

**SUBSIDIARY LEGISLATION 318.20**

**EQUAL TREATMENT IN OCCUPATIONAL SOCIAL  
SECURITY SCHEMES REGULATIONS**

13th September, 2005

*LEGAL NOTICE 317 of 2005, as amended by Legal Notice 424 of 2007.*

**1.** (1) The title of these regulations is the Equal Treatment in Occupational Social Security Schemes Regulations. Title and scope.

(2) These regulations give effect to the relevant provisions of Council Directive 86/378/EEC, as amended by Council Directive 96/97/EC, on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

(3) The purpose of these regulations is to implement the principle of equal treatment for men and women in occupational social security schemes.

(4) These regulations shall be applicable to:

- (a) members of the working population, including self-employed or self-occupied persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment, retired and disabled workers, and those claiming under them, in accordance with the provisions of applicable law, and, or practice;
- (b) occupational schemes which provide protection against sickness, invalidity, old age, early retirement, industrial accidents, occupational diseases and unemployment;
- (c) occupational schemes which provide for other social benefits, whether in cash or in kind, and in particular survivors' benefits and family allowances if such benefits are accorded to employed persons, constituting a consideration paid by the employer to the worker by reason of the latter's employment.

(5) These regulations shall not apply to:

- (a) individual contracts for self-employed workers;
- (b) schemes for self-employed workers having only one member;
- (c) insurance contracts, in the case of salaried workers, to which the employer is not a party;
- (d) optional provisions of occupational schemes offered to participants individually to guarantee them -
  - (i) additional benefits, or
  - (ii) a choice of date on which the normal benefits for self-employed workers will commence or, a

choice between several benefits;

- (e) occupational schemes in so far as benefits are financed by contributions paid by workers on a voluntary basis.

Definitions.

**2.** (1) For the purposes of these regulations, unless the context requires otherwise:

Cap. 318.

"the Act" means the Social Security Act;

"discriminatory treatment" means any distinction, exclusion, restriction or difference in treatment, whether direct or indirect, between men and women which is not justifiable in a democratic society;

"occupational social security schemes" means schemes, intended to supplement or replace the benefits provided by the Act, whether membership of such schemes is compulsory or optional, and the purpose of which is to provide employed, self-employed and self-occupied persons in an undertaking or group of undertakings, any area of economic activity, occupational sector or group of sectors;

"principle of equal treatment" means the absence of direct or indirect discriminatory treatment between men and women in particular by reference to marital or family status.

(2) Subject to the provisions of subregulation (1), terms and expressions used in these regulations shall, unless the context requires otherwise, have the meaning assigned to them by the Act.

Concept of discriminatory treatment.

**3.** (1) It shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly, particularly with regard to:

- (a) the scope of the schemes and the conditions of access to them;
- (b) the obligation to contribute and the calculation of contributions; and
- (c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

(2) For the purposes of these regulations:

- (a) direct discriminatory treatment shall be taken to occur where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation;
- (b) indirect discriminatory treatment shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a disadvantage when compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

4. (1) Any provisions contrary to the principle of equal treatment in any law, individual or collective contracts or agreements, internal rules of undertakings or rules governing any registered organisation in terms of applicable law, shall be considered null and void.

Provisions in contracts, agreements, other rules or any other law.

(2) The provisions referred to in subregulation (1) shall include such provisions:

- (a) determining the persons who may participate in an occupational scheme;
- (b) fixing the compulsory or optional nature of participation in an occupational scheme;
- (c) laying down different rules as regards the age of entry into the scheme or the minimum period of employment or membership of the scheme required to obtain the benefits thereof;
- (d) laying down different rules, except as provided for in paragraphs (h), (i) and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;
- (e) setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;
- (f) fixing different retirement ages;
- (g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons, which are granted by law or agreement, and are paid by the employer;
- (h) setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined-contribution schemes:

Provided that in the case of funded defined-benefit schemes, certain elements including:

- (i) the conversion into a capital sum of part of a periodic pension;
- (ii) the transfer of pension rights;
- (iii) a revisionary pension payable to a dependant in return for the surrender of part of a pension;
- (iv) a reduced pension where the worker opts to take early retirement;

may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex, at the time when the scheme's funding is implemented;

- (i) setting different levels for workers' contributions;
- (j) setting different levels for employers' contributions, except:

- (i) in the case of defined-contribution schemes if the aim is to equalize the amount of the final benefits or to make them more nearly equal for both sexes;
- (ii) in the case of funded defined-benefit schemes where the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined;
- (k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in paragraphs (h), (i) and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

(3) For the purpose of these regulations, where the granting of benefits is left to the discretion of the scheme's management bodies, the latter must comply with the principle of equal treatment.

Positive action.

**5.** Nothing in these regulations shall:

- (a) prejudice any provisions in any law relating to the protection of women by reason of maternity;
- (b) for the purposes of granting a pension by virtue of an occupational scheme, preclude any employer from granting to persons who have already reached retirement age but who have not yet reached retirement age for the purposes of granting a statutory pension, a pension supplement the aim of which is to make equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached statutory retirement age, until such time when the persons benefiting from the supplement reach the retirement age established by law.

Flexible pension age.

**6.** Where in any occupational scheme, there is provision for a flexible pensionable age, then a claim by either men or women claiming under the same conditions shall be construed to be compatible with these regulations.

Request of report.

**7.** (1) Where an allegation is made that some form of discriminatory treatment has occurred, the person making the allegation shall have the right to send a written notification to the scheme's management body, hereinafter referred to as the management body, of the alleged discriminatory treatment received, giving any relevant details and requesting a reply. On receipt of such notification, the management body shall submit a written reply within ten working days of the date of receipt of such notification, giving the management body's version of events and any grounds for disputing the allegations, as well as an explanation of any relevant procedures adopted by the management body to prevent discriminatory treatment.

(2) Any correspondence referred to in subregulation (1) shall

be admissible in proceedings brought before any court, and if it appears to the court that the management body deliberately, and without reasonable excuse, omitted to reply within ten working days of the date of receipt of such notification or that the reply was evasive or equivocal, the court may draw any inference from that fact that it considers just and equitable to draw, including an inference that an unlawful act was committed.

**8.** An employee who is dismissed shall be regarded to have been unfairly dismissed if the reason, or if more than one, the principal reason, of the dismissal of that employee was a response on the part of the employer to a complaint made at undertaking level, or to the institution of legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Unfair dismissal.

**9.** Nothing shall prevent any association, organisation or other legal entity, having a legitimate interest in ensuring that these regulations are complied with, to engage itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure provided for the enforcement of obligations under these regulations.

Defence of rights.

**10.** Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euros and thirty-seven cents (2,329.37).

Offences.  
*Amended by:*  
*L.N. 424 of 2007.*