On the contrary, employers are expressly obliged to provide supportive measures, since disabled people experience unemployment at an above-average rate.

People without a disability can also rely on the legal protection of the Act if they experience discrimination as a result of being closely related to a disabled person. This was clarified in a judgment of the Court of Justice of the European Union, which held that an employer who treats an able-bodied employee with a disabled child less favourably than another employee in a similar situation discriminates directly on the grounds of disability.

Age

Discrimination on grounds of **age** is also impermissible. This prohibition is related to biological age, thus treating both older and younger people differently is unlawful.

For example, promoting employees automatically once they have reached a certain age constitutes discrimination against younger employees.

The Act foresees extensive possibilities for justification in cases where a person is treated differently because of their age.

Measures to integrate young people into a profession or occupation may be permissible. Likewise, the stipulation of a minimum age for entrance into an occupation can be legally justified.

Clearly distinguishing between old and young is, however, much more difficult than distinguishing between woman and man, or between Catholic and Muslim. Accordingly, the implementation of the Act's provisions in relation to the discrimination on grounds of age is often more difficult.

Sexual Orientation

The term **sexual orientation** is given a broad definition by the Act. It is connected to the way a person relates sexually to others. Lesbians, homosexuals, heterosexuals, and bisexuals all enjoy legal protection from discrimination.

Multiple Discrimination

The term **multiple discrimination** was coined in 2001 during the United Nations World Conference against Racism in South Africa; it is related to difference of treatment on grounds of a number of protected characteristics. Discrimination of this type is also prohibited by the Act.

One example of multiple discrimination is when a woman looking for a job or a flat is turned away because she is disabled and comes from a migrant background.

The grounds for discrimination cannot always be clearly differentiated. However, even in cases the law provides a justification for discrimination in relation to one protected characteristic, this would not mean that this justification can also be used to justify discrimination against another characteristic. Each form of discrimination must be examined separately in order to determine whether or not it is justified.

The Act does not, however, designate any specific consequences resulting from multiple discrimination. However, the official rationale for regulations concerning awards of damages and compensation under employment law does point out that an **increased level of compensation** is appropriate if an employee has experienced unjustified discrimination on a number of grounds.

2.2 Material Scope – In which situations does the General Equal Treatment Act apply?

2.2.1 Employment and Occupation

The protection offered by the General Equal Treatment Act in the field of employment and occupation pertains to **employment** and **self-employment**. **Employment** includes every activity performed with the long-term objective of creating and maintaining an income. Part-time employment, secondary employment, and sideline work are considered forms of employment. The Act protects against discrimination with regard to access to employment, self-employment, and promotion.

Self-employed people benefit from legal protection against discrimination *only* upon access or during professional advancement. Employees, on the other hand, benefit from additional legal protection in their working conditions, especially those relating to dismissal.

Self-employed people are primarily those who pursue their profession independently. A person who contributes to a body within an organisation (for instance as a member of the board of a limited liability company) might also fall within the category of self-employed.

The **access to employment** also encompasses aspects such as selection criteria and recruitment conditions. All forms of discrimination related to access to employment are prohibited.

A **job advertisement** seeking a “friendly young waitress” demonstrates two forms of discrimination: the term “young” is a form of discrimination on grounds of age, while the female form “waitress” can be equated with discrimination on grounds of sex.

In a **job interview**, it would be unfair to ask a female applicant about her plans for a family.

In addition to access to employment and self-employment, the prohibition of discrimination stipulated by the Act also covers **professional advancement**. This is understood as a change in a person's area of activity or responsibility. This is generally the result of a **promotion**, after which the employee takes a higher-level position. Statistically, women suffer from structural disadvantage when aiming to advance into leadership positions. The larger and more hierarchical the company, the fewer the number of women at the top. In larger enterprises, the chairman and the board of directors are almost exclusively men. **Performance evaluations**, which are often a prerequisite for a possible promotion, are also a part of advancement.

Other working conditions, including **dismissals**, must also be free of discrimination. Such working conditions include instructions and orders given by employers such as reassignments or transfers.

With regard to the termination of employment in Germany, the **Act on the Protection against Unfair Dismissal** (German: *Kündigungsschutzgesetz*), along with special regulations in the Maternity Protection Act, and the Federal Act on Parental Allowance and Parental Leave, are of primary importance. Correspondingly, the General Equal Treatment Act determines that with regard to dismissals, only the stipulations providing general and specific protection against unfair dismissal apply. The General Equal Treatment Act allows for claims for damages and compensation to be made, but cannot reverse the dismissal of an employee. Only the Act on the Protection against Unfair Dismissal can be relied upon here. This means that a dismissal can be ineffective if it involves discrimination on the grounds of one of the protected characteristics. Regardless of whether an affected person makes a claim for protection against dismissal, he or she has the right to claim compensation.

The protection provided by the General Equal Treatment Act also applies to the laws pertaining to vocational training. This includes access to all types and to all levels of **vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience**. This protection applies even if the training is supposed to be completed during a period of unemployment or a reduction in earnings. Those taking part in vocational training or an apprenticeship within the context of an employment relationship already benefit from the comprehensive protection granted to employees by the Act. This includes access to employment, termination of the employment relationship and any other working conditions.

Unjustified discrimination is also impermissible in relation to membership of, and involvement in, an organisation of workers or employers, or any organisation whose members pursue a particular profession, as well as to the benefits provided by such organisations. This also includes the use of services provided by such clubs and societies. Unions, chambers of commerce and law societies are all bound by the law.

Works or staff councils are not bound by General Equal Treatment Act. However, the protection against discrimination does apply to membership and work within **employees' associations, professional organisations** and associations with an overwhelming position of power in the economic sector (such as the Federation of German Industries), or in a social context (for example the German Red Cross), as well as **sport federations**. If a person has been denied **membership or participation** in one of these organisations for reasons that represent a breach of the prohibition against discrimination, it is possible to legally enforce a **claim to acceptance** into the organisation.

The constitution of an inter-regional football club states that only male candidates are allowed to stand for membership of the board of directors. The General Equal Treatment Act requires, however, that women must also be allowed to join the board.

2.2.1.1 Admissible Difference of Treatment and Exceptions in the Context of Employment and Occupation

Differences of treatment in the field of employment and occupation on grounds of ethnic origin, sex, religion or belief, disability, age, or sexual orientation are only permissible when one of these characteristics represents a genuine and determining **professional requirement** or constitutes grounds for the rejection of an applicant. In this conjunction, the purpose pursued by an employer in adopting such measures must be legitimate and appropriate to the demands placed upon the employee.

The characteristic of **ethnic background** might be seen as a genuine and determining professional requirement when members of a certain ethnic group are being sought in order to provide counselling for people with a migrant background. In such cases, it is important to recruit employees from countries of origin that are not involved in a conflict with the homeland of those seeking advice. Ethnic background can also be an essential prerequisite for developing a relationship of trust between a counsellor and the person seeking advice.

When **sex** represents a genuine and determining requirement for a job, women/men may be given preferential treatment in hiring. A counselling agency for men can be cited as one example, while a female teacher for a girls' boarding school represents another.

If a person is not suited to take on a job because a specific kind of disability prevents him or her from being able to carry out the intended work, a rejection will not be deemed a form of discrimination.

A haulage firm advertises a job vacancy for lorry drivers. The relevant regulations require drivers with visual impairments to have at least 10% vision in their weaker eye. This means that a company may legitimately reject the application of a person who is fully blind in one eye.

Nevertheless, a disabled person cannot be treated as unfit for the job if it is possible to equip the workplace with the appropriate facilities.

The installation of a ramp for an employee confined to a wheelchair is considered such an appropriate measure, to the extent that the installation does not place an excessive burden on the employer in terms of the costs or the necessary changes in the building.

Employers cannot rationalise the rejection of an applicant by arguing that productivity generally sinks with **age**. If the employer intends to justify such an age limit, he or she must be able to demonstrate a real loss of productivity or efficiency related to age, taking into account the specific activity in question.

2.2.2 Access to and Supply of Goods and Services

Beyond the fields of employment and occupation, the General Equal Treatment Act also applies to insurance and **access to and supply of goods and services**, for example when shopping, visiting a restaurant or a nightclub, searching for a flat, or conducting insurance and banking transactions. The procurement of goods and services is generally a form of **bulk business**, which is usually conducted without regard to the individual involved.

A shop that does not allow the entry of guide dogs for the blind violates the prohibition on discrimination on the grounds of disability

The letting of residential space is only treated as a form of bulk business when a landlord lets out more than 50 flats. However, discrimination on grounds of **race** and **ethnic origin** is always prohibited, regardless of whether it pertains to bulk business or not.

2.2.2.1 Admissible Difference of Treatment and Exceptions in Civil Law

Unlike the characteristic of race/ethnic origin, a difference of treatment on the ground of sex, religion, disability, age, and sexual orientation is permissible when there is an **objective reason** for it.

Differences of treatment in routine business dealings are common and often even desired.

Price reductions for schoolchildren are allowed, as are special opening hours for women in swimming pools.

In addition, the General Equal Treatment Act permits differences of treatment when they serve the purpose of **averting danger**.

Hence, it might be necessary for operators of an amusement park to refuse persons with disabilities access to certain amusements, such as Ferris wheels or auto scooters, or to insist that someone accompanies them in order to avoid injury to the disabled person.

Differences of treatment that take into consideration the **desire to protect one's privacy** or personal safety are also allowed.

Separate opening hours for women and men in saunas are an example of a permissible exception.

Under certain circumstances there may be no interest in enforcing equal treatment.

These often include **special offers or discounts** for children, school-children, students, and senior citizens, since these people do not, or no longer, have their own source of income.

Insurance contracts governed by private law may include exceptions to the principle of equality for all protected characteristics except race/ethnic origin, and sex. Following a judgment of the Court of Justice of the European Union, since 21 December 2012, any difference of treatment on grounds of sex has been unlawful. Since this date, only unisex insurance rates have been allowed. With respect to contracts that were concluded before this date, less favourable treatment or conditions may be permissible, but only if a strict risk analysis shows sex to be a decisive risk factor. Charges relating to pregnancy and motherhood may not, under any circumstances, lead to different treatment in the provision of a service.

Extensive differences of treatment are, however, permissible in relation to the characteristics of age, disability, religion, and sexual orientation. This is permissible when statistical evidence supports the assessment of risk on which this difference of treatment is based. As a general rule, a statistical increase in the number of insurance claims is only evident in cases where age or disability are at issue.

When persons with disabilities are either unable to obtain life or private health insurance, or can only obtain it when they pay a higher premium, there must be statistical evidence to support this assessment of risk. For example, when a disabled person's application for supplementary hospital insurance is rejected, there must be evidence of the increased likelihood of inpatient treatment for the person. However, an insurer is obliged to disclose this only upon a court order, after an affected person has brought a legal claim under the General Equal Treatment Act.

The Act's provisions do not apply to **family law and inheritance law obligations**.

Inherited wealth is distributed among rightful heirs according to the laws of inheritance.

III. The Concept of Discrimination in the General Equal Treatment Act

The General Equal Treatment Act uses the term “less favourable treatment”, but not “discrimination”, because not every kind of unequal treatment which causes disadvantage is necessarily discriminatory. Less favourable treatment is impermissible if it cannot be legally justified. These justifications are provided in the legislation, in other words, there are exceptional situations in which unequal treatment concerning employment and access to goods and services is allowed.

3.1 Unjustified Difference of Treatment

The General Equal Treatment Act cites five forms of discrimination:

Direct discrimination shall be taken to occur when a person is treated less favourably than another person would be. For an alleged act of discrimination to be unlawful under the Act, it must be made on the grounds of one of the Act’s protected characteristics (race or ethnic origin, gender, religion or belief, disability, age, or sexual orientation).

A Muslim woman applies for a position as a medical assistant. Her application is rejected because she wears a headscarf. This constitutes direct discrimination on the ground of religion.

The Act also offers protection against **indirect discrimination**. It is sometimes the case that apparently neutral regulations can have disproportionately negative effects on people belonging to protected classes. If these regulations cannot be objectively justified, the rule itself and its discriminatory effect are impermissible.

A collective bargaining agreement stipulates that pilots must be at least 1.65 metres tall. There is no justifiable safety reason to require a minimum height for pilots. While this rule is not explicitly focused on gender, it disproportionately affects women, as they are statistically less likely than men to meet this height requirement. Since there is no objective justification for the requirement, the rule constitutes an indirect discrimination on the basis of sex.

Harassing a person because they possess one of the Act's protected characteristics is always prohibited. To be considered harassment for the purposes of the law, the following conditions must be satisfied:

1. There is unwanted conduct which has the effect or purpose of violating the dignity of the person involved;
2. An intimidating, hostile, degrading, humiliating, or offensive environment is created as a result of the harassment; and
3. The harassment is connected to the affected person's possession of a protected characteristic.

The Act treats **bullying** as a form of harassment when the person affected is bullied because they possess one of the protected characteristics cited in the Act.

Incessant racist remarks or verbal abuse by colleagues or superiors in the workplace on grounds of a certain ethnic origin are considered bullying within the meaning of the Act.

Sexual harassment is defined as unwanted conduct of a sexual nature that has the effect or purpose of violating the dignity of the person involved. The creation of an intimidating, hostile, or degrading work environment often involves an attack on someone's dignity. While this sort of hostile environment is a requisite condition for harassment in general, it is not required for the existence of *sexual* harassment.

Male employees make suggestive remarks in the presence of a female colleague. They also send her e-mails with pornographic content.

Instructing others to discriminate also constitutes a form of discrimination. This has been included in the legislation to provide more effective protection against discrimination. The potential victim does not necessarily need to wait until an act of discrimination has taken place, but can take pre-emptive action against the instructions to discriminate.

An employer tells their Human Resources manager not to promote people with disabilities.

The person affected by discrimination is obliged to provide **proof** of the fact that an act of discrimination as defined by the General Equal Treatment Act has taken place. However, the Act provides plaintiffs with a lighter burden of proof. This is because people affected by unequal treatment are not always able to provide conclusive evidence of it. It is, therefore, initially sufficient to cite evidence indicating that discrimination has taken place. The other party is then obliged to prove that there was no difference of treatment or that there was a justifiable reason for it in the specific case.

3.2 Justified Difference of Treatment

Difference of treatment in an employment context is permissible within very narrow limits, provided that the characteristics required are genuine and nearly essential for performing the task.

An association offers advice to migrant women from specific countries. To establish trust, it is useful to have women of the same culture providing the advice. As such, here it would be permissible only to hire women with a specific ethnic background, as gender and ethnic origin are legitimately relevant occupational requirements in this case.

In cases where there is an objective reason, it is also conceivable that different treatment with regard to access to and supply of goods and services might also be permissible.

A pregnant woman fails to produce a doctor's certificate confirming that it is safe for her to fly on a plane. An airline may be justified in refusing to honour the flight booking in order to protect the person in question from harm or injury that can result from air travel.

IV. Courses of Action in the Event of Existing or Threatened Breaches of the General Equal Treatment Act

The objective of the General Equal Treatment Act is to prevent or stop discrimination on grounds of race, ethnic origin, sex, religion or belief, disability, age, or sexual orientation.

4.1 Preventing Discrimination

Employers have legally mandated **organisational obligations**. This includes their being required to take necessary **preventive measures** in order to provide protection against discrimination.

A company could set up a network on its intranet with the aim of supporting homosexual employees.

Furthermore, the employees of a company must be made aware of the fact that discrimination and harassment are prohibited and, when necessary, provided with training aimed at preventing such behaviour. Employees must also be protected against **discrimination by third parties**, such as customers. Works and staff councils are obliged to include protective measures within the scope of their activities.

No specific preventive measures are stipulated for the context of access to goods and services.

4.2 Stopping Discrimination

When employees are subject to unjustified differences of treatment in their working lives, they are entitled to lodge a complaint with the responsible office within the company or with the authorities. Employers are legally obliged to establish such complaints offices. If, in cases of **harassment** or **sexual harassment**, the employer fails to adopt appropriate measures to remedy the situation, then the employee has the **right to refuse performance** for her or his own protection, without loss of pay. However, the right to refuse performance should only be invoked after previous consultation. Employers can stop discrimination by making use of measures such as **reprimands, reassignments, transfer, or dismissal**.

In cases of unjustified discrimination with regard to the access to and supply of goods and services, the person involved has the right to demand the **elimination** of the obstacles and to apply for an **injunction**. **Claims must also be submitted within two months of the incident taking place.**

A young woman is refused entry into a nightclub because of her headscarf and Middle Eastern appearance. This is a case of direct discrimination on grounds of ethnic origin and religion. She can demand damages and compensation within two months. In addition, she can also demand an injunction, meaning that she cannot be refused entry into the nightclub again.

4.3 Positive Measures

In order to promote groups that have been previously subject to discrimination, targeted measures can now be adopted by employers in relation to the field of work and by parties to private contracts for the access to and supply of goods and services. By adopting positive measures, it is possible to both compensate for an existing case of discrimination and to prevent threatened discrimination. With the inclusion of this provision, the General Equal Treatment Act clearly goes further than simply prohibiting discrimination.

Positive measures are warranted when a group of persons is represented far less frequently in certain contexts than in the population at large.

A company that trains apprentices of both German and Turkish origin offers employees of Turkish origin programmes of further vocational training as a positive measure aimed at increasing the proportion of Turkish employees in more advanced positions.

On the other hand, a job vacancy for a pre-school teacher which is advertised for women only would not be a legitimate positive measure. This is because women are regularly over-represented in this occupation.

4.4 Legal Remedies for Unlawful Discrimination

People who have experienced discrimination as it is defined in the General Equal Treatment Act have the right to claim **damages and compensation**. However, those who experience discrimination while applying for a job are *not* entitled to be awarded the position they applied for. **Claims must be made in writing within two months of the alleged discrimination taking place.**

V. Further Areas of Protection

Discrimination in the area of social protection, including social security and health care, is also prohibited by the General Equal Treatment Act. Services provided by private organisations, such as medical practices, or special benefits in the form of reduced entry prices for socially disadvantaged groups, are relevant here. The prohibition does not, however, extend to public social protection in the form of state pensions or public health insurance.

The **Books of the Social Code** form the legal basis for German social law and contain their own provisions against discrimination. Thus, there is a fundamental prohibition of discrimination on grounds of race, ethnic origin, and disability. The German Federal Employment Agency is not allowed to publish discriminatory job advertisements. Discrimination in access to vocational counselling, vocational training, and advanced training is also prohibited.

The protection of the General Equal Treatment Act does not apply to areas governed by **public law**. However, discrimination is still prohibited in this context, since the German Basic Law requires that citizens are protected against discrimination both by and from the State. In order for a law to be adopted, it must be ensured that it does not breach the fundamental rights enshrined in the Basic Law. Lawmakers, the courts, and all areas of public administration are obliged to conduct themselves according to the same standards and not to act in an arbitrary fashion.

The activities of public authorities in the relationship between citizens and the state are characterised primarily by a **superior/subordinate hierarchy**. The State is empowered by laws such as those regulating the right of asylum, commercial law, and police authority, to name but a few, to act in a certain way. Given their responsibility for implementing laws, the authorities are required to adhere to the provisions of the Basic Law and to uphold the **principle of equality** inscribed therein.

The same requirements apply to the role of public service providers in the provision of (or failure to provide, as the case may be) social benefits or state-sponsored education opportunities.

Due to the relationship of superiority and subordination, only the State has the power to prosecute or impose a financial penalty. Accordingly, the Act does not prescribe any criminal or regulatory sanctions, but rather enables claims to be made by contracting parties under civil law. German **criminal law** does not contain any specific provisions pertaining to discrimination, with the exception of the offence of Incitement to hatred (section 130 Criminal Code, German: *Strafgesetzbuch*). An act of discrimination can therefore be prosecuted in the same way as a criminal act, but only if it fulfills the requirements of an existing crime such as defamation or personal injury, for example.

The Act provides protection in the **field of education** only to the extent that **private contracts** are involved. If discriminatory behaviour is exhibited at a private language school, for example, then the Act's protection applies directly. Likewise, in the case of education in the state system, the education legislation of the particular federal state (*Bundesland*) applies.

Beyond the Act and the public sector, other areas are affected by discrimination, including internet communication via social media or chat rooms, relationships between neighbours, and leisure activities such as societies and volunteering. It can be difficult to obtain legal protection against discrimination in these areas because of limitations in the scope of the discrimination prohibition within the Act and in German public law.

VI. Support in Cases of Discrimination: The Federal Anti-Discrimination Agency

The Federal Anti-Discrimination Agency (German: *Antidiskriminierungsstelle des Bundes*) is primarily responsible for counselling people who feel that they have experienced discrimination. The counselling is not subject to any prior conditions, fees, or time limits. People affected by discrimination can contact the Agency by telephone, e-mail, letter, or fax. It is also possible to arrange a personal meeting with counsellors. On the page www.antidiskriminierungsstelle.de, those affected by discrimination will find an electronic contact form and the opportunity to submit a video of their query in sign language. Counsellors can provide information on the legal position, possible claims, and time limits.

If the parties involved in a conflict seek an amicable settlement, the Federal Anti-Discrimination Agency can attempt, with the consent of the person affected, to contact the other party in order to outline mediation options. The Agency can also make referrals to specialised local counselling services if necessary. In cases that fall under the responsibility of a Commissioner appointed by the government or the German Federal Parliament, the Agency will refer the matter – with the consent of the person affected – to the Commissioner.

The Agency collects and analyses research on the topic of discrimination in Germany, with the aim of identifying and closing research gaps. In addition, it is also responsible, together with the Commissioners appointed by Germany's Federal Government and Parliament, for submitting a report on discrimination on grounds of the characteristics specified in the Act to the Federal Parliament every four years.

The Agency wishes to cultivate a societal awareness of the fact that equal treatment is a human right. It uses brochures and campaigns to inform the public about the Act, so that full advantage can be taken of the possibilities offered by the legislation. The multilingual website www.antidiskriminierungsstelle.de offers information on the Agency's work, both for those who are affected by discrimination as well as

for those interested in the topic of equal rights. Employers, landlords, business organisations, employer associations, researchers, and anti-discrimination organisations can obtain information here on the scope and implementation of the General Equal Treatment Act.

Appendix

General Equal Treatment Act

Act Implementing European Directives Putting Into Effect the Principle of Equal Treatment)

Quote:

“General Anti-Discrimination Act of 14th August 2006 (Federal Law Gazette I, page 1897), last amended by Article 8, SEPA Accompanying Act of 3 April 2013 (BGBl IS.610). Also amended by Article 19, paragraph 10 of the Act of 12 December 2007 (Federal Law Gazette I, page 2840)”

Status: last amended by Article 8, SEPA Accompanying Act of 3 April 2013 (BGBl IS.610).

The German Federal Parliament has passed the following Act:

Article 1

General Equal Treatment Act

Part 1

General Provisions

Section 1

Purpose

The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age, or sexual orientation.¹

Section 2

Scope

(1) For the purposes of this Act, any discrimination within the meaning

of Section 1 shall be impermissible in relation to:

1. conditions for access to dependent employment and self-employment, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of professional hierarchy, including promotion;
2. employment conditions and working conditions, including pay and reasons for dismissal, in particular in contracts between individuals, collective bargaining agreements and measures to implement and terminate an employment relationship, as well as for promotion;
3. access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

1 Social Code Book I, Section 33c: When claiming his or her use of social rights, no person shall be discriminated against on the grounds of race, ethnic origin, or disability. Claims may only be asserted or derived in so far as the conditions of entitlement have been stipulated in detail by the provisions of the specific parts of this Code. *(Non-official translation)*

4. membership of and involvement in an organisation of workers or employers or any organisation whose members carry on a particular profession, including all benefits provided for by such organisations;
5. social protection, including social security and health care;
6. social advantages;
7. education;
8. access to and supply of goods and services, which are available to the public, including housing.

(2) Section 33c Social Code, Book I and Section 19a Social Code, Book IV shall apply to social benefits. The Company Pensions Act (*Betriebsrentengesetz*) shall apply to company pension schemes.

(3) The application of other prohibitions of discrimination or laws on equal treatment shall remain unaffected by this Act. The same shall apply, *mutatis mutandis*, to provisions under public law which serve the protection of specific groups of persons.

(4) Only the provisions governing the protection against unlawful dismissal in general and specific cases shall apply to dismissals.

Section 3

Definitions

(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 any of the grounds

referred to under Section 1. Direct discrimination on grounds of sex shall also be taken to occur in relation to Section 2(1) No. 1 to 4 in the event of the less favourable treatment of a woman on account of pregnancy or maternity.

(2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons on any of the grounds referred to under Section 1, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Harassment shall be deemed to be discrimination when an unwanted conduct in connection with any of the grounds referred to under Section 1 takes place with the purpose or effect of violating the dignity of the person concerned and of creating an intimidating, hostile, degrading, humiliating, or offensive environment.

(4) Sexual harassment shall be deemed to be discrimination in relation to Section 2(1) Nos 1 to 4, when an unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in

particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.

(5) An instruction to discriminate against a person on any of the grounds referred to under Section 1 shall be deemed as discrimination. Such an instruction shall in particular be taken to occur in relation to Section 2(1) Nos 1 to 4 where a person instructs an employee to conduct which discriminates or can discriminate against another employee on one of the grounds referred to under Section 1.²

Section 4

Unequal Treatment on Several Grounds

Where unequal treatment occurs on several of the grounds referred to under Section 1, this unequal treatment may only be justified under Sections 8 to 10 and 20 when the justification extends to all those grounds for which the equal treatment occurred.

Section 5

Positive Action

Notwithstanding the grounds referred to under Sections 8 to 10 and 20, unequal treatment shall only be permissible where suitable and appropriate

measures are adopted to prevent or compensate for disadvantages arising on any of the grounds referred to under Section 1.

Part 2 Protection of Employees Against Discrimination

Chapter 1 Prohibition of Discrimination

Section 6

Persons Covered

(1) For the purposes of this Act, “employee” shall refer to

1. persons in dependent employment (salaried employees, workers);
2. persons employed for the purposes of their vocational training;
3. persons of similar status on account of their dependent economic status, including those engaged in home work and those equal in law to home workers.

“Employee” shall here also refer to those applying for an employment relationship and persons whose employment relationship has ended.

2 Social Code Book IV, Section 19a: When claiming benefits concerning access to all forms and all levels of vocational guidance, vocational training, advanced vocational training, retraining including practical work experience, no person shall be discriminated against on the grounds of race or ethnic origin, gender, religion or belief, disability, age, or sexual identity. Claims may only be asserted or derived in so far as the conditions of entitlement have been stipulated in detail by the provisions of the specific parts of this Code. *(Non-official translation)*

(2) For the purposes of Part 2, “employer” shall refer to natural and legal persons as well as unincorporated firms with legal capacity employing persons referred to in Subsection (1). Where employees are transferred to a third party for the performance of work and services, the employer shall also be classified as such within the meaning of Part 2. The client or intermediary shall take the place of the employer in the case of employees engaged in home work and those equal in law to home workers.

(3) Insofar as the conditions for access to gainful employment and promotion are affected, the provisions under Part 2 shall apply, *mutatis mutandis*, to the self-employed and to members of an organ of an enterprise, in particular directors and board members.

Section 7

Prohibition of Discrimination

(1) Employees shall not be permitted to suffer discrimination on any of the grounds referred to under Section 1; this shall also apply where the person committing the act of discrimination only assumes the existence of any of the grounds referred to under Section 1.

(2) Any provisions of an agreement which violate the prohibition of discrimination under Subsection (1) shall be ineffective.

(3) Any discrimination within the meaning of Subsection (1) by an

employer or employee shall be deemed a violation of their contractual obligations.

Section 8

Permissible Difference of Treatment On Grounds of Occupational Requirements

(1) A difference of treatment on any of the grounds referred to under Section 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities or of the context in which they are carried out, such grounds constitute a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

(2) The agreement of a lower rate of remuneration for the same or equivalent work on any of the grounds referred to under Section 1 shall not be justified on account of special regulations applying for any of the reasons referred to under Section 1.

Section 9

Permissible Difference of Treatment On Grounds of Religion or Belief

(1) Notwithstanding Section 8, a difference of treatment on the grounds of religion or belief of employees of a religious community, facilities affiliated to it (regardless of their legal form), or organisations which have undertaken conjointly to practice a religion or belief, shall not constitute discrimination where such grounds

constitute a justified occupational requirement for a particular religion or belief, having regard to the ethos of the religious community or organisation in question and by reason of their right to self-determination or by the nature of the particular activity.

(2) The prohibition of different treatment on the grounds of religion or belief shall be without prejudice to the right of the religious community referred to under Section 1, the facilities assigned to it (regardless of their legal form) or organisations which have undertaken conjointly to practice a religion or belief, to require individuals working for them to act in good faith and with loyalty to the ethos of the organisation.

Section 10

Permissible Difference of Treatment On Grounds of Age

Notwithstanding Section 8, a difference of treatment on grounds of age shall likewise not constitute discrimination if it is objectively and reasonably justified by a legitimate aim. The means of achieving that aim must be appropriate and necessary. Such differences of treatment may include, among others:

1. the setting of special conditions for access to employment and vocational training, as well as particular employment and working conditions, including remuneration and dismissal conditions, to ensure the vocational integration of young

people, older workers and persons with caring responsibilities and 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 specific training requirements of the post in question or the need for a reasonable period of employment before retirement;
4. the fixing of upper age limits in company social security systems as a precondition for membership of or the drawing of an old-age pension or for invalidity benefits, including fixing different age limits within the context of these systems for certain employees or categories of employees and the use of criteria regarding age within the context of these systems for the purposes of actuarial calculations;
5. agreements providing for the termination of the employment relationship without dismissal at a point in time when the employee may apply for payment of an old-age pension; Section 41 Social Code, Book VI shall remain unaffected;
6. differentiating between social benefits within the meaning of the Works Constitution Act (*Betriebsverfassungsgesetz*), where the parties have created a regulation governing compensation based on age or length of service whereby the employee's chances

on the labour market (which are decisively dependent on his or her age) have recognisably been taken into consideration by means of emphasising age relatively strongly, or employees who are economically secure are excluded from social benefits because they may be eligible to draw an old-age pension after drawing unemployment benefit.³

Chapter 2 Employer Obligations

Section 11

Advertisement of Vacancies

A vacancy shall not be advertised in violation of Section 7(1).

Section 12

Employer Action and Duties

(1) The employer has the duty to take measures necessary to ensure protection against discrimination on any of the grounds referred to under Section 1. This protection shall also cover preventive measures.

(2) The employer shall draw attention to the inadmissibility of such discrimination in a suitable manner, in particular within the context of training and further training, and shall use his or her influence to ensure that such discrimination does not occur. Where an employer has trained his or her employees in an appropriate manner for the purpose of preventing discrimination, he or she shall be deemed to have fulfilled his or her duties under Subsection (1).

(3) Where employees violate the prohibition of discrimination under Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to put a stop to the discrimination; this may include cautioning, moving, relocating, or dismissing the employee in question.

(4) Where employees are discriminated against in the pursuance of their profession by third persons within the meaning of Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given

3 Social Code Book VI, Section 41: The entitlement of an insured person to receive an old-age pension shall not be considered as grounds for the termination of an employment relationship by the employer under the Act on the Protection against Unfair Dismissal. A contract envisaging the termination of an employee's employment relationship without notice at a time when the employee may apply for old-age pension before reaching the standard pension age shall be considered as if envisaging the termination of the employee's employment relationship at the time when the employee reaches the standard pension age, unless such a contract has been concluded within the three years prior to this date or has been confirmed by the employee within the three years prior to this date. If the contract envisages that the employment relationship will come to an end at the point when pension age is reached, the contracting parties may, during the course of the contractual relationship, agree to postpone the end of the contract. This can be done as many times as the parties see fit (*Non-official translation*).

case, to protect the employee in question.

(5) This Act and Section 61b of the Labour Courts Act (*Arbeitsgerichtsgesetz*), as well as information concerning the departments competent to handle complaints pursuant to Section 13 shall be made known in the enterprise or public authority. This may be done by putting up a notice or displaying information leaflets in a suitable place or by using the information and communication channels normally used in the enterprise or authority.

Chapter 3 Employee Rights

Section 13

Right of Appeal

(1) Employees shall have the right to lodge a complaint with the competent department in the firm, company or authority when they feel discriminated against in connection with their employment relationship by their employer, superior, another employee or third party on any of the grounds referred to under Section 1. The complaint shall be examined and the complainant informed of the result of the examination.

(2) The rights of worker representatives shall remain unaffected.

Section 14

Right to Refuse Performance

Where the employer takes no or takes obviously unsuitable measures to stop the harassment or sexual harassment in the workplace, the affected employees shall have the right to refuse performance without loss of pay insofar as this is necessary for their protection. Section 273 of the Civil Code (*Bürgerliches Gesetzbuch*) shall remain unaffected.

Section 15

Compensation and Damages

(1) In the event of a violation of the prohibition of discrimination, the employer shall be under the obligation to compensate the damage arising therefrom. This shall not apply where the employer is not responsible for the breach of duty.

(2) Where the damage arising does not constitute economic loss, the employee may demand appropriate compensation in money. This compensation shall not exceed three monthly salaries in the event of non-recruitment, if the employee would not have been recruited if the selection had been made without unequal treatment.

(3) The employer shall only be under the obligation to pay compensation where collective bargaining agreements have been entered into when he or she acted with intent or with gross negligence.

(4) Any claim resulting from Subsection (1) or (2) must be asserted in writing within a period of two months, unless the parties to a collective bargaining agreement have agreed otherwise. In the case of an application or promotion, the time limit shall commence on the date on which the rejection is received; in other cases of discrimination the time limit shall commence on the date on which the employee learns of the discrimination.

(5) This shall be without prejudice to other claims against the employer resulting from other legal provisions.

(6) Any violation on the part of the employer of the prohibition of discrimination under Section 7(1) shall not justify a claim to the establishment of an employment relationship, a vocational training relationship, or to promotion, unless such a relationship or promotion results from another legal ground.

Section 16

Prohibition of Victimisation

(1) The employer shall not be permitted to discriminate against employees who assert their rights under Part 2 or on account of their refusal to carry out instructions that constitute a violation of the provisions of Part 2. The same shall apply to persons who support the em-

ployee in this or who testify as a witness.

(2) The rejection or toleration of discriminatory conduct by an affected employee may not be used as the basis for a decision affecting that employee. Subsection (1) second sentence shall apply *mutatis mutandis*.

(3) Section 22 shall apply *mutatis mutandis*.

Chapter 4 Supplementary Provisions

Section 17

Social Responsibility of the Involved Parties

(1) The parties to collective bargaining agreements, employers, employees and their representatives shall be required to become actively involved in achieving the goal set out in Section 1 within the context of their duties and scope of action.

(2) Where the employer commits a gross violation of the provisions of Part 2 in an enterprise in which the conditions pursuant to Section 1(1) first sentence of the Works Constitution Act⁴ are present, the Works Council or a trade union represented in the enterprise may also assert before a court the rights set out in Section 23(3) first sentence Works Constitution

⁴ Works Constitution Act section 1 para. 1 sentence 1: Works councils shall be elected in all establishments that normally have five or more permanent employees with voting rights, including three who are eligible.

Act⁵ if the preconditions therein are present; Section 23(3) second to fifth sentences of the Works Constitution Act⁶ shall apply *mutatis mutandis*. No claims of the person suffering discrimination shall be asserted in the application.

Section 18

Membership of Organisations

(1) The provisions set out in Part 2 shall apply, *mutatis mutandis*, to membership of or involvement in

1. a party to a collective bargaining agreement;
2. an organisation whose members belong to a specific occupational group or who have a dominating position of power in the economic or social sector if there is a basic interest in acquiring membership; as well as any associations thereof.

(2) Where a rejection constitutes a violation of the prohibition of discrimination under Section 7(1), this shall constitute the right to membership of or involvement in the organisations referred to under Subsection (1).

Part 3

Protection against Discrimination Under Civil Law

Section 19

Prohibition of Discrimination under Civil Law

(1) Any discrimination on the grounds of race or ethnic origin, sex, religion, disability, age, or sexual orientation shall be illegal when founding, executing or terminating civil-law obligations which

1. typically arise without regard of person in a large number of cases under comparable conditions (bulk business) or where the regard of person is of subordinate significance on account of the obligation and the comparable conditions arise in a large number of cases; or which
2. have as their object a private-law insurance.

(2) Any discrimination on the grounds of race or ethnic origin shall furthermore be illegal within the meaning of Section 2(1) Nos 5 to 8 when founding,

5 Works Constitution Act Section 23 para. 2 sentence 1: Where the employer has grossly violated his duties under this Act, the works council or a trade union represented in the establishment may apply to the labour court for an order to the employer enjoining him to cease and desist from an act, allow an act to be performed or perform an act.

6 Works Constitution Act Section 23 para. 3 sentence 2 to 5: If the employer does not obey an executory court order to cease and desist from an act or allow an act to be performed, the labour court shall, on application and after prior warning, impose a fine on him for each such violation. If the employer does not carry out an act imposed on him by an executory court order, the labour court shall, on application, give a decision that he shall be made to perform the act imposed on him subject to payment of fines. Such application may be made by the works council or by a trade union represented in the establishment. The maximum amount of the fine shall be euros. 10,000.

executing or terminating other civil-law obligations.

(3) In the case of rental of housing, a difference of treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social, and cultural conditions.

(4) The provisions set out in Part 3 shall not apply to obligations resulting from family law and the law of succession.

(5) The provisions set out in Part 3 shall not apply to civil-law obligations where the parties or their relatives are closely related or a relationship of trust exists.

As regards tenancy, this may in particular be the case where the parties or their relatives use housing situated on the same plot of land. The rental of housing for not only temporary use shall generally not constitute business within the meaning of Subsection (1) No 1 where the lessor does not let out more than 50 apartments in total.

Section 20

Permissible Differences of Treatment

(1) Differences of treatment on grounds of religion, disability, age, sexual orientation, or sex shall not be deemed to be a violation of the prohibition of discrimination if they are based on objective grounds. Such differences of treatment may include, among others, where the difference of treatment

1. serves the avoidance of threats, the prevention of damage or another purpose of a comparable nature;
2. satisfies the requirement of protection of privacy or personal safety;
3. grants special advantages and there is no interest in enforcing equal treatment;
4. is based on the concerned person's religion and is justified with regard to the exercise of the right to freedom of religion or the right to self-determination of religious communities, facilities affiliated to them (regardless of their legal form), and organisations which have undertaken conjointly to practice a religion or belief, given their respective ethos.

(2) Differences of treatment on the ground of sex shall only be permitted in case of the application of Section 19(1) No 2 with reference to premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. Costs arising from pregnancy and maternity may on no account lead to the payment of different premiums and benefits. Differences of treatment on the ground of religion, disability, age, or sexual orientation in the case of application of Section 19(1) No 2 shall be permissible only where these are based on recognised principles of risk-adequate calculations, in particular on an assessment of risk based on actuarial calculations which are in turn based on statistical surveys.

Section 21

Enforcement

(1) Where a breach of the prohibition of discrimination occurs, the disadvantaged person may, regardless of further claims being asserted, demand that the discriminatory conduct be stopped. Where other discrimination is to be feared, he or she may sue for an injunction.

(2) Where a violation of the prohibition of discrimination occurs, the person responsible for committing the discrimination shall be obligated to compensate for any damage arising therefrom. This shall not apply where the person committing the discrimination is not responsible for the breach of duty. The person suffering discrimination may demand appropriate compensation in money for the damage, however not for economic loss.

(3) Claims in tort shall remain unaffected.

(4) The person responsible for committing the discrimination shall not be permitted to refer to an agreement which derogates from the prohibition of discrimination.

(5) Any claims arising from Subsections (1) and (2) must be asserted within a period of two months. After the expiry of the time limit the claim may only be asserted when the disadvantaged person was prevented from meeting the deadline through no fault of their own.

Part 4

Defence of Rights

Section 22

Burden of Proof

Where, in case of conflict, one of the parties is able to establish facts from which it may be presumed that there has been discrimination on one of the grounds referred to in Section 1, it shall be for the other party to prove that there has been no breach of the provisions prohibiting discrimination.

Section 23

Support from Anti-Discrimination Organisations

(1) "Anti-discrimination organisation" shall refer to any association of persons which attends to the particular interests of persons or groups of persons discriminated against within the meaning of Section 1; in accordance with their statutes these organisations must operate on a non-profit and non-temporary basis. The powers set out in Subsections (2) to (4) shall be granted to such organisations with at least 75 members or an association comprising at least seven organisations.

(2) Anti-discrimination organisations shall be authorised, under the terms of their statutes to act as legal advisor to a disadvantaged person in the court hearings. Otherwise, the provisions set out in the rules of procedure, in particular those according to which legal advisors may be barred from

being heard, shall remain unaffected.

(3) Anti-discrimination organisations shall be permitted to be entrusted with the legal affairs of disadvantaged persons under the terms of their statutes.

(4) The special rights of action and powers of representation of associations for the benefit of disabled persons shall remain unaffected.

Part 5

Special Regulations Applying to Public-Law Employment Relationships

Section 24

Special Regulation Applying to Public-Law Employment Relationships

The provisions of this Act shall apply, *mutatis mutandis*, taking into consideration their special legal relationship, to

1. civil servants of the Federal Administration, the *Länder*, local authorities, local authority associations, as well as other public bodies, institutions and foundations under the jurisdiction of the Federal Administration, or one of the *Länder*;
2. judges of the Federal Administration and the *Länder*;
3. persons undertaking alternative military service (*Zivildienstleistende*) and recognised conscientious objectors, insofar as they are required to undertake alternative military service.

Part 6

Anti-Discrimination Agency

Section 25

Federal Anti-Discrimination Agency

(1) The federal agency for the protection against discrimination on any of the grounds referred to in Section 1 (Federal Anti-Discrimination Agency) shall be established within the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth, regardless of the competence of any Parliamentary Commissioners of the German Bundestag or Federal Government Commissioners.

(2) The Federal Anti-Discrimination Agency shall be provided with the personnel and materials required to fulfil its tasks. It shall be identified as a separate chapter in the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth's individual plan.

Section 26

Legal Status of the Head of the Federal Anti-Discrimination Agency

(1) The Federal Minister for Family Affairs, Senior Citizens, Women, and Youth shall appoint a person to head the Federal Anti-Discrimination Agency, based on a suggestion put forward by the Federal Government. In accordance with this Act, the relationship between the Agency and the Federal Administration shall be that of an official public-law relationship (*öffentlich-rechtliches Amtsverhältnis*).

The Agency shall be independent in the execution of its duties and only subject to the law.

(2) The official relationship under public law shall commence upon the handing over of the certificate of appointment by the Federal Minister for Family Affairs, Senior Citizens, Women, and Youth.

(3) The official relationship under public law shall end, unless by death,

1. with the assembly of a new Bundestag;
2. with the end of the period of office upon the incumbent reaching the age limit set out in Section 41(1) Federal Civil Servants Act (*Bundesbeamtengesetz*);
3. upon the incumbent being discharged.

The Federal Minister for Family Affairs, Senior Citizens, Women, and Youth shall discharge the head of the Federal Anti-Discrimination Agency upon his or her request or when grounds arise which, in the case of a judge appointed for life, would give rise to discharge from duty. In the event of the termination of the official relationship under public law, the head of the Federal Anti-Discrimination Agency shall receive a certificate executed by the Federal Minister for Family Affairs, Senior Citizens, Women, and Youth. The discharge shall become effective upon the handing over of the certificate.

(4) The legal relationship between the head of the Federal Anti-Discrimination Agency and the Federal Administration shall be regulated by contract with the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth. The contract shall require the consent of the Federal Government.

(5) Where a federal civil servant is appointed head of the Federal Anti-Discrimination Agency, he or she shall retire from his or her previous office at the same time as the official relationship under public law commences. For the period of the official relationship under public law, the rights and duties associated with being a civil servant shall be suspended, with the exception of the duty to official secrecy and the prohibition of accepting rewards or gifts. Where civil servants are injured in an accident, their legal right to claim treatment and compensation shall remain unaffected.

Section 27

Tasks

(1) Any person who believes he or she has been discriminated against on any of the grounds referred to in Section 1 may take their case to the Federal Anti-Discrimination Agency.

(2) The Federal Anti-Discrimination Agency shall give independent assistance to persons addressing themselves to the Agency in accordance with Subsection (1) in asserting their rights to protection against discrim-

ination. Such assistance may, among other things, involve

1. providing information concerning claims and possible legal action based on legal provisions providing protection against discrimination;
2. arranging for advice to be provided by another authority;
3. endeavouring to achieve an out-of-court settlement between the involved parties.

Where responsibility lies either with a Parliamentary Commissioner of the German Bundestag or a Federal Government Commissioner, the Federal Anti-Discrimination Agency shall immediately pass on the matters of the person referred to in Subsection (1), with their prior approval.

(3) The Federal Anti-Discrimination Agency shall take on and independently carry out the following tasks, insofar as no Parliamentary Commissioner of the Bundestag or Federal Government Commissioner is competent in the matter:

1. publicity work;
2. measures to prevent discrimination on any of the grounds referred to in Section 1;
3. academic studies into such discrimination.

(4) The Federal Anti-Discrimination Agency and the competent Federal Government Commissioner and Parliamentary Commissioner of the German Bundestag shall jointly submit reports to the German Bundestag

every four years concerning cases of discrimination on any of the grounds referred to in Section 1 and shall make recommendations regarding the elimination and the prevention of such discrimination. They may jointly carry out academic studies into such discrimination.

(5) The Federal Anti-Discrimination Agency and the competent Federal Government Commissioner and Parliamentary Commissioner of the German Bundestag shall co-operate in cases of discrimination on several of the grounds referred to in Section 1.

Section 28

Authority

(1) In cases in accordance with Section 27(2) second sentence, No 3, the Federal Anti-Discrimination Agency may request the involved parties to make submissions, insofar as the person who has turned to the Agency in accordance with Section 27(1) has consented thereto.

(2) All federal authorities and other federal public offices shall be under the obligation to assist the Federal Anti-Discrimination Agency in carrying out its tasks, in particular to supply the necessary information. The provisions regarding the protection of personal data shall remain unaffected.

Section 29

Co-operation with Non-Governmental Organisations and Other Institutions

The Federal Anti-Discrimination Agency shall involve in an appropriate manner non-governmental organisations and institutions active in the field of the protection against discrimination on any of the grounds referred to in Section 1 at European, federal, *Länder*, and regional level.

Section 30

Advisory Council

(1) The Federal Anti-Discrimination Agency shall be assigned an Advisory Council for the purposes of promoting dialogue with social groups and organisations whose goal is the protection against discrimination on any of the grounds referred to in Section 1. The Advisory Council shall advise the Federal Anti-Discrimination Agency as regards the submission of reports and recommendations to the German Bundestag in accordance with Section 27(4) and may put forward its own suggestions to that end and with regard to academic studies in accordance with Section 27(3) No 3.

(2) The Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth shall, in agreement with the head of the Federal Anti-Discrimination Agency as well the competent Federal Government Commissioner or Parliamentary Commissioner of the German Bundestag, appoint the members of this Advisory Council and

a deputy for each member. The Advisory Council shall comprise representatives of social groups and organisations, as well as experts on issues concerning discrimination. The Advisory Council shall not exceed a total membership of 10 persons. The Advisory Council shall be made up of equal numbers of men and women.

(3) The Advisory Council shall adopt its own rules of procedure, which shall require the consent of the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth.

(4) The members of the Advisory Council shall perform their duties in accordance with this Act on a voluntary basis. They shall have the right to claim expenses, travel costs, a per diem allowance, and hotel expenses. The rules of procedure shall contain further details on these matters.

Part 7

Concluding Provisions

Section 31

Prohibition of Changing Any Provisions

No agreement derogating from the provision of this Act may be made to the disadvantage of the persons protected thereby.

Section 32

Final Provision

General legal provisions shall apply unless this Act provides otherwise.

Section 33

Transitional Provisions

- (1) As regards discrimination in accordance with Sections 611a, 611b and 612(3) of the German Civil Code or sexual harassment pursuant to the Employee Protection Act (Act on the Protection of Employees from Sexual Harassment in the Workplace, *Beschäftigtenschutzgesetz*), the law applicable prior to 18 August 2006 shall find application.
- (2) As regards discrimination on the grounds of race or ethnic origin, Sections 19 to 21 shall not apply to relationships under the law of obligations entered into prior to 18 August 2006. The first sentence shall not apply to subsequent changes to continuous obligations.
- (3) As regards discrimination on the grounds of sex, religion, disability, age, or sexual orientation, Sections 19 to 21 shall not apply to relationships under the law of obligations entered into prior to 1 December 2006. The first sentence shall not apply to subsequent changes to continuous obligations.
- (4) As regards relationships under the law of obligations, whose object is a private insurance, Section 19(1) shall not apply where these were entered into prior to 22 December 2007. The first sentence shall not apply to subsequent changes to such obligations.
- (5) As regards contracts for insurance which were concluded before 21 December 2012, a difference of treatment in payouts or premiums on the grounds of gender is only permissible within the meaning of Article 19(1), sentence 2, when a detailed and specific mathematical or statistical risk assessment shows gender to be a decisive risk factor. Charges relating to pregnancy and motherhood may not, under any circumstances, lead to differences in premiums or payouts.

Index

A

Access	p. 8 f., 16 f., 20 f., 23, 26 ff., 34 ff., 37 f.
Access to and supply of goods and services	p. 8 f., 20, 26, 28, 35
Access to employment	p. 9, 16 f., 38
Act on the Protection against Unfair Dismissal	p. 17, 39
Advanced vocational training	p. 17, 36
Age	p. 3, 8 ff., 14, 18 ff, 23, 27, 34, 36, 38 f., 42, 46, 49
Age limit	p. 19, 38, 46
Averting danger	p. 20

B

Banking transactions	p. 20
Basic Law	p. 7 f., 30
Belief	p. 3, 8 ff., 12, 18, 23, 27, 34, 36 ff., 43
Bisexuals	p. 15
Bodies	p. 45
Bulk business	p. 10, 20, 42
Bundestag	p. 9, 45 ff., 48
Business organisations	p. 33

C

Civil law	p. 9, 12, 20, 31, 42 f.
Claims	p. 17, 21, 28 f., 31 f., 34, 36, 41 f., 44, 47
Commissioner appointed by the government.....	p. 32
Compensation	p. 15, 17, 28 f., 38, 40, 44, 46
Concept of discrimination	p. 23
Consultation	p. 28
Contact form	p. 3, 32
Council of the European Union	p. 8

D

Desire to protect one's privacy	p. 21
Dignity	p. 7, 24, 35 f.
Direct discrimination	p. 10 ff., 23 f., 28, 35
Directors	p. 17 f., 37

Discounts	p. 21
Discrimination	p. 3, 7 ff., 10 ff., 13 ff., 16 ff., 19 f., 23 f., 25, 27 ff., 30 f., 32 f., 34 ff., 37 ff., 40 ff., 43 f., 47 ff.
Disability	p. 3, 8 ff., 13 f., 18 ff., 21, 23, 27, 30, 34, 36, 42 f., 49
Dismissal	p. 16 f., 28, 34 f., 38 f.

E

Education	p. 13, 30 f., 35
Education in the state system	p. 31
Elimination	p. 28, 47
Employees	p. 12, 14, 16 ff., 19, 25, 27 ff., 36 ff., 39 ff., 49
Employees' association	p. 18
Employers	p. 13, 17 ff., 27 f., 33, 35, 41
Employment	p. 8 f., 12 f., 15 ff., 20, 23, 26, 30, 34, 36 ff., 45
Self-employment	p. 16 f., 34
Employment relationship	p. 17, 34, 36, 38 ff., 41, 45
Equality	p. 7 ff., 21, 30
Equality of women and men	p. 7
Ethnic origin	p. 8, 10, 12, 18, 20 f., 23 f., 26 ff., 30, 34, 36, 42, 49
European Community	p. 8
European Union	p. 8, 11, 14, 21

F

Faith	p. 7, 38
Family planning	p. 16
Federal Act on Parental Allowance	p. 17
Federal Anti-Discrimination Agency	p. 3, 32, 45 ff., 48
Field of education	p. 31
Framework Directive on Employment	p. 8

G

German Bundestag	p. 45, 47 f.
------------------------	--------------

H

Harassment	p. 24, 27 f., 35, 40, 49
Heirs	p. 22
Homeland	p. 7, 19

Homosexuals.....	p. 15
Hotel	p. 48
Human rights.....	p. 7 f.

I

Illness	p. 13
Income	p. 16, 21
Increased level of compensation	p. 15
Indirect discrimination.....	p. 11, 23 f., 35
Injunction	p. 28, 44
Instructing others to discriminate.....	p. 25
Insurance	p. 20 ff., 30, 42, 49

J

Job interview	p. 16
---------------------	-------

L

Landlord(s).....	p. 11, 20, 33
Language	p. 7, 31 f.
Language school.....	p. 31
Legal protection.....	p. 10, 14 ff., 31
Lesbian.....	p. 15
Lessor.....	p. 43
Letting.....	p. 20

M

Maternity Protection Act.....	p. 17
Membership.....	p. 18, 35, 38, 42, 48
Minimum age.....	p. 14
Multiple discrimination.....	p. 9, 15
Motherhood.....	p. 12, 21, 49
Muslim.....	p. 12, 14, 23

N

Nationality.....	p. 10 f.
------------------	----------

O

Objective reason	p. 20, 26
Occupation	p. 8, 14, 16, 18, 20, 26, 29, 37 f., 42
Occupational group.....	p. 42
On grounds of race.....	p. 8, 20, 27, 30
Opening hours	p. 20 f.

Organisational obligation	p. 27
Origin.....	p. 7 f., 10, 12, 18 ff., 23 f., 26 ff., 34,
.....	36, 42, 49

P

Parentage	p. 7
Participation	p. 18
Part-time employment	p. 16
Performance evaluation	p. 17
Political opinion	p. 7
Pregnancy.....	p. 12, 21, 35, 43, 49
Price reduction	p. 20
Principle of equality.....	p. 7, 21, 30
Productivity	p. 19
Professional requirement	p. 18 f.
Professional organisation	p. 18
Prohibition of discrimination.....	p. 7, 17, 30, 36 f., 39 f., 41 ff.
Promotion	p. 9, 16 f., 34, 37, 41
Proof	p. 25, 44
Protection against discrimination	p. 7, 10 ff., 16, 18, 25, 27, 31, 39,
.....	42, 45, 47 f.
Protection of privacy	p. 43
Positive measures	p. 28 f.
Public law	p. 30 f., 35, 45 f.
Publicity work	p. 47

R

Reassignment	p. 11, 17, 28
Rejection	p. 18 f., 41 f.
Relationship of trust	p. 19, 43
Religion	p. 3, 8 ff., 12, 18, 20 f., 23, 27 f., 34,
.....	36 ff., 42 f., 49
Religious community	p. 37 f.
Remuneration	p. 37 f.
Reprimand.....	p. 28
Researchers	p. 33
Restaurant	p. 20
Retraining	p. 17, 35 f.

S

Schoolchildren	p. 20 f.
Scope	p. 9 f., 16, 27, 31, 33 f., 41

Personal scope	p. 10
Secondary employment	p. 16
Selection criteria	p. 16, 34
Senior citizens	p. 21, 45 f., 48
Sex	p. 3, 7 ff., 10 ff., 15, 18 ff., 23, 27, 35, 42 f., 49
Sexual harassment	p. 24, 28, 35, 40, 49
Sexual orientation	p. 3, 8 ff., 15, 18, 20 f., 23, 27, 34, 42 f., 49
Sideline	p. 16
Social benefits	p. 30, 35, 38 f.
Social law	p. 30
Social protection	p. 30, 35
Social security	p. 30, 35, 38
Society	p. 3, 13
Special offers	p. 21
Sport federations	p. 18
Staff council	p. 18, 27
Students	p. 21
Subordinate hierarchy	p. 30
Supply of goods and services	p. 8 f., 20, 26, 28, 35

T

Teacher	p. 13, 19, 29
Time limits	p. 32
Trade union	p. 41 f.

U

United Nations	p. 7, 13, 15
United Nations World Conference	p. 15
Universal Declaration of Human Rights ..	p. 7
Unjustified difference of treatment	p. 23

V

Vocational training	p. 9, 17, 29 f., 34, 36, 38, 41
---------------------------	---------------------------------

W

Work experience	p. 17, 35 f.
Working condition	p. 9, 12, 16 f., 34, 38
Works council	p. 41 f.

This publication is part of the Federal Anti-Discrimination Agency's public relations work; it is offered free of charge and not intended for sale.

Publisher:

Antidiskriminierungsstelle des Bundes
11018 Berlin

www.antidiskriminierungsstelle.de

Contact:

Phone: +49 (0) 30 18555-1855

Fax no.: +49 (0) 30 18555-41865

Initial Legal Counselling:

Mon 1 p.m.–3 p.m., Wed 9 a.m.–12 p.m. and Fri, 9 a.m.–12 p.m.

E-mail address: beratung@ads.bund.de

General Enquiries:

Mon–Fri, 9 a.m.–12 p.m. and 1 p.m.–3 p.m.

E-mail address: poststelle@ads.bund.de

Design: www.avitamin.de

Reprint: www.zweiband.de

Translation: Lisa Gow (revised version 2016),
Maureen Roycroft Sommer (original version 2010)

Current at: November 2019

Printing: MKL Druck GmbH & Co. KG