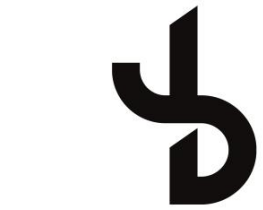
THE EMPLOYMENT CONTRACT AND THE WORKING ENVIRONMENT

A brochure on employment law



Jussbuss

Preface

This brochure is published by the legal aid organisations Juss-Buss (Law Students' Free Legal Aid Organisation) and JURK (Legal Advice for Women).

This brochure is one of five dealing with labour law. These brochures are:

1. The employment contract and the working environment
2. Holidays and leave of absence
3. Entitlement to pay and holiday benefits
4. Being dismissed, fired or laid off
5. Pregnancy and childbirth rights – only available in Norwegian

The brochure was last updated in May 2009 by the Social, benefits and labour law group at Juss-Buss.

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Chapter 1 Introduction

First, this brochure deals with the statutory requirements for the formulation and content of a written contract of employment. Second, the requirements for a good working environment as laid down in the Working Environment Act will be examined. The third area to be dealt with is the requirement that employees are treated equally.

For information on other labour law issues we refer to the brochures "Krav på lønn og feriepenger" (Entitlement to pay and holiday benefits), "Oppsigelse, avskjed og permittering" (Being dismissed, fired or laid off) and "Ferie og permisjon" (Holiday and leave of absence), which can be obtained from Juss-Buss or JURK.

The Working Environment Act can be obtained from most bookshops and libraries. The Norwegian version of the Act is also available at www.lovdata.no.

Chapter 2 The written contract of employment

2.1 Introduction

In this chapter we will examine in more detail some of the most important rights and obligations that come into play when you enter an employment relationship. The most important requirement for the provisions in the Working Environment Act to apply to you is that you must be an employee. However, the Act does not apply to employees in shipping, hunting and fishing.

The point of departure is the actual written contract of employment. This must then be compared to the provisions in the Act. When the Act is mandatory, it will override the contract in any disputes.

The employment relationship is regulated by provisions in the Working Environment Act, but for state and municipal employees, the provisions in the Civil Service Act apply. Moreover, the provisions in the Annual Holidays Act, the Anti-Discrimination Act and the National Insurance Act regulate special areas of the employment relationship. Many employment relationships are also regulated by collective pay agreements. What is called normal practice in the trade may also determine aspects of the employment relationship.

2.2 The written contract of employment

In writing
Section 14-5 of the Working Environment Act

Within one month

In employment relationships with a total duration of more than one month, a written contract of employment shall be entered into in writing. It shall be entered into as early as possible and one month following commencement of the employment at the latest, and in employment relationships of a shorter duration than one month or in connection with contract labour, it shall be entered into immediately. If you are already employed and want to have a written employment contract, you have the right to have one.

A contract must at least contain the following to comply with the provisions of the Act.

Section 14-6 *Minimum requirements regarding the content of the written contract*

(1) The contract of employment shall state factors of major significance for the employment relationship, including:

a) the identity of the parties,
b) the place of work. If there is no fixed or main place of work, the contract of employment shall provide information to the effect that the employee is employed at various locations and state the registered place of business or, where appropriate, the home address of the employer,

c) a description of the work or the employee's title, post or category of work,

d) the date of commencement of the employment,

e) if the employment is of a temporary nature, its expected duration,

f) where appropriate, provisions relating to a trial period of employment, cf. section 15-3, seventh paragraph, and section 15-6,

g) the employee's right to holidays and holiday pay and the provisions concerning the fixing of dates for holidays,

h) the periods of notice applicable to the employee and the employer,

i) the pay applicable or agreed on commencement of the employment, any supplements and other remuneration not included in the pay, for example pension payments and allowances for meals or accommodation, method of payment and payment intervals for salary payments,

j) duration and disposition of the agreed daily and weekly working hours,

k) length of breaks,

l) agreement concerning a special working-hour arrangement, cf. section 10-2, second, third and fourth paragraphs,

m) information concerning any collective pay agreements regulating the employment relationship. If an agreement has been concluded by parties outside the enterprise, the contract of employment shall state the identities of the parties to the collective pay agreements.

(2) Information referred to in the first paragraph (g) to (k) may be given in the form of a reference to the Acts, regulations and/or collective pay agreements regulating these matters.

This is an example of a written contract of employment:

A written contract of employment has been entered into on 25 June 2007 between

1. Peder Ås, Lillevikgaten 3, 1234 Lillevik, dob 31/01/1984, and Lillevik Renhold A/S, business enterprise register number 123 456 789.

2. The place of work is Storhallen, Storevikvegen 5, 1234 Lillevik.

3. Peder Ås is employed to work as a cleaner.

4. Peder Ås commences work on 01/07/07.

5. Annual holidays are determined in cooperation with Lillevik Renhold A/S and in accordance with the provisions in the Annual Holidays Act of 29 April 1988 no. 21.

6. In the event of dismissal, the period of notice for Peder Ås and Lillevik Renhold A/S is 1 – one – month.

7. Peder Ås will be paid NOK 20 000 each month. In addition, he will have the free use of a company car. He will be paid on the 6th of each month, to account no. 1234.56.78900.

8. Working hours are 8 am to 4 pm Mondays through Fridays, totalling 37.5 hours a week. During the summer months, working hours are from 8.30 am to 3 pm.

_____ _____

Peder Ås *For Lillevik Renhold A/S*
Lars Holm, General Manager

Items 9-11 are only included if relevant.

9. Peder Ås is employed on a temporary basis, and will leave his post 31 December 2007.

10. The first three months will be a trial period for Peder Ås.

11. The collective pay agreement between the cleaners' trade union and NHO will be applicable.

A closer look at the agreement item by item:

The identities of the parties

1. The employment contract must include the identity of the parties. Names, dates of birth, addresses and the business enterprise registration number are good points of reference.

The workplace

2. The next item is the workplace. Where there is no permanent place of work, it must be written that the employee will be working at several locations. The employer's business or home address must also be entered.

Description of the post

3. The job or the post must be described, preferably using the title. The clearer the description given here, the more precisely described is the employer's managerial prerogative (see Chapter 2.4), which leads to clearer lines for the employee's obligation to work. Occasionally, only general reference is made to the work regulations. If a collective pay agreement applies for your employment relationship, it will often delimit and determine the scope of the obligation to work (see Item 11 in the employment contract above and Chapter 2.3).

The right to pay

4. The obligations to work and the right to be paid commence when the employment contract commences.

Holiday
Section 5 of the Annual Holidays Act

5. It is sufficient that the employment contract refers to the Annual Holidays Act, see Chapter 2.8. If you have made an agreement with the employer on additional holidays or another scheme for holiday benefits than what follows from the Act, this must be described here. This is particularly important as the Act only lays down entitlement to 25 weekdays annually. Holiday time beyond this may follow from your written contract of employment, collective pay agreement or practice. A less beneficial scheme for the employee cannot be agreed than what is stipulated by the Act.

Periods of notice
Section 15-3 (1) of the Working Environment Act

6. It is sufficient for the employer to refer to the Working Environment Act, where the general rule is one month's notice. If a longer period of notice is agreed than what follows from the Act, it is essential that this is entered into the agreement. If you agree on shorter notice than stipulated by the Act, the Act will override the agreement, and the general rule in the Act stipulating one month will be applied.

Section 15-3 (4) of the Working Environment Act

The period of notice runs from the first day of the month following the month notice was given. However, this does not apply during the trial period, where the period of notice runs from the day notice was given. The period of notice during the trial period is 14 days, unless otherwise agreed in writing or stipulated in a collective pay agreement.

Pay and other fringe benefits

7. Pay and other benefits that are granted should be included in the written contract of employment. Therefore schemes such as pension payments, free telephone, free newspaper and similar should also be included in the written contract of employment. The date when the pay is to be paid should also be included here. In this item, however, it is sufficient to refer to the Act.

Working hours
Section10-4 of the

8. Here the scope of the obligation to work must be agreed upon. This item determines what should be

Working Environment Act

counted as additional work and overtime. Here it must be stated how many hours per week you must work, when the working hours are, flexible working hours etc. Here too, reference can be made to the Act. The normal working week in the Act is 40 hours, even if 37.5 hours per week is normal for full posts today. You can read more about this in Chapter 2.6.

Items 9-11 are only included if relevant.

Temporary appointment
Section 14-9 of the Working Environment Act

9. It is sufficient to enter the expected duration of the temporary appointment, but it should be made as precise as possible. You can read more about this in Chapter 2.5.

Trial period
Section 14-6 of the Working Environment Act

10. Some employers wish to give employees a trial period to determine whether they are suitable in the post. A trial period must be agreed in writing before it is valid. You will find more information about this in Chapter 2.5.

Collective pay agreements

11. Collective pay agreements that apply to the employment relationship must be included here. This applies even if you are not a member of any trade union. See Chapter 2.3 for more detailed information.

Work regulations

12. The employment contract may also refer to work regulations. If so, compliance with the work regulations is an obligation laid down in the agreement for the employee. Any breach of the work regulations will then be considered a breach of the written contract of employment, for which the most extreme consequence is that it constitutes the grounds for dismissal.

2.2.1 Content of the agreement

Additional provisions

The written contract of employment is an agreement entered into between the employee and the employer. It may therefore include much more than what is laid

down in the Act as a minimum. The contract aims to regulate the employment relationship. Matters that may be included could be the duty of confidentiality, the use of equipment for private purposes, the right to have a voice in the company, your occupational insurance etc., even if these are not requirements in the Act. *Further matters that should be included in the contract should be discussed between you and the employer and included in the contract as far as you wish or find useful. In this way you will ensure that you have the best possible information about the employment relationship.*

Unilateral change

A contract is a binding agreement between an employee and employer. This means that the written contract of employment cannot be changed by you or the employer unless you both agree to do so. However, with the managerial prerogative, the employer can to a certain degree order the employee to change work duties as long as the basic character of the post is not changed. Otherwise the agreement applies unchanged. Changes you agree on should be entered into the agreement. See also Chapter 2.4 on the employer's managerial prerogative.

2.2.2 No written contract is entered into

What it means if you do not enter into a written agreement

First, not entering into a written contract of employment is a breach of the law which may leave the employer liable. The Norwegian Labour Inspection Authority can order an employer to draft a written contract of employment.

Second, disagreement on matters the contract should have made clear may put both the employee and the employer at risk of losing benefits they believed had been secured at the start of the employment relationship. The dispute must then be resolved through concrete assessments, and in such cases the general rules will often be applied. This may be unfavourable for both parties. Therefore it is vital for both parties that the

contract is in order.

The requirement that agreements should be in writing is a matter of order, not validity. If no written contract of employment has been established, the employment contract is still valid.

2.3 Collective pay agreements

A collective pay agreement is an agreement between a trade union and an employer or employer association on working and pay conditions or other work-related matters. A collective pay agreement will often delimit and determine the scope of the obligation to work. A collective pay agreement is not a contract of employment in itself, but it lays down the types of condition that will apply to contracts of employment, and will normally apply as part of the personal contract of employment. If the employment relationship comes under a collective pay agreement, the contract of employment cannot contain conditions that are in conflict with it. If one or more conditions are in conflict with the collective pay agreement, they are counted as invalid so that the provisions of the collective pay agreement apply instead. The collective pay agreement cannot be deviated from in favour of the employee, in contrast to some of the rules in the Working Environment Act and the Annual Holidays Act.

Deviations

Non-unionised employees
Legal practice is the authority for this

An employee is not required to be a member of a trade union for a collective pay agreement to be binding for the employment relationship. If the employer is bound by a collective pay agreement, a trade union has the right to demand that the terms in the collective pay agreement must apply, even if you are not a trade union member. The thinking behind this is that this is necessary to avoid undermining collective pay agreements.

An employee has the right, but is not obliged, to be a

member of a trade union, and may freely choose the union. An employer cannot deny an employee to be a member of a trade union or use trade union membership against an employee. If so, this represents illegal discrimination. You can read more about this in Chapter 3.6.

2.4 The employer's managerial prerogative

The employer's managerial prerogative is the right to organise, manage, allocate and inspect the work you perform. It also includes the right to enter into and terminate employment contracts. The managerial prerogative basically confers the right on the employer to determine what and how something should be done, and when and how it should be done. However, this right must be exercised within the frames following from Acts, regulations and agreements.

Extending the obligation to work
Section 10-12 of the Working Environment Act

In special cases, where unforeseen events threaten to cause major damage, the employer may, based on the managerial prerogative and the situation that has arisen, order you to extend your obligation to work. Major natural disasters such as flooding, fire and hurricanes where there is a risk of major loss of value, or an illegal strike are examples of this.

Refusal to obey orders

An employer's orders and instructions must be complied with. It is very important to be aware that refusal to obey orders in most cases is seen as grounds for dismissal. The requirement is that the order has been issued clearly and is within the obligation to work. An employee is not, for example, obliged to carry out orders that would be in breach of the provisions of the Civil Penal Code. The obligation to work is the employee's obligation to carry out the work comprised by the contract of employment. A driver cannot, for example, be ordered to work in the cafeteria. If there is doubt that the order is within the obligation to work, you risk being dismissed if you

refuse to carry out the work and the refusal later proves to be illegal. It may thus be wise to carry out the work but with reservations, and then later raise this issue with the employer, for example through the employee representative or trade union.

Limitations on the managerial prerogative

The managerial prerogative is not unlimited. In general, one may state that an employer may undertake such actions that are fair considering the operations of the enterprise. The Working Environment Act and other legislation, collective pay agreements, the employment contract and customary practice curtail the managerial prerogative. An employer cannot deviate from what you have agreed, or demand that you act in breach of the law.

2.5 Permanent or temporary employment?

The clear general rule is that employees are in a continuous employment relationship. This means that you are permanently employed until you resign or the employer terminates the employment contract.

Full-time and part-time posts

An employee may be permanently employed without having a 100 per cent post. Part-time employees are therefore also permanently employed, but work a lower number of hours than those in full-time posts.

Temporary employees

Section 14-9 of the Working Environment Act

Conditions

A temporary employee may work in a full-time or part-time post, but the employment is then time-limited. Such posts are exceptions from the general rule, and must always be explicitly agreed upon. The Act lays down that temporary appointments can only be used in certain cases. Temporary appointments are permitted when the nature of the work so indicates, often because it is different from the work normally carried out by the enterprise. The less difference there is from the regular operations, the less probable it is that the temporary appointment is legal. Permanent employment shall be used instead in such cases. Temporary appointments are

permitted for work as a trainee, for work as a temporary replacement and for employment in connection with labour market schemes. The head of the enterprise may also be employed on a temporary basis.

Access to termination of a temporary appointment
Section 15-7 of the Working Environment Act

With a temporary appointment, the employer and the employee can both terminate the employment relationship during the period of work. It is important to bear in mind that in such cases, the general rules governing dismissal in the Act apply. These rules give the employee particular rights and protection. You can read more about this in the brochure "Being dismissed, fired or laid off".

Temporary employee for four years or more – the right to a permanent appointment
Section 14-9 (5) of the Working Environment Act

If an employee has been temporarily employed for more than four consecutive years, he or she can be considered to be permanently employed. This means that on dismissal, for example, the rules of objectivity shall apply. The four-year rule does not apply, however, to a temporary appointment *that existed as of 1January 2006.* If a temporary employment appointment is renewed, it must be borne in mind that temporary employment time directly preceding the renewal will be included in the four-year rule.

Substitute

A substitute works in the place of another person. If a substitute worker is hired over an extended period of time to substitute for several persons, this may lead to the substitute being considered a permanent employee. This might be indicative of the fact that the enterprise has a permanent need for labour. If so, the enterprise must use permanent employees.

Section 14-11 of the Working Environment Act

If an employee is illegally temporarily employed, the main rule in the Act on permanent employment will be applicable.

Trial period
Section 14-6 (f), cf. section 15-3

When entering into a contract on permanent or temporary employment, the employer can require that for a period of time you will be employed on a trial

seventh paragraph and section 15-6 of the Working Environment Act

basis. The trial period must be agreed in writing in the contract of employment. Pursuant to the Act, a trial period may last up to six months. A trial period may be prolonged beyond this, but only if you have been absent during the trial period, and only for a period of time corresponding to your absence. The right to prolong the trial period must also have been entered into the written contract of employment in advance. Thus, if you have been sick for a month during the trial period, the trial period may be prolonged by one month. When the trial period is over, whether it has been prolonged or not, the employee will be permanently employed.

2.6 Working hours

Normal working hours
Section 10-4 of the Working Environment Act

Working hours must be set in the written contract of employment. Pursuant to the Act, normal working hours must not exceed nine hours per day and 40 hours per week. A normal work week today is 37.5 hours in a full post. Many people have agreements for shorter working weeks.

The right to reduced working hours
Section 10-2 (4) of the Working Environment Act

After a well-grounded application, an employee may be granted reduced working hours due to health, social or other important welfare reasons, where this can be undertaken without causing special inconvenience for the enterprise. How such reduced working hours are to be scheduled must be agreed between the employer and employee, if a reduced number of working hours is granted. Such an agreement may be granted for up to two years at a time. Reduced working hours is an important right, and applies to employees with special needs.

Additional work

For an employee with reduced working hours or who is employed in a part-time post, the working hours that exceed what is agreed but is within regular working hours are counted as additional work. The Act does not stipulate any right to higher pay for additional work. If you are to be paid a higher hourly rate for the additional

work, this must be agreed in advance.

Overtime work
Section 10-4 cf. section 10-6 (11) of the Working Environment Act

Overtime is counted only when you have worked more than nine hours in a day or more than 40 hours in a week, unless otherwise agreed. After respectively nine or 40 hours, you have the right to overtime pay. The Act stipulates that you have the right to at least 40 per cent in addition to your regular hourly rate. A higher percentage may be agreed. Collective pay agreements often regulate overtime rates with higher percentages.

Off-duty time
Section 10-6 (12) of the Working Environment Act

Another way of compensating employees for additional work and overtime is through the granting of off-duty time. The Act provides the employee with a free choice between overtime pay or off-duty time. This can be agreed separately between the employee and the employer, either in the employment contract or in each specific case. One solution is that you are granted off-duty time hour for hour, but you are paid the overtime supplement in the normal way.

More on the use of additional work and overtime work
Section 10-6 of the Working Environment Act

Overtime work and additional work must not be used as a regular scheme. It is within the employer's managerial prerogative (see Chapter 2.4) to impose additional work and overtime on employees. Before overtime is imposed, the employer should if possible have discussed its necessity with the employee's elected representative. If overtime of more than two hours beyond what are regular working hours pursuant to the Act is imposed on an employee, the employee has the right to a break of at least 30 minutes before continuing work. When conditions so necessitate, this pause may be shortened or moved to another time.

An employer may only impose additional work or overtime when unforeseen events or absence of employees may disrupt normal operations, or when it is necessary to protect goods or equipment from damage. Unexpected work pressure, seasonal fluctuations or lack of employees with special skills or similar reasons may

also allow for the use of additional work and overtime.

Overtime work may prolong the work day up to 14 hours. It must, however, not exceed 10 hours per week, 25 hours in four consecutive weeks and 200 hours per calendar year. For agriculture and other activities under the Labour Inspection Authority, other rules may be agreed.

Example

Here are two examples of additional work and overtime work:

Day

A single day

Working hours: from 8 am to 10.30 pm:

Agreed working hours: 8 am to 4 pm, whereof a 30-minute break, i.e. 7.5 hours.
Additional work: from 4 pm to 5.30 pm.
Overtime work: from 5.30 pm to 10.30 pm.
Total: 14 hours.

7.5 hours + 1.5 hours + 5 hours = 14 hours

Week

A whole week

Agreed working hours: 30 hours.
Additional work: from 30 to 40 hours.
Overtime work: from 40 to 50 hours.

The agreed working hours here constitute 30 hours per week. As the normal working time pursuant to the Act is 40 hours, the interval must be accounted as additional work. The period from 40 to 50 hours is overtime work.

The right to an exemption
Section 10-6 (10) of the Working Environment Act

The employer is obliged to exempt employees who for health or strong social reasons (for example parental care for minors, sick parents, major family events) request that they be exempted from additional work or overtime work. An employer is also obliged to exempt an

employee who requests exemption for other personal reasons when the work can be postponed or carried out by others without damage. If a general exemption is asked for, the employer may require a medical certificate from the employee stating that this is necessary.

2.7 Illness

Sickness benefits
Section 8-18 of the National Insurance Act

Pay when sick is the same as the normal pay, and starts from the first day of illness. If an employee is sick, he or she is obliged to notify the employer from the first day of illness that the absenteeism is due to illness. If this is not done, the employee will lose the right to sickness benefits until the employer is notified either by the employee or a doctor. If an employee at the end of the working day knows that she or he will not be able to come to work the next day due to illness, the employer must be notified at that time so that a substitute can be arranged if necessary.

Conditions
Section 8-2 of the National Insurance Act

To be entitled to sickness benefits, at least 28 days (waiting time) must have passed from when you were employed. In the case of illness during this period, you may not demand pay for your days of illness up to the 28th day. If an employee suffers an occupational injury during this period, there is no waiting time. Then the employee has the right to pay from the first day of sickness absenteeism. Moreover, the employee must in the course of the year earn at least half of the base rate of the National Insurance. Sickness benefits are limited to an amount up to six times the base rate of the National Insurance. NAV can provide information on the exact amount of the base rate (called 1 G in Norwegian), as this amount changes from one year to the next.

Self-certified sick leave
Section 8-23 of the National Insurance Act

Self-certified sick leave is the right to notify the employer verbally about sickness absenteeism without having to submit a medical certificate. The employer may request confirmation in writing when the employee returns to work.

How long
Section 8-24 of the National Insurance Act

How often
Section 8-24 of the National Insurance Act

A condition for the right to use self-certified sick leave is that the employee has been employed by the employer for at least two months. Self-certified sick leave can be used for up to three consecutive days and up to four times in the course of a period of 12 months. If the employer approves it, self-certified sick leave can be used for a longer period than three days, in which case this should be clarified in advance. In the case of illness immediately prior to or after off-duty time, these are included when the number of sick days is calculated. If an employee is sick on Friday and Monday, he or she is considered to have been sick for four days.

An employer may demand a medical certificate from the fourth day of sickness absenteeism. If a medical certificate is not submitted, the right to sickness benefits will lapse.

Employer period (sick pay period)
Section 8-19 of the National Insurance Act

The first 16 days of sickness absenteeism are called the employer (sick pay) period. The employer will pay your sickness benefits during this period. Sometimes an employer may refuse to pay sickness benefits, even if the employee has submitted a medical certificate.

Demand for payment

A letter must then be written demanding that the money is paid within one week.

Advance payment from NAV
Section 8-22 of the National Insurance Act

If the employer continues to refuse to pay the money, the employee may demand that NAV pay the sick pay. If so, the employee must send a letter to NAV as the following example shows:

Example

Employee's name
Address
National identity number (11 digits)

Place, date

NAV-trygd
Address

I was sick from 1 April 2007 to 12 April 2007. As my employer refuses to pay me sick pay for the employer (sick pay) period, in spite of the written demand (see the attached copy), I demand that NAV-trygd pay this to me, cf. section 8-22 of the National Insurance Act.

If the sick pay is not paid to me by the employer or NAV-trygd, the refusal will be appealed to the appeals board for sickness benefits for the sick pay period, cf. section 21-13 of the National Insurance Act.

Yours sincerely

(The employee's name)

The local NAV office is under the obligation to provide guidance on questions relating to payment of sickness benefits.

2.8 Holidays

The right to holidays
Section 5 of the Annual Holidays Act

Employers shall ensure that employees have 25 working days' holiday leave each holiday year. The holiday year follows the calendar year. The number of holiday days is not related to how long you have worked for an employer or earned holiday pay. For employees over 60 years of age, special rules apply which confer the right to longer holidays and more holiday pay.
Longer holidays may have been agreed pursuant to collective pay agreements or special agreements.

Employees under 60 years of age

The Annual Holidays Act calculates a week as consisting of six working days. This gives you the right to four weeks and one day off. If you were to have off-

duty days according to the regular schedule, these do not extend your holiday. Within the framework of the Act, the employer decides when you may take your holiday.

Section 7 of the Annual Holidays Act

The main holiday is three weeks (18 working days), and is normally given between 1 June and 30 September. An employee may also demand that the remainder of the holiday of seven days (one holiday week and one day) is given together or divided. If an employee resigns from the job him-/herself, or starts in a new job after 15 August, he or she cannot demand that the holiday is taken during the main holiday period. If you are dismissed, the employer cannot demand that you take your holiday during the period of notice if this is shorter than three months.

Employees over 60 years of age
Section 5 (2) of the Annual Holidays Act

Employees who reach the age of 60 before 1 September in a holiday year have the right to an extra holiday week, and their holiday pay constitutes 12.5 per cent of the holiday pay base rate.

Holiday pay
Section 10 of the Annual Holidays Act

Holiday pay replaces pay during the holidays. The base rate for the holiday pay must be clearly stated on your pay and tax deduction slip. For most employees, the holiday pay constitutes 10.2 per cent of the base rate for holiday pay. Collective pay agreements or individual employment agreements may have other provisions that give higher holiday pay.

Holidays and sickness
Section 9 of the Annual Holidays Act

As an employee who is completely incapacitated for work before your holiday you may demand to have the holiday postponed until later in the holiday year. The demand for the postponement must be made at the latest on the last working day you would have worked before the holiday was to commence. If you have been completely incapacitated for work for at least six working days in the holiday, you may demand to have a corresponding number of working days' holiday postponed and given to you as a new holiday later in the

holiday year. Such a demand for a postponement of the holiday must be submitted without undue delay after your return to work. In both cases a medical certificate is required to maintain the right.

2.9 Transfer of enterprises

Rights pursuant to the contract of employment are carried forward
Section 16-2 of the Working Environment Act

Employees often find that the enterprise they are working for is sold. Transfer to another owner is in itself no ground for dismissal by the previous or new owner. The point of departure is therefore that that an employee retains his or her rights and obligations ensuing from the contract of employment and the employment relationship in general. This generally applies to both full or partial transfer of the enterprise to a new owner. It is immaterial that the new owner is not familiar with all the details. Pay, holidays, per diem, newspapers, the use of a company car etc. that the employee was entitled to from the old owner are carried forward.

Exemptions
Section 16-2 of the Working Environment Act

The situation is different when it comes to pension benefits and collective pay agreements. The new owner is only obliged to maintain rights that have already accrued. The new employer shall be bound by any collective pay agreement that was binding upon the former employer. This shall not apply if the new employer within three weeks after the date of transfer at the latest declares in writing to the trade union that the new employer does not wish to be bound. The transferred employees nevertheless have the right to retain the individual working conditions that follow from a collective pay agreement that was binding upon the former employer. This shall apply until this collective pay agreement expires or until a new collective pay agreement is concluded that is binding upon the new employer and the transferred employees.
If a collective pay agreement applies to the employment relationship, it will only be "transferred" to the extent that individual working conditions follow from it, and only until it expires or is replaced by another collective

pay agreement.

Information
Section 16-5 of the Working Environment Act

Both the former and new owner shall as early as possible discuss the transfer with the employees' elected representatives. They are obliged to give information about the reason for the transfer, and legal, financial and social implications of the transfer for the employees. Measures planned in relation to the employees must also be discussed with a view to reaching an agreement.

Right of reservation
Section 16-3 of the Working Environment Act

An employee may object to transfer of the employment relationship to the new employer. This is called the right of reservation. An employee must give notification of this in writing within the specified time limit.

An employee who has asserted his or her right of reservation may on specified conditions have a preferential right to a new appointment at the former employer.

2.9.1 When has the transfer of enterprises taken place?

Introduction
Section 16-1 of the Working Environment Act

Transfer means the transfer of an autonomous entity that retains its identity after the transfer. Any assessment of whether a transfer of an enterprise has taken place must be undertaken specifically in each case.

Autonomous entity

The section of the enterprise that is transferred must have stable finances and a permanent structure to come under the rules. It is not required that the objective of the section transferred is to achieve economic gain. No requirement exists as to the size or number of employees in the section transferred.

The rules apply when the enterprise's main tasks and its supporting functions both are transferred. A transfer that comes under the rules may, for example, include transferring service functions such as canteen, cleaning

and reception desk.

Identity

It must be decided whether the enterprise has retained its identity after the transfer, or whether only the previous tasks of the enterprise are carried forward.

Assessment issues

A comprehensive assessment must be undertaken of each specific case. The real situation is decisive, terminology and formalities cannot be given emphasis. Vital issues will be:

- The type of enterprise or company
- Whether a transfer of equipment has taken place at the time of the transfer
- Whether the customers are taken over
- To what extent the work tasks remain the same after the transfer
- How long the enterprise operations have been halted, if at all
- Whether the operations are being carried out in the same premises as previously
- Whether the requirements for employee qualifications are the same before and after the transfer

2.10 Outsourcing work tasks to an independent contractor

Outsourcing means that an enterprise gives certain work previously carried out by its employees to an independent contractor to carry out. The reason given for outsourcing is generally that the enterprise wishes to focus on its core tasks. Support functions are left to others so that the enterprise's main tasks can be carried out more rationally.

The relation between transfer

The rules on outsourcing are intended to function as a supplement to the rules on the transfer of an enterprise,

of an enterprise and outsourcing

when they are not applied. The purpose of both sets of rules is to give employees protection against dismissal.

Dismissal due to outsourcing
Section 15-7 of the Working Environment Act

The rules stating that an employer must have an objective reason for dismissing employees also applies to the dismissal of an employee as a result of outsourcing. A dismissal must satisfy the general conditions that apply pursuant to the general provisions of the Act, for example the requirement calling for an advance process. Outsourcing will always be a part of a rationalisation or downsizing process undertaken by the enterprise. When deciding whether a dismissal is objectively justified, the needs of the enterprise shall be weighed against the disadvantage caused by the dismissal for the individual employee. Dismissal is not considered objectively justified if the employer has other suitable work in the enterprise to offer the employee.

Justified due to continued operation
Section 15-7 of the Working Environment Act

The Act moreover states that dismissal owing to an employer's actual or planned contracting out of the enterprise's ordinary operations to a third party is not objectively justified unless it is absolutely essential in order to maintain the continued operation of the enterprise.

What may be deemed to be objectively justified will rest on an arbitrary assessment in each specific case. In cases where the enterprise has very serious financial problems, it will probably be allowed to dismiss employees due to outsourcing.

When has outsourcing occurred?

Independent contractor

The rule concerning outsourcing is only applicable if assignments from the enterprise are outsourced to an independent contractor. This means an independent business operator without his or her own employees. This means that if the enterprise outsources to a

temporary help agency or a company with employees that specializes in taking assignments for other enterprises, this is outside the scope of the provision. The objective justification of the dismissal must then be assessed pursuant to the general rules on dismissal in the Act.

The enterprise's operations

By the enterprise's operations is meant the company's main functions and support functions. Most work tasks within an enterprise thus come under the provision. The main functions are what the company chiefly produces. Support functions are, for example, the switchboard, cleaning and canteen.

2.11 Layoffs

Conditions
No direct authorisation in law, but derived from practice in working life, collective pay agreements and judicial precedent

Layoffs can be used, for example, in the case of production cutbacks or shutdowns, and when the employer has objective justification. A layoff must be a temporary measure and cannot be used in cases involving permanent cutbacks in operations, in which case the rules governing dismissal would then have to be applied.

Unlawful layoffs may give the employee cause to sue the employer for lost income.

No obligation to work

In the case of a layoff, the employee is released from the obligation to work, either wholly or through reduced working hours per day or week. The employer is for his or her part released from the obligation to pay wages for the working hours not worked. An employer may order the employee to be laid off, or the employer and the employee may reach agreement on this. If your employment contract is bound by a collective pay agreement, what the basic agreement states about layoffs will in practice be overriding.

Layoff notice
Section 8-3 of the

An employer is obliged to serve layoff notice at the latest 14 days prior to the layoff period.

Layoff pay from the employer
Section 3 of the Layoff Pay Act

In the case of "full layoff" and at least 40 per cent reduction of working hours, an employee has the right to full pay from the employer the first ten days of the layoff period (the employer period). If an employee is laid off less than 40 per cent of the working hours, the employer period is 15 days. If the layoff is due to fire, accidents or natural disasters, however, the employer period does not apply.

The right to unemployment benefits from the National Insurance
Section 4-7 of the National Insurance Act

An employee has the right to unemployment benefits from the day the employer period comes to an end. The employer is obliged to notify *NAV Arbeid* prior to laying off employees. Even so, the employee should also contact *NAV Arbeid* as soon as possible after being laid off.

Duration
Section 4-7 of the National Insurance Act

Unemployment benefits for laid off workers can be paid for up to 26 weeks in the course of a period of 18 months in cases involving full or part layoff from the same employer. If the layoff exceeds 26 weeks, the employer is obliged to pay you full pay again.

Termination of employment
Section 15-3 (9) of the Working Environment Act

As an employee who has been laid off you continue to be employed, with the right and obligation to return to work when the layoff period is over. While laid off, you can freely work for others, unless your old employer needs you for short assignments. If you wish to resign during the period you are laid off, the period of notice is 14 days, regardless of previously agreed periods of notice.

Exemptions
Section 1 of the Layoff Pay Act

Employees in fish processing enterprises are exempted from the provisions of the Layoff Pay Act.

Furthermore, you are not entitled to layoff pay if the

layoff is the result of a labour dispute (strike or lock-out).

Chapter 3 The working environment

3.1 The Working Environment Act

Rights and obligations

The Act lays down various obligations for the employer to ensure a thoroughly sound working environment. In the same way, employees also have a number of obligations in relation to their employer and work colleagues pursuant to this Act.

Indispensability
Section 1-9 of the Working Environment Act

The provisions of the Working Environment Act may basically not be departed from to the detriment of the employee. The provisions may, however, expressly provide for deviations, if consent is obtained from the trade unions organising the employees involved. In such cases, the trade union must be of a certain size.

3.2 The employer's responsibilities

The working environment must be thoroughly sound. This means that the employer must ensure that the work can be performed without unnecessary risk with respect to health hazards, injuries or accidents.

The employer's most important duties

The employer's most important duties are defined in Chapter 3 and Chapter 4 of the Working Environment Act. It is employer's obligation to ensure that the provisions of the Working Environment Act are complied with.

Instructions and training

The employer is obliged to give instructions, practice and training in how the work is to be carried out. If the enterprise has more than ten employees, it must as a general rule have written work instructions. The provisions here may supplement the individual employment contract, which otherwise must have a certain minimum content of provisions. You can read

more about this in Chapter 2 of this brochure.

Requirements regarding arrangement, participation and development
Section 4-2 of the Working Environment Act

The employer is furthermore obliged to arrange the workplace so that the employee can avoid physical strain injuries. The employer is also obliged to ensure that work rooms, access ways, lighting, climate, staff rooms, cleaning etc. are in accordance with the established requirements, and to keep pollution and noise down to a manageable level. When it comes to facilitating the workplace for the functionally disabled and for pregnant women, you will find more information in Chapter 4 of the Working Environment Act. See also the brochure dealing with rights in the event of pregnancy and birth.

Safety devices
Section 4-4 of the Working Environment Act

The employer is also obliged to ensure that machines and other work equipment are provided with approved safety devices.

Information on health hazards
Section 4-5 of the Working Environment Act

The employer must ensure that employees are familiarised with substances that are possible health hazards and that they are able to handle such substances safely.

Follow-up and inspection

Moreover, the employer is obliged to supervise the work and inspect that it is carried out in accordance with the instructions given.

Employee influence Section 2-3 of the Working Environment Act

Work must be arranged so that each individual has the opportunity for self-determination and influence in his/her work situation. Work should be so arranged that monotonous and repetitive work is avoided as much as possible.

Should problems nevertheless arise, these should be raised with the employer. The safety representative and the Norwegian Labour Inspection Authority can also be contacted.

Information

The employer is obliged to provide information

obligation
Section 8-1 of the Working Environment Act

concerning issues of importance for the employees' working conditions and discuss such issues with the employees' elected representatives as early as possible, if the enterprise has at least 50 employees. The obligation means informing about current and expected activities and financial situation. The employer must also provide information on and discuss the workforce situation and decisions that may lead to considerable changes in the organisation of the work or conditions of employment. Elected employee representatives can be ordered to maintain confidentiality. These provisions may be departed from in connection with collective pay agreements.

3.3 Bullying and ostracism

The employer is responsible for ensuring that the working environment is sound so that the employees are not subjected to bullying.

Raise the problem

If an employee is subjected to bullying by work colleagues or superiors, the person in question should raise the matter with his or her employer, elected employee representative or the safety representative as soon as possible. The employer is then obliged to address the situation. The Norwegian Labour Inspection Authority may intervene with injunctions after being contacted by an employee.

Ostracism is a special form of harassment where the bully tries to force the employee to resign from the job. This can be practised by work colleagues or superiors. If the employer tries to force the employee to resign, this may be an attempt to circumvent the rules that apply to dismissal. This is illegal. Such attempts at dismissal may constitute the basis for compensation. You can read more about this in the brochure "Termination of employment and dismissal".

Sexual

Sexual harassment means uninvited sexual attention

harassment

from, for example, colleagues or superiors, which is bothersome for the person who is the focus of such attention. This will in many cases be considered the same as other types of bullying which the employer is obliged to prevent. In serious cases, this harassment may also be criminal offence pursuant to the provisions in the Civil Penal Code relating to sex crimes.

3.4 The employee's obligations

Cooperation
Section 2-3 of the Working Environment Act

Employees shall cooperate to ensure a good working environment by complying with orders and instructions from the employer. Employees must do this due to the employer's general managerial prerogative over them as employees. The employer's managerial prerogative is often defined as the right to lead, distribute and organise the work. You can read more about this in Chapter 2.

The employer's managerial prerogative

Follow-up of environment measures
Section 2-3 of the Working Environment Act

Employees are obliged to follow up and loyally comply with the environment measures that are implemented. This applies in particular to the enterprise's systematic health, environment and safety activities. Employees must comply with the measures initiated for the workplace by the employer and the Norwegian Labour Inspection Authority.

Notification obligation
Section 2-4 of the Working Environment Act

If an employee discovers flaws and shortcomings that may be hazardous to life and health, notification must be submitted to the superior and also to work colleagues, if relevant. The employee must also ensure that the employer or the safety representative is informed as soon as it is known that incidents of harassment or discrimination take place at the workplace.

Prohibition against retaliation
Section 2-5 of the Working

It is prohibited for an employer to retaliate against an employee who notifies pursuant to the right to submit notification.

Environment Act

Protective equipment
Section 2-3 (2) of the Working Environment Act

Employees shall use the prescribed protective equipment, exercise caution and otherwise contribute to the prevention of accidents and injury to health.

3.5 Control measures

Requirements to control measures
Section 9-1 of the Working Environment Act

The employer may only implement control measures in relation to employees when such measures are objectively justified by circumstances relating to the enterprise and it does not involve undue strain on the employees.

Consultation and information
Section 9-2 of the Working Environment Act

The employer is obliged as early as possible to discuss needs, design, implementation and major changes to control measures in the enterprise with the employees' elected representatives.

Before implementing such measures, the employer shall provide the affected employees with information concerning the purpose of the control measures, practical consequences of the control measures, implementation of the measures and the assumed duration of the control measures.

Obtaining health information
Section 9-3 of the Working Environment Act

The employer must not, when advertising for new employees or in any other manner, request applicants to provide other health information than is necessary in relation to performance of the duties associated with the post.

Medical examinations
Section 9-4 of the Working

The employer may only require medical examinations, such as health examinations, to be conducted when provided by statutes or regulations. Such examinations can be carried out in connection with posts involving

Environment Act

particularly high risks or when the employer finds it necessary in order to protect life or health. The hazard must be serious and appear to be concrete, present and probable to justify such examinations.

3.6 Trade unions

Freedom to organise

Employees have the right but not the obligation to organise in unions. The freedom to organise is a human right, just like the freedom of religion, freedom of expression etc. Trade unions do not only undertake pay negotiations, but also give free legal assistance to members in the event of conflicts with the employer.

Collective pay agreements

Collective pay agreements are agreements between a trade union and an employer or his/her association. Collective pay agreements often include those employees who are not members of a union. It would therefore be a good idea to obtain the relevant collective pay agreement. See Item 2.3.

3.7 The Norwegian Labour Inspection Authority

Duties

The Norwegian Labour Inspection Authority is a state agency charged with inspecting that enterprises comply with the provisions of the Working Environment Act. The Authority has local offices. Through the provision of information, guidance and inspection the Authority aims to influence employers to achieve a sound working environment. The Norwegian Labour Inspection Authority has the duty to provide guidance.

There are a number of regulations to the Working Environment Act which specify the workplace requirements in detail. These can be obtained from the local Labour Inspection Authority, (tel.: 73 19 97 00) or from www.lovdata.no. Questions may also be addressed to the Labour Inspection Authority's answering service (tel.: 815 48 222).

Anonymity

If an employee lodges complaints with the Labour Inspectorate about matters at his/her workplace, the identity of the employee shall be concealed from the employer.

3.8 Safety representatives

Sections 6-1 and 6-2 of the Working Environment Act

All enterprises with more than ten employees shall elect a safety representative. The safety representative shall safeguard the interests of employees in matters relating to the working environment. The safety representative shall discuss problems with the employer and has the right to halt hazardous work. However, the employer is primarily responsible for improving the working environment. Each employee is obliged to consider his or her own safety.

3.9 Working environment committees

Sections 7-1 and 7-2 of the Working Environment Act

Enterprises which have more than 50 employees shall have a working environment committee. The committee must have representatives from the employees and management. The committee shall help plan safety and environmental activities at the company, for example to combat air and noise pollution.

3.10 Company health service

If so indicated by the nature of the hazards at enterprises, a special company health service shall be provided. This is particularly relevant in enterprises where there is a risk that the working environment may cause health injuries in the long term. The Norwegian Labour Inspection Authority will inform about where a company health service is required.

3.11 Industrial injury insurance

Obligation to take out

Employers are obliged to insure their employees against personal injury to employees at the premises of the

industrial injury insurance
Section 3 of the Industrial Injury Insurance Act

employer. The industrial injury insurance shall entitle one to full compensation regardless of whether any person is to blame for the injury. If the employer has not insured the employee, the employee will nevertheless have the right to payment of the compensation from an insurance company.

Chapter 4 Equality and discrimination

4.1 Introduction

One universal human right is the right any person has to equality in the eyes of the law and protection against differential treatment.

Norwegian law has provisions protecting against discrimination in the Gender Equality Act, the Anti-discrimination Act and in the Working Environment Act.

The Gender Equality Act applies in cases involving differential treatment based on gender. The Anti-discrimination Act entered into force on 1 January 2006, and applies to discrimination on the basis of ethnicity, national origin, descent, skin colour, language, religion and belief. In connection with the new Act, the anti-discrimination rules in the Working Environment Act have been changed to comprise discrimination on the basis of political views, membership in a trade union, sexual orientation, functional disability and age. The amendments to the Acts are the result of the implementation of a European Union directive, and also the outcome of political will to protect society as a whole against all forms of discrimination.

4.2 The female employee

4.2.1 Introduction

Section 1 of the Gender Equality

The Gender Equality Act shall promote gender equality and aims in particular at improving the position of

Act

women. The Act shall contribute to giving women and men equal opportunities in education, employment and cultural and professional advancement. This is particularly relevant in working life. Due to the frequently different life situations for women and men, it is unavoidable that they may encounter different issues in working life.

4.2.2 Protection against differential treatment

Protection against differential treatment
Section 3 of the Gender Equality Act

Pursuant to the Gender Equality Act direct and indirect differential treatment of women and men is not permitted. Illegal differential treatment is the same as discrimination.

Direct differential treatment
Section 3 of the Gender Equality Act

Direct differential treatment means actions that discriminate between women and men because they are of different sexes, that place a woman in a worse position than that in which she otherwise would have been because of pregnancy or childbirth, or that place a woman or a man in a worse position than that in which the person concerned otherwise would have been because of her or his exercise of rights to take leave of absence that are reserved for one of the sexes.

Indirect differential treatment
Section 3 of the Gender Equality Act

The term indirect differential treatment means any apparently gender-neutral action that in fact has the effect of placing one of the sexes in a worse position than the other.

Example

An example of indirect differential treatment may be different working conditions for full-time and part-time employees. It remains a fact that women continue to spend the most time on caring for children. This often means that it is mostly women who are part-time employees. If an enterprise introduces poorer working conditions for part-time employees than full-time employees, and there are mostly female part-time employees, this may be considered to be indirect

discrimination and thus illegal.

Exceptions
Section 3 of the Gender Equality Act

In certain cases, however, indirect differential treatment is permitted if the action has an objective purpose that is independent of gender, and the means that are chosen are suitable, necessary and are not a disproportionate intervention in relation to the said purpose.

4.2.3 Gender equality in connection with employment etc.

Hiring, promoting, dismissal or layoff
Section 4 of the Gender Equality Act

Basically an employer may hire whosoever he/she wishes. In some areas, however, the legislators have restricted this liberty because it may have unfortunate results. Such an example is the consideration of women's and men's equal opportunities in the labour market. Due to the fact that differential treatment based on gender is prohibited pursuant to the Gender Equality Act, no difference must be made between women and men when it comes to hiring, promoting, dismissing or laying off employees.

Provided that there is no obvious objective reason for it, a post must not be advertised only for the one gender. The advertisement must not give the impression that the employer expects one gender for the post. However, the employer is not prevented from encouraging persons of one gender to apply in the advertisement.

How to determine whether one has been subjected to differential treatment

A job seeker who has not been given an advertised post may demand that the employer state in writing the education, experience and other clearly demonstrable qualifications for the post the appointed person has. It is not a requirement that the person being compared to is of another sex. There can also be differential treatment between two women, for example if one of them was not given the post because she is pregnant.

Legal differential

Indirect differential treatment which in accordance with

treatment of one gender (affirmative action)	the aim of the Gender Equality Act promotes equality between the genders is not in contravention of the Act's prohibition against differential treatment. This also applies to special rights and measures aiming to protect women in connection with pregnancy, childbirth and breastfeeding.
Pay Section 5 of the Gender Equality Act	Women and men in the same enterprise shall have equal pay for the same work or work of equal value. The pay shall be fixed in the same way for women and men regardless of sex. The right to equal pay for the same work or work of equal value shall apply regardless of whether such work is connected with different trades or professions or whether the pay is regulated by different collective pay agreements. Whether the work is of equal value shall be determined after an overall assessment in which importance is attached to the expertise that is necessary to perform the work and other relevant factors, such as effort, responsibility and working conditions. If parts of a collective pay agreement are in breach of the equal pay principle of the Gender Equality Act, those parts that are in breach cease to apply due to their invalidity.
Pregnancy and birth Section 3a of the Gender Equality Act	In connection with pregnancy and childbirth, employees have a number of rights. These are described in more detail in the brochure "Pregnancy and childbirth rights", which can be obtained free of charge from Juss-Buss or JURK.
Burden of proof Section 16 of the Gender Equality Act	If there are circumstances that give reason to believe that there has been direct or indirect differential treatment in contravention of the provisions of this Act regarding employment or working conditions, the employer must prove on balance of probabilities that the differential treatment is not in breach of the Gender Equality Act. Shared burden of proof means that if an employee or job

seeker presents factual circumstances that create an assumption that the equal treatment principle has been violated, it will be up to the employer to render probable that this is not due to the alleged reason behind the discrimination. Such factual circumstance may for example be statistical information regarding pay at an enterprise.

The Equality and Anti-Discrimination Ombud

If you believe that you have been subjected to differential treatment based on gender, you may lodge a complaint with the Equality and Anti-Discrimination Ombud. See Item 4.4 for more information.

4.3 Discrimination on other grounds than gender

4.3.1 Introduction

Section 13-1 of the Working Environment Act

Discrimination on other grounds than gender is also prohibited. The prohibition applies to all aspects of the contract of employment, including when hiring, during the working relationship and on termination of the working relationship. The prohibition is regulated by the Working Environment Act and the Anti-discrimination Act.

4.3.2 Protection against discrimination pursuant to the Working Environment Act

Section 13 of the Working Environment Act protects employees against direct and indirect discrimination based on political views, membership of a trade union, sexual orientation, functional disability or age.

Who is covered by the Act

Section 13-2 of the Working Environment Act

The prohibition against discrimination comprises all types of employees and their working relationship, i.e. permanent employees, part-time employees and temporary employees. The same also applies in relation to the employer's choice and treatment of independent business operators and leased employees.

Collective pay agreements Section 13-2 (4) of the Working Environment Act	The protection against discrimination allows for differential treatment due to membership in trade unions when it comes to pay and conditions in collective pay agreements.
The content of the prohibition against discrimination	Circumstances that must be assessed to determine whether discrimination has occurred are whether the differential treatment has had an unfair objective, whether it is disproportionate intervention, and whether the differential treatment is necessary for the performance of the work or profession.
Obtaining information when hiring Section 13-4 of the Working Environment Act	An employer must not when advertising for new employees or in other ways request that applicants provide information concerning sexual orientation, their views on political issues or whether they are a member of a trade union. An employer must not implement measures to obtain such information in any other way.
Exceptions Section 13-3 (2) and (4)	The prohibition does not apply if obtaining the information is connected to the nature of the post or part of the purpose of the enterprise in question. If such information will be required, this must be stated when advertising the post.
Duty of disclosure Section 13-7 of the Working Environment Act	A job seeker who has not obtained an advertised post may demand that the employer state in writing the education, experience and other clearly demonstrable qualifications for the post which the person appointed to the post has.
Adaptation for employees with functional disabilities Section 13-5 of the Working Environment Act	An employer shall as far as possible implement necessary measures to enable employees with functional disabilities to obtain or retain employment, perform and make progress in the work and have access to training and other forms of competence development. This shall not apply if such measures would involve an excessive burden for the employer.

Burden of proof Section 13-8 of the Working Environment Act	An employer must prove on balance of probabilities that the differential treatment has not taken place if an employee or job seeker produces information that gives reason to believe that such differential treatment has occurred. This also applies in the event of retaliation in breach of section 2-4 of the Working Environment Act due to an employee's notification of breach of the prohibition against discrimination.
The effects of breach of the prohibition against discrimination Section 13-9 of the Working Environment Act	Anyone who has been discriminated against in breach of section 13 of the Working Environment Act or subjected to retaliation in breach of section 2-4 of the Working Environment Act may claim compensation without regard to the fault of the employer. Thus an objective liability is in force for discrimination. Compensation for financial loss as a result of illegal discrimination or retaliation may be claimed pursuant to the general rules in the Working Environment Act.

4.3.3 Protection against discrimination pursuant to the Anti-discrimination Act

When the Act applies Section 3 of the Anti-discrimination Act	The Anti-discrimination Act applies in cases involving discrimination on the basis of ethnicity, national origin, descent, skin colour, language, religion and belief.
Protection against discrimination Section 4 of the Anti-discrimination Act	Pursuant to the Act, direct and indirect discrimination on the basis of ethnicity, national origin, descent, skin colour, language, religion or belief is prohibited.
Direct discrimination	"Direct discrimination" shall mean that the purpose or effect of an act or omission is such that persons or

	enterprises are treated less favourably than others are, have been or would have been treated in a corresponding situation.
Indirect discrimination	"Indirect discrimination" shall mean any apparently neutral provision, condition, practice, act or omission that actually puts a job seeker or employee at a particular disadvantage compared with other job seekers or employees on such grounds as are mentioned above.
Exemptions Section 4 fourth paragraph of the Anti-discrimination Act	Differential treatment that is necessary in order to achieve a legitimate aim, and which does not involve a disproportionate intervention in relation to the person or persons so treated is not regarded as discrimination pursuant to the present Act. Specific measures that contribute to promoting the purpose of the Act shall also not be regarded as discrimination pursuant to this Act.
Prohibition against harassment Section 5 of the Anti-discrimination Act	Harassment of an employee on such grounds as mentioned in the prohibition against discrimination is prohibited. "Harassment" shall mean acts, omissions or statements which have an offensive, frightening, hostile, degrading or humiliating effect, or which are intended to have such an effect.
Prohibition against obtaining information Section 7 of the Anti-discrimination Act	Employers shall not, when advertising for new employees or in another manner, ask applicants to provide information regarding their stance on religious or cultural issues. Nor may employers initiate measures to obtain such information in another manner
Exceptions Section 7 second paragraph of the	The prohibition in the first paragraph shall not apply if the information regarding the applicants' stance on religious or cultural issues is obtained on account of the nature of the post, or if it is part of the purpose of the

Anti-discrimination Act	enterprise concerned to promote specific religious or cultural views and the stance of the employee will be significant for the accomplishment of the said purpose.
Protection against reprisal Section 9 of the Anti-discrimination Act	It is prohibited to retaliate against anyone who has made a complaint concerning a breach of the provisions in the Act. This shall not apply if the complainant has acted with gross negligence.
Burden of proof Section 10 of the Anti-discrimination Act	As with the anti-discrimination provisions in the Gender Equality Act and the Working Environment Act, the burden of proof is shared when it comes to assessing whether discrimination or harassment has occurred. Employers must render probable that discrimination or harassment has not occurred, if an employee or job seeker produces information that gives reason to believe that such differential treatment has occurred.

4.4 What can you do?

The Equality and Anti-Discrimination Ombud	If you believe that you have been subjected to differential treatment or discrimination on the basis of reasons that violate the Gender Equality Act, the Working Environment Act or the Anti-discrimination Act, you may lodge a complaint with the Equality and Anti-Discrimination Ombud. This Ombud is a common enforcement agency for discrimination cases regulated by the Equality and Anti-Discrimination Ombud Act. If the Ombud finds that the Act has been breached, the case may be put to the Norwegian Equality Tribunal, unless a voluntary settlement can be achieved between the parties. The Norwegian Equality Tribunal makes a decision in the case based on the statement made by the Ombud. The Tribunal may for example prohibit a hiring or advertisement that is in breach of the Gender Equality Act. It cannot, however, reverse a hiring already implemented or award the employee who has been

passed over compensation.

The Equality and Anti-Discrimination Ombud enforces the Gender Equality Act, the Working Environment Act and the Anti-discrimination Act, and gives advice and guidance on the provisions in the Acts. Any person may address the Ombud, including employees, employers and organisations. The Ombud also addresses issues on its own initiative. Case processing by the Ombud is free of charge. You can obtain more information on www.ldo.no

Civil action

A person who is subjected to discrimination or harassment in breach of the prohibition against discrimination in the above-mentioned Acts, may in some cases be entitled to compensation from the employer. To be awarded compensation for discrimination, a civil action must be brought against the employer in the courts.

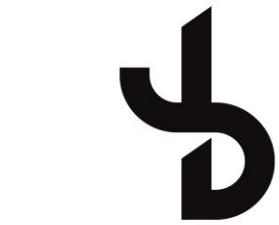
List of contacts

The Norwegian Labour Inspection Authority's response service (Arbeidstilsynets svartjeneste)
Tel.: 815 48 222
www.arbeidstilsynet.no

The Directorate of the Norwegian Labour Inspection Authority
Tel.: 73 19 97 00

JURK (Legal Advice for Women)
Tel.: 22 84 29 50

The Equality and Anti-Discrimination Ombud (Likestillings- og diskrimineringsombudet)
Postboks 8048 Dep
0031 OSLO
Office address: Grensen 5-7
Tel.: 24 05 59 50/800 41 556
Fax: 24 05 59 60
www.ldo.no
post@Ldo.no



Jussbuss

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