

Gender Equality in Employment Act

Passed by the Legislative Yuan on December 21, 2001.

Promulgated by the President on January 16, 2002 by the Order of Hwa-Tung-1-I-Tze-No. 09100003660.

Chapter I General Provisions

Article 1

To protect equality of right to work between the two sexes, implement thoroughly the constitutional mandate of eliminating sex discrimination, and promote the spirit of substantial equality between the two sexes, the Act is hereby enacted.

Article 2

Arrangements made by employers and employees that are superior to those provided for by the Act shall be respected.

The Act is applicable to public personnel, educational personnel and military personnel, provided that, Articles 33, 34 and 38 of the Act shall not be included.

Complaints, remedies and processing procedures for public personnel, educational personnel and military personnel shall be handled in accordance with respective statutes and regulations governing personnel matters.

Article 3

The terms used in the Act shall be defined as follows:

1. Employee means a person who is hired by an employer to do a job for which wage is paid.
2. Applicant means a person who is applying a job from an employer.
3. Employer means a person, a public or private entity or authority that hires an employee. A person who represents an employer to exercise managerial authority or who represents an employer in dealing with employee matters is deemed to be an employer.
4. Wage means compensation which an employee receives for his or her work, including wages, salaries, premiums, fringe benefits and other regular

payments under whatever name which are payable in cash or in kind, or computed on an hourly, daily, monthly or on a piece-work basis.

Article 4

The term competent authorities used in the Act are referred to the Council of Labor Affairs of the Executive Yuan at the central government level, the municipal governments at the municipal government level, and the county/city governments at the county/city level.

Matters stipulated in the Act which are concerned with the competences of the competent authorities for other purposes shall be handled by those authorities for other purposes.

Article 5

In order to examine, consult and promote matters concerning gender equality in employment, the competent authorities at each government level shall set up committees on gender equality in employment.

The committees on gender equality in employment referred to in the preceding Paragraph shall have five to eleven members with a term of two years. They shall be selected from persons with related expertise on labor affairs, gender issues or with legal backgrounds. Among them, two members shall be recommended by workers' and women's organizations respectively. The number of female members of the committees shall be over one-half of the total membership.

Matters concerning the organization, meeting and other related issues of the committees referred to in the preceding Paragraph shall be drawn up by the competent authorities at each government level.

In the case of local competent authorities which have already set up commissions on employment discrimination, they may handle the related matters referred to in this Act, provided that, the composition of these commissions shall be in accordance with the provisions of the preceding Paragraph.

Article 6

For the purpose of promoting employment opportunities for women, the

competent authorities at the municipal, country (or city) government level shall prepare and earmark necessary budgets to provide various occupational training, employment service and re-employment training programs for them. During these training and service periods, child-care, elder-care and other related welfare facilities shall be set up or provided for.

The Central Competent Authority may provide financial assistances for those competent authorities at the municipal, country (or city) government level that have provided occupational training, employment service and re-employment training programs, and set up or provide child-care, elder-care and other related welfare facilities during those training and service periods mentioned in the preceding Paragraph.

Chapter II Prohibition of Sex Discrimination

Article 7

Employers shall not treat applicants or employees discriminatorily because of their sex in the course of recruitment, examination, appointment, assignment, designation, evaluation and promotion. However, if the nature of work only suitable to a special sex, the above-mentioned restriction shall not apply.

Article 8

Employers shall not treat employees discriminatorily because of their sex in the case of holding or providing education, training or other related activities.

Article 9

Employers shall not treat employees discriminatorily because of their sex in the case of holding or providing various welfare benefit measures.

Article 10

Employers shall not treat employees discriminatorily because of their sex in the case of paying remuneration. Employees shall receive equal pay for equal work or equal value. However, if such differentials are the result of seniority systems, reward and punishment systems, merit systems or other justifiable reasons of non-sexual

factors, the above-mentioned restriction shall not apply.

Employers may not adopt methods of reducing the remuneration of other employees in order to evade the stipulation of the preceding Paragraph.

Article 11

Employers shall not treat employees discriminatorily because of their sex in the case of retirement, severance, job leaving and termination.

Work rules, labor contracts and collective bargaining agreements shall not stipulate or arrange in advance that when employees marry, become pregnant, engages in child-birth or child-raising activities, they have to leave their jobs or apply for leave without payment. Employers also shall not use the above-mentioned factors as reasons for termination.

Any prescription or arrangement that contravenes the stipulations of the two preceding Paragraphs shall be deemed as null and void. The termination of the labor contract shall also be deemed as null and void.

Chapter III Prevention and Correction of Sexual Harassment

Article 12

Sexual harassment referred to in this Act shall mean one of the following circumstances:

- (1) in the course of an employee executing his or her employment duties, any one makes a sexual request, uses verbal or physical conduct of a sexual nature or with an intent of sex discrimination, causes him or her a hostile, intimidating and offensive working environment and infringes on or interferes with his or her personal dignity, physical liberty or affects his or her job performance.
- (2) an employer explicitly or implicitly makes a sexual request toward an employee or an applicant, uses verbal or physical conduct of a sexual nature or with an intent of sex discrimination as an exchange for the establishment, continuance, modification or assignment of a labor contract or as a condition to his or her designation, remuneration, personal evaluation, promotion, demotion, reward and punishment.

Article 13

Employers shall prevent and correct sexual harassment from occurrence. For employers hiring over thirty employees, measures for preventing and correcting sexual harassment, related complaint procedures and punishment measures shall be established. All these measures mentioned above shall be openly displayed in the workplace.

When employers know of the occurrence of sexual harassment mentioned in the preceding Article, immediate and effective correctional and remedial measures shall be implemented.

Related guidelines concerning preventive and correctional measures, complaint procedures, and punishment measures mentioned in the preceding Paragraph shall be drawn up by the Central Competent Authority.

Chapter IV Measures for Promoting Equality in Employment

Article 14

When female employees encounter job difficulty because of menstruation, they may request a menstruation leave for one day in one month. The number of this leave shall be incorporated into sickness leave.

The computation of wage of a menstruation leave shall be made pursuant to the related statutes and administrative regulations governing sickness leave.

Article 15

Employers shall stop female employees from working and grant them a maternity leave before and after childbirth for a combined period of eight weeks. In the case of a miscarriage after being pregnant for more than three months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for four weeks. In the case of a miscarriage after being pregnant for over two months and less than three months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for one week. In the case of a miscarriage after being pregnant for less than two months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for five days.

The computation of wage during maternity period shall be made pursuant to the related statutes and administrative regulations.

While employees' spouses are in labor, their employers shall grant them two days off as a fraternity leave.

During the preceding fraternity leave period, wage shall be paid.

Article 16

After being in service for one year, employees hired by employers with more than thirty employees may apply for parental leave without payment before any of their children reach the age of three years old. The period of this leave is until their children reach the age of three years old but cannot exceed two years. When employees are raising over two children at the same time, the period of their parental leave shall be computed aggregately, provided that, the maximum period shall be limited to two years the youngest one has received raising.

During the period of parental leave without payment, employees may participate in the original social insurance programs continuously. Premiums originally paid by the employers shall be exempted and premiums originally paid by the employees may be postponed consecutively for three years.

Payment of subsidies for parental leave shall be prescribed by other statutes.

The measures for implementing matters concerning parental leave shall be drawn up by the Central Competent Authority.

Article 17

After the expiration of the parental leave referred to in the preceding Article, employees may apply for reinstatement. Unless one of the following conditions exists and after receiving permission from a competent authority, employers may not reject such application:

- (1) Where the employers' businesses are suspended, or there are operating losses, or business contractions.
- (2) Where the employers change the organization of their businesses, disband or transfer their ownership to others pursuant to other statutes.

- (3) Where *force majeure* necessitates the suspension of business for more than one month.
- (4) Where the change of the nature of business necessitates the reduction of workforce and the terminated employees cannot be reassigned to other suitable positions.

In the case of employers cannot reinstate employees due to the causes referred to in the preceding Paragraph, they shall give notice to the affected employees thirty days in advance and offer severance or retirement payments in accordance with legal standards.

Article 18

Where employees are required to feed his or her baby of less than one year of age in person, in addition to the rest period stipulated, their employers shall permit them to do so twice a day, each for thirty minutes.

The feeding time referred to in the preceding Paragraph shall be deemed as working time.

Article 19

For the purpose of raising children of less than three years of age, employees hired by employers with more than thirty employees may request one of the following from their employers:

- (1) to reduce working time one hour per day; and for the reduced working time, no remuneration shall be paid.
- (2) To adjust working time.

Article 20

For the purpose of taking personal care for family members who need inoculation, who suffer serious illness or who must handle other major events, employees hired by employers with more than thirty employees may request a family leave. The number of this leave shall be incorporated into normal leave and not exceed seven days in one year.

The computation of wage during family leave period shall be made pursuant to the related statutes and administrative regulations governing normal leave.

Article 21

When employees make a request pursuant to the stipulations of the preceding seven Articles, employers may not reject, provided that, the employers have justifiable reasons under Article 19 of the Act.

When employees make a request pursuant to the preceding Paragraph, employers may not treat it as a non-attendance and affect adversely the employees' full-attendance bonus payments, personal evaluation or take any disciplinary action that is adverse to the employees.

Article 22

In the case of spouses of employees who are not engaged in any gainful employment, the stipulations of Articles 16 to 20 of the Act shall not apply, provided that, the employees have justifiable reasons.

Article 23

Employers hiring more than two hundred and fifty employees shall set up child care facilities or provide suitable child care measures.

Competent authorities shall provide financial assistance for those employers who have set up child-care facilities or provide suitable child care measures for their employees.

The standards of setting up child care facilities, providing child care measures and matters related to financial assistance shall be drawn up by the Central Competent Authority after consulting with other related public authorities.

Article 24

For the purpose of assisting those employees who have left their jobs due to the reasons of marriage, pregnancy, child-birth, child-care or taking personal care of their families, competent authorities at each government level shall adopt employment service, occupational training and other necessary measures for them.

Article 25

For those employers who hire the employees who have left their jobs due to the reasons of marriage, pregnancy, child-birth, child-care or taking personal care of their families and with outstanding results, competent authorities at each government level may provide suitable rewarding measures for them.

Chapter V Remedies and Appeal Procedures

Article 26

When employees or applicants are damaged by the employment practices referred to in Articles 7 to 11 or Paragraph 2 to Article 21 of the Act, the employers shall be liable for any damage arising therefrom.

Article 27

When employees or applicants are damaged by the employment practices referred to in Article 12 of the Act, the employers and the harassers shall be jointly liable to make compensations. However, the employers are not liable for the damages if they can prove that they have complied with this Act and provide all preventive and correctional measures required, and they have exercised necessary care in preventing damage from occurring but they still happen.

If compensations cannot be obtained by the injured parties pursuant to the stipulations of the preceding Paragraph, the court may, on their application, taking into consideration the financial conditions of the employers and the injured parties, order the employers to compensate for a part or the whole of the damage.

The employers who have made compensations have rights of recourse against the harassers.

Article 28

When employees or applicants are damaged because employers contravene the obligations referred to in Paragraph 2 to Article 13 of the Act, the employers shall be liable for any damage arising therefrom.

Article 29

In the case of circumstances referred to in the preceding three Articles, employees or applicants may claim reasonable amounts of compensation even for such damage that are not purely pecuniary losses. If their reputations have been damaged, the injured parties may also claim the taking of proper measures for the rehabilitation of their reputations.

Article 30

The claim for damage arising from wrongful acts referred to in Articles 26 to 28 of the Act is extinguished by prescription, if not exercised in two years by the claimants become known of the damage or the obligees bound to make compensation. The same rule applies if ten years have elapsed from the date when the harassing conduct or other wrongful acts were committed.

Article 31

After employees or applicants make *prima facie* statements of the discriminatory treatment, the employers shall shoulder the burden of proof of non-sexual factor of the discriminatory treatment, or the specific sexual factor for the employees or the applicants to perform the job.

Article 32

Employers may establish complaint systems to coordinate and handle the complaint filed by employees.

Article 33

When employees find out that employer contravene the stipulations of Articles 14 to 20 of the Act, they may appeal to the local competent authorities.

When they appeal to the Central Competent Authority, the Authority shall refer the appeals to the local competent authorities after it receives the appeal or within seven days after the date it has found out the above-mentioned contraventions.

Within seven days after the local competent authorities have received the appeals,

they shall proceed to investigate and may mediate the matters for the related parties in accordance with their competences and authorities.

The measures for handling the appeals referred to in the preceding Paragraph shall be drawn up by the local competent authorities.

Article 34

After employees or applicants find out that employers contravene the stipulations of Articles 7 to 11, Article 13, Paragraph 2 to Article 21, or Article 36 of the Act and appeals the matter to the local competent authorities, if the employers, employees or applicants are not satisfied with the decisions made by the local competent authorities, they may apply to the Committee on Gender Equality in Employment of the Central Competent Authority for examination or file an administrative appeal directly within ten days. If the employers, employees or applicants are not satisfied with the decisions made by the Committee on Gender Equality in Employment of the Central Competent Authority, they may file administrative appeals and proceed administrative lawsuits pursuant to the procedures of the Administrative Appeals Act and the Administrative Lawsuits Act.

The measures for handling the examination of the appeals referred to in the preceding Paragraph shall be drawn up by the Central Competent Authority.

Article 35

When courts or competent authorities determines the facts of discriminatory treatments, they shall examine the investigation reports, rulings and decisions rendered by the committees on gender equality in employment.

Article 36

Employers may not terminate, transfer or take any disciplinary action that is adverse to employees who personally file complaints pursuant to the Act or assist other file complaints.

Article 37

The competent authorities shall provide necessary legal aid when employees or

applicants who file lawsuits in courts because of any violation of the Act by their employers.

The measures for providing legal aid referred to in the preceding Paragraph shall be drawn up by the Central Competent Authority.

When employees or applicants file lawsuits referred to in the preceding Paragraph and apply for precautionary proceedings, the courts may reduce or exempt the amounts for security.

Chapter VI Penal Provision

Article 38

Employers who violate the stipulations of Articles 7 to 10, Paragraphs 1 and 2 to Article 11, the final part of Paragraph 1 and Paragraph 2 to Article 13, Paragraph 2 to Article 21, or Article 36 of the Act, shall be punished by administrative fines not less than 10,000 yuan but not exceeding 100,000 yuan.

Chapter VII Supplementary Provisions

Article 39

The enforcement rules of the Act shall be drawn up by the Central Competent Authority.

Article 40

The Act shall become effective on March 8, 2002.