

**SAINT LUCIA**  
**EQUALITY OF OPPORTUNITY AND TREATMENT IN**  
**EMPLOYMENT AND OCCUPATION ACT**

**CHAPTER 16.14**

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**EQUALITY OF OPPORTUNITY AND TREATMENT  
IN EMPLOYMENT AND OCCUPATION ACT**

**(Act 9 of 2000)**

AN ACT to provide for equality of opportunity and treatment in employment and occupation.

*Commencement [1 April 2000]*

**PART 1  
PRELIMINARY**

*Short title*

1. This Act may be cited as the Equality of Opportunity and Treatment in Employment and Occupation Act.

*Interpretation*

2. In this Act—

“commission agent” means an agent who is remunerated by commission;

“contract worker” means a person who performs work for another person under a contract between the employer of the first-mentioned person and that other person;

“*de facto* spouse” in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as a husband or wife of that person although not legally married to that person;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

“disabled person” means a person who is disadvantaged by virtue of intellectual, communicative, behavioural, physical or multiple exceptionalities.

“educational authority” means a body of persons administering an educational institution;

“educational institution” means a school, a college, university or other institution at which education or training is provided;

“employee” means a person who offers his or her services under a contract of employment, a managerial employee or a dependent contractor or where appropriate, a former employee;

“employer” includes any person or undertaking, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker, and the heirs, successors and assigns of an employer;

“employment” includes—

- (a) part time, temporary employment and employment under a contract of service or of apprenticeship;
- (b) employment under a contract for services; and
- (c) engagement as a commission agent;

“employment agency” means any person who, whether for payment or not, assists persons to find employment or assists employers to find employees;

“family responsibilities” means responsibilities in respect of any dependent family member;

“functions” includes powers, authorities and duties;

“marital status” means the status or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced;
- (e) the *de facto* spouse of another person;

“principal” means—

- (a) in relation to a commission agent, a person for whom work is done by that commission agent;
- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“sexual harassment” means unwanted conduct of a sexual nature in the work place or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

## **PART 2**

### **Protection Against Unlawful Discrimination**

#### *Definition and prohibited grounds of discrimination*

3. (1) For the purposes of this Act, a person discriminates against another person if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference, the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

3. (2) The grounds referred to in subsection (1) are—

(a) race, sex, religion, colour, ethnic origin, family responsibilities, pregnancy, marital status, or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of minors; or

(b) any characteristic which appertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic origin, social origin, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of minors.

3. (3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2), is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate and constitutes an offence.

#### *Prohibition on discrimination against applicant and employees*

4. (1) This Act applies to all employees and employers in the public and private sectors who are engaged in an employment relationship.

4. (2) It is unlawful for any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, to discriminate against that other person on the grounds specified under section 3(2)—

(a) in the advertisement of the job;

(b) in the arrangements made for the purpose of determining who should be offered that employment;

- (c) in determining who should be offered employment;
- (d) in the terms or conditions on which employment is offered;
- (e) in the creation, classification or abolition of jobs;

4. (3) It is unlawful for an employer to discriminate against an employee on the grounds specified under section 3(2)—

- (a) in terms or conditions of employment afforded to that employee by the employer;
- (b) in conditions of work or occupational safety and health measures;
- (c) in the provision of facilities related to or connected with employment;
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
- (e) by retrenching or dismissing the employee;
- (f) by subjecting the employee to any other disadvantage.

*Bona fide occupational qualifications exceptions*

5. (1) Section 4 does not apply to any distinction, exclusion, or preference based on the grounds specified under section 3(2) where a genuine occupational qualification exists.

5. (2) For the purposes of this Act a genuine occupational qualification for a job exists where—

- (a)
  - (i) the essential nature of the job calls for a particular sex, ethnic, origin, disability for reasons of physiology excluding physical strength or stamina; or
  - (ii) where in dramatic performances or other entertainment for reasons of authenticity, the essential nature of the job would be materially different if carried out by a person of the opposite sex or different race, ethnic or social origin or religion, to the person chosen to do the job;
- (b) in a religious institution, the essential nature of the job calls for a particular religious affiliation or belief and the essential nature of the said job would be materially different or unable to be carried out if performed by a person of a different religious affiliation or belief;

- (c) the job needs to be held by a man or a woman to preserve decency or privacy because—
  - (i) it is likely to involve physical contact with persons of the same sex as the employees in circumstances where those persons might reasonably object to its being carried out by persons of the opposite sex;
  - (ii) the holder of the job is likely to do work in circumstances where persons of the same sex might reasonably object to the presence of a person of the opposite sex because they are in a state of undress or are using sanitary facilities;
- (d) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and—
  - (i) the only such premises which are available for persons holding that kind of job are occupied or normally occupied by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex; and
  - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex or to work out a practicable solution of usage of such facilities for members of both sexes;
- (e) the job requires a married couple;
- (f) the nature of the establishment, or the part of it where the work is carried out, requires the job to be held by a person of a particular sex because—
  - (i) it is, or is part of a hospital, prison, or other establishment for persons requiring special care, supervision or attention,
  - (ii) those persons are all of the same sex (disregarding any person of the opposite sex whose presence is exceptional), and
  - (iii) it is reasonable, having regard to the essential character of the establishment or of the part of the establishment, that the job should not be held by a person of the opposite sex;
- (g) the holder of the job provides persons with personal services promoting their health, welfare or education, and those services can most effectively be provided by a person of a particular sex;
- (h) on the grounds of disability it is shown that—

(i) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job cannot be carried out as a result of the disability; or

(ii) special facilities or modifications, whether physical, administrative, or otherwise, are required to be made at the work place to accommodate the disabled person which the employer cannot reasonably be expected to perform.

#### *Equal remuneration*

6. (1) Employers and persons acting on behalf of employers shall pay equal remuneration to men and women performing work of equal value for the employer.

6. (2) In this section “equal remuneration” means rates of remuneration that have been established without differentiation based on the grounds of gender.

6. (3) In this section “work of equal value” means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

6. (4) The burden of proof to establish that equal remuneration has been paid shall rest on the employer.

#### *Temporary measures to promote equality*

7. (1) Subject to subsection 3 special measures of a temporary nature taken by employers to promote equality of opportunity in employment based on the grounds set out in section 3(1) are not considered to be unlawful discrimination within the meaning of section 4.

7. (2) An employer shall not continue a special measure undertaken under subsection (1) for a period more than 2 years.

7. (3) The employer shall advise the Commissioner of Labour of the special measures the employer proposed to undertake and the Labour Commissioner or public officer designated by him or her shall monitor the implementation of the measures.

#### *Sexual harassment*

8. Any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee shall constitute unlawful discrimination based on sex within the meaning of section 3 and constitutes an offence.

#### *Professional partnership*

9. (1) Where employment in a particular profession is largely provided through partnership firms, it is unlawful for such firms of professionals consisting of 6 or more partners or for 6 or more persons proposing to form

themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 3(2)—

- (a) in the arrangements they make for the purpose of determining who should be offered a position as partner in the firm; or
- (b) by expelling persons from the firm or subjecting persons in the firm to detrimental treatment.

9. (2) Subsections (1)(a) and (1)(b) do not apply if the treatment afforded to the partner or potential partner is based on a genuine occupational qualification.

*Professional trade or other organisations*

10. It is unlawful for an organisation of employers, a trade union or other organisation of employees, or any other organisation whose members carry on a particular profession or trade for the purpose of which the organisation exists to discriminate against any person on the grounds set out in section 3 (2)—

- (a) by refusing or failing to accept a person's application for membership;
- (b) in the terms on which it is prepared to admit a person to membership; or
- (c) in the case of a person who is a member of the organisation—
  - (i) by denying, limiting or deliberately omitting to afford access to any benefits, facilities or services provided by the organisation,
  - (ii) by depriving that person of membership or varying the terms of membership,
  - (iii) by limiting or depriving that person access or acquisition to a leadership position within the organisation, or
  - (iv) by subjecting that person to any other detriment.

*Qualifying bodies*

11. (1) It is unlawful for an authority or body responsible for the conferring, renewing, extending, revoking or withdrawing of an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation, to discriminate against a person on the grounds set out under section 3(2)—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;



(b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend it; or

(c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

11. (2) In this section “authorisation or qualification” includes recognition, registration, enrolment, approval and certification.

*Vocational training bodies*

12. (1) It is unlawful for any association which comprises employers and has its principal objective, or one of its principal objectives, as affording its employees access to training facilities, or for any other person recognised as providing facilities for training for employment or occupation to discriminate on the grounds set out in section 3(2) against a person who is seeking or undergoing technical vocational training which would help to make that person fit for any kind of employment or occupation—

(a) in the arrangements made for the purpose of determining who should be offered training;

(b) in the terms and conditions on which that person is afforded access to training courses or other facilities and services including vocational counselling and guidance;

(c) by refusing or deliberately omitting to afford access as in paragraph (b) to that person;

(d) by terminating that person’s training.

12. (2) It is not unlawful under subsection (1) to give preference to nationals above non-nationals.

*Employment agencies*

13. (1) It is unlawful for an employment agency to discriminate against a person on the grounds set out in section 3(2)—

(a) by refusing to provide that person with any of its services;

(b) in the terms on which it offers to provide that person with any of its services;

(c) in the manner in which it provides that person with any of its services; or

(d) in any other manner in which it facilitates the hire or employment of that person.

13. (2) This section does not apply if the discrimination concerns employment which the employer could lawfully refuse to offer that person.

13. (3) An employment agency is not liable under this section if it proves—

(a) that it acted in reliance on a statement made to it by an employer to the effect that, by reason of the operation of subsection (2), its action would not be unlawful; and

(b) that it was reasonable for it to rely on the statement.

13. (4) An employer who makes a statement referred to in subsection (3)(a) which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine of \$5,000.

#### *Discrimination by subterfuge*

14. Where a requirement or condition which is not apparently in contravention of this Act, has the effect of giving preference to a person on the grounds set out in section 3(2) in a situation where such preference would be unlawful under this Act, the imposition of that condition or requirement is unlawful unless the person imposing it establishes good reason for its imposition and shows that its imposition is not a subterfuge to avoid complying with this Act.

#### *Advertisement*

15. (1) It is unlawful for any person to publish or display or cause or allow to be published or displayed, any advertisement or notice which indicates or could reasonably be understood as indicating, an intention to commit a breach of any provision under this Act.

15. (2) The publisher or displayer of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection if the publisher proves—

(a) that the advertisement was published or displayed in reliance on a statement made by the person who caused it to be published or displayed to the effect that the publication would not be unlawful;

(b) that it was reasonable for the publisher to rely on that statement.

15. (3) A person who makes a statement referred to in subsection (2) which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine of \$5,000.

#### *Application forms*

16. Where by virtue of this Part, it would be unlawful, in particular circumstances, for a person to discriminate against another person on the grounds set out in section 3(2), it is unlawful for that person to request or require that other person to provide information whether by way of completing a form which would not, in the same or substantially similar circumstances be required or requested of the person of the opposite sex, or of a different race, religion, colour, political opinion, ethnic origin, social origin, pregnant state or marital status or with different family responsibilities.

### **PART 3**

#### **General Exceptions**

##### *Charities*

17. (1) Part 3 and 4 do not affect—
- (a) a provision in a deed, will or other document, whether made before or after the coming into operation of this Act, that confers charitable benefits or enables charitable benefits to be conferred on persons on the basis of the grounds set out in section 3(2); or
  - (b) an act that is done in order to give effect to such a provision.

17. (2) In this section “charitable benefits” means benefits for purposes that are exclusively charitable according to existing laws.

##### *Religious bodies*

18. This Act does not affect—
- (a) the ordination of a priest, a minister of religion or members of that body;
  - (b) the training or education of persons seeking ordination or appointment as priest, ministers of religion or members of a religious order;
  - (c) the selection or appointment of persons to perform duties or functions for the purpose of, or in connection with, or otherwise to participate in any religious observance or practice; or
  - (d) any other act or practice of a body established for religious purposes, if it is an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

### **PART 4**

#### **Offences, penalties and Remedies**

##### *Pressure to discriminate*

19. (1) It is unlawful to induce or attempt to induce, a person to do any act which contravenes Part 2 by—
- (a) providing or offering to provide the person with any benefit; or
  - (b) subjecting or threatening to subject the person to any detriment.

19. (2) An offer or threat may fall under subsection (1) whether it is made directly or indirectly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

19. (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

*Victimisation*

20. (1) A person who victimises another person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

20. (2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation against another person if the first-mentioned person subjects or threatens to subject the other person to any detriment—

(a) on the ground that the other person—

(i) has made, or proposes to make, a complaint under this Act,

(ii) has brought, or proposes to bring proceedings under this Act against any person,

(iii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act,

(iv) has attended or proposes to attend an inquiry under this Act or to provide evidence or testimony as a witness, or

(v) has made in good faith, allegation that a person has committed an act of discrimination in contravention of this Act;

(b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do any of the things referred to in paragraphs (a)(i) to (a)(v).

*Burden of proof*

21. (1) Except where otherwise provided in this Act, the person alleging a violation of this Act shall bear the burden of presenting a *prima facie* case of discrimination or an offence related to discrimination under this Act.

21. (2) Upon a *prima facie* showing of discrimination, the burden of proof shall shift to the respondent to disprove the allegations.

*Burden of proof of exceptions*

22. In any proceedings under this Act, the burden of proof of any conduct that is claimed to be an exception to conduct that is unlawful under this Act, lies on the party claiming the exception.

*General penalty clause*

23. (1) A person who contravenes a provision of this Act commits an offence.

23. (2) A person found guilty of an offence under this Act for which no penalty is prescribed is liable on summary conviction to a fine not exceeding \$5,000.

*Remedies*

24. Despite any other remedy that may be available in any court of competent jurisdiction, any person who is aggrieved by any act or omission of an employer in contravention of Part 2 is entitled to claim or apply for all or any of the following remedies—

- (a) damages from the employer, or any other person or body covered under this Act, for any loss caused directly or indirectly as a result of the contravention;
- (b) an order directing the employer or other relevant person or body covered under this Act to redress the contravention, including an order to employ, re-employ or reinstate any person, although the vacancy in question has already been filled and although the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;
- (c) an order making any decision found to have been based on unlawful discrimination voidable;
- (d) any other order the court may deem fair and just to remedy the cause and effect of the discrimination.