

ISRAEL

EMPLOYMENT (EQUAL OPPORTUNITIES) LAW 5748-1988

Definitions.

1. In this Law -

"collective agreement" has the same meaning as in the Collective Agreement Law, 5717-1957, and includes an extension order within the meaning of said Law, and a collective arrangement;

"personal status" - being a single person, married, divorced or widow or widower.

"the Minister" means the Minister of Labour and Social Affairs.

Prohibition of discrimination.

2. (a) An employer shall not discriminate among his employees or among persons seeking employment on account of their sex, sexual tendencies, personal status or because of their age, race, religion, nationality, country of origin, views, party or duration of reserve service, within the meaning thereof under the Defence Service (Consolidated Version) Law 5746-1986, in any of the following:

(1) acceptance for employment;

(2) terms of employment;

(3) advancement in employment;

(4) vocational training or supplementary vocational training;

(5) dismissal or severance pay.

(6) benefits and payments for employees in connection with their retirement from employment.

(b) For the purposes of subsection (a), the making of irrelevant conditions shall be regarded as discrimination.

(c) Differential treatment necessitated by the character or nature of the assignment or post shall not be regarded as discrimination under this section.

Prohibition of request for and use of military profile.

2A. (a) Employers shall not ask applicants for employment or employees for their military profile, and shall not make use of his military profile, where it has been obtained by the employer, for any of the purposes enumerated in section 2(a)(1) to (6).

(b) Where an employer asks for a military profile, contrary to the provisions of subsection (a), he shall not prejudice such employee or applicant for work in any matter enumerated in section 2(a)(1) to (6), by reason of a refusal to give his military profile.

(c) The provisions of this section shall not apply to the General Security Service and to the Institute for Intelligence and Special Assignments, as employers, in respect of employees of the said bodies or in respect of the recruitment of employees to the said bodies.

(d) In this section "military profile" means - the numerical symbol used by the Israel Defence Forces to indicate a person's medical suitability for service in various units and positions in the Israel Defence Forces.

Saving or rights.

3. (a) A provision laid down by any enactment, collective agreement or contract of employment in respect of pregnancy, protection of pregnancy, birth, nursing or fertility does not constitute discrimination.

(b) This Law shall not derogate from any privilege granted to a female employee by any enactment, collective agreement or contract of employment, and such a privilege shall not be regarded as discrimination.

Parents' rights.

4. (a) Where, in accordance with the terms of employment customary at her place of work, a woman employee has any entitlement by virtue of her being a parent, such entitlement shall also be accorded to a male employee at the workplace where the aforesaid term of employment is customary, where one of the following applies to such employee:

(1) his spouse is an employee and she has not been absent from her work by virtue of her said right in subsection (b)(1) or (2) and has not claimed the right to such entitlement as provided in subsection (b)(3) or (4);

(2) the child is in his sole custody;

(b) In this section "entitlement by virtue of being a parent" - shall be construed as one of the following:

(1) absence from work due to the child's illness;

(2) a shortened working day because the woman employee is the mother of a child;

(3) the right to use the services of a day care center, which the employer provide for the children of employees;

(4) the employer's contribution to the cost of keeping a child in a day care center.

Prevention of worsening of terms.

5. An employer shall not, for the purpose of remedying discrimination prohibited by section 2(a)(2), detract from the rights, or worsen the position, of any other employee.

Protection of complainant.

6. (a) An employer shall not prejudice an employee as to any of the matters enumerated in section 2 by reason of a complaint or claim of the employee in relation to this Law or by reason that he assisted another employee in connection with a complaint or claim under this Law,

(b) In a criminal or civil proceeding for an infringement of subsection (a), it shall be a good defence if the employer acted in reaction to a false complaint, or to assistance in connection with a false complaint, made or given maliciously and in the knowledge that the complaint was false.

Prejudice due to sexual harassment.

7. (a) Within the framework of work relations, an employer shall not prejudice an employee in relation to any of the matters enumerated in section 2 or in any other manner, where the source of such prejudice is one of the following:

(1) sexual harassment of the employee or of the applicant for employment, committed by the employer, by an appointee of his behalf or by another employee; in this Law "sexual harassment" - has the meaning assigned to it in the prevention of Sexual Harassment Law 5758-1998 (hereinafter referred to as - the Prevention of Sexual Harassment Law), provided that in the matter of prejudice the source of which is sexual harassment under section 3(a)(3) and (4) of the aforesaid Law, a single reference or proposition shall be sufficient;

(2) an employee's claim or complaint because of prejudice as provided in this section;

(3) an employee's assistance to another employee in connection with a complaint or a claim because of prejudice as referred to in this section.

(b) The provisions of section 6(b) shall apply to prejudice stemming from a complaint or a claim as provided in subsection (a)(2) and (3).

(c) The provisions of this section shall apply in respect of employers and employees, as well as to a person who actually employs a person through a manpower contractor and to the persons employed, *mutatis mutandis*, and as the case may be.

Advertisement of offers of employment

8. (a) An employer or a person requiring an employee shall not publish an advertisement offering employment or referral to vocational training unless the offer uses both the masculine and the feminine gender, whether in the singular or in the plural, and such an advertisement shall not be published if it contains anything that constitutes discrimination under the provisions of section 2.

(b) The provisions of this section shall not apply to an advertisement that offers employment or offers to send persons for vocational training to which section 2(c) applies.

Onus of proof.

9. (a) In an action by a person seeking employment, or by an employee for an infringement of the provisions of section 2, the onus shall be upon the employer to prove that he did not act in contravention of the provisions of section 2:

(1) in relation to acceptance for employment, advancement in employment, terms of employment, referral to vocational training or supplementary vocational training or payment of severance pay, if the employer has laid down terms or qualifications and person seeking employment or the employee, as the case may be, has proved that he or she meets the said terms or qualifications;

(2) in relation to dismissal, if the employee proves that his conduct or acts did not provide reason for his dismissal.

(b) In an action by an employee or applicant for employment for breach of the provisions of section 7(a), the burden of proving that he did not act in breach of that section shall be upon the employer, where the employer or applicant for employment proves that what is provided in paragraphs (1) to (3) of section 7(a) is applicable.

Jurisdiction and remedies.

10. (a) The Labour Court shall have sole jurisdiction in a civil proceeding for an infringement of the provision of this Law and may -

(1) award compensation, even if no monetary damage has been caused, to an amount deemed appropriate by it in the circumstances of the case provided that in a civil proceeding for damage as provided in section 7 the Labour Court may award compensation of a sum not exceeding NIS 50,000 without proof of damage.

(2) make a prohibitory or mandatory order if it considers that the grant of compensation alone will not be just; in making such an order, the court shall have regard, *inter alia*, to the effect of the act on labour relations, at the place of employment and the possibility of another employee being prejudiced and, in the case

of dismissal arising out of a contraction of employment, also to the provisions of the collective agreement applying to the parties. The provisions of this subsection shall apply notwithstanding the provisions of section 3(2) of the Contracts (Remedies for Breach of Contract) Law, 5731-1970.

(b) The amount referred to in subsection (a)(I) shall be updated on the 16th of each month, according to the rate of increase of the new index over the base index; for the purposes of this section -

"index" means the Consumer Price Index published by the Central Bureau of Statistics;

"new index" means the index for the month that preceded the update;

"base index" means the index for March 1998.

Delayed wage.

11. Where, in an action of an employee under this Law, the Labour Court has determined that wage differentials or severance pay are or is due to the employee, the, for the purposes of the wage Protection Law, 5718-1958, the date for the payment thereof shall be the eighth day after the judgment and "the determining date", for the purposes of wage differentials, shall be the ninth day after the said date of payment.

Right of action.

12. Actions for an infringement of the provisions of this Law may be brought by the employee or by the representative employees' organisation at the place of employment concerned, or, if there is no such employees' organisation, by the employees' organisation of which the employee is a member.

Right to intervene in actions.

13. In actions for infringements of the provisions of this Law, the Labour Court may permit and organisation that is concerned with the rights of persons against whom discrimination is prohibited under the provisions of section 2 to be heard in such manner as it may direct.

Prescription.

14. The Labour Court shall not entertain a civil claim for an infringement of the provisions of this Law filed after twelve months have elapsed since the day when the ground therefor arose provided that in respect of civil claims for damage as provided in section 7 the prescription period shall be three years from the date on which the grounds arose.

Penalties.

15. (a) A person who contravenes the provisions of section 2, 2A, 6, 7 or 8 is liable to double the fine prescribed in section 61(a)(l) of the Penal Law, 5737-1977.

(a1) (1) Where a person commits a breach of the provisions of section 7 he shall be liable to imprisonment as provided in section 5(b) of the Prevention of Sexual Harassment Law;

(2) Where an employer or an appointee of the employer sexually harasses his employee as provided in section 3(a) of the Prevention of Sexual Harassment Law who has been thereby prejudiced as provided in section 7, he shall be liable to imprisonment as provided in section 5(c) of the said law.

(a2) The provisions of sections 5(d) and (e) of the Prevention of Sexual Harassment Law shall apply in the case of an offence under subsection (a1).

Personal responsibility in the case of offences by a body of persons.

16. Where an offence under this Law is committed by a body of persons, every partner - other than a limited partner - or responsible official of that body shall also be regarded as responsible for it and may be prosecuted for it as if he had committed it unless he proves that it was committed without his knowledge or that he took all appropriate steps to prevent its commission.

Status of the State.

17. For the purposes of this Law, the State as an employer shall be treated in the same manner as any other employer.

Inspectors.

18. (a) The Minister shall appoint inspectors to supervise the implementation of the provisions of this Law.

(b) To carry out his functions under this law, an inspector may -

(1) request any employer or person requiring an employee or any other person concerned to supply him with any information in his possession relating to this Law;

(2) after giving advance notice, enter any place of employment and examine the owner and any other concerned person present and inspect the documents relating to the employees at that place of employment.

(c) An inspector may take minutes of the answers and statements of a person examined by him under this section, and minutes taken as aforesaid shall be treated as a statement taken down in accordance with section 2 of the Criminal Procedure (Evidence) Ordinance, and section 3 of the said Ordinance shall apply to them.

(d) No person shall, for the purposes of subsection (b), have to give evidence likely to incriminate him.

Public Council.

19. (a) The Minister shall appoint a Public Council (hereinafter referred to as "the Council"), whose members shall be -

(1) representatives of Government Ministries designated by the Minister;

(2) employees' representatives, after consultation with the employees' organisation representing the greatest number of employees in the State;

(3) employers' representatives, after consultation with representative national organisations of employers which in the opinion of the Minister are concerned;

(4) other representatives of the public who in the opinion of the Minister are concerned;

(b) The Minister or a person appointed by him in that behalf shall be the chairman of the Council.

(c) The Minister shall, by regulations, prescribe the work procedure and the number of the members of the Council: Provided that the number of representatives of Government Ministries shall be three tenths of the number of the members of the Council and that the number of the representatives of the public shall be one tenth of the number of the members of the Council.

(d) Where a member of the Council resigns, dies or is permanently unable to carry out his functions, the Minister shall, after consultation with the body in consultation with which that member had been appointed, appoint another person in his stead for the remainder of his period of tenure.

Functions of Council.

20. The function of the Council shall be to advise the Minister as to any matter relating to the implementation of this Law and also as to any matter in relation to -

(1) the fostering of public awareness of everything connected with equality of opportunities as to employment.

(2) the creation of conditions, and the preparation of services, facilitating women's accepting employment away from home;

(3) equality of opportunities as to advancement in employment and as to the referral of male and female employees to vocational training at their places of employment;

(4) the publication of information as to any matter within the cope of the Council's functions.

Inapplicability.

21. (a) For the purposes of section 2, preference given to an employee who is a relative of the employer or, in the case of a body corporate, a relative of the person controlling it, shall not be regarded as discrimination for this purpose -

(1) "relative" means a spouse, or a parent, child, grandchild, brother or sister of a spouse of any of these;

(2) "person controlling a body corporate" means a person who, alone or together with relatives, has direct or indirect control of its business and management.

(b) The provisions of this Law, except section 7, shall not apply to a person employed otherwise than for the purposes of the employee's business or vocation.

(c) The provisions of this Law, except section 7, shall not apply to a person employing fewer than six persons.

Amendment of Severance Pay Law.

22. In section 7 of the Severance Pay, 5723-1963 -

(1) Instead of the marginal section heading insert:

Resignation of parent.

(2) The content thereof is to be marked (a) and thereafter insert (b), (c), (d) and (e) as in text of Severance Pay Law.

Amendment of Employment of Women Law.

23. In the Employment of Women Law 5714-1954 in section 7 after subsection (d) insert (dl) to (d4) [for text see Employment of Women Law as above].

Amendment of Labour Courts Law.

24. In the Second schedule to the Labour Courts Law, 5729-1969 at the end of the Schedule add "Employment Equal Opportunities Law 5748-1988".

Repeal.

25. The Employment (Equal Opportunities) Law, 5741-1981, is hereby repealed.

Implementation and Regulations.

26. (a) The Minister is charged with the implementing of this Law and may make regulations as to any matter relating to its implementation.

(b) The Minister may, with the approval of the Knesset Labour and Social Affairs Committee, enact by regulations, provisions as to the duty of delivering to the employer notices for the purposes of section 4 from the spouses or from one of them or as to the consequences of non-delivery of such notices.

Commencement.

27. This law shall come into force on the 14th Nisan, 5748 (1st April, 1988).