



THE EQUALITY ACT,
DISCRIMINATION AND
GENDER DIVERSITY

■ MINISTRY OF SOCIAL AFFAIRS AND HEALTH
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Introduction

Discrimination against gender minorities occurs in all areas of society from working life and studies to everyday activities and the operation of authorities.

How is the Equality Act (Act on Equality Between Women and Men, 609/1986) of help if there is reason to suspect discrimination based on gender identity or gender expression? This brochure provides information about discrimination that is prohibited in the Equality Act, and offers instructions on what to do in situations where discrimination takes place.

Discrimination based on sexual orientation is prohibited under the Non-Discrimination Act (1325/2014). This brochure does not address discrimination based on sexual orientation.

Information about gender diversity

Gender diversity means that each person's gender is an individual and unique combination of physical, psychological and social features related to gender. At the same time, each person is marked as either male or female in the Population Information System.

The Equality Act contains the following definitions:

- The phrase 'gender identity' refers to an individual's experience of their own gender.
- The phrase 'gender expression' refers to expressing one's gender through clothing, behaviour, or by other means.
- The Equality Act also forbids discrimination based on the fact that an individual's physical gender-defining characteristics are not unambiguously female or male.

Gender minorities include, amongst others, transgender people, cross-dressers and intersexuals. In English gender minorities can be referred to as 'trans and intersex people'. People who do not belong to any gender minority are sometimes referred to as cisgender people.



Image: Ilkka Ruuska

Gender minorities are not a homogeneous group

People can use various different designations to describe their own gender identity. These designations and their definitions change with time.

The definition of transgender people usually states that their own experience of their gender is in contrast with the sex they were assigned at birth, and this is often related to experiences of gender dysphoria.

Gender dysphoria means that a person's individual gender identity does not match their physical attributes or their gender as perceived by other people. The gender that is entered into the Population Information System can be reassigned under certain conditions provided in the law. People suffering from gender dysphoria can also be treated with the help of hormones, or they can undergo sex reassignment surgery. Most transgender people identify themselves as either female or male.

Some people perceive themselves as neither female nor male. They may describe themselves as, for example, genderqueer or transgender.

Cross-dressers are people who, from time to time, display the other side of their gender by, for example, dressing like a member of the opposite sex.

The expression 'intersexuality' usually refers to conditions where the congenital physical gender-defining characteristics of a person are not unambiguously female or male.

The terminology also varies from country to country and there may not be direct translations that are generally accepted. In Finnish the expressions 'transukupuolinen' ja 'transvestiitti' are commonly used, whereas the direct English translations 'transsexual' and 'transvestite' are often replaced with 'transgender' and 'cross-dresser'.

For more information about gender minorities and the related terminology, visit Seta's Transgender Support Center website: www.transtukipiste.fi/in-english/.



The Equality Act and gender diversity

A young person had an appointment at the TE Office to discuss job seeking possibilities. The person's official name was gender-neutral, and the person was most often perceived as male based on gender expression. The TE official asked for the person's identity papers, which stated that they was female. The official refused to believe that the identity papers belonged to them. The young person left feeling let down.

The purpose of the Equality Act is to prevent gender-based discrimination and promote equality.

The purpose of the prohibitions laid down in the Equality Act to prevent discrimination based on gender identity or gender expression is, above all, to ensure that members of gender minorities can live their lives without fear of discrimination. The prevention of discrimination is essential because gender minorities are often almost invisible in the society and people are not necessarily able to adopt a natural approach to them. Preventing discrimination based on gender identity or gender expression ensures that everyone has the possibility to experience and express their gender more freely.

Discrimination prohibited under the Equality Act

General prohibition on discrimination applies to all areas of social life. Only relationships pertaining to personal life and religious practices are excluded.

Prohibited forms of discrimination include:

- treating people differently on the basis of gender, gender identity or gender expression, or for reasons of pregnancy or childbirth (direct discrimination)
- treating someone in an allegedly gender-neutral manner but where the effect of the action is such that the person may actually find themselves in a less favourable position on the basis of gender, gender identity or gender expression, if there is no legal justification for such procedure (indirect discrimination)
- treating someone differently on the basis of parenthood or family responsibilities, if there is no legal justification for such procedure (also indirect discrimination)
- order or instruction to engage in discrimination
- discriminating against a person based on their assumed gender, gender identity or gender expression (discrimination based on assumption)
- discriminating against a person based on reasons relating to another individual (discrimination by association)
- gender-based harassment and sexual harassment

Special prohibitions of discrimination supplement the general prohibitions and define discriminatory practices in working life, educational institutions, organisations representing labour market interests and the provision and availability of goods and services.

Employers, educational institutions, organisations representing labour market interests and providers of goods and services are obligated to intervene in sexual harassment and gender-based harassment once they receive notification of such harassment. Harassment is defined as unwanted conduct used to violate a person's integrity by creating an intimidating, hostile, degrading, humiliating or offensive atmosphere.

Countermeasures taken by an employer or a provider of goods and services are also counted as prohibited discrimination (section 8a). This means that a person may not be treated less favourably because they have appealed to the Equality Act or taken part in the investigation of a matter concerning gender discrimination.

The violation of special discrimination prohibitions may lead to demands for compensation in a district court.

Prevention of discrimination should be a part of equality work

Authorities, education providers and institutes as well as employers are obliged to prevent all discrimination based on gender identity or gender expression purposefully and systematically.

Prevention of discrimination should be included in the gender equality planning of educational institutions and workplaces. Prevention of discrimination can include pre-defined operating models that are used to intervene in discriminatory situations and to support victims of discrimination.

Examples of discrimination experienced by members of gender minorities:

- An employer refuses to hire a person because they assume that the current personnel of the company would not want to work with people belonging to gender minorities.
- An employee is dismissed or treated unfavourably in the distribution of work tasks because they are going through a gender reassignment process.
- Derogation of gender minorities or degrading talk concerning another person's gender identity or gender expression.
- A person is refused services or general wage increases are not applied to them because they have appealed to the Equality Act.
- A teacher does not intervene in a situation where a person is ridiculed or bullied because they belong to a gender minority.
- A health care institution disregards a person's gender identity in, for example, the selection of clothes and recreational activities.



What to do in a case of discrimination?

A man held a professional position in a company. People at the workplace discovered that he had been to the theatre the week before dressed as a woman. He began to receive constant mocking comments from some of his peers. The man contacted the local union representative and together they took the matter to the company manager. They were able to put a stop to the bullying.

In general, an attempt to resolve a case of discrimination should be made locally where the suspected discriminatory situation or action took place. If possible, the matter should first be discussed with the party suspected of practising discrimination. If necessary, support and help can be requested to resolve the matter.

Support and help

In working life, an employee can seek help from a supervisor, a shop steward or an occupational safety and health representative. They have the responsibility to intervene in cases of discrimination. Victims of discrimination can also seek help from trade unions, whereas employers' representatives may request assistance from an employers' association.

In an educational institution, a victim of discrimination can turn to a teacher, other member of the institution personnel or the institution management for help. A victim of discrimination can also approach the student association of an educational institution to receive assistance. Especially larger institutions often have an advisor on equality issues who can provide help in cases of discrimination. In addition, the school health care system can offer support.

Customers of public authorities can contact customer services or the organisation's management. Decisions of authorities can usually be contested, or a complaint can be submitted to a supervising authority.

Customers of commercial services can request for another customer service person or for the supervisor, or contact the management of the company.

Additional information and support can also be received through non-governmental organisations. In Finland, these include especially Seta ry (www.seta.fi/in-english/), Seta's Transgender Support Center (www.transtukipiste.fi/in-english/), Trasek ry (www.trasek.fi/in-english/) and DreamWearClub ry (www.dreamwearclub.net, in Finnish).

Request for an employer's or educational institution's report

Employers, educational institutions or other organisations providing training and education are obliged to give a written report to any applicant, employee or student who feels that they have been discriminated against.

Supervision and legal advice

The Ombudsman for Equality (www.tasa-arvo.fi/en/home) offers guidance and advice to people who suspect that they have been subject to discrimination as defined in the Equality Act. In addition, the Ombudsman provides information about the Equality Act and its application. If the Ombudsman for Equality notices that the obligations of the Equality Act are not being observed, or that the regulations of the Act are otherwise being violated, they must seek to prevent this by providing guidance.

The Ombudsman for Equality can also be contacted in cases of discrimination based on multiple grounds (multiple discrimination). If the issue is covered by the Non-Discrimination Act, the Ombudsman for Equality will direct the matter to the relevant authorities. Compliance with the Non-Discrimination Act is supervised by the Ombudsman for Non-Discrimination (www.ofm.fi/en/front_page), the Non-Discrimination and Equality Tribunal and occupational safety and health authorities (www.tyosuojelu.fi/fi/workingfinland/).

In cases of harassment prohibited under the Occupational Safety and Health Act (738/2002) or action that violates the Employment Contracts Act (55/2001), occupational safety and health authorities can provide the workplace with guidance and advice.

Legal advice is also provided by lawyers, and people with low income can contact the Legal Aid Office (www.oikeus.fi/oikeusapu/en/index.html).



Image: Tuulikki Holopainen

The victim's right to receive compensation

The contravening of discrimination prohibitions laid down in the Equality Act concerning working life, educational institutions, organisations representing labour market interests and the provision of goods and services may present cause for compensation, but the victim of discrimination must bring a claim for compensation to the district court.

In the processing of discrimination cases, the principle of divided burden of proof is applied. The person suspecting discrimination must show that it is probable that the discrimination prohibitions have been violated. If the situation gives rise to a presumption of discrimination, the other party must then demonstrate that the action was taken for an acceptable reason and not due to gender.

Reporting an offence

If there is reason to suspect a crime, the matter may be reported to the police.

Summary

It is prohibited to harass or treat people differently on the basis of gender identity or gender expression. Authorities, educational institutions and employers are obliged to prevent discrimination.

An attempt to resolve a discrimination case should first be made where the discriminatory action took place. Ultimately a victim of discrimination can request compensation by bringing a claim for compensation to the district court.

The Ombudsman for Equality provides information about the Equality Act and its application, and offers guidance and advice to those suspecting discrimination. Help and support can also be received through non-governmental organisations, and, depending on the situation, from for example trade unions or equality advisers of educational institutions.

Further information

This brochure is based on the information package on gender diversity prepared by WoM Oy, Setälä and the Finnish League for Human Rights for the use of educational institutions, workplaces and public authorities (Reports and memorandums of the Ministry of Social Affairs and Health 2015:22, available in Finnish).

The following brochures of the Ministry of Social Affairs and Health have also been prepared based on the information package:

- The Equality Act, authorities and gender diversity (Brochure 2015), in Finnish and Swedish
- The Equality Act, educational institutions and gender diversity (Brochure 2015), in Finnish and Swedish
- The Equality Act, workplaces and gender diversity (Brochure 2015), in Finnish and Swedish



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