



➔ Norwegian version

## Act relating to the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (Equality and Anti-Discrimination Ombud Act)

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Abbreviated title	Equality and Anti-Discrimination Ombud Act
Original title	Lov om Likestillings- og diskrimineringsombudet og Diskrimineringsnemnda (diskrimineringsombudsloven)

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### Kapitteloversikt:

- Chapter 1. General provisions
- Chapter 2. The Equality and Anti-Discrimination Ombud
- Chapter 3. The Anti-Discrimination Tribunal
- Chapter 4. Regulations
- Chapter 5. Entry into force and transitional provisions

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**Amendment acts incorporated in this text:** L19.12.2017 No. 114 (in force 1 January 2018), L21.06.2019 No. 57 (in force 1 January 2020).

**This is an unofficial translation of the Norwegian version of the Act and is provided for information purposes only. Legal authenticity remains with the Norwegian version as published in Norsk Lovtidend. In the event of any inconsistency, the Norwegian version shall prevail.**

The translation is provided by the Ministry of Children and Families and by the Ministry of Culture.

## Chapter 1. General provisions

### Section 1. *Scope*

This Act contains provisions on the organisation and activities of the Equality and Anti-Discrimination Ombud (the Ombud) and the Anti-Discrimination Tribunal (the Tribunal).

The jurisdiction of the Ombud and the Tribunal encompasses:

- a) the Equality and Anti-Discrimination Act, unless otherwise specified in this Act
- b) chapter 13 of the Working Environment Act, with the exception of section 13-1(3)
- c) section 6 of the Ownership of Property Units Act
- d) section 1-8 of the Tenancy Act
- e) section 1-4 of the House-Building Cooperatives Act
- f) section 1-5 of the Housing Cooperatives Act
- g) chapter 10 of the Ship Labour Act, with the exception of section 10-1

The Ombud's activities also encompass reporting on equality and non-discrimination efforts pursuant to section 3-3 c of the Accounting Act.

The Tribunal's enforcement, see section 7, does not encompass the activities of the Storting, the Office of the Auditor General of Norway, the Parliamentary Ombudsman or other agencies of the Storting. Nor does it encompass the activities of the courts, the Norwegian Courts Administration, the Judicial Appointments Board or the Supervisory Committee for Judges.

## **Section 2. *Relationship with the Public Administration Act***

Unless otherwise provided, the Public Administration Act applies to the activities of the Ombud and the Tribunal. Sections 35 and 51, fifth paragraph, of the Public Administration Act do not apply. However, if an administrative decision of the Tribunal is declared invalid by judgment, section 35, first paragraph, c), of the Public Administration Act will apply.

Administrative decisions and decisions of the Tribunal may not be appealed.

## **Section 3. *Disclosure duty***

Notwithstanding any duty of confidentiality, public authorities have a duty to provide the Ombud and the Tribunal with all information required for implementation of the provisions specified in section 1, second paragraph; see also section 5, third paragraph. Such information may also be requested from other parties with a duty to give evidence pursuant to the Dispute Act. Section 24-8(3) of the Dispute Act applies correspondingly. A decision as specified in section 22-6(1), second sentence, section 22-7, section 22-8(2), section 22-9(2)-(4), section 22-10, second sentence, or section 22-11(2) of the Dispute Act shall be made by the district court.

The Ombud and the Tribunal may apply for evidence to be taken by the courts; see section 43, second paragraph, of the Courts of Justice Act.

0 Amended by Act 19 December 2017 No. 114 (in force 1 January 2018).

# **Chapter 2. The Equality and Anti-Discrimination Ombud**

## **Section 4. *The organisation of the Ombud***

The Equality and Anti-Discrimination Ombud is appointed by the King in Council for a fixed term of six years without the possibility of reappointment.

The Ombud is an independent public administrative agency administratively subordinate to the King and the Ministry. Neither the King nor the Ministry may issue instructions to the Ombud regarding the Ombud's professional activities.

## **Section 5. *The tasks of the Ombud***

The Ombud shall work to promote genuine equality and prevent discrimination in all sectors of society on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression or age. The Ombud shall also work to promote equal treatment in the context of employment, irrespective of political views and labour-organisation membership.

The Ombud shall provide guidance on the provisions specified in section 1, second paragraph, including in individual cases.

The Ombud shall monitor that Norwegian law and administrative practice are in accordance with Norway's obligations under:

- a) The United Nations International Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979.
- b) The United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965.
- c) The United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006.

The Ombud shall supervise the activity duty and duty to issue a statement pursuant to sections 24, 25, 26 and 26 a of the Equality and Anti-Discrimination Act, as well as the duty to report on equality and non-discrimination pursuant to section 3-3 c of the Accounting Act. The Ombud's supervision may include preparation by the Ombud and an employer of a joint strategy for compliance with the activity duty by the undertaking. The Ombud may also review equality statements, analyse the findings and propose improvement measures and strengthened initiatives for inclusion in the undertaking's equality work. The Ombud may also make follow-up visits to undertakings.

## Chapter 3. The Anti-Discrimination Tribunal

### Section 6. *The organisation of the Tribunal*

The Tribunal is an independent public administrative agency administratively subordinate to the King and the Ministry. Neither the King nor the Ministry may issue instructions to the Tribunal regarding the Tribunal's professional activities.

The Tribunal shall be divided into divisions. The Tribunal chairpersons shall participate in their respective divisions. A chairperson shall be appointed as the administrative leader.

The Tribunal chairpersons shall fulfil the requirements prescribed for judges in section 53, first paragraph, and section 54, second paragraph, of the Courts of Justice Act. The Tribunal chairpersons shall have prior judicial experience unless other particular qualifications indicate that such experience is not required.

Members and deputy members shall be appointed by the King for a term of four years, with the possibility of reappointment for one additional term. When the members and deputy members are appointed for the first time, half of them shall be appointed for a term of two years.

Employees of the Ombud and the Ministry may not be appointed as members of the Tribunal.

Cases processed by the Tribunal are prepared by a secretariat. The head of the secretariat is employed by the Ministry.

### Section 7. *The areas of responsibility of the Tribunal*

The Tribunal shall enforce the provisions specified in section 1, second paragraph, with the exception of the following provisions of the Equality and Anti-Discrimination Act:

- a) section 18 on universal design of ICT
- b) section 24 on the activity duty of public authorities and the duty to issue a statement
- c) section 25 on the duty of employer and employee organisations to promote equality
- d) section 26 on the activity duty of employers
- e) section 26 b on the employer's disclosure duty relating to equality work
- f) section 28 on the gender balance of public committees, etc.

- g) section 32, second paragraph, on the processing of information on pay
- h) section 39 on penalties for aggravated contravention of prohibitions against discrimination by several persons acting together.

The Tribunal shall not enforce the prohibition against discrimination in family life and other purely personal circumstances pursuant to the Equality and Anti-Discrimination Act.

### **Section 8. *Processing of cases by the Tribunal***

The Tribunal processes the cases submitted to it. A party, the Ombud or other persons with legal standing may submit a case to the Tribunal.

The Tribunal shall not represent a party in external proceedings.

### **Section 9. *Written and oral proceedings***

The proceedings of the Tribunal are conducted in writing. The Tribunal shall consider whether an oral hearing should nevertheless be held for the purpose of elucidating the case. A decision to hold an oral hearing may be made by a Tribunal chairperson. In cases concerning sexual harassment, and in cases where a claim for redress has been made, the parties are entitled to an oral hearing.

### **Section 10. *Dismissal and closing of cases***

The Tribunal shall dismiss a case:

- a) which has been decided by a court or been brought before a court for adjudication
- b) if the conditions for processing the case are not met
- c) which is under investigation by the prosecuting authority
- d) if the aggrieved party in the case has been reported for giving false evidence.

The Tribunal may dismiss a case if the matter is more than three years old.

The Tribunal may close a case if the matter is trivial in nature, the subject matter of the complaint is obviously not contrary to the provisions specified in section 1, second paragraph, or the submitted evidence fails to elucidate the case sufficiently. Reasons shall be given for any decision to close a case.

Administrative decisions and decisions pursuant to the first and second paragraphs may be made by a Tribunal chairperson.

### **Section 11. *Authority to make administrative decisions. Orders to stop, remedy, etc.***

Unless otherwise provided, the Tribunal may make an administrative decision if the provisions specified in section 1, second paragraph, have been breached.

Subject to the exceptions specified in sections 14 and 15, the Tribunal may order the stoppage or remediation of an act or other measures necessary to secure the cessation of discrimination, harassment, instructions or retaliation, and to prevent repetition. The Tribunal may set a deadline for compliance with the order.

In cases where a delay pending the Tribunal's processing of the case is expected to entail inconvenience or harm, an administrative decision pursuant to the second paragraph may be made by a Tribunal chairperson.

### **Section 12. *Redress and compensation***

The Tribunal may make an administrative decision concerning redress in the context of an employment relationship and in connection with an employer's selection and treatment of self-employed persons and hired workers; see section 38, second paragraph, first sentence, of the Equality and Anti-Discrimination Act, section

13-9 of the Working Environment Act and section 10-9 of the Ship Labour Act.

The Tribunal may make a unanimous administrative decision concerning compensation in connection with breach of the provisions specified in section 1, second paragraph, if the only submissions made by the respondent relate to inability or pay or other manifestly untenable objections.

### **Section 13. *Coercive fines***

The Tribunal may make an administrative decision to impose a coercive fine to ensure implementation of an order issued pursuant to section 11 if the deadline for complying with the order is breached. The coercive fine shall take the form of a lump-sum coercive fine or an accruing daily fine. The coercive fine begins to run if the deadline for complying with the order is breached, and shall normally run until the order has been complied with.

A decision to impose a coercive fine may be made by a Tribunal chairperson. A party may apply for review of a decision to impose a coercive fine. Sections 28 to 36 of the Public Administration Act apply correspondingly.

The Tribunal may reduce or waive an imposed coercive fine when indicated by special reasons.

Coercive fines are payable to the State, and are collected by the Norwegian National Collection Agency.

The Ministry may issue regulations containing rules on the size and duration of coercive fines, as well as other provisions on setting and implementation.

### **Section 14. *The authority of the Tribunal relative to other public administrative agencies***

The Tribunal may not make an administrative decision establishing that an administrative decision of another public administrative agency breaches provisions specified in section 1, second paragraph. However, this does not apply to individual administrative decisions made by public administrative agencies in the performance of their employer functions. Under no circumstances may the Tribunal make administrative decisions relating to the King or ministries.

In cases specified in the first paragraph, the Tribunal may issue a statement as to whether the matter submitted to the Tribunal breaches the provisions specified in section 1, second paragraph. However, this does not apply to cases concerning the appointment of judges by the King in Council.

### **Section 15. *The Tribunal's relationship with the Labour Court***

If a case before the Tribunal indirectly raises a question about the existence, validity or interpretation of a collective wage agreement, any party to the wage agreement may have this question decided by the Labour Court.

The Tribunal may issue a statement as to whether a collective wage agreement or a provision in a collective wage agreement that has been submitted to the Tribunal breaches the provisions specified in section 1, second paragraph. In such cases, the parties to the collective wage agreement may submit the question of the agreement's relationship with a provision specified in section 1, second paragraph, to the Labour Court.

Cases before the Tribunal that are brought before the Labour Court pursuant to the first paragraph or the second paragraph, second sentence, shall be suspended until the Labour Court has finished dealing with the question.

Under no circumstance may the Tribunal make decisions which fall within the jurisdiction of the Labour Court pursuant to the Act of 27 January 2012 No. 9 relating to labour disputes and the Act of 18 July 1958 No. 2 relating to public service disputes.

### **Section 16. *Court proceedings***

Administrative decisions and decisions concerning the imposition of a coercive fine made by the Tribunal may be submitted to the courts for comprehensive review. Proceedings concerning review of an administrative decision or decision concerning the imposition of a coercive fine made by the Tribunal must be brought within three months of the time the parties are notified of the Tribunal's administrative decision or decision. If proceedings are not brought by the deadline, an administrative decision takes effect as a legally binding judgment, and may be enforced pursuant to the rules applicable to judgments. The Tribunal may grant reinstatement following breach of the deadline in the second sentence pursuant to the rules in sections 16-12 to 16-14 of the Dispute Act. Administrative decisions concerning reinstatement may be submitted to the district court.

Proceedings concerning the validity of an administrative decision or decision by the Tribunal shall be addressed to the State, represented by the Tribunal, and be brought before Oslo District Court; see section 4-4(4), first sentence, of the Dispute Act. The same applies to the lawfulness of circumstances linked to the imposition of a coercive fine pursuant to section 13.

### **Section 17. *Relationship with the ordinary courts***

As long as a case is being processed by the Tribunal, the parties to the case may not submit it to the district court. The Tribunal is deemed to be processing the case as of the date it receives the complaint.

If proceedings are brought before the district court and a party wishes to have the case decided by the Tribunal, the court may suspend further proceedings on the application of the party. Section 16-15, section 16-18(3) and (4) and section 16-19 of the Dispute Act apply correspondingly. When deciding whether the case should be suspended, the court shall emphasise whether it is reasonable to suspend the case pending the Tribunal's decision, given the time the parties will spend and the costs they will incur in connection with suspension. The case may be re-started before the district court on the application of either party, but not before an administrative decision has been made, and no later than one month after the administrative decision has been pronounced.

### **Section 18. *Penalty for contravention of an order and breach of disclosure duty***

A penalty of a fine shall be imposed on any person who intentionally or negligently fails to comply with an order pursuant to section 11 or to comply with the disclosure duty pursuant to section 3.

Contravention by a person in a subordinate position shall not be penalised if such contravention is essentially due to the subordinate relationship.

### **Section 19. *Prosecution***

Contravention of section 18 shall only be prosecuted when so requested by the Tribunal, unless public prosecution is required in the public interest.

In connection with such criminal proceedings, the prosecuting authority may request a judgment establishing measures to ensure cessation of the unlawful act, omission or retaliation, and to prevent repetition.

### **Section 20. *Rehearing***

Legally binding administrative decisions and decisions of the Tribunal may be reheard on the application of a party. A case may be reheard if

- a) the impartiality requirement in section 6 of the Public Administration Act has been breached
- b) some other administrative error has been made and the possibility cannot be excluded that the error was determinative of the content of the administrative decision in question
- c) information concerning the factual circumstances that was unknown at the time the case was decided strongly indicates that the administrative decision would have been different.

A case may not be reheard

- a) for a reason that was rejected when the case was processed

- b) for a reason the parties should have cited during the ordinary processing of the case, in proceedings before the district court or in an application for reinstatement
- c) if it is highly likely that rehearing the case will not result in a change of significance to the applicant.

Administrative decisions concerning rehearing may be made by a Tribunal chairperson.

A refusal of an application for rehearing may be submitted to the district court. Sections 31-6 to 31-9 of the Dispute Act otherwise apply insofar as they are relevant.

If the Tribunal makes an administrative decision concerning rehearing, the applicant is entitled to reimbursement of legal costs pursuant to the provisions of section 36, first paragraph, of the Public Administration Act. Section 36, second paragraph, of the Public Administration Act does not apply.

### **Section 21. *Correction and supplementary decisions***

The Tribunal may correct an administrative decision that clearly does not reflect the Tribunal's opinion due to a typographical or calculation error, a misunderstanding, an omission or a similar clear error.

If no decision has been made on a matter that should have been decided, a supplementary decision may be issued if an application for one is submitted by the deadline for submitting the case to the district court; see section 16, first paragraph.

An administrative decision pursuant to the first or second paragraph may be made by a Tribunal chairperson.

Sections 19-8 and 19-9 of the Dispute Act otherwise apply correspondingly.

## **Chapter 4. Regulations**

### **Section 22. *Authority to issue regulations***

The Ministry may issue regulations on the organisation, tasks and case processing of the Ombud and the Tribunal.

## **Chapter 5. Entry into force and transitional provisions**

### **Section 23. *Entry into force***

This Act shall enter into force as of the date decided by the King.<sup>1</sup> As of the same date, the Act of 10 June 2005 No. 40 relating to the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal shall be repealed.

<sup>1</sup> 1 January 2018 according to Resolution of 16 June 2017 No. 750.

### **Section 24. *Transitional provisions***

Cases concerning breach of the provisions specified in section 1, second paragraph, that were submitted to the Ombud or the Tribunal prior to the entry into force of this Act shall be transferred to the Tribunal for further processing. The Tribunal shall also process new cases concerning matters pre-dating the entry into force of this Act if such matters contravened the provisions specified in section 1, second paragraph, or corresponding provisions as they read prior to such entry into force.

Cases specified in the first paragraph shall be processed pursuant to the provisions of this Act. Administrative decisions specified in sections 11, 12 and 13 may only be made if authority to do so also existed prior to the entry into force of this Act.

**Section 25. *Changes to other legislation***

As of the date this Act enters into force, section 16(2), new paragraph c), of the Act of 18 May 1979 No. 18 relating to the limitation period for claims shall read: – – –