

***JURK***

Juridisk rådgivning for kvinner

# **Discrimination**

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# TABLE OF CONTENTS

1.0 INTRODUCTION.....	4
1.1 The purpose of this brochure.....	4
2.0 CONTENT OF THE BROCHURE .....	5
3.0 DISCRIMINATION.....	6
3.1 What is discrimination? .....	6
3.2 Discrimination is illegal .....	6
3.3 What is discrimination according to the law? .....	7
3.4 Differential treatment .....	8
3.4.1 Direct differential treatment .....	8
3.4.2 Indirect differential treatment.....	8
3.4.3 What does it mean to be treated less favourably than others.	9
3.5 Grounds of discrimination .....	9
3.6 No legal exceptions apply .....	11
3.6.1 Fair differential treatment.....	11
3.6.2 Necessary differential treatment.....	11
3.6.3 Proportional differential treatment.....	12
4.0 HARASSMENT AND RACISM.....	13
4.1 What is harassment? .....	13
4.2 Sexual harassment .....	13
4.3 What is racism?.....	15
5.0 SITUATIONS WHERE DISCRIMINATION MAY OCCUR .....	16
5.1 Education .....	16
5.2 Work .....	17
5.2.1 Discrimination in the workplace .....	17
5.2.2 Pregnancy and work .....	18
5.2.3 Job interviews .....	18
5.2.4 Clothing in the workplace .....	19
5.3 Housing.....	20
5.4 Public offices .....	21
5.5 Checking in to a hotel.....	21
5.6 Within the family.....	22
6.0 WHAT CAN YOU DO IF YOU HAVE EXPERIENCED DISCRIMINATION?.....	24
6.1 Seek help.....	24
6.1.1 JURK .....	24
6.1.2 Discrimination Aid and Mediation Bench .....	25

6.1.3 The Anti-Discrimination Tribunal (DN). .....	25
6.1.4 The Equality and Anti-Discrimination Ombud (LDO).....	26
7.0 NORWEGIAN DISCRIMINATION LAW.....	27

## **1.0 INTRODUCTION**

### **1.1 The purpose of this brochure**

This brochure is about discrimination. Our goal is to provide a brief presentation of legal issues relevant in relation to discrimination. The purpose is to enable the reader to identify the main issues that may occur in the given context, and to make the reader aware of her rights. According to Norwegian legislation, everyone who lives in Norway shall have equal opportunities and rights.

This brochure is a step towards eliminating discrimination. We wish to do this by providing information about protection against discrimination.

We believe that the more you know about the protection provided to you by law, the more you will use the rules and invoke your rights.

## **2.0 CONTENT OF THE BROCHURE**

Have you ever experienced not getting a phone call back after a house viewing, or not getting a permanent employment contract because you do not speak Norwegian fluently?

Have you experienced someone calling you unpleasant names, or that your husband does not allow your daughter to take part in the same activities as your son?

Have you ever wondered if this is discrimination or harassment? Have you wondered where to go, who to call or how to find help?

If so, you should read this brochure.

## 3.0 DISCRIMINATION

### 3.1 What is discrimination?

Discrimination refers to treating people differently without a valid reason.

#### Grounds of discrimination

In simple terms this means treating a person less favorably on the basis of gender, pregnancy, parental leave, religion, life stance, skin color, national origin, language, ethnic background, disability, gender identity, sexual orientation, age or combinations of the terms mentioned above. These terms are called *grounds of discrimination*.

If you are discriminated against, you are not given the same rights and opportunities as others.

One example of discrimination is a woman losing her job *because* she is pregnant.

Research shows that women often have a lower position in society than men and are therefore more often discriminated against.

Immigrant women face discrimination more frequently than Norwegian women. They can experience discrimination both for being women, and for being an ethnic minority. In example, many experience great difficulty when it comes to employment.

Discrimination is an international problem. That is why there is an extensive international legislation on this area, which aims to prevent discrimination. Norway is bound by these rules, and they apply as Norwegian law.

### 3.2 Discrimination is illegal

**Discrimination is against the law** It is illegal to discriminate according to Norwegian law.

**Human rights** It is also illegal to discriminate according to human rights legislation.

For example the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) offers protection against discrimination on the basis of gender. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) makes it illegal to discriminate on the basis of your ethnic origin.

**Compensation** You can claim compensation if you are discriminated against. Compensation means payment for some sort of damage. It is solely the Courts and The Norwegian Anti-Discrimination Tribunal (Diskrimineringsnemnda) that can award compensation.

**Punishment** If someone exposes you to racism or other severe discrimination, they can be punished by Norwegian law. In order for this to happen, the incident must be reported to the police.

### **3.3 What is discrimination according to the law?**

**Not all differential treatment is discrimination** Being treated less favourably than others can be a degrading experience. But being treated unfairly and differently might feel unjust without it qualifying as discrimination according to the law.

**Three key characteristics to constitute discrimination**

Discrimination has three key characteristics:

1. Differential treatment. This means that someone is being treated less favourably than others in a similar situation.



2. The differential treatment is based on one or more grounds of discrimination.
3. No legal exceptions apply.

All three characteristics must be present to constitute discrimination.

### **3.4 Differential treatment**

**1<sup>st</sup> characteristic** Differential treatment is the first key characteristic of discrimination. The law operates with a distinction between *direct differential treatment* and *indirect differential treatment*.

#### **3.4.1 Direct differential treatment**

**Likestillings- og diskrimineringsloven § 7**

Direct differential treatment means that a person is treated less favourably than another person in a similar situation, based on one or more of the listed grounds of discrimination.

**Example of direct differential treatment**

An example from the Equality and Anti-Discrimination Ombud (Likestillings- og diskrimineringsombudet, LDO) is a case regarding a flight company. In the job advertisement, the company stated that they wished to hire an ethnic Norwegian woman between 20 and 25 years of age.

LDO stated that the advertisement was direct differential treatment, and thereby discrimination based on gender, age and ethnicity.

#### **3.4.2 Indirect differential treatment**

**Likestillings- og diskrimineringsloven § 8**

Indirect differential treatment means that a certain practice, action or negligence that is seemingly neutral, but in reality puts certain persons in a less favourable

position due to one or more of the listed grounds of discrimination.

**Example of indirect differential treatment**

An example from LDO is a case regarding the general rules for swimming attire in a hospital swimming pool. The accepted swim attire was listed as “normal swim attire”, which only included a one- or two piece swimsuit or swim trunks.

Women who wanted to wear more covering swim attire due to religious reasons were therefore excluded from using the swimming pool.

Even though it was a general rule meant to be applied the same way for everyone, the consequence was that certain women were treated less favourably than other users of the pool. LDO concluded that the rule was an example of indirect discrimination.

***3.4.3 What does it mean to be treated less favourably than others?***

**Comparison**

In order to find out if you have been treated less favourably, you must compare your situation to others in the same or similar situation as you are in.

**The effect of the treatment**

It is not necessary that the person who treated you differently did it intentionally. It is the effect of the treatment that counts.

Even though you feel like you have been treated less favourably than others, one has to draw a line towards trivial (minor) circumstances.

**3.5 Grounds of discrimination**

<b>2<sup>nd</sup> characteristic</b>	The second key characteristic is that the differential treatment is based on one or more <i>grounds of discrimination</i> .
<b>Grounds of discrimination</b>	The law states that treating someone less favourably on the basis of certain categories is illegal. These are called grounds of discrimination.
<b>Likestillings- og diskrimineringsloven § 6</b>	<p>The grounds of discrimination in Norwegian legislation are:</p> <ul style="list-style-type: none"> <li>• gender</li> <li>• pregnancy</li> <li>• parental leave because of birth or adoption</li> <li>• caring responsibilities (breastfeeding etc.)</li> <li>• disabilities</li> <li>• ethnicity (national origin, language, skin colour.)</li> <li>• religion</li> <li>• life stance (atheism etc.)</li> <li>• age</li> <li>• sexual orientation</li> <li>• gender identity or expression (transsexuality)</li> </ul>
<b>Example</b>	<p>If you are refused the opportunity to rent a flat because you are an ethnic minority, this may be discrimination on the grounds of ethnicity.</p> <p>It is also illegal to discriminate against someone who has some sort of connection to a person that is included in one of the grounds of discrimination. In example treating a woman less favourably because she has a disabled child.</p>
<b>Arbeidsmiljøloven §13-1 (1)</b>	<p>In work relations it is illegal to discriminate on the grounds of:</p> <ul style="list-style-type: none"> <li>• age</li> <li>• political views</li> <li>• membership in a labour organisation (trade union)</li> </ul>

### **3.6 No legal exceptions apply**

**3<sup>rd</sup> characteristic** The third key requirement is that no legal exceptions apply to your situation. The differential treatment is only legal if it is fair, necessary and proportional.

**No legal exceptions apply**

In order for the differential treatment to be legal and not qualify as discrimination, all of these three requirements must be fulfilled.

#### ***3.6.1 Fair differential treatment***

**Fair differential treatment** For the differential treatment to be fair, one has to consider what is legitimate in the specific situation. This is often a difficult legal evaluation. Furthermore, one has to see if the differential treatment is based on correct facts.

**Example** In a case brought before the Equality and Anti-Discrimination Ombud (LDO) a woman had applied for a job as a cleaning assistant in a Church.

The woman had just moved to Norway and she did not speak Norwegian fluently. The Church did not wish to employ her because her Norwegian was poor and because she was not a member of the Christian faith.

LDO stated that it was not necessary to speak Norwegian fluently nor be a Christian in order for the woman to do the job as a cleaning assistant. This was not a fair differential treatment, and LDO concluded that this was discrimination on the grounds of religion and language.

#### ***3.6.2 Necessary differential treatment***

**Necessary differential treatment**

Furthermore, the differential treatment has to be necessary to achieve the intended goal.

For something to be necessary, it has to be more than just desirable. The differential treatment is not necessary if the goal can be achieved another way using non-discriminatory actions.

### ***3.6.3 Proportional differential treatment***

**Proportional differential treatment**

The differential treatment cannot under any circumstances be disproportionately invasive towards the person being treated differently. Disproportionally invasive means that the act is worse for the person being treated differently than the importance of achieving the goal obtained by the differential treatment.

**Seek help**

It can be difficult to find out whether you have been exposed to unfair differential treatment (discrimination). If you think that you might have been discriminated against, we advise you to seek help. You can find information about places to reach out to under section 6 in the brochure.

## **4.0 HARASSMENT AND RACISM**

### **4.1 What is harassment?**

**Likestillings- og diskrimineringsloven § 13 (2)**

Harassment is actions, omissions or remarks, which feels or is meant to feel offensive, frightening, hostile, degrading or humiliating. In other words, it is a conduct or behavior that makes you feel scared or victimized.

**Harassment is illegal**

Norwegian law forbids harassment on the grounds of gender, pregnancy, parental leave, religion, life stance, skin color, national origin, language, ethnic background, disability, gender identity, sexual orientation, age or combinations of the terms mentioned above.

Bullying in the workplace can count as harassment. An example of bullying is that someone repeatedly gossips about you (talks behind your back) or makes negative comments about you. Bullying in the workplace is illegal according to Norwegian law.

**Illegal everywhere**

Harassment can take place in the streets, at home, at work, at a public office etc. Regardless of where the harassment takes place, it is forbidden by law.

**Punishment**

In some cases, harassment is punishable according to the Norwegian penal code. In such cases the incident should be reported to the police.

### **4.2 Sexual harassment**

**Sexual harassment**

Any form of unwanted sexual attention, which purpose or consequence is to be offensive, frightening, hostile, degrading, humiliating or bothersome is considered sexual harassment.

**Sexual attention** Sexual attention is attention which has a sexual character. The attention can be verbal, non-verbal or physical. Sexual attention can in example be anything from glances, touching, rumours, repeated jokes, comments and suggestions with a sexual undertone, to attempted rape or rape.

**Pictures or videos with sexual content** Receiving unwanted pictures or videos with sexual content also qualifies as sexual harassment.

**What is sexual harassment?** To be considered as sexual harassment the sexual attention must be unwanted. Whether the sexual attention is unwanted depends on the subjective perception of the person the attention is directed at.

The person who exercises the sexual harassment should be made aware that the attention is unwanted for it to be considered as sexual harassment. However, the attention can be considered as sexual harassment without he harasser being aware that the attention is unwanted, as long as the attention is of a more severe character.

As a minimum requirement, the attention has to be bothersome to be defined as sexual harassment. Whether the attention is bothersome will be decided based on an overall assessment. In this assessment, the subjective perception of the person that receives the sexual attention is an important factor. Other factors such as time and place of the harassment and the relationship between the harasser and the person being harassed are also important.

One shall also take into account that men and women often have a different perception about what is to be considered negative sexual attention. It is the female standard for negative sexual attention that is the determining factor in the evaluation.

<b>Example</b>	Some women experience sexual harassment at work. One example is that your boss pinches your bottom or touches you in other inappropriate ways against your will.
<b>Illegal everywhere</b>	Sexual harassment can take place in the streets, at home, at work, at a public office etc. Regardless of where the harassment takes place, it is forbidden by law.
<b>Punishment</b>	If the sexual harassment becomes physical, violent or threatening, the perpetrator can be punished according to the Norwegian penal code. In such cases, the incident should be reported to the police.

### **4.3 What is racism?**

<b>Racism</b>	Racism is severe harassment that is based on the colour of your skin or national or ethnic origin.
<b>Illegal and punishable</b>	Racism is illegal and punishable by Norwegian law. Both written and oral comments are punishable by fines or imprisonment.
<b>Report to the police</b>	If you experience racism you should go to the police and report it. The police can help you file a report.
<b>DiMe</b>	You can also contact DiMe (Diskrimineringshjelpen og Meglingsbenken). They offer free legal counselling in cases regarding racism and discrimination. They can also assist with filing a report to the police. For more information you can contact DiMe by calling 981 31 217 or email <a href="mailto:dime@dhjelpen.no">dime@dhjelpen.no</a>



## 5.0 SITUATIONS WHERE DISCRIMINATION MAY OCCUR

In this section of the brochure, we will present a number of examples of discrimination from various areas of life. We ask questions we believe are relevant for you, and try to provide answers.

### 5.1 Education

Some girls find that their parents prioritize their son's education over their daughter's.

*Is it legal to treat girls and boys differently when it comes to education?*

The answer is no. Boys and girls, have equal rights to education.

#### **Equal rights to education**

This means that they have the same right to attend school and to have the same amount of time to do homework. They also have the same rights in regards to choosing their education or job.

#### **Religious schools**

Some religious schools teach their pupils that women and men have different value and roles.

However, The Equality and Anti- Discrimination Ombud and the Norwegian Anti- Discrimination Tribunal (Diskrimineringsnemnda) have stated that school books used in education shall promote gender equality. This applies in all schools, including religious schools.

#### **Religious communities**

Even though women and men are equal under the law there are some who still believe that this does not apply

within religious communities. The law establishes the boundaries for the degree to which religious communities etc. can treat women and men differently.

**A religious leader cannot harass women or encourage violence**

*What is a religious leader or teacher allowed to say and teach?*

There are limits to what a Minister, Pastor, Priest, Imam or other religious leaders can say.

A religious leader does not have the right to harass women (see section 4 for more details about harassment etc). Nor can a religious leader encourage the use of violence – “*discipline*” – in the home against “*disobedient*” women and children.

## **5.2 Work**

### **5.2.1 Discrimination in the workplace**

**Discrimination at the workplace is illegal**

Discrimination in the workplace is illegal.

This means that you are protected against discrimination in all aspects of the working relationship. This includes:

- job advertisements
- interviews
- engagement in a new job
- relocation
- promotion
- training
- wages
- leave of absence
- termination of employment

Example:

A Muslim woman wanted to go on a pilgrimage (hajj).

She worked at SFO and asked her supervisor if she could take three weeks off to travel. Her supervisor denied her request because her being on a long leave would not be good for the children at SFO.

She complained to the Equality and Anti-Discrimination Ombud (LDO).

LDO ruled that this was indirect discrimination because the woman was not given an individual assessment. LDO concluded that she had been treated less favourably than others because she was religious. SFO had no *valid* reason to refuse her request for holiday.

### **5.2.2 Pregnancy and work**

**Discrimination due to pregnancy is illegal**

It is illegal to discriminate against women due to pregnancy or childbirth.

The Equality and Anti- Discrimination Ombud (LDO) has ruled in many cases concerning pregnancy and work.

**Example**

A woman worked part time as a chef at a hotel. When the hotel decided to hire a chef for a permanent fulltime position, chef the woman was promised the job. When the woman later became pregnant, the hotel said that they wanted to employ another chef instead.

LDO ruled that this was discrimination because the reason why she was denied the job was that she was pregnant. Pregnancy is not a valid reason for treating people less favourably. The woman was therefore able to continue in the position.

### **5.2.3 Job interviews**

**Illegal to ask about religion, politics or pregnancy**

In an interview, it is illegal to ask about a candidate's religion, beliefs or political views. It is also illegal to ask if the candidate is planning an adoption, is pregnant or plans to get pregnant. Nor are questions about ethnicity, disability or sexual orientation allowed. This includes both male and female candidates.

**Example**

During an interview for a job at a clothing store, the candidate told the interviewer that she lived with her female partner. After this, her sexual orientation became the main topic of the interview.

LDO concluded that the woman had been discriminated against because the employer had asked several questions related to her sexual orientation.

#### ***5.2.4 Clothing in the workplace***

Some women wonder whether they have the right to wear a headscarf (hijab) or other religious symbols at work.

In the majority of workplaces, you have the right to wear religious headwear and symbols while you work.

**The right to choose**

As a woman living in Norway, you have the right to choose how you wish to dress. You also have the right to be treated equally, no matter how you dress.

The Equality and Anti-Discrimination Ombud (LDO) has tried a number of cases concerning the right to wear religious clothing in the workplace.

**Example**

One case was about a Muslim woman who wore a hijab and worked in a shop at a shopping center. Her manager received a number of complaints from the other shops regarding her wearing the hijab. He told the woman that

if she wanted to keep her job she had to stop wearing the hijab.

The woman found it humiliating to take off her hijab, and denied her employers request. As a result, the woman was dismissed and lost her job. LDO ruled that it was discrimination and that the woman had the right to wear a hijab at work. The grounds of discrimination were gender and religion.

### **Exceptions**

An employer must have a valid reason to prohibit the use of religious headwear and symbols in the workplace. Certain jobs require that the employee is perceived as neutral, such as a police officer and a news reporter on TV. They are in need of being perceived as objective when executing their tasks in the public eye. Therefore a prohibition against religious symbols may be valid in these cases.

Some work tasks require a certain level of safety or strict hygiene policies. In such cases, an employer can demand that employees do not wear personal and/or religious symbols. This applies to jobs where it is necessary to wear helmets or personal protective clothing or equipment as well as positions in the health sector.

## **5.3 Housing**

**It is illegal to in the housing market**

*Does a property owner have the right to decline you as a tenant or buyer because you are a minority?*

The answer is no. It is illegal to discriminate on the grounds of ethnicity or other grounds of discrimination in connection with the rental or sale of a house, apartment or similar housing.

### **Example**

Some ethnic minorities find it difficult to rent or buy a house. One case brought before LDO was about an Iranian family who wished to purchase a house.

The family made the best offer for the house, but the owners sold the house to an ethnic Norwegian family. The owners said that they did not wish to sell the house to foreigners because they did not want “*any trouble*”.

According to LDO, the Iranian family’s offer was denied because they were foreigners. The Iranian family had been treated unfairly in comparison to an ethnic Norwegian family. The family’s ethnicity was not a valid reason to deny them the right to purchase the house, and this was therefore discrimination.

It is illegal to put out house advertisements on Internet websites such as [www.finn.no](http://www.finn.no) and state in the advertisement that the property owner only wants Norwegian applicants.

In a case brought before the LDN the tribunal ruled that the property owner had not acted in accordance with the law when rejecting two tenants based on their sexual orientation LDN concluded that this was discrimination based on sexual orientation.

## **5.4 Public offices**

**It is illegal for the public sector to discriminate**

Some women with minority backgrounds experience discrimination from public service offices such as NAV.

Public employees, civil servants and institutions shall not treat people unfavorably based on a ground of discrimination unless they have a valid reason.

## **5.5 Checking in to a hotel**

**Illegal to discriminate at check-ins**

Some foreign women have been denied to stay at a hotel due to their foreign appearance.

A case from the Equality and Anti-Discrimination Ombud (LDO) and the Norwegian Anti-Discrimination Tribunal concerned two Asian women who wished to check in at a hotel in Oslo.

The hotel had a policy of denying guests who lived close to the hotel to prevent drug addicts and prostitutes from staying at the hotel. The two women were denied rooms because they lived close to Oslo. The women felt that the receptionist presumed that they were prostitutes because they were female and from Asia.

LDO and the Anti-Discrimination Tribunal ruled that the differential treatment was based on two grounds of discrimination also known as cross discrimination. The grounds of discrimination were gender and ethnicity.

## **5.6 Within the family**

**It is illegal to discriminate within the family**

Some women find that their partner or other family members do not want them to work or go out unaccompanied.

*Is this discrimination?*

The right to not be discriminated also applies within the family.

This means that as a woman you have the right to be treated with the same respect and dignity as your fellow family members. You also have the right to decide what you want to do and when you want to do it.

Example:

Some women experience that their husband prevents them from leaving the house, using the phone or the internet, or working. If this is done against their will, it is regarded as deprivation of liberty (imprisonment.)

**It is illegal to discriminate between children**

Girls and boys have the right to equal treatment within the family. This means that both girls and boys shall attend school and be respected equally in the home.

However many girls find that they are given more responsibility for domestic work compared to their male family members simply because they are female.

Some immigrant children experience that their parents do not want them to become too adapted to Norwegian culture. Some children are therefore not allowed to participate in society in the same way as Norwegian children.

**Children have the right to participate in decision making**

Children have the right to full integration in Norway. This means that they have the right to participate in society, engage in leisure time activities, go to school and have friends.

When parents make a decision on behalf of their child, the child has the right to be heard and to participate in the decision making. Girls and boys have the same right to be heard in matters that concern them.

Parents do not have the right to force their religious beliefs onto their child. This includes religious clothing and symbols. However, they have the right to advise their children in regards to for example hairstyles and clothing.



## **6.0 WHAT CAN YOU DO IF YOU HAVE EXPERIENCED DISCRIMINATION?**

### **6.1 Seek help**

There is several organisations you can reach out to if you experience or have questions about discrimination. JURK, DiMe, Anti-Discrimination Tribunal (DN) and Equality and Anti-Discrimination Ombud (LDO) are some of them.

#### **6.1.1 JURK**

*Who is Legal Advice for Women (JURK)?*

JURK is a politically independent legal aid initiative that is run by law students. We provide advice and guidance on legislation and rules to all who define themselves as women.

JURK is bound by secrecy and you can trust us and feel safe when you contact us. Our counselling is free of charge.

*How to contact JURK:*

You can visit JURK  
Skippergata 23 Oslo  
Mondays 12-15  
Wednesdays 17-20

You can call JURK:  
22 84 29 50  
Mondays 12-15  
Wednesdays 9-12 and 17-20

You can send a letter to JURK:  
Skippergata 23, 0154 OSLO

You can visit [www.jurk.no](http://www.jurk.no) for more information about JURK.

### **6.1.2 Discrimination Aid and Mediation Bench**

DiMe (Discrimination Aid and Mediation Bench) is a low- threshold legal aid measure that offers legal advice and assistance in racism and discrimination cases. The “Discrimination Aid” offers legal guidance as well as assistance in writing complaint and notifications when necessary, or sorting cases further to the “Mediation Bench”.

How to contact DiMe You can call DiMe:  
22 03 77 00.

You can visit DiMe:  
Stortorvet 10, 4. floor 0155 OSLO

You can send DiMe and e-mail:  
[norsk.folkehjelp@npaid.org](mailto:norsk.folkehjelp@npaid.org)

### **6.1.3 The Anti-Discrimination Tribunal (DN).**

#### **Complaint about discrimination**

If you believe you have been discriminated against, you can file a complaint to the The Anti-Discrimination Tribunal (DN)

The Tribunal is a neutral body that decides on complaints regarding discrimination and harassment.

DN can decide if you have been discriminated against or not. If you have been discriminated against they can also decide if you have the right to receive financial compensation.

*How to contact the DN:*

You can send DN an e-mail:  
[post@diskrimineringsnemnda.no](mailto:post@diskrimineringsnemnda.no)

You can call DN:  
90 93 31 25

You can visit DN's website:  
[www.diskrimineringsnemnda.no](http://www.diskrimineringsnemnda.no)

### **6.1.4 The Equality and Anti-Discrimination Ombud (LDO)**

#### **Advice and guidance**

LDO can guide you on how to write a complaint to DN. LDO can also give you advice and guidance in cases regarding discrimination or harassment.

*How to contact LDO:*

You can visit LDO  
Mariboegate 13, Oslo, 4th, floor.  
Mailbox: 9297 Grønland, 0134 Oslo, Norway.

You can send an e-mail:  
post@LDO.no

You can call LDO:  
Green number: 80 04 15 56  
Telephone: 23 15 73 00  
Fax: 23 15 73 01  
You can also send an SMS to 95 92 05 44.

For more information about LDO you can visit their website: [www.ldo.no](http://www.ldo.no)

## 7.0 NORWEGIAN DISCRIMINATION LAW

There are several laws that aid to protect people from discrimination. Here is a list of relevant laws:

- Likestilling- og diskrimineringsloven 16. juni 2017nr. 51
- Diskrimineringsombudsloven 16. juni 2017 nr. 50
- Menneskerettsloven 21. mai 1999 nr. 30
- Arbeidsmiljøloven av 17. juni 2005 nr. 62
- Straffeloven av 20. mai 2005 nr. 28
- Husleieloven av 26. mars1999 nr.17
- Borettslag loven av 6. juni 2003 nr.39
- Boligbyggelagsloven av 6. juni 2003 nr. 38
- Eierseksjonsloven 23. mai 1997 nr. 31

You can find these laws at [www.lovdatab.no](http://www.lovdatab.no).

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[www.jurk.no](http://www.jurk.no)

22 84 29 50  
Skippergata 23, 0154 Oslo