

Non-Discrimination Act



Equality - what does it mean?

Equality means that everyone is treated the same and that no one may be discriminated against on the basis of, for instance, age, skin colour, sexual orientation or other personal characteristics. In a just society, everyone has equal opportunities to training and personal development, to obtain services and to advance their career.



The new Non-Discrimination Act entered into force at the beginning of 2015, and its purpose is to promote equality, prevent discrimination and to enhance the protection provided by law to those who have been discriminated against.

The Act contains provisions on, for example,

- what constitutes discrimination
- what is permissible different treatment
- who should be notified of discrimination
- what kind of compensation and other sanctions may be applied for on the basis of the law, and
- who should promote equality.

What constitutes discrimination?

Typically, discrimination is different treatment of people because they belong (or they are assumed to belong) to a certain group, such as professing a certain religion or belonging to a sexual minority. Often the underlying factor behind discrimination comprises prejudices which are generalized to apply to all persons who belong to such a group. Discrimination may be a single word or situation, or it can be a consequence of the structures of society. In Finland, discrimination is prohibited on the basis of the Constitution, the Act on Equality between Women and Men, the Criminal Code, and several individual special acts. The provision on discrimination in the Constitution also prohibits segregation where services are provided separately to different groups of the population according to the grounds referred to in the prohibition of discrimination, unless it can be deemed justified in a certain situation on the basis of an acceptable reason.

Prohibition of discrimination

Pursuant to section 8 of the Non-Discrimination Act, no one may be discriminated against on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.



Discrimination is prohibited, regardless of whether it is based on a fact or assumption concerning the person him/herself or another. Discrimination may be involved when a person is discriminated against for being closely associated with a person belonging to an ethnic minority (discrimination by association). An act may be a violation of the prohibition of discrimination even when the perpetrator errs regarding, for instance, a person's origin, age or sexual orientation (discrimination based on assumption). In addition to direct and indirect discrimination, harassment, denial of reasonable adjustments as well as an instruction or order to discriminate constitute discrimination as referred to in the Non-Discrimination Act.

According to the non-discrimination act, discrimination constitutes

Direct discrimination (section 10): A person is treated less favourably than another person was treated, is treated or would be treated in a comparable situation.

An entrepreneur refuses to let a disabled person enter their business premises.

Indirect discrimination (section 13): An apparently neutral rule, criterion or practice puts a person at a disadvantage compared with others on the grounds of personal characteristics.

An employer demands job applicants to have a perfect command of the Finnish language, even though it is not necessary for the performing of the job duties in question.

Harassment (section 14): Behaviour that is a deliberate or de facto infringement of the dignity of a person, creating a degrading or humiliating, intimidating, hostile or offensive environment towards the person.

Examples of harassment include racist jokes made with the intention of insulting someone or calling a fellow worker, who is a member of a sexual minority, names.

Also, saying things or sending e-mail messages which infringe a person's dignity, putting inappropriate material on display and other kinds of communication may constitute discrimination prohibited by law.

Instruction or order to discriminate (section 8): Advisories, directives or requirements that are tantamount to discrimination or foster discrimination.

A manager at a restaurant orders the doormen to make sure that persons belonging to certain groups of the population cannot enter the restaurant.

Denial of reasonable adjustments (section 15): An authority, education provider, employer or provider of goods and services who fails to make due and appropriate adjustments necessary in each situation for a person with disabilities to secure the non-discrimination of disabled persons is guilty of discrimination.

An employer refuses to make reasonable adjustments necessary which a disabled job applicant would need to attend a job interview.

Prohibition of discriminatory work advertisements (section 17): When advertising an open position, public service office or post, an employer may not unlawfully require that applicants have the personal characteristics or qualities referred to in this Act.

A bus company requires Finnish citizenship from applicants in a job advertisement for the position of a bus driver.

Prohibition of victimisation (section 16):

A person must not be treated unfavourably or in such a way that they suffer adverse consequences as a result of pleading the rights or obligations provided for in the Non-Discrimination Act, participating in the clarification of a matter concerning discrimination, or taking other action to safeguard equality.

An employer transfers an employee to other, less demanding duties after the employee reported an experience of discrimination to an occupational safety and health authority.

Experiences of discrimination among the various population groups

Any person may have to confront discrimination or prejudice on the basis of some reason related to them, such as age, religion or state of health. Especially sus-

ceptible to discrimination are persons who belong to groups which face negative stereotypes or prejudice. Discrimination may cause both mental and financial damage. It also increases insecurity and diminishes the potential of the victims of discrimination to take part in social activities.



Examples of experiences of discrimination among the various groups of population

Roma	<p>Prejudice directed at Roma diminishes their equal opportunities for finding employment.</p> <p>Special conditions are placed on a Roma family when they lease a residence or no rental residence is granted at all.</p> <p>A Roma employee or customer is often the first to be blamed for a theft at a workplace or in a shop.</p>
Sámi people	<p>A municipality refuses to provide day care or care for the elderly in Sámi, even though it would have the necessary resources.</p> <p>Hate speech is directed at Sámi people on the Internet.</p> <p>Sámi youths experience discrimination because of their cultural background.</p>
Immigrants	<p>Racist name-calling and violence in public places is directed at persons who are members of visible minorities (with dark skin or otherwise different appearance than the majority of the population).</p> <p>Demands on language skills are set as a requirement in jobs where they are not necessary with regard to the performing of the work.</p> <p>People who have a foreign name or who speak Finnish with an accent find it harder to find employment than ethnic Finns.</p>
Disabled persons	<p>A person in a wheelchair cannot enter inaccessible shops, workplaces or classrooms, even though access could be arranged through reasonable measures.</p> <p>A person who is hard of hearing cannot hear a discussion in a noisy environment during a meeting and is prohibited from using an induction loop.</p> <p>A visually impaired person cannot attend an admission examination at a university because the exam is based on eyesight, although the person would be able to study and graduate from the institution.</p>
Sexual minorities	<p>For fear of discrimination, a person dares not reveal to the work community that he or she has a spouse who is of the same gender.</p> <p>Hate speech and violence is directed at sexual minorities.</p> <p>A young person or an adult who is a member of a sexual minority has to listen to insulting jokes at school or in the workplace.</p>
Children and young people	<p>Minors are prohibited from spending time in a space, such as a shopping centre or a store, without an acceptable reason.</p> <p>Young people are in an inferior position in the labour market.</p> <p>Discrimination, bullying and sexual harassment occurs in schools.</p>

Elderly and aged people	<p><i>Elderly people feel that they are deemed sick or incapable of affecting solutions that concern their own lives.</i></p> <p><i>Aged persons face discrimination in the labour market.</i></p> <p><i>The needs of the elderly are ignored when designing electronic services.</i></p>
People with religious and other convictions	<p><i>Factors related to a person's clothing or religious worship are regarded as obstacles to employment when, in fact, they are not.</i></p> <p><i>Persons in religious minorities face prejudice and have more difficulties finding employment.</i></p> <p><i>Children who are irreligious or belong to a minority religion are not provided alternative activities during religious events at school.</i></p>
Multiple discrimination	<p><i>An elderly Roma person is discriminated as a Roma, a woman and an elderly person.</i></p> <p><i>A disabled immigrant is not accepted on a labour-related integration course because his or her employment opportunities are deemed to be poorer than other people's.</i></p> <p><i>The partner of an elderly person who belongs to a sexual minority is not acknowledged as a family member in health care or care for the elderly.</i></p>



What is permissible different treatment?

Not all different treatment based on a personal characteristic, such as state of health, age, citizenship or the equivalent, constitutes discrimination. Pursuant to section 11 of the Non-Discrimination Act, different treatment does not constitute discrimination if the treatment is based on legislation and it otherwise has an acceptable objective and the measures to attain the objective are proportionate. For example, legislation on tobacco, alcohol and traffic contains provisions on different age limits and requirements.

Even different treatment which is not based on legislation may have an acceptable objective with regard to fundamental and human rights. For instance, measures preventing the social exclusion of young people, promoting the equality of language groups or subsidies granted to religious minorities do not constitute discrimination because they are aimed at a goal which is acceptable from the perspective of fundamental rights. Such goals may include the promotion of linguistic and cultural rights, non-discrimination, equality, and the rights of children and minorities.

Positive discrimination

According to section 9 of the Non-Discrimination Act, positive discrimination that aims to de facto promote equality, or to prevent or remove the disadvantages attributable to discrimination, does not constitute dis-

crimination. Positive discrimination must have an acceptable objective in terms of fundamental and human rights, and it must be planned, proportionate and temporary. Positive discrimination includes, for instance, proportionate recruitment measures aimed at increasing the proportion of persons belonging to a disadvantaged group (such as immigrants).

Different treatment at work and in employing personnel

Pursuant to section 12 of the Non-Discrimination Act, different treatment at work and in employing personnel is justified if the treatment is founded on genuine and determining requirements concerning the type of occupational tasks and their performance, and the treatment is proportionate to achieve the legitimate objective. When hiring a priest, for example, it is permissible to require membership in a certain church, or workers with a Chinese background may be sought for a Chinese restaurant.

Different treatment based on age or domicile is also justified if the treatment has an objectively and appropriately justified employment policy objective or an objective concerning the labour market, if the different treatment is attributable to the age limits adopted for qualification for retirement or disability benefits.

Who should be notified of discrimination?

According to section 18 of the Non-Discrimination Act, compliance with the provisions of the Non-Discrimination Act is supervised by the Non-Discrimination Ombudsman, the National Non-Discrimination and Equality Tribunal, and the occupational safety and health authorities. The police investigate offences involving or related to discrimination.

If you feel that you have been discriminated against in some area of life other than employment (such as public services or training), contact the Non-Discrimination Ombudsman.

www.syrjinta.fi

You can also refer the matter to the National Non-Discrimination and Equality Tribunal.

www.yvtltk.fi

If you feel you have been discriminated against at the workplace or when seeking employment, contact an occupational safety and health authority.

<http://www.tyosuojelu.fi/tyosuhde/yhdenvertaisuus>

If you feel you are the victim of a crime involving discriminatory motives, contact the police.

www.poliisi.fi

If you think you have been discriminated against by the authorities, you may also submit a complaint to the Parliamentary Ombudsman, a Regional State Administrative Agency or, in case of authorities in social welfare and health care, to the local Patients' or Social Ombudsman.

If you are uncertain of whom to turn in a matter concerning discrimination, you can contact the Non-Discrimination Ombudsman or Victim Support for advice (**www.riku.fi**). If you are considering submitting a notification about discrimination, you should remember that the Non-Discrimination Act prohibits victimisation of a person who has reported discrimination.

Advice and legal assistance are also available from legal aid offices (**www.oikeus.fi**), trade unions or non-governmental organizations representing various groups.

Non-discrimination ombudsman

The Non-Discrimination Ombudsman may assist the victims of discrimination in the investigation of their complaints concerning discrimination. You may refer to the Non-Discrimination Ombudsman if you have experienced or observed discrimination on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.

Occupational safety and health authorities

Compliance with the Non-Discrimination Act in employment relationships and service relationships under public law, and in traineeships and other comparable activities in the workplace as well as in employing persons, is supervised by the occupational safety and health authorities. The occupational safety and health authority may intervene in discrimination at the workplace by control measures laid down in the Act on Occupational Safety and Health Enforcement and Co-operation on Safety and Health at Workplaces, such as directives and requests. If the employer fails to adhere to a request, the occupational safety and health authority may make a decision that obliges the employer to comply.

The ombudsman for equality

The duty of the Ombudsman for Equality is to supervise compliance with the Act on Equality between Women and Men. The Ombudsman for Equality may assist a victim of discrimination defined in the Act on Equality between Women and Men in safeguarding the person's rights and, if necessary, represent the person at a trial.

National non-discrimination and equality tribunal

The National Non-Discrimination and Equality Tribunal confirms the reconciliation between the parties in matters concerning discrimination or victimisation. The National Non-Discrimination and Equality Tribunal may, in other matters than those pertaining to the authority of the occupational safety and health authority, forbid the party continuing or repeating the discrimination. The Tribunal may also order a party to take action to fulfil the obligations stipulated. The Tribunal may impose a conditional fine to enhance its prohibition or order.

In supervising compliance with the Non-Discrimination Act, the Tribunal has competence in issues related to working life. The Ombudsman for Equality or a central organization in the labour market may bring a matter concerning the Act on Equality between Women and Men to be handled by National Non-Discrimination and Equality Tribunal.

Sanctions of discrimination

The sanctions of discrimination depend on the act applied for hearing a discrimination by a court of law. The sanctions listed in the Non-Discrimination Act include compensation paid to a victim of discrimination, invalidation of a discriminatory contract term, issuance of a directive or request by the occupational safety and health authority, and prohibition or obligation decision imposed by the National Non-Discrimination and Equality Tribunal as well as a conditional fine imposed as an incentive.

In court cases related to discrimination, typical sentences include fines imposed on the basis of the Criminal Code, although the maximum sentence for discrimination is 6 months' imprisonment. Also, victims of discrimination may obtain compensation on the basis of the Employment Contracts Act or compensation for pain and suffering on the basis of the Tort Liability Act.

Compensation

On the basis of section 23 of the Non-Discrimination Act, a party who has been discriminated against or victimised is entitled to receive compensation from the authority, employer or education provider or supplier of goods or services who has discriminated against them or victimised them contrary to the Non-Discrimination Act.

No maximum amount for the compensation has been set in the Act. Pursuant to section 24 of the Non-Discrimination Act, the compensation must be equitably proportionate to the severity of the act. The severity of the act is assessed by taking into account the type, extent and duration of the infringement. Compensation must be demanded at a district court within two years from the discriminatory actions or actions contrary to the prohibition of victimisation. Seeking compensation does not preclude an application for compensation on the basis of the Tort Liability Act or other legislation.

Prohibition and conditional fine

Pursuant to section 20 of the Non-Discrimination Act, the National Non-Discrimination and Equality Tribunal may, in other matters than those pertaining to the authority of the occupational safety and health authority, forbid the party in question from continuing or repeating the discrimination or victimisation, or order the person to take action within a reasonable time to fulfil the obligations provided for in the Non-Discriminatory Act. The Tribunal may impose a conditional fine to enhance its prohibition or order.



How can equality be promoted?

According to the Non-Discrimination Act, authorities, education providers and employers must assess and promote equality in their activities. When fulfilling this obligation on promotion, origin, age, disability, sexual orientation, religion and other grounds for segregation prohibited in the Non-Discrimination Act must be taken into account. The purpose of these fos-

tering measures is to safeguard everyone's de facto equal opportunities for using services provided by different authorities, obtain training and advance their career. This may require measures to eliminate obstacles to equality so that de facto equality can be implemented.

Obligations to promote equality in the non-discrimination act

Authorities (section 5)	<i>The authorities shall evaluate the realisation of equality in their activities and take necessary measures to foster the realisation of equality. The authorities must have a plan of the necessary measures for the fostering of equality.</i>
Education providers (section 6)	<i>The education provider and the educational institution maintained by it shall evaluate the realisation of equality in their activities and take necessary measures to foster the realisation of equality.</i>
Employers (section 7)	<i>An employer who regularly employs at least 30 persons must have a plan for the necessary measures for the promotion of equality.</i>

Assessment of equality

Promoting equality requires

- the ability to assess one's activities from the perspective of various groups of population
- the ability to be in interaction with various population groups
- the ability to identify areas for improvement
- the ability to design concrete measures for fostering equality.

Equality can be assessed by many different methods. Tips on different methods are available in online materials on the assessment of equality, published by the Ministry of Justice:

<http://yhdenvertaisuus.finlex.fi/>.

Equality promotion plan

An equality promotion plan is drawn up by an authority, education provider or employer, containing concrete measures for fostering equality in their activities or in the role of the employer. This plan may be discreet or part of another plan (an equality plan, a curriculum, an activity programme for occupational safety and health, etc.).

Guidebooks, instructions and good practices for equality promotion planning are available on the website yhdenvertaisuus.fi.



Contents of an equality promotion plan

An equality promotion plan may include a description of the methods for assessing equality and assessment results, a list of concrete measures for fostering

equality and a specification of the follow-up, assessment and updating, if necessary, of the implementation of the plan, and the related schedule.

ASSESSMENT MATRIX

	ASSESSMENT OF EQUALITY		EQUALITY PROMOTION PLAN	
METHODS <i>For example:</i>	OBSERVATIONS		MEASURES (description, schedule and responsibilities)	MONITORING
	Employer	Activities		
Employee survey				
Assessment meetings				
Round of comments				
Information about the follow-up of strategies				
Analysis of documents				

Further information

On the non-discrimination act:

FINLEX (<http://www.finlex.fi/fi/laki/kaannokset/2014/en20141325.pdf>)

Government proposal (19/2014 and 111/2014)

Report by the employment and equality committee (11/2014)

On promoting equality:

www.yhdenvertaisuus.fi/www.equality.fi

www.oikeusministerio.fi (Democracy, Language Affairs and Fundamental Rights)

On the legal protection of victims of discrimination: www.syrjinta.fi

On intervening in discrimination in employment: www.tyosuojelu.fi

On discrimination based on gender: www.tasa-arvo.fi

On discrimination in Finland: http://www.yhdenvertaisuus.fi/welcome_to_equality_fi/monitoring-discrimination/

On campaigns against discrimination: www.yhdenvertaisuus.fi

Inquiries and requisitions of the brochure: yhdenvertaisuus.om@om.fi

www.yhdenvertaisuus.fi



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