

SWEDEN

# Act on Equality between Women and Men

## **The Equal Opportunities Act (SFS 1991:433)**

(Including amendments up to and including SFS 2000:773)

### **Purpose of the Act**

**Section 1.** The purpose of this Act is to promote equal rights for women and men in matters relating to work, the terms and conditions of employment and other working conditions, and opportunities for development in work (*equality in working life*).

The aim of the Act is primarily to improve women's conditions in working life.

### **Co-operation**

**Section 2.** Employers and employees shall co-operate as regards active measures to ensure that equality in working life is attained. They shall in particular endeavour to equalize and prevent differences in pay and other conditions of employment between women and men who perform work which is regarded as equal or of equal value. They shall also promote equal opportunities for pay development for women and men.

Work is to be regarded as of equal value with other work if it, on an overall assessment of the requirements imposed for the work and its nature, may be deemed to be of equal value with the other work. The assessment of the requirements imposed for the work shall be made taking into account criteria such as knowledge and skills, responsibility and effort. When assessing the nature of the work, particular regard shall be taken of the working conditions. (SFS 2000:773)

### **Active measures**

#### **Goal-orientated work towards equality in working life**

**Section 3.** The employer shall, within the framework of its operations, conduct goal-orientated work in order to actively promote equality in working life.

Detailed provisions regarding employers' obligations are set forth in Sections 4-11.

## **Working conditions**

**Section 4.** The employer shall carry out such measures as, taking into consideration the employer's resources and the circumstances in general, may be required in order to ensure that working conditions are suitable for both women and men.

**Section 5.** The employer shall facilitate the combination of gainful employment and parenthood with respect to both female and male employees.

**Section 6.** The employer shall take measures to prevent and preclude an employee being subjected to sexual harassment or harassment resulting from a complaint about sex discrimination.

Sexual harassment means such unwanted conduct based on sex or unwanted conduct of a sexual nature, that violates the integrity of the employee at work.

## **Recruitment, etc.**

**Section 7.** The employer shall, through training, skills development and other suitable measures, promote an equal distribution between women and men in various types of work and within different categories of employees.

**Section 8.** The employer shall endeavour to ensure that both women and men apply for vacant positions.

**Section 9.** When at a workplace there is not, in the main, an equal distribution of women and men in a certain type of work or within a certain category of employees, the employer shall, in respect of new positions, especially endeavour to recruit applicants of the underrepresented sex and shall seek a gradual increase in the proportion of employees of that sex.

The provisions of the first paragraph shall, however, not apply where there exists special cause not to implement such measures or where such measures cannot reasonably be demanded taking into consideration the employer's resources and the circumstances in general.

## **Pay issues**

**Section 10.** With the purpose of discovering, rectifying and preventing unwarranted pay differentials and other terms of employment between women and men, the employer shall annually survey and analyse

- regulations and practice concerning pay and other terms of employment that are applied with the employer, and

- pay differentials between women and men who perform work which is regarded as equal or of equal value.

The employer shall assess whether the pay differentials prevailing are directly or indirectly connected to sex. This assessment shall in particular relate to differentials between

- women and men who perform work which is regarded as equal, and
- groups with employees who perform work that is or is usually regarded to be female dominated and groups with employees who perform work which is regarded as of equal value with such work but neither is nor normally regarded as female dominated. (SFS 2000:773).

**Section 11.** The employer shall each year prepare a plan of action for equal pay and therein report the results of the survey and analysis in accordance with Section 10. The plan shall state what pay adjustments and other measures are necessary to be implemented to attain equal pay for work which is to be regarded as equal or of equal value. The plan shall contain a cost computation and a time schedule with the aim that the pay adjustments that are necessary shall be implemented as soon as possible and at the latest within three years.

A report and an evaluation of how the planned measures were implemented shall be included in the plan of action for the following year.

The obligation to prepare a plan of action for equal pay shall not apply where the employer had less than ten employees at the end of the immediately preceding calendar year. (SFS 2000:773).

**Section 12.** The employer shall supply an employees' organisation in relation to which the employer is bound by a collective bargaining agreement, with the information that is necessary to enable the organisation to collaborate in the survey, analysis and preparation of a plan of action for equal pay.

If the information concerns data relating to pay or other circumstances that affect an individual employee, the rules of confidentiality and damages contained in Sections 21, 22 and 56 of the Employment (Co-Determination in the Workplace) Act (1976:580) apply. The provisions of Chapter 14, Sections 7, 9 and 10 of the Secrecy Act (1980:100) apply in public activities. (SFS 2000:773).

### **Plan of action for equality**

**Section 13.** The employer shall each year prepare a plan in relation to the employer's work for equality. The plan shall contain a survey of the measures pursuant to Sections 4-9 which are required at the workplace and shall indicate which of such measures the employer intends to commence or to implement during the coming year.

The plan shall also provide a summary report of the plan of action for equal pay that the employer shall implement in accordance with Section 11.

A report concerning how the planned measures pursuant to the first paragraph have been implemented shall be included in the plan for the following year.

The obligation to prepare an equality plan shall not apply where the employer had less than ten employees at the end of the immediately preceding calendar year. (SFS 2000:773).

### **Collective bargaining agreements**

**Section 14.** Collective bargaining agreements which are concluded in respect of the matters referred to in Sections 4-13 shall not discharge the employer from the obligation to comply with the provisions of the aforesaid Sections. (SFS 2000:773)

### **Direct discrimination**

**Section 15.** An employer may not disfavour a job seeker or an employee by treating her or him less favourably than the employer treats or would have treated a person of the opposite sex in a position of a similar nature, unless the employer demonstrates that the disfavour is not connected to the sex of the person disfavoured.

This prohibition does not apply if the treatment

- is an element in efforts to promote equality in working life and it does not involve the application of pay or other terms of employment for work which is regarded as equal or of equal value, or
- is justified having regard to such an ideological or other special interest that should manifestly not be subordinated to the interest of equality in working life. (SFS 2000:773).

### **Indirect discrimination**

**Section 16.** An employer may not disfavour a job seeker or an employee by applying a provision, a criterion or a method of procedure that appears to be neutral but which in practice is particularly disadvantageous to persons of one sex, unless the provision, criterion or method of procedure is appropriate and necessary and can be justified with objective factors that are not connected to the sex of the persons. (SFS 2000:773).

## **Scope of the prohibitions**

**Section 17.** The prohibitions against sex discrimination contained in Sections 15 and 16 apply when the employer

1. decides on an employment issue, selects a job seeker for an employment interview or implements other measures during the employment procedure,
2. decides on promotion or selects an employee for training for promotion,
3. applies pay or other terms of employment for work which is regarded as equal or of equal value,
4. manages and distributes work, or
5. gives notice of termination, summarily dismisses, lays-off or implements other significant measures against an employee. (SFS 2000:773).

**Sections 18-20.** (Repealed).

## **Information in respect of qualifications**

**Section 21.** A job seeker who has not been employed, or an employee who has not been promoted or selected for training for promotion is entitled, upon request, to obtain written information from the employer in respect of the nature and scope of the training, professional experience and other comparable qualifications of the person of the opposite sex who got the job or the training position.

## **Ban on harassment, etc.**

**Section 22.** An employer may not subject an employee to harassment on the grounds that the employee has rejected the employer's sexual advances or has reported the employer for sex discrimination.

A person who is entitled to determine an employee's conditions of work in lieu of the employer shall, in the application of the provisions of the first paragraph, be equated with the employer.

**Section 22 a.** An employer who becomes aware that an employee considers her or himself to have been exposed to sexual harassment by another employee, shall investigate the circumstances surrounding the said harassment and if it has occurred implement the measures that may reasonably be required to prevent continuance of the sexual harassment. (1998:208)

## **Damages and other sanctions**

### **Invalidity**

**Section 23.** A contract shall be invalid to the extent that it prescribes or permits such sex discrimination as is prohibited in accordance with Sections 15-17.

**Section 24.** If an employee is discriminated against in any way that is prohibited pursuant to Sections 15 or 16 and 17, items 3-5, through a provision in an agreement with the employer or through the termination by the employer of an agreement or by the employer taking other such legal act, the provision or the legal act shall be declared invalid if so requested by the employee. The aforesaid shall not apply where Section 23 is applicable. (SFS 2000:773)

### **Damages**

**Section 25.** If a job seeker or an employee is discriminated against by the employer breaching the prohibitions contained in Sections 15 or 16 and 17, the employer shall pay damages to the person discriminated against for the violation caused by the discrimination. In cases referred to in Section 15 or 16 or Section 17, items 3-5, the employer shall also pay damages to the employee for the loss that arises for her or him. (SFS 2000:773).

**Section 26.** (Repealed).

**Section 27.** If an employee is subjected to harassment as referred to in Section 22, the employer shall pay damages to the employee in respect of the violation caused by the harassment.

**Section 27a.** If the employer does not fulfil the employer's obligations pursuant to Section 22a, the employer shall pay damages to the employee for the violation caused by the omission. (1998:208).

**Section 28.** If it is reasonable, damages pursuant to Sections 25, 27 or 27a can be reduced or lapse completely. (SFS 2000:773)

### **Other sanctions**

**Section 29.** Where an employer fails to fulfil its obligations pursuant to a collective bargaining agreement as referred to in Section 14, that prescribed regarding sanctions by the agreement or by the Employment (Co-Determination in the Workplace) Act (1976:580) shall apply. (SFS 2000:773)

## **Monitoring of compliance with the Act**

**Section 30.** There shall be an Equal Opportunities Ombudsman and an Equal Opportunities Commission in order to ensure compliance with this act.

The Equal Opportunities Ombudsman and the Equal Opportunities Commission shall be appointed by the Government.

### **The Equal Opportunities Ombudsman**

**Section 31.** The Equal Opportunities Ombudsman shall, in the first instance, encourage employers to voluntarily comply with the provisions of this Act.

The Ombudsman shall also otherwise participate in the endeavours to promote equality in working life.

### **The Equal Opportunities Commission**

**Section 32.** The Equal Opportunities Commission has the task of considering matters concerning orders for default fines pursuant to Section 35 and appeals pursuant to Section 42.

### **Duty to provide information**

**Section 33.** An employer is liable at the request of the Equal Opportunities Ombudsman

- provide the information concerning the circumstances in the employer's operation that may be of importance for monitoring by the Ombudsman pursuant to Section 30, and
- allow the Ombudsman access to the workplace for investigations that may be of importance for the monitoring. (SFS 2000:773).

### **Orders for default fines**

**Section 34.** If the employer does not comply with a request pursuant to Section 33, the Equal Opportunities Ombudsman may order the employer to do so subject to a default fine.

**Section 35.** An employer who fails to comply with any of the provisions set forth in Sections 4-13 may be ordered to fulfil her or his obligations subject to a default fine. Such an order shall be issued by the Equal Opportunities Commission upon application by the Equal Opportunities Ombudsman or, if the Ombudsman has declared that the Ombudsman is not willing to make an application, by a central employees' organisation in relation to which the employer is bound by a collective

bargaining agreement. The order may also be directed against the State as an employer.

The Ombudsman shall, in the application, indicate what measures the employer should be ordered to undertake, the reasons invoked in support of the application, and what investigation has been carried out. (SFS 2000:773).

## **Procedure**

**Section 36.** The employer shall be ordered, subject to the sanction that the matter may nevertheless be determined, to present her or his comments within a specified period in respect of a request pursuant to Section 35 and to provide such information in respect of the conditions of her or his business as is required by the Commission for its adjudication.

When an employees' organisation has made an application, the Equal Opportunities Ombudsman shall be afforded an opportunity to present its views. (SFS 2000:773).

**Section 37.** The Equal Opportunities Commission shall ensure that matters are investigated to the extent their nature requires.

Where necessary, the Commission shall cause the investigation to be supplemented. Unnecessary investigations may be rejected.

## **Oral Proceedings**

**Section 38.** Matters concerning orders for default fines pursuant to Section 35 shall be determined following an oral hearing, except where the Commission considers such a hearing unnecessary.

**Section 39.** The person who presented the application to the Equal Opportunities Commission and the employer shall be summoned to attend a hearing pursuant to Section 38.

The Commission may order, subject to a default fine, the employer or the employer's legal representative to attend personally.

Where so required for the investigation, the Commission may also summon others to the hearing. (SFS 2000:773)

## **The determination of matters**

**Section 40.** A matter concerning a default fine order pursuant to Section 35 may be determined even where the employer fails to express an opinion in the matter or does not co-operate in the investigation, or if the employer fails to attend an oral hearing.

If the Equal Opportunities Ombudsman or the employees' organisation that made the application for a default fine order fails to attend a hearing, the application for a default fine order lapses. (SFS 2000:773).

**Section 41.** The Equal Opportunities Commission may, when determining a matter concerning a default fine order pursuant to Section 35, order the employer to implement other measures than those requested in the application, provided these measures are not manifestly more onerous for the employer.

In the order, the Commission shall indicate how and within what time the measures of the employer shall be commenced or implemented.

The decisions of the Commission shall be made in writing and served on the employer. (SFS 2000:773)

### **Appeals, etc.**

**Section 42.** Decisions of the Equal Opportunities Ombudsman concerning default fine orders pursuant to Section 34 may be appealed against to the Equal Opportunities Commission.

Sections 35-41 shall apply in such appeal matters.

**Section 43.** Decisions of the Equal Opportunities Commission pursuant to this Act may not be appealed against.

**Section 44.** Actions for the judicial confirmation of default fines which have been ordered pursuant to this Act shall be brought in a District Court by the Equal Opportunities Ombudsman.

In cases concerning the judicial confirmation of default fines ordered pursuant to Section 35, the District Court may also assess the suitability of the default fine. (SFS 2000:773).

## **Litigation in discrimination disputes**

### **Applicable regulations**

**Section 45.** Cases concerning the application of Sections 15-17 and 22- 28 shall be dealt with in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371).

In such context, a job seeker shall be deemed to be an employee and the person with whom someone has applied for work shall be deemed to be an employer.

The provisions of the second paragraph shall also apply to disputes pursuant to Sections 15-17 and 22-28 of the regulations concerning the handling of disputes contained in the Employment (Co-Determination in the Workplace) Act (1976:580). (SFS 2000:773)

### **Right to bring an action**

**Section 46.** In a dispute pursuant to Section 45, the Equal Opportunities Ombudsman may bring an action on behalf of an individual employee or job seeker, if the individual allows this and the Ombudsman considers that a judgment in the dispute is of importance for the application of law or where there is otherwise special reason for so doing. Where the Ombudsman brings a claim on behalf of an individual on the basis of this Act, the Ombudsman may also in the same proceedings present another claim on behalf of the individual.

Actions shall be brought in the Labour Court. (1994:292)

**Section 47.** When an employees' organisation is entitled to bring an action on behalf of the individual pursuant to Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371), the Equal Opportunities Ombudsman may only bring an action if the organisation does not do so.

That prescribed in the aforesaid Act concerning the status of an individual in the legal proceedings shall also apply when actions are brought by the Ombudsman.

(Sections 48-52 Repealed)

### **Time limits, etc.**

**Section 53.** If someone brings an action as a result of notice of termination or summarily dismissal, Sections 34 and 35, 37, 38, second paragraph, second sentence, Sections 39-42 and Section 43, first paragraph, second sentence, and second paragraph of the Employment Protection Act (1982:80) shall apply.

**Section 54.** In matters concerning any other action than those referred to in Section 53, Sections 64-66 and 68 of the Employment (Co-Determination in the Workplace) Act (1976:580) shall apply, except that the time limit stated in Section 66, first paragraph, first sentence, shall be two months. (SFS 2000:773).

**Section 55.** In an action for damages resulting from a decision on appointments to positions made by an employer with public status, the periods of time pursuant to Section 54 shall be counted from the day in which the decision has entered into final legal force.

**Section 56.** An action brought by the Equal Opportunities Ombudsman is dealt with as if the action had been brought personally by the employee or the job seeker.

**Section 57.** Actions concerning damages pursuant to Section 25 as a result of a decision concerning employment that has been made by an employer with public status may not be considered before the employment decision has entered into final legal force. (SFS 2000:773).