

A.L. 181 ta' l-2008**ATT DWAR L-UGWALJANZA GHALL-IRĠIEL U N-NISA
(KAP. 456)****Regolamenti ta' l-2008 dwar Trattament Indaqg fl-Aċċess u
l-Provvista ta' Ogġetti u Servizzi**

BIS-SAHHA tas-setgħat mogħtija mill-artikoli 9(3), 18(3) u 20 ta' l-Att dwar l-Ugwaljanza għall-Irġiel u n-Nisa, il-Ministru għall-Politika Soċjali għamel dawn ir-regolamenti li ġejjin:-

1. (1) It-titolu ta' dawn ir-regolamenti hu **Regolamenti ta' l-2008 dwar Trattament Indaqg fl-Aċċess u l-Provvista ta' Ogġetti u Servizzi**. Titolu u skop.

(2) Dawn ir-regolamenti jdahħlu fis-seħħ id-dispożizzjonijiet rilevanti tad-Direttiva tal-Kunsill 2004/113/KE li timplimenta l-prinċipju ta' trattament indaqg bejn irġiel u nisa fl-aċċess u l-provvista ta' ogġetti u servizzi.

(3) Dawn ir-regolamenti għandhom japplikaw għall-persuni kollha li jipprovdu ogġetti u servizzi, li jkunu disponibbli għall-pubbliku irrispettivament mill-persuna involuta fir-rigward tas-setturi kemm pubbliċi kemm privati, inklużi korpi pubbliċi, u li jkunu offruti barra mill-qasam tal-hajja privata u dik familjari u għal kull transazzjoni li ssir f'dan il-kuntest.

(4) Dawn ir-regolamenti ma jippreġudikawx il-libertà ta' l-individwu li jagħżel sieheb kontrattwali sakemm dik l-għażla ta' sieheb kontrattwali ma tkunx ibbażata fuq il-generu ta' dik il-persuna.

(5) Dawn ir-regolamenti m'għandhom la japplikaw għal affarijiet li jirrigwardaw l-impjeg u x-xogħol, lanqas għal affarijiet ta' min jimpjega lilu nnifsu, sakemm dawk l-affarijiet ikunu koperti minn liġijiet u regolamenti oħrajn.

(6) Dawn ir-regolamenti qegħdin isiru mingħajr preġudizzju għal dispożizzjonijiet aktar favorevoli fir-rigward tal-harsien tan-nisa f'dak li għandu x'jaqsam mat-tqala u l-maternità.

Tifsir.

2. F'dawn ir-regolamenti, sakemm ir-rabta tal-kliem ma tkunx tehtieg xort'ohra:-

“l-Att” ifisser l-Att dwar l-Ugwaljanza għall-Irġiel u n-Nisa;

“il-Kummissjoni” tfisser il-Kummissjoni Nazzjonali għall-Promozzjoni ta' l-Ugwaljanza għall-Irġiel u n-Nisa, stabbilita skond l-artikolu 11 ta' l-Att u tinkludi lil kull uffiċjal tal-Kummissjoni awtorizzat minnha kif imiss biex jaġixxi f'isimha għal xi skop speċifiku taht l-Att, u l-kelma “Kummissarju” għandha tiftiehem skond din it-tifsira;

“trattament indaq” tfisser in-nuqqas ta' diskriminazzjoni, sew diretta sew indiretta, għal raġunijiet ta' sess, b'referenza partikolari għall-istatus taż-żwieġ jew dak tal-familja.

Skop.

3. L-iskop ta' dawn ir-regolamenti hu sabiex jitqieghed il-qafas għall-ġlieda kontra d-diskriminazzjoni bbażata fuq il-ġeneru fl-aċċess għal oġġetti u servizzi u l-provvista tagħhom, bl-iskop li jiddaħhal fis-seħh fil-każ ta' dak l-aċċess u provvista ta' oġġetti u servizzi l-prinċipju ta' trattament indaq bejn l-irġiel u n-nisa.

Kunċett ta' trattament diskriminatorju.

4. (1) Persuna ma tistax tassogġetta lil xi persuna ohra għal trattament diskriminatorju, kemm direttament kemm indirettament, għal raġunijiet ta' sess, inkluż kull trattament diskriminatorju li jkollu x'jaqsam mat-tqala jew mal-maternità.

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(2) Minghajr preġudizzju għad-dispożizzjonijiet ta' l-Att u ta' l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali:

“diskriminazzjoni diretta” għandha titqies li ssir meta xi persuna tiġi trattata inqas favorevolment minhabba fis-sess tagħha minn kif persuna ohra tiġi, tkun ġiet jew tkun kieku ser tiġi trattata f' sitwazzjoni simili;

“diskriminazzjoni indiretta” għandha titqies li ssir meta xi provvedimento, kriterju jew Prattika li jidhru li jkunu newtrali kieku jqieghdu lil persuni ta' xi sess fi żvantagġ partikolari meta dawn jiġu mqabblin ma' persuni tas-sess l-iehor, kemm-il darba tali provvedimento, kriterju jew Prattika ma jkunux oġġettivament ġustifikabbli minhabba f' għan leġittimu u l-mezzi biex jintlaħaq dak l-għan ikunu adatti u mehtieġa.

(3) Fastidju u fastidju sesswali għandhom jitqiesu wkoll bhala li jikkostitwixxu diskriminazzjoni għall-finijiet ta' dawn ir-regolamenti. Iċ-ċahda jew assoġġettament għal fastidju jew fastidju

sesswali minn xi persuna ma jistghux jintużaw bhala bażi għal deċiżjoni li tkun tolgot lil dik il-persuna.

(4) Minghajr preġudizzju għad-dispożizzjonijiet ta' l-Att u ta' l-Att dwar l-Impjiegi u r-Relazzjonijiet Industrijali:

“fastidju” għandu jittqies li jsir meta mġieba mhux mixtieqa li jkollha x'taqsam mas-sess ta' persuna ssir bl-iskop jew bl-effett li jikser id-dinjità ta' persuna u li johloq ambjent intimidatorju, ostili, degradanti, umiljanti jew offensiv; u

“fastidju sesswali” għandu jittqies li jsir meta ssir xi għamla ta' mġieba mhux mixtieqa, sew fiżika, verbali, mhux verbali jew mhux fiżika, ta' xorta sesswali bl-iskop jew bl-effett li tikser id-dinjità ta' persuna, b'mod partikolari meta din tkun tohloq ambjent intimidatorju, ostili, degradanti, umiljanti jew offensiv.

(5) Għall-finjiet ta' dawn ir-regolamenti, kull persuna jew organizzazzjoni li dawn ir-regolamenti japplikaw għalihom għandhom jittqiesu wkoll li jkunu iddiskriminaw kontra persuna jekk huma jonqsu mid-dmir li għandhom li jipprevjenu kull għamla ta' fastidju jew fastidju sesswali fl-organizzazzjoni tagħhom.

(6) Meta tinghata xi struzzjoni dwar diskriminazzjoni diretta jew indiretta għal motivi ta' sess, din għandha tittqies bhala diskriminazzjoni fil-kuntest tat-tifsira ta' dawn ir-regolamenti.

(7) Għandu wkoll jittqies li tkun saret diskriminazzjoni meta persuna tiġi vittimizzata għaliex hija tkun għamlet xi lment lill-awtoritajiet leġittimi jew talli hija tkun tat bidu jew hadet sehem fi proċeduri għal rimedju għal motivi ta' xi ksur allegat tad-dispożizzjonijiet ta' dawn ir-regolamenti, jew għaliex tkun żvelat informazzjoni, sew kunfidenzjali sew mhix, lil xi korp regolatorju pubbliku nominat, dwar xi attività li allegatament tkun wahda illegali jew korrotta li ssir minn xi persuna u li tkun tinkwadra fil-kuntest ta' dawn ir-regolamenti jew minn persuni li jaġixxu f'isem jew fl-interess ta' dik il-persuna.

(8) Dawn ir-regolamenti m'għandhom jipprekludu ebda differenza fit-trattament jekk il-provvista ta' oġġetti u servizzi li ssir esklużivament jew primarjament lil membri ta' xi sess tkun ġustifikata minn xi għan leġittimu u l-mezzi biex jintlahaq dak l-għan ikunu adatti u mehtieġa.

Fatturi ghal
skopijiet
ta' informazzjoni
statistika.

5. (1) Meta s-sess jittiehed bhala fattur fil-kalkolu tal-premjijiet u l-benefiċċji għall-finijiet ta' l-assigurazzjoni u servizzi finanzjarji relatati ma' dan m'għandux jirriżulta fil-premjijiet u l-benefiċċji li jirrigwardaw lil xi individwi minbarra f'dawk il-każijiet meta s-sess jittiehed bhala fattur determinanti fil-kalkolu tar-riskju, u dan isir biss jekk id-differenza li tirriżulta fil-premjijiet u l-benefiċċji li jirrigwardaw lil xi individwu jkunu proporzjonati, u meta dak il-kalkolu jkun ibbażat fuq informazzjoni statistika li tintuża fl-assigurazzjoni li tkun relevanti u eżatta.

(2) Il-provdituri ta' l-assigurazzjoni u ta' servizzi finanzjarji relatati ma' dan li jużaw dak il-fattur determinanti għandhom jipprezentaw avviz ta' kull sena f'dan is-sens lill-Kummissjoni.

(3) Dan l-avviz għandu jinkludi dawn id-dettalji li ġejjin:

(a) isem il-provditur tas-servizz;

(b) il-prodott jew is-servizz li dwaru jkun ġie ipprezentat l-avviz;

(c) ir-raġuni għaliex is-sess jittiehed bhala fattur determinanti; u

(d) l-informazzjoni statistika għal skopijiet ta' assicurazzjoni li fuqha din ir-raġuni tkun ibbażata fuqha.

Azzjoni pożittiva.

6. Bil-ghan li tiġi żgurata ugwaljanza shiha fil-prattika bejn l-irġiel u n-nisa, il-prinċipju ta' trattament indaqs m'għandu jzomm lil ebda persuna milli żżomm jew tadotta miżuri speċifiċi biex tipprevjeni jew tikkumpensa l-iżvantaġġi marbutin mas-sess.

Proċeduri
għudizzjarji u
amministrattivi.

7. (1) Persuni li jahsbu li l-prinċipju ta' trattament indaqs li jinkwadra fil-kuntest ta' dawn ir-regolamenti ma jkunx ġie applikat fir-rigward tagħhom ikollhom dritt jipprezentaw ilment lill-Kummissarju, u l-Kummissarju għandu jagħti bidu għall-proċeduri imsemmija fl-Att jew f'kull liġi oħra jew regolament iehor li jkunu japplikaw.

(2) Mingħajr preġudizzju għas-subregolament (1), persuna li tallega li xi persuna oħra tkun ikkommettiet fir-rigward tiegħu jew tagħha xi att illegali taht dawn ir-regolamenti għandu jkollha, fi żmien erbgha u għoxrin xahar mill-ksur allegat, dritt ta' azzjoni quddiem il-qorti kompetenti ta' ġurisdizzjoni ċivili li permezz tagħha titlob lill-qorti biex tordna lill-konvenut biex jieqaf minn dak l-att illegali u biex tordna li jsir il-hlas ta' kumpens għal dik il-ħsara li tkun ġiet imġarrba b'dak l-att li jmur kontra l-liġi.

(3) F'kull proċedura msemmija fis-subregolamenti (1) u (2) ta' dan ir-regolament, meta persuni li jqisu li tkun saritilhom xi hsara minhabba li l-prinċipju tat-trattament indaqs ma jkunx ġie applikat ghalihom, iġibu prova quddiem xi Qorti jew Tribunal kompetenti dwar fatti li minnhom jista' jkun prezunt li kien hemm diskriminazzjoni diretta jew indiretta, il-piż tal-prova jkun fuq il-konvenut biex juri li ma kien hemm ebda ksur tal-prinċipju ta' trattament indaqs meta jkun qed isir is-smigh ta' dak l-ilment, u l-Qorti jew it-Tribunal ghandhom jilqgħu l-ilment jekk il-konvenut ma jgħib ebda prova li huwa ma jkunx għamel dak l-att li jmur kontra l-liġi.

(4) F'kull azzjoni bhal dik skond kif provdut fis-subregolament (2) ta' dan ir-regolament, l-attur ghandu, aktar minn hekk u b'żjieda ma' dawk id-danni u l-ispejjeż li jkun ġew attwalment imġarrba u li jistgħu jkunu dovuti skond il-liġi, ikun intitolat li jirkupra bhala kumpens dik is-somma flus skond ma l-qorti tista', fid-diskrezzjoni tagħha, tqis li tkun wahda raġonevoli fil-kuntest taċ-ċirkustanzi kollha tal-każ. Il-qorti ghandha madankollu tiżgura li l-kumpens ikun wiehed li jiddiswadi u proporzjonat mal-hsara mġarrba.

8. Xejn m'għandu jzomm lil xi assoċjazzjoni, organizzazzjoni jew enti legali ohra, li jkollha xi interess leġittimu milli tiżgura li jkun hemm konformità mad-dispożizzjonijiet ta' dawn ir-regolamenti, milli tipparteċipa sew f'isem sew b'appoġġ ta' min jilmenta, bl-approvazzjoni tiegħu jew tagħha, f'xi proċedura ġudizzjarja jew amministrattiva intiża għall-infurzar ta' l-obbligi li johorġu minn dawn ir-regolamenti. Difiża ta' drittijiet.

9. Għall-finijiet ta' dawn ir-regolamenti, u minghajr preġudizzju għal artikolu 12 ta' l-Att, il-funzjonijiet tal-Kummissjoni għandhom jinkludu: Funzjonijiet tal-Kummissjoni.

(a) l-għoti ta' għajnuna indipendenti lil vittmi ta' diskriminazzjoni biex imexxu 'l quddiem l-ilmenti tagħhom dwar xi diskriminazzjoni;

(b) li jmexxu sħarriġ indipendenti dwar id-diskriminazzjoni; u

(ċ) il-pubblikazzjoni ta' rapport indipendenti u l-għemil ta' rakkomandazzjonijiet fuq kull kwistjoni li jkollha x'taqsam ma' dik id-diskriminazzjoni.

10. (1) Dawk il-persuni u l-organizzazzjonijiet li dawn ir-regolamenti japplikaw ghalihom għandhom jieħdu l-miżuri meħtieġa biex jiżguraw li l-prinċipju ta' trattament indaqs jiġi rispettatt f'dak li għandu x'jaqsam ma' l-aċċess u l-provvista ta' oġġetti u servizzi fil- Konformità.

kuntest ta' dawn ir-regolamenti, u b'mod partikolari li jiġu aboliti dispożizzjonijiet amministrattivi kuntrarji għall-prinċipju ta' trattament indaqs u li kull dispożizzjoni kuntrattwali, regoli interni ta' intrapriżi, u regoli li jirregolaw assoċjazzjonijiet kemm li jagħmlu l-qliġh kemm li ma jagħmlux qliġh li jkunu kuntrarji għall-prinċipju ta' trattament indaqs jiġu aboliti jew emendati.

(2) F'kull każ, kull dispożizzjoni jew prattika li tkun kuntrarji għall-prinċipju ta' trattament indaqs għandha tkun nulla u bla ebda effett.

Reati.

11. Kull min jagħti fastidju sesswali lil xi hadd iehor bi ksur tad-dispożizzjonijiet ta' dawn ir-regolamenti jkun hati ta' reat u jista', meta jinsab hati, jehel multa ta' mhux iżjed minn elfejn u tliet mitt euro (€2,300) jew priġunerija għal mhux iżjed minn sitt xhur, jew dik il-multa u priġunerija flimkien.

L.N. 181 of 2008

**EQUALITY FOR MEN AND WOMEN ACT
(CAP.456)**

**Access to Goods and Services and their Supply
(Equal Treatment) Regulations, 2008**

IN exercise of the powers conferred by articles 9(3), 18(3) and 20 of the Equality for Men and Women Act, the Minister for Social Policy has made the following regulations:-

1. (1) The title of these regulations is the Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008. Title and scope.

(2) These regulations give effect to the relevant provisions of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to goods and services and their supply.

(3) These regulations shall apply to all persons who provide goods and services made available to the public irrespective of the person concerned as regards both the public and private sectors, including public bodies, and which are offered outside the area of private and family life, and to all transactions carried out in this context.

(4) These regulations do not prejudice the freedom of an individual to choose a contractual partner as long as such choice of a contractual partner is not based on the gender of that person.

(5) These regulations shall not apply to matters of employment and occupation, nor to matters of self-employment, insofar as these matters are covered by other laws and regulations.

(6) These regulations shall be without prejudice to more favourable provisions concerning the protection of women as regards pregnancy and maternity.

2. In these regulations unless the context otherwise requires:- Interpretation.

“the Act” means the Equality for Men and Women Act;

“the Commission” means the National Commission for the Promotion of Equality for Men and Women established in terms of article 11 of the Act and includes any officer of the Commission duly authorised by it to act on its behalf for any specific purpose

under the Act, and the term “Commissioner” shall be construed accordingly;

“equal treatment” means the absence of discrimination, whether direct or indirect, on grounds of sex, by reference in particular to marital or family status.

Purpose.

3. The purpose of these regulations is to lay down a framework for combating discrimination based on gender in the access to and supply of goods and services, with a view to putting into effect in the access to such goods and services and their supply the principle of equal treatment between men and women.

Concept of discriminatory treatment.

4. (1) It shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly, on the grounds of sex, including discriminatory treatment related to pregnancy or maternity.

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(2) Without prejudice to the provisions of the Act and of the Employment and Industrial Relations Act:

“direct discrimination” shall be deemed to occur where one person is treated less favourably, on grounds of sex, than another is, has been or would be treated in a comparable situation; and

“indirect discrimination” shall be deemed to occur where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, 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 and sexual harassment shall also be deemed to constitute discrimination for the purposes of these regulations. A person’s rejection or submission to harassment or sexual harassment may not be used as a basis for a decision affecting that person.

(4) Without prejudice to the provisions of the Act and of the Employment and Industrial Relations Act:

“harassment” shall be deemed to occur where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment; and

“sexual harassment” shall be deemed to occur where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

(5) For the purposes of these regulations, any person or organisation to whom these regulations apply shall also be deemed to have discriminated against a person if they neglect their obligation to prevent any form of harassment or sexual harassment within their organisation.

(6) Instruction to direct or indirect discrimination on the grounds of sex shall be deemed to be discrimination within the meaning of these regulations.

(7) Discrimination shall also be deemed to have occurred when a person is victimised for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of these regulations, or for having disclosed information, confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by any person falling within the scope of these regulations or by persons acting in such person’s name and interests.

(8) These regulations shall not preclude differences in treatment, if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

5. (1) The use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in the premiums and benefits relating to an individual except in those cases where the use of sex is a determining factor in the assessment of risk, and only if the resulting differences in the premiums and benefits relating to an individual are proportionate, and where this assessment is based on relevant and accurate actuarial statistical data. Actuarial factors.

(2) Providers of insurance and related financial services who use such a determining factor shall file an annual notification to such effect with the Commission.

(3) Such notification shall include the following details :

(a) the name of the service provider;

(b) the product or service in relation to which the notification is being filed;

(c) a rationale as to why the use of sex is a determining factor; and

(d) the actuarial statistical data on which this rationale is based.

Positive action.

6. With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any person from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex.

Judicial and administrative proceedings.

7. (1) Persons who feel that the principle of equal treatment within the scope of these regulations has not been applied to them, shall have a right to file a complaint with the Commissioner and the Commissioner shall initiate the proceedings prescribed in the Act or in any other applicable law or regulation.

(2) Without prejudice to subregulation (1), a person who alleges that any other person has committed in his or her regard any unlawful act under these regulations shall, within twenty-four months of the alleged breach, have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful act and to order the payment of compensation for such damage suffered through such unlawful act.

(3) In any proceedings mentioned in subregulations (1) and (2) hereof, where persons who consider themselves wronged since the principle of equal treatment has not been applied to them, establish before any competent Court or Tribunal facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the defendant to prove that there has been no breach of the principle of equal treatment on the hearing of the complaint, and the Court or Tribunal shall uphold the complaint if the defendant does not prove that he did not commit that unlawful act.

(4) In any such action as is provided under sub-regulation (2) hereof, the plaintiff shall moreover and in addition to such damages and costs as may have been actually suffered and as may be due according to law, be entitled to recover by way of compensation such sum of money as the court may in its discretion consider reasonable taking into account all the circumstances of the case. The court shall however ensure that compensation is dissuasive and proportionate to the damage suffered.

8. Nothing shall prevent any association, organisation or other legal entity, having a legitimate interest in ensuring that the provisions of these regulations are complied with, from engaging itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure as is provided for the enforcement of obligations under these regulations. Defence of rights.

9. For the purposes of these regulations, and without prejudice to article 12 of the Act, the functions of the Commission shall include : Functions of the Commission.

(a) providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;

(b) conducting independent surveys concerning discrimination; and

(c) publishing independent reports and making recommendations on any issue relating to such discrimination.

10. (1) Persons and organisations to whom these regulations apply shall take the necessary measures to ensure that the principle of equal treatment is respected in relation to the access to and supply of goods and services within the scope of these regulations, and in particular that administrative provisions contrary to the principle of equal treatment are abolished and that any contractual provisions, internal rules of undertakings and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are abolished or amended. Compliance.

(2) In any case, any provision or practice contrary to the principle of equal treatment shall be null and void.

11. Any person who sexually harasses any other person in breach of the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding two thousand three hundred euro (€ 2,300) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment. Offences.

