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Federal Act on Gender Equality (Gender Equality Act, GEA)

of 24 March 1995 (Status as of 1 July 2020)

The Federal Assembly of the Swiss Confederation,

on the basis of Articles 8 paragraph 3, 110 paragraph 1 letter a, 122 and 173 paragraph 2 of the Federal Constitution^{1,2}
and having considered the Federal Council Dispatch dated 24 February 1993³,
decrees:

Section 1 Purpose

Art. 1

This Act has the aim of furthering true equality between women and men.

Section 2 Equality at Work

Art. 2 Principles

This Section applies to employment relationships under the Swiss Code of Obligations⁴ as well as to all employment relationships under public law in the Confederation, cantons and communes.

Art. 3 Prohibition of discrimination

¹ Employees must not be discriminated against on the basis of their sex, whether directly or indirectly, including on the basis of their marital status, their family situation or, in the case of female employees, of pregnancy.

AS 1996 1498

¹ SR 101

² Amended by No I of the FA of 14 Dec. 2018, in force since 1 July 2020 (AS 2019 2815; BBl 2017 5507).

³ BBl 1993 I 1248

⁴ SR 220

² This prohibition applies in particular to hiring, allocation of duties, setting of working conditions, pay, basic and continuing education and training, promotion and dismissal.

³ Appropriate measures aimed at achieving true equality are not regarded as discriminatory.

Art. 4 Discrimination through sexual harassment

Any harassing behaviour of a sexual nature or other behaviour related to the person's sex that adversely affects the dignity of women or men in the workplace is discriminatory. Such behaviour includes in particular threats, the promise of advantages, the use of coercion and the exertion of pressure in order to obtain favours of a sexual nature.

Art. 5 Employees' rights

¹ Anyone who is the victim of discrimination within the meaning of Articles 3 and 4 may apply to the court or to the administrative authority for an order:

- a. prohibiting or stopping threatened discrimination;
- b. requiring existing discrimination to cease;
- c. confirming that discrimination is taking place if it is continuing to have a disruptive effect;
- d. for the payment of any salary due.

² If the discrimination relates to the refusal of employment or to dismissal under the Code of Obligations, the person concerned is entitled only to a compensatory payment. This payment must be fixed by taking all the circumstances into account and is calculated on the basis of the probable or actual salary.

³ In the case of discrimination through sexual harassment, the court or the administrative authority may also award the person concerned compensation, unless the employer proves that it took measures that have been proven in practice to be necessary and adequate to prevent sexual harassment and which it could reasonably have been expected to take. The compensation must be fixed by taking all the circumstances into account and is calculated on the basis of the average Swiss salary.

⁴ The compensation in the case of discrimination through the refusal of employment in terms of Paragraph 2 must not exceed an amount equivalent to three months' salary. The total amount of compensation must not exceed this sum even if two or more persons claim compensation for the discriminatory refusal of the same position. The compensation in the case of discrimination through dismissal under the Code of Obligations in terms of Paragraph 2 and in the case of discrimination through sexual harassment in terms of Paragraph 3 must not exceed an amount equivalent to six months' salary.

⁵ Claims for damages for financial loss and pain and suffering as well as further contractual claims are reserved.

Art. 6 Reduced burden of proof

In relation to the allocation of duties, setting of working conditions, pay, basic and continuing education and training, promotion and dismissal, discrimination is presumed if the person concerned can substantiate the same by prima facie evidence.

Art. 7 Actions and appeals by organisations

¹ Organisations that have been in existence for at least two years and that have as their object in terms of their articles of incorporation the promotion of gender equality or safeguarding the interests of employees may in their own names have a finding of discrimination declared if the probable outcome of proceedings will have an effect on a considerable number of jobs. They must allow the employer concerned the opportunity to state his position before they institute conciliation proceedings or bring an action.

² The provisions on actions and appeals by individuals also apply by analogy.

Section 3
Special Provisions for Employment Relationships
governed by the Code of Obligations⁵**Art. 8** Procedure in the case of discriminatory refusal of employment

¹ Persons whose application for employment has been refused and who claim discrimination may request a written statement of reasons from the employer.

² The right to compensation in accordance with Article 5 paragraph 2 is forfeited unless an action is brought within three months of the employer giving notice of refusal of employment.

Art. 9 Procedure in the case of discriminatory dismissal

If an employee is discriminated against in the case of dismissal, Article 336b of the Code of Obligations⁶ applies.

Art. 10 Protection against dismissal

¹ The termination of employment by an employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee.

² Protection against dismissal applies for the duration of any complaints procedure at the place of work, and of any conciliation or court proceedings, and for six months thereafter.

⁵ SR 220

⁶ SR 220

³ The dismissal must be challenged in court before the expiry of the period of notice of termination. The court may order the temporary reinstatement of the employee for the duration of the proceedings if it appears likely that the requirements for overturning the dismissal are well founded.

⁴ The employee may opt not to continue in employment for the duration of the proceedings and may instead claim compensation in accordance with Article 336a of the Code of Obligations⁷.

⁵ This Article applies by analogy to dismissals that result from a complaint filed by an organisation in terms of Article 7.

Art. 11 and 12⁸

Section 4

Legal Protection in the case of Public Employment Relationships

Art. 13

¹ Legal protection in the case of employment relationships under public law is governed by the general provisions on the administration of federal justice. In the case of complaints made by federal staff, Article 58 of the Federal Act of 30 June 1927⁹ on Public Officials also applies.

² If a person is discriminated against in the rejection of an application that would establish an employment relationship for the first time, then Article 5 paragraph 2 applies. Compensation may be requested at the same time that a complaint about the decision rejecting the application is made.

³ Federal employees may have recourse to a conciliation board within the period provided in terms of Article 50 of the Federal Act of 20 December 1968¹⁰ on Administrative Procedure. This Board advises the parties and attempts to bring about a settlement.¹¹

⁴ ...¹²

⁷ SR 220

⁸ Repealed by Annex 1 No II 1 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS 2010 1739; BBl 2006 7221).

⁹ [BS 1 489; AS 1958 1413 Art. 27 let. c, 1997 2465 annex 4, 2000 411 No II 1853, 2001 894 Art. 39 lett. 1 2197 Art. 2 3292 Art. 2, AS 2008 3437 No I 1]. See now Art. 35 and 36 of the Federal Personnel Act of 24 March 2000 (SR 172.220.1).

¹⁰ SR 172.021

¹¹ Amended by No I of the Federal Act of 8 Oct. 2004, in force since 1 March 2005 (AS 2005 1023; BBl 2003 7809).

¹² Repealed by Annex No 1 of the Federal Supreme Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS 2006 1205; FF 2001 4202).

⁵ The proceedings are free of charge, other than in cases of vexatious litigation. In proceedings before the Federal Supreme Court, costs are governed by the Federal Supreme Court Act of 17 June 2005^{13,14}

Section 4a¹⁵ Equal Pay Analysis and Audit

Art. 13a Obligation to conduct an equal pay analysis

¹ Employers who employ 100 or more employees at the start of any year shall conduct an internal equal pay analysis for that year. Apprentices are not regarded as employees for this purpose.

² The equal pay analysis shall be repeated every four years. If the number of employees falls below 100 during this period, the equal pay analysis shall be repeated when the number reaches 100 again.

³ If the equal pay analysis indicates that equal pay requirements are being met, the employer concerned shall be exempted from the obligation to conduct an analysis.

Art. 13b Exception to the obligation to conduct an equal pay analysis

The obligation to conduct an equal pay analysis does not apply to employers:

- a. that are subject to verification of equal pay compliance as part of a procedure for the award of a public contract;
- b. that are subject to such verification in terms of an application for subsidies; or
- c. that have already been subject to such verification and have proven that they meet the requirements, unless more than four years has elapsed since the reference month.

Art. 13c Method of equal pay analysis

¹ The equal pay analysis shall be conducted according to a scientific method and in accordance with the law.

² The Confederation shall provide all employers with a standard analysis tool free of charge.

Art. 13d Audit of the equal pay analysis

¹ Employers subject to the Swiss Code of Obligations¹⁶ shall have their equal pay analysis audited by an independent body. They may choose between:

¹³ SR 173.110

¹⁴ Sentence inserted by Annex No 1 of the Federal Supreme Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS 2006 1205; FF 2001 4202).

¹⁵ Inserted by No I of the FA of 14 Dec. 2018, in force from 1 July 2020 to 30 June 2032 (AS 2019 2815; BBl 2017 5507).

¹⁶ SR 220