

# Employment Rights in Europe - Discrimination and Recruitment

This publication is linked to Sofie Persson's guest blog post '[Discrimination at work](#)'.

This is a brief look at employment rights in Europe, focussing on discrimination and recruitment.

**In Denmark**, affirmative action on specific grounds is generally not allowed because there are a number of Danish acts prohibiting discrimination in the labour market on grounds of gender, race, colour, religion or beliefs, political opinion, sexual orientation, age, disability and national or social ethnic origin. However in some cases affirmative action may be allowed for objective and legitimate reasons. This could for example be in relation to raising the employment rate of non-ethnic Danes or employing equally qualified disabled candidates which must be given priority over other applicants for vacancies at public employers.

In the event of breach, the employee may be awarded a substantial compensation payment.

**In France** an employer cannot give preference in hiring a particular people or group because it may be considered discrimination which is prohibited by law. Employers with at least 20 employees are legally required to employ disabled individuals at a rate of 6% of the workforce. Temporary measures for hiring women or older employees are also authorised.

The French labour code protects employees against harassment and discrimination at work. The protected characteristics in this code are wider than the UK legislation and it includes gender, morals, sexual orientation or identity, age, family situation, pregnancy, genetic characteristics, belonging or not belonging to an ethnic group, nation or race, real or assumed, political opinions, union mutual activities, religious beliefs, physical appearance, family name, state of wealth or handicap. An employer must not take any of these protected characteristics into account whilst making a decision to hire, sanction, dismiss, promote or award an employee. In addition to the above protected characteristics, the French labour code grants protection in favour of employees who use their right of strike and fixed- term, or part time employees as compared to permanent employees in similar situations.

**In Germany** employers with at least 20 employees are required to employ severely disabled persons so that they take up at least 5% of the positions of their businesses. However, non-compliance does not mean that the severely disabled person is guaranteed employment. He or she would be compensated under non discrimination law.



**Italy** have very similar discrimination laws to be UK including provisions against direct discrimination, indirect discrimination, harassment, victimisation, sexual harassment and equal pay. Discrimination is defined under Italian law as any prejudicial or different treatment of individuals based on actual or perceived membership of a certain protected category.

Positive discrimination is generally prohibited but there are exceptions. An employer must be adhere to set quotas that vary according to whether the employer is in the public or private sector. Employers are for instance required to employ a certain number of disabled employees, widows or widowers or orphans due to accidents at work, or war as well as children or spouses of persons disabled through accidents at work or war.

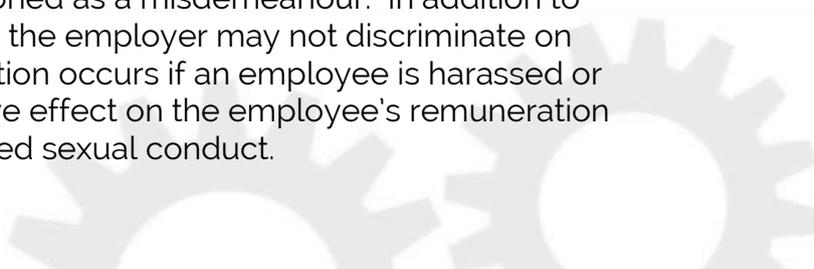
**In the Netherlands**, this is left entirely up to employers as there are no legal requirements to give preference to any particular person or group of people when hiring. Diversity within a company is self-regulated by the employers but could be influenced by certain preferential beliefs in relation to for example, disability benefits.

The Dutch equal treatment legislation stipulates that in unequal treatment on discrimination is unlawful grounds. There are various specific acts and the Netherlands Institute for Human Rights monitors compliance with the legislation. The Institute for Human Rights also gives advice and information about the standards that apply. The decisions of this body are not legally binding.

Therefore any aggrieved party still has to bring the unequal treatment matter before the competent court, which is under no obligation to decide according to the decision of the Institute of Human Rights.

**In Poland** there is no legal requirements to give preference to any particular person or groups of people when hiring, but it cannot be contrary to the discrimination legislation that is currently in force. The prohibition of discrimination in employment is provided for in the labour code. In addition to the provisions affecting direct or indirect discrimination, there is also legislation that sets out the provisions of employment agreements and other company regulations breaching the principle of equal treatment in employment are treated as null and void. Set relevant regulations and labour law apply, and where no such regulations exist, discriminatory provisions shall be replaced with appropriate non-discriminatory clauses. Employees who have been discriminated against are entitled to financial compensation no lower than the minimum remuneration for work in Poland. Discrimination because of age is the newest phenomenon in Poland.

**In Romania** general provisions of harassment and discrimination are applicable to all employees in Romania. These provisions are entered in the labour code and thus all direct or indirect discrimination towards an employee, based on criteria similar to those in the UK are prohibited. Similar provisions exist in respect of harassment but are sanctioned as a misdemeanour. In addition to the general prohibition of discrimination the employer may not discriminate on the grounds of gender and a discrimination occurs if an employee is harassed or sexually harassed and there is a negative effect on the employee's remuneration and if they refuse to accept the unwanted sexual conduct.



Romanian law provides for certain incentives in hiring certain categories of persons, such as disabled, unemployed or young persons. The law imposes an obligation on the employer to employ disabled people to make up at least 4% of the total number of employees if you have individual employment agreements for more than 50 people. If you do not, the sanctions are quite peculiar. For example, an employer would have to make a monthly payment to the state budget of a sum equal to 50% of the minimum national salary for each job position that was not filled by a disabled person or they have to acquire products for services manufactured or performed by a disabled person employed within specific units protected by law in the amount equal to the sum that otherwise would be owed to the state budget.

**In Spain**, the Spanish constitution prohibits any discrimination by reason of birth, race, sex, religion, opinion or any other professional or social circumstance. They are also statutes granting equal rights in employment and equal treatment for men and women regarding emotion and equal pay. Direct or indirect discrimination on the grounds of sex, race, age, religion, etc. is classed as very serious misconduct and may incur fines of between 6,000 Euros and 187,500 Euros.

Spanish law requires reservation of a specific number of jobs for the disabled in companies that have a given number of employees: for firms employing over 50 people, 2% of them need to be disabled. Otherwise there is freedom in hiring unless any discrimination based on age, religion, ideology, union membership, language, sex and race is involved in the process.

**In Sweden**, employers are generally free to hire whoever they please, provided they do not discriminate on the grounds as stipulated in discrimination legislation or grounds related to parental leave. However, affirmative discrimination may be legitimate when the aim is to improve equality between the sexes.

In Sweden anti-discrimination legislation prohibits both direct and indirect discrimination as well as harassment in working life, based on sex, ethnicity, religion or other beliefs, disability, sexual orientation, transgender identity or expression of age. Employers may neither discriminate against part time or fixed term employees, nor treat an applicant or an employee unfairly, on grounds related to parental leave. Trade union representatives are also protected from discrimination based on their union activities.

Sweden operates a system where employees that have been terminated as a consequence of shortage of work in a redundancy situation, have rights of priority for redeployment in the business in which they were previously employed. Similarly, an employer who wishes to recruit within the operating unit may be obliged to offer the position to a person with a right to priority. It's worth noting that the priority is contingent on the employee having been employed by the employer for a total of more than 12 months during the past 3 years. The right to priority applies during the notice period and thereafter until 9 months from the date that the employment ceased.



## About the Author

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Sofie Persson has recently joined [Engleharts](#) in Hove and heads up the firm's Employment department specialising in all aspects of employment law. She has a particular interest in Tribunals and drafting employment contracts, staff handbooks and settlement agreements.

Sofie speaks fluent Swedish and Chinese and graduated with a Chinese & Politics degree from the School of Oriental and African Studies in 2005. After a few years living and working in China, she returned to the UK to qualify as a specialist employment lawyer.

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