

A blurred, high-angle photograph of a crowd of people walking on a light-colored surface, possibly a sidewalk or a public square. The image is heavily motion-blurred, creating a sense of movement and a busy atmosphere. The colors are muted, with a lot of greys, whites, and soft blues. The overall composition is abstract and focuses on the collective movement of the group rather than individual faces.

## Equal treatment in the Netherlands

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### Colofon

Publication: Ministry of Social Affairs and Employment, March 2003  
Text: Tekstburo Gort, Amsterdam  
Graphic design: Vincent Schepman, Zoetermeer  
Photo cover: The Stock Market, Amsterdam  
Production: Ministry of Social Affairs and Employment - FBPGMA, The Hague

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## Welcome to the Netherlands!

After the Second World War it was common practice in the Netherlands for women who worked for the post office to be sacked when they got married. Nowadays, in 2003, that is virtually inconceivable. The Netherlands has an array of legislation governing equal treatment. People who feel they are not being treated equally are in a good position in the eyes of the law. Employers who do not treat their employees equally must have some justification for doing so. Otherwise, they are breaking the law. In short, a lot has been regulated and, in all honesty, that is mainly due to European legislation and regulations. If those were not in place, things would have progressed much more slowly in the Netherlands.

There are two facets to equal treatment: the legal and the cultural facet. Like any other country, the Netherlands has certain cultural traditions. To some extent, unequal treatment is something that we do unwittingly. There are employers who unconsciously and unintentionally treat their employees unequally. That is why, besides having legislation, the Dutch way is to continually make people aware of the need for equal treatment. We have a strong culture of consultation in this country and this provides a channel for passing on information. We also distribute information to individual employers and employees.

Just as married women once used to be dismissed, the same fate currently awaits employees in the Netherlands when they reach the age of 65. But is turning 65 a reason to terminate someone's employment? Suppose that person is still fighting fit? At the moment the government thinks that an employer is entitled to dismiss someone of that age, but that is not written in stone. It is clear that equal treatment is a dynamic process, as you will see from this booklet.

Theo Langejan,  
Director-General for International and Labour Relations,  
Ministry of Social Affairs and Employment

## Equal treatment is regulated by law

**Everyone in the Netherlands is entitled to equal treatment. Discrimination, on any grounds whatsoever, is prohibited. That is the principle underlying Dutch law. This equality principle has been developed into a wide-ranging package of legislation.**

### The Constitution of the Kingdom of the Netherlands

Equal treatment is a fundamental right in the Netherlands, provided for in the Constitution of the Kingdom of the Netherlands (1983). Article 1 of the Constitution states that 'All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted'. By introducing this basic principle in Article 1 of the Constitution, the Netherlands stresses the importance attached to equal treatment.

### Equal Treatment Act

The Equal Treatment Act (Algemene wet gelijke behandeling, AWGB) became law in 1994, giving concrete form to the prohibition on discrimination enshrined in the Constitution. The Equal Treatment Act stipulates that no one in the Netherlands may be treated unequally. The grounds are specifically mentioned: religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation and civil status. Specifically, this Act prohibits discrimination at work or in the exercise of a liberal profession, in offering goods and services and in providing educational or careers guidance. The Act does not apply to legal relations within religious communities or in the private domain.

The Equal Treatment Act aims to promote equal participation in society. Every person must be free to live and work in society without being discriminated against because of his or her personal characteristics. The effect of the Act is evaluated every five years.

## The Equal Treatment Commission

The law is important, enforcement equally so. Under the Equal Treatment Act, responsibility for monitoring compliance has therefore been entrusted to a special body. Set up by the Dutch government, the Equal Treatment Commission is an independent body of experts who assess, on request, whether specific regulations are in accordance with the law. Individual employees and employers, trade unions and even a company's works council may bring a matter before the Equal Treatment Commission. If, for example, an employer wants to introduce flexible pay arrangements, he or she can ask the Commission to examine whether the proposed system complies with the Equal Treatment Act. It is also possible to file a complaint, which the Equal Treatment Commission will then investigate free of charge. Once sufficient information has been gathered, a hearing is held. The hearing is, in principle, public. The person filing the complaint may be represented by a lawyer, but this is not compulsory. He or she may also act for him or herself or ask another person to represent his or her interests. The Commission then decides on the case in closed session. In its decision, the Commission indicates whether there has been any contravention of the law. The Commission occasionally makes a decision public in an attempt to prevent similar discrimination in the future. It should be noted that the Commission's decisions are not legally binding. Research has shown, however, that they are usually complied with.



Commissie Gelijke Behandeling

The Commission is also authorised to conduct investigations of its own accord and subsequently publish its findings. It is not strictly necessary to file a complaint with the Commission. Anyone who feels they have been illegally discriminated against can take the matter straight to court.

The Equal Treatment Commission is an important consultative partner for the Ministry of Social Affairs and Employment. It helps with investigations and gives the government advice, both solicited and unsolicited, about issues concerning equal treatment.

## Equal Opportunities Act

Men and women who do work of equal value must receive equal pay for that work. This is set down in the Equal Opportunities Act (Wet gelijke behandeling van mannen en vrouwen, WGB). This Act, originally passed in 1980 and amended in 1989, 1994 and 1998, sets out detailed rules on the equal treatment of men and women at work. Besides equal remuneration, the Act covers equal treatment in access to employment and equal treatment in pension provision. The Act also lays down rules on matters such as affirmative action, burden of proof and discrimination in respect of the liberal professions.

## Dutch Civil Code

The prohibition on discrimination between male and female employees with a civil-law employment contract is contained in Articles 7:646 and 7:647 of the Dutch Civil Code.

Under Article 7:648 of the Civil Code, an employer may not discriminate between employees on the basis of a difference in working hours. This specifically applies to all conditions under which an employment contract is entered into, extended or terminated.

Article 7:649 of the Code prohibits an employer from discriminating between employees in terms of their conditions of employment on the basis of the nature of the employment contract (temporary or otherwise), unless there is objective justification for doing so.

## Equal treatment and working hours

The Equal Treatment (Working Hours) Act (Wet verbod op onderscheid naar arbeidsduur, WOA) became law in the Netherlands in 1996. This Act prohibits an employer from discriminating between full-time and part-time employees, unless there is objective justification for doing so. The underlying principle of the Act is that part-time work is equivalent to full-time work. Permanent and other employees should not face uncertainty about their legal status or experience discrimination on the basis of their working hours. It is also unlawful to discriminate between part-timers who work more or fewer hours. A part-time worker is proportionately entitled to the same pay, the same bonuses and the same number of days' holiday. This also applies to the accumulation of pension rights.

## Working hours

An employer excludes people who work fewer than twelve hours a week from receiving compensation for working at unaccustomed times. The employer is discriminating on the basis of working hours. This discrimination is not objectively justified, since working irregular hours is always inconvenient, irrespective of whether someone is employed on a full-time or part-time basis.

Under the Working Hours (Adjustment) Act (Wet aanpassing arbeidsduur, WAA, 2000), employees in the Netherlands who have worked for their current employer for a year have the individual right to increase or decrease their working hours. Employers are obliged to comply with such a request, unless their interests would be seriously damaged.

## Temporary and permanent employment contracts

The Equal Treatment (Temporary and Permanent Employees) Act (Wet gelijke behandeling tijdelijke en vaste werknemers) came into force at the end of 2002. Under this Act, employers may not discriminate in terms of conditions of employment between employees with a permanent contract and those with a temporary contract, unless there is objective justification for doing so. The new Act does not apply to agency staff (temps). This Act imposes an obligation on employers to inform employees with a temporary contract of vacancies for a permanent post, clearly and in good time.

## Two new bills

Two new bills are making their way through parliament: one prohibiting age discrimination in employment and one on the equal treatment of disabled/chronically ill people.

Under the first, age discrimination would be permitted only if there were objective justification for imposing an age limit. The prohibition on age discrimination would apply to every aspect of employment, from recruitment, selection and placement to conditions of employment and termination of contract. It would also apply to the liberal professions, vocational training, vocational guidance, career planning and membership of employers' or employees' associations and professional associations.

The bill on the equal treatment of disabled/chronically ill people will entitle people who have a disability or suffer from a chronic illness to effective alterations to enable them to play a full part in society. The bill was adopted in Parliament on April 1st 2003 and will become effective on December 1, 2003. Initially, this would cover the same areas as the age discrimination bill, and also public transport. At some point in the future this entitlement would be extended to other areas, such as housing and access to goods and services. Public authorities, businesses and institutions would have to make the necessary alterations if disabled and chronically ill people ask them to do so. However, this may not impose any disproportionate burden on those required to put them in place. Effective alterations are defined as measures that are appropriate and necessary to enable participation in the life of society like any other person. This concept will be defined in more detail in the case law. The bill also prohibits unjustified discrimination on the grounds of disability/chronic illness.

The Equal Treatment Commission would monitor compliance with the prohibition on age discrimination and investigate complaints. Disabled and chronically ill people would also be able to complain to the Equal Treatment Commission, in the event, for example, of a failure to make the requested alterations. Such matters may of course always be brought before a civil court.

## **Direct and indirect discrimination is prohibited in the Netherlands**

A distinction is made in the Netherlands between direct and indirect discrimination:

- in the case of **direct discrimination**, people are treated unequally on the basis of their religion, political opinion, belief, race, sex, nationality, sexual orientation and civil status. Direct discrimination is always unlawful, unless the law specifies exceptions.
- in the case of **indirect discrimination**, people are not directly treated unequally, but in practice one particular group is put at a disadvantage. Indirect discrimination is only permitted if it can be objectively justified: discrimination must be absolutely necessary for the proper performance of the work.

## Not allowed!

An employee of Moroccan origin is paid less because he is a foreigner. The employer thinks that foreigners are less able and therefore does not want to pay him the same as a Dutch employee. This is a form of direct discrimination and is prohibited under Dutch legislation.

## When is indirect discrimination objectively justified?

An employer must have a legitimate reason for indirect discrimination. The law stipulates that:

- indirect discrimination must serve a compelling purpose that must be of great importance to the company;
- indirect discrimination must be an appropriate means of achieving this aim;
- indirect discrimination must be necessary to achieve this aim.

## Indirecte discrimination

A company is advertising for a cleaner (M/F) with a good knowledge of Dutch. This advertisement is an example of indirect discrimination. It may be more difficult for some foreign applicants to meet this requirement, whereas it is not a problem for Dutch nationals. Indirect discrimination is only permitted if it is objectively justified, i.e. if the requirement is necessary in order to do the job properly. In this case the employer must explain why this language requirement is so important for the job advertised.

In the case of working hours and a temporary or permanent contract of employment, no distinction is made between direct and indirect discrimination. Whenever there is a possibility of discrimination on the basis of working hours or on the basis of a temporary or permanent contract, the case is always examined to see whether discrimination can be objectively justified.

Under the law, however, it is not prohibited to offer someone a job for, say, twenty hours. Nor is it illegal to offer a contract for, say, one year. Employers may decide for themselves how long they want to employ some-

one and what their working hours will be. In terms of their conditions of employment, however, part-timers must be treated in the same way as full-timers, and temporary employees in the same way as permanent employees.

### **Is this allowed?**

A Dutch company offers a wage premium for a typical man's job, because there is a shortage of workers to do this particular job. The company does not pay a premium for an equivalent 'woman's job'. The wage premium is linked to the job, not the jobholder's sex. So there is no direct discrimination. But the measure does result in discrimination between men and women. Is this discrimination objectively justified? The employer must demonstrate that the labour shortage is so bad that higher pay has to be offered. The premium may not be higher than necessary, and the situation must be regularly reviewed to see whether it still needs to be paid. Naturally, the premium must have nothing to do with discrimination on the grounds of sex.

## The Netherlands and beyond

### **Equal treatment is also high on the agenda in Europe.**

Community law on equal treatment is of great importance to the Member States of the European Union, particularly because Community law takes precedence over national law and because of the direct application of Article 141 of the EC Treaty. Equal treatment at work is also mentioned in numerous international sources of law. These international standards supplement Community and national law on equal treatment. In other words, Dutch citizens can directly refer to these international standards in court. Furthermore, national courts and the European Court can use these international standards as an interpretative framework when explaining and applying the law.

#### **Article 13 EC Treaty**

The Treaty of Amsterdam, which entered into force on 1 May 1999, stipulates that the European Council of Ministers 'may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. The fifteen Member States of the European Union have hereby stated that they will make an extra effort to achieve equal treatment and combat discrimination. The Netherlands stresses the importance of this.

Two Directives have now been adopted based on Article 13 of the Treaty. The Netherlands is working on implementing these Directives in its national legislation, which means that two new non-discrimination grounds will be added to the existing list: age and disability/chronic illness.

#### **Article 141 EC Treaty**

Article 141 of the EC Treaty is also important for European and Dutch legislation on equal treatment. Under Article 141 all Member States of the European Union must ensure that male and female workers receive equal pay for work of equal value. In practice, however, there is a wage gap, both in the Netherlands and elsewhere. The European Commission wants to tackle this. For the Netherlands, this is one reason to devote additional attention to the subject, through research and information campaigns.

The Netherlands is keen to work on new proposals in the area of equal treatment, and actively supported the European Commission's proposal for an amended Second Directive. The Netherlands is therefore pleased that there is now a new (amended) Directive.

### **International Convention on the Elimination of All Forms of Discrimination against Women**

The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW or the UN Women's Convention) contains several provisions that can help enhance the legal status of women. The UN Women's Convention acknowledges the structurally disadvantaged position of women and aims to eliminate discrimination against them. Under this Convention, the Netherlands - like other countries - has a clear obligation to improve the position of women, through measures such as affirmative action. Using a combination of legislation, policy and public information, the Dutch government is making every effort to meet its obligations under the Convention.

### **International Convention on the Elimination of All Forms of Racial Discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted in 1965. The Convention stipulates that Member States must submit a report every two years and makes provision for a Committee on the Elimination of Racial Discrimination. It outlines a procedure for settling complaints from States Parties and also from individuals, provided the state concerned has declared that it recognises the competence of the Committee to hear individual complaints. Using a combination of legislation, policy and public information, the Dutch government is making every effort to meet its obligations under the Convention.

### **Conventions of the International Labour Organisation**

Of all the conventions of the International Labour Organisation (ILO), Conventions 100, 111, 156 and 175 are of particular relevance to equal treatment. Convention 100 (concerning Equal Remuneration for Men and Women Workers for Work of Equal Value) and Convention 111 (concerning Discrimination in Respect of Employment and Occupation) broadly cover the same areas as national and Community equal treatment law. ILO Convention 156 applies to workers with family responsibilities, while Conven-

tion 175 concerns part-time work. With the Working Hours Act and the Working Hours (Adjustment) Act, the Netherlands fulfils its obligations under this Convention.

## Equal treatment in practice

The Netherlands devotes a great deal of attention to providing information about equal treatment. The legislation is explained in various leaflets. The approach is always about how equal treatment works in practice and what you can do if you are the victim of unequal treatment. The sections that follow look at some specific examples.

### Policy in the Netherlands

The Ministry of Social Affairs and Employment is not the only ministry to set out policy on equal treatment. Other ministeries, such as the Ministry of the Interior & Kingdom Relations, the Ministry of Health, Welfare & Sport and the Ministry of Education, Culture & Science, also contribute. Likewise, the social partners, the Equal Treatment Commission and various non governmental organisations (NGOs) are consulted. Works councils also have a part to play. The Policy of the Ministry of Social Affairs and Employment constantly focuses on mobilising the various different parties involved, so that equal treatment becomes a broadly established concept in society, starting in the workplace.

## Equal treatment in recruitment and selection

**The right to equal treatment at work starts with the recruitment and selection of personnel. An employer is of course free to choose the best candidate for the job. But in the Netherlands an employer is not allowed to discriminate between the applicants. Each applicant must have an equal chance of getting the job.**

### The rules

Job applicants must be treated equally. This applies to all stages of the recruitment and selection process, from advertising the vacancy through to appointment. Specifically, an employer may not discriminate on the basis of:

- religion
- belief
- political opinion
- race
- sex
- nationality
- sexual orientation
- civil status
- working hours
- temporary or permanent contract.

Age and disability/chronic illness will shortly be added to this list.

The equal treatment laws apply not only to employers. Employment offices, temping agencies, head-hunters and other intermediaries must also respect the law. An intermediary who, for example, rejects an applicant of foreign origin because the client does not want to employ foreigners, is himself acting in violation of the law.

Besides the statutory regulations, there are also rules of decency in the Netherlands. These have been drawn up by the Dutch Association for Personnel Policy, in association with the Labour Foundation, a joint consultative body of employers' and employees' associations. The basic principle is

that each job applicant must be treated decently and with due care. A recruitment code is available, containing all the rules of decency that an organisation must observe in the recruitment and selection of personnel. There is also a complaints office that deals with complaints involving breaches of the rules of decency during the application procedure.

## Rules for employers

- A vacancy notice may only state the requirements that are relevant for the job. The wording of the advertisement must clearly indicate that both men and women may apply. An affirmative action policy is allowed, but must be mentioned in the vacancy notice.
- During the job interview the employer may not ask any questions of a directly or indirectly discriminatory nature. For example, he or she may not ask whether the applicant is pregnant (direct discrimination on the grounds of sex) or whether the applicant wishes to have children (indirect discrimination on the grounds of sex).
- The job requirements may not be changed in the course of the application procedure.

## Pregnancy

During her job interview a woman mentioned that she was pregnant. She was subsequently turned down by the company, even though she was well qualified for the job. The woman filed a complaint with the Equal Treatment Commission. The Commission ruled in the woman's favour and informed the company of its decision. The company responded positively. Although the vacancy in question had already been filled, the woman would be offered the next suitable vacancy that arose.

## Exceptions under the law

All job applicants must be treated equally in the Netherlands. There are a few exceptions to this general rule:

1. Affirmative action: an employer may express a preference for women or members of ethnic minority groups, provided the percentage of women or ethnic minorities in the company is lower than required in the jobs in

question. In this way the Dutch government hopes to eliminate any disadvantage experienced by women and members of ethnic minority groups in the labour market.

2. Gender-specific occupations: a man or a woman may specifically be recruited for some occupations, the so-called gender-specific occupations. The Equal Opportunities Act and a Decree specify occupations where exceptions may be made. They include acting and singing.
3. Race-specific occupations: if an occupational activity can only be performed by someone from a specific ethnic background, recruitment may be 'race-specific'. The Equal Treatment Act and a Decree specify cases where exceptions may be made. They include recruiting a male black actor for the role of Martin Luther King, for example.
4. Belief: if a specific religion or belief is necessary to do a job, this may be specified as a job requirement.

### **Affirmative action**

A company employs a hundred crane drivers: ninety men and ten women (10%). The percentage of women qualified to drive cranes in the whole of the labour market is 20%. The company can therefore apply an affirmative action policy in the recruitment and selection of personnel until it has reached 20%.

### **Medical Examinations Act**

The Medical Examinations Act (Wet op de medische keuringen) places restrictions on medical examinations as part of a job application procedure. In the Netherlands, in principle, an employer may not check up on the physical health of a job applicant. This is only permitted if a medical examination is necessary for a job because the applicant's own health or that of others may be at risk. Such an examination may only take place if the applicant has already been selected. The applicant is provided with written information about the examination beforehand. The applicant is informed first of the results of the examination; he or she then decides whether the examining doctor may pass on the results to the prospective employer. If the applicant does not agree with the results, he or she is entitled to a second examination. The applicant may not be asked about pregnancy during the medical examination. Also no questions may be asked about the

health of an applicant. Nor may an employer inquire with a former employer about the applicant's sick leave record.

### **Pre-employment Medical Examination Complaints Committee**

The law is important, enforcement equally so. The Pre-employment Medical Examination Complaints Committee was set up in 2002 as a direct result of the Medical Examinations Act. This independent body examines complaints about medical examinations during job application procedures and issues an opinion. The Committee's opinion is not binding. However, if the Committee finds that a medical examination has contravened the law, this makes it easier for the applicant to prove it in a civil court.

### **Employees can exert influence**

Employers are responsible for ensuring a scrupulous recruitment and selection policy. But employees also have a responsibility in this area. In the Netherlands every company with fifty or more employees must have a works council. In companies with fewer employees there may be a form of employee participation, such as employee representation. A works council represents the employees in a company. One of its tasks is to prevent discrimination within the company. The works council must also encourage the employer to recruit disabled people and members of ethnic minorities. If an employer wishes to adopt, amend or revoke any regulation concerning appointment policy, he or she must obtain the consent of the works council.

**Lydia Lousberg, Senior Equal Treatment Policy Officer,  
Ministry of Social Affairs and Employment**

"Personal responsibility is becoming ever more important in Dutch society. We expect people to be independent, and to stand on their own two feet and earn a living. The laws on equal treatment are essential if people are to live up to these expectations. Without an equal chance of access to the labour market, women, for example, cannot become economically independent.

"I have worked in the field of equal treatment for the Dutch government for the past five years. I can see that laws in Europe are increasingly being harmonised as a result of European legislation. But there are also typically Dutch aspects to our laws. Equal treatment on the basis of sexual orientation, for example, has been well regulated in the Netherlands for several years now. Discrimination based on 'civil status' is likewise prohibited in this country. We also have a law concerning equal treatment in relation to working hours, which is of particular importance to women because, traditionally, Dutch women usually work part-time. This law makes it easier to fight unequal treatment of part-time workers than via direct or indirect discrimination on the basis of sex. As a result, it is no longer necessary to collect data on the numbers of women and men working full-time and part-time. And male part-time workers also benefit.

"The Netherlands has opted not to introduce strict enforcement measures for the legislation on equal treatment. The main emphasis must be on raising awareness. The government is working hard to achieve this. For instance, we show employers the advantages of considering equal treatment issues during the staff recruitment and selection process. That leads to better recruitment procedures and indirectly improves their image. But our legislation also requires trade unions and individual citizens to be proactive. And that brings me back to the question of personal responsibility."

## Equal pay

**People who do work of equal value are entitled to equal pay. The Dutch rules in this area are clear. In practice, however, things are sometimes less straightforward.**

### The rules

Equal pay is an important issue that is high on the Dutch political agenda. People who do work of equal value must be equally remunerated for that work. This applies, for example, to men and women, autochthonous and allochthonous, but also to people with permanent and temporary contracts and to full-time and part-time workers. Equal pay relates not only to salary, but also to allowances and bonuses.

In order to determine whether work is of equal value, an employer can use a job evaluation system to weigh up one job against another. Equal pay does not mean that someone doing work of equal value earns exactly the same as a colleague. If, for example, the colleague in question has more experience, the fact that he or she earns more may be justified. Pay must, however, be calculated on the basis of equal criteria, which must be identical for everyone. It should also be apparent how pay is calculated.



### What is work of equal value?

Where there are differences in pay, it is often argued that the work is different. However, the law says that work of equal or almost equal value must be remunerated equally. This means that work of equal value in different jobs may not be remunerated unequally. Any job evaluation system used to evaluate the jobs may not contain discriminatory elements; nor should any discrimination be practised in using such a system. The Ministry of Social Affairs and Employment has published a manual on gender-neutral job evaluation. This can be used to test the gender neutrality of job evaluation systems.

## Determining pay fairly

Employers must apply the same criteria in determining the pay of their employees. There must be no discrimination between men and women or between part-time and full-time workers, for example. Specifically, the following test is applied in the Netherlands:

- The employer must calculate pay in a transparent manner.
- The criteria for calculating pay must be the same for all employees.
- If an employer uses criteria that lead to differences in pay for specific groups, he or she must have justification for doing so.

### Extra allowance

An employee receives a wage premium because there is a shortage of workers with his background and experience. This employee has a typical 'man's job'. An equivalent 'woman's job' is not eligible for a wage premium. The employer is not guilty of direct discrimination because the allowance is linked to the job and not to the jobholder's sex. There is, however, indirect discrimination. The employer is only allowed to pay the male employee a wage premium if he or she can prove that there is a need to do so. In other words, the premium must be objectively justified.

Many employees in the Netherlands negotiate their pay when they start a new job. The employer must always make sure that equal pay is given for work of equal value. If not, then he or she must be able to prove that the difference in pay has nothing to do with the employee's sex, race or working hours. An employer is not allowed to take advantage of the fact that, for example, foreigners might be willing to do the same work for less pay than Dutch nationals might. This would be direct discrimination.

An employer who breaks the law by failing to observe the equal pay rule cannot cite a collective labour agreement or other regulation in which pay conditions are stipulated. Nor may an employer justify it by saying that a specific job is not mentioned in the collective labour agreement. The employer will therefore have to provide sound reasons if he or she wishes to differentiate between employees in terms of pay.

## Remuneration in practice in the Netherlands

Although the law is clear on this point, pay differences still exist in the Netherlands, according to a survey by the Labour Inspectorate. Here are a few figures relating to the status of people in employment in 2000:

- Women earn 23% less than men. This wage gap is partly to do with a difference in background (education, experience, job level, etc.). In the case of men and women in identical jobs or jobs of equal value, women still earn 5% less than men. There is no explanation for this 5% differential.
- Part-timers who work more than twelve hours a week earn 4% less than colleagues who perform work of equal value on a full-time basis. People with a part-time job of fewer than twelve hours a week also earn 4% less than colleagues who work full-time.
- Ethnic minority employees earn 4% less than Dutch people who do the same work.

These figures come from a Labour Inspectorate report entitled 'De arbeidsmarktpositie van werknemers in 2000' (The status of workers in 2000), published in September 2002.

## Two-pronged policy

Equal pay is one of the priorities of the equal treatment policy of the Ministry of Social Affairs and Employment. An action plan was launched in 2000 to achieve equal pay and combat unjustified pay inequalities. Since then a progress report has been prepared every year, reviewing the current situation and describing any new initiatives. These reports (in the form of letters) are always discussed in parliament.

In order to achieve equal pay, the Netherlands pursues a two-pronged policy:

1. General equal opportunities and minorities policy
2. Equal pay policy, directly aimed at combating unjustified differences in pay.

Equal pay is the joint responsibility of the government and the social partners. The Equal Treatment Commission is also involved. Individual employers and employees are also expected to be proactive in their efforts to combat unjustified unequal pay.

The Ministry of Social Affairs and Employment has undertaken various initiatives:

- The Equal Treatment Commission has been granted subsidies to commission an instrument (a quick scan) for reviewing employers' pay policies.
- Development of course material for works councils on subjects such as equal pay.
- Information on its website about equal pay aimed at employers, employees and works councils.
- Manual on gender-neutral job evaluation.

## Overtime

A company pays its employees overtime if they work more than 36 hours a week. People who normally work 24 hours a week, but put in extra hours during the busy Christmas season, are only paid overtime if they work more than 36 hours. This difference in remuneration is justified. There is no discrimination between full-timers and part-timers. If a part-time employee were to work more than 36 hours, he or she would be entitled to the same overtime payment and would of course accumulate pension and holiday pay on the extra hours worked.

## Equal conditions of employment

**Every employee in the Netherlands is entitled to equal terms and conditions of employment. Pay is an important employment condition. But there are others...**

### The rules

Employees must be treated equally with respect to all conditions of employment. An employer may not discriminate on the basis of:

- religion
- belief
- political opinion
- race
- sex
- nationality
- sexual orientation
- civil status
- working hours
- temporary or permanent contract.

Age and disability/chronic illness will shortly be added to this list.

Under the Equal Treatment (Working Hours) Act, discrimination in conditions of employment between full-time and part-time workers is not permitted, unless it is objectively justified. Assessment of whether collective agreement provisions that discriminate between full-time and part-time workers are in breach of the law should occur on a case-by-case basis. A limited survey by the Labour Inspectorate in 2001 showed that 15 of the 22 collective labour agreements studied discriminate between full-timers and part-timers. The parties that negotiate these agreements can ask the Equal Treatment Commission for advice regarding equal treatment in general, and discriminatory collective agreement provisions in particular. The government is not directly involved in the collective bargaining process, but it does encourage the parties to review collective agreement provisions in the light of current legislation.

## Which conditions?

Conditions of employment are defined as all the conditions that the employer and employee have jointly agreed, either orally or in writing. They include leave arrangements, promotion, training, reimbursement of expenses, and company cars. Men and women, allochthonous and autochthonous staff, and other groups may not therefore be treated unequally as regards their conditions of employment.

## Pleasant working environment

Employers in the Netherlands are required to ensure that there is a pleasant atmosphere at work. This is part of the package of employment conditions. The employer must prevent discrimination in the company. If anyone is the victim of sexual harassment, bullying or discrimination, the employer is obliged to take action. Research has shown that one in three employees has to cope with aggression, violence, sexual harassment or bullying. This mainly involves cases of racism and other discrimination, such as homophobia. In its information campaigns the Dutch government encourages employees to report any instances of unequal treatment.

### Putting our own house in order

The Ministry of Social Affairs and Employment – which is responsible for legislation concerning equal treatment at work – has drawn up a code of conduct for its own staff in order to prevent discrimination at work. The Ministry's aim is to ensure that all employees have equal opportunities and that discrimination and harassment are combated. The code appears in a booklet called 'Zo gaan we bij SZW met elkaar om' (Putting our own house in order).

## Equal treatment in the event of termination of employment

**The rules on termination of employment are clear: an employer may not discriminate between employees in this matter.**

### The rules

Employees are entitled to equal treatment in relation to termination of their contract, including during the probationary period. If an employee is treated unequally in this respect, he or she can have the termination of the contract nullified. Furthermore, the employer requires prior permission to terminate an employee's contract of employment. Each time a request for termination of employment is submitted, checks are made to see whether the employer has complied with the equal treatment rules.

#### Man

A clothing salesman works in a gentlemen's outfitters. The business becomes a women's boutique. The salesman is dismissed 'for commercial reasons'. He files a complaint with the Equal Treatment Commission because he suspects that he has been dismissed on the grounds of his sex. The Commission subsequently decides that the company cannot disprove this. It rules that the termination of employment is in breach of the law.

### Termination of employment during pregnancy

In principle, it is prohibited to terminate an employee's contract of employment during pregnancy or within six weeks after maternity leave has ended. Termination of contract is possible only in special cases, such as bankruptcy or summary termination. Naturally, an employer may not dismiss a female employee simply because she is pregnant or planning to get pregnant. Nor may pregnancy be used as a reason for not extending a temporary contract.

### Termination of employment during illness caused by pregnancy

A sick employee may not, in principle, be dismissed in the Netherlands. This is only possible if someone has been ill for two years. If the illness is

caused by pregnancy, the pregnancy itself is not included in the two-year period. Nor is the sixteen weeks' pregnancy and maternity leave to which every pregnant woman in the Netherlands is entitled. Illness associated with pregnancy or childbirth, and which occurs after pregnancy and maternity leave has ended, is included, however.

## Pregnant

A woman gets a job for a limited period. At the end of her probationary period she is dismissed because she 'did not meet the job requirements'. The woman reports this to the Equal Treatment Commission. During her probationary period she had mentioned that she was pregnant and she suspects that this is the reason for the termination of her employment. The Commission decides that the employer cannot disprove this and that the termination of employment is in breach of the law.

## Compliance with the law

**Responsibility for equal treatment at work lies primarily with employers. But employees also have their share of responsibility: if they are treated unequally, they must report it.**

### The company

Employees who are the victim of unequal treatment can go to their employer to discuss possible action. Many organisations in the Netherlands have a confidential advisor and a complaints committee. In cases of systematic unequal treatment affecting several employees, the works council can get involved.

### Equal Treatment Commission

The Equal Treatment Commission decides on complaints of discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, sexual orientation, civil status, working hours and temporary or permanent contract. The Commission will also deal with the new non-discrimination grounds of age and disability/chronic illness. The complaint must relate to work or the provision of goods and services. The Commission investigates the complaint, free of charge, and issues a decision.

### Court

Employees can also take their case to court, either straightaway or after the Commission has reached its decision. The court examines the case and can, for example, award damages.

### Extra effort

The evaluation of the Equal Treatment Act has shown that the ban on discrimination is not yet firmly established in society. While there is sufficient support for equal treatment, knowledge and compliance still fall short. Having good legislation is one thing, but people also have to be familiar with it. There are also signs that unequal treatment is still a regular occurrence. The Ministry of Social Affairs and Employment is trying to increase awareness of equal treatment issues through information campaigns.

The Ministry's policy also aims to motivate all kinds of different organisa-

tions to work towards firmly establishing equal treatment in society – or at any rate in the workplace. One of the ways it does this is through targeted projects. The aim is to put equal treatment on the agenda of works councils and of the Royal Association MKB-Nederland (medium and small-sized businesses), the employers' association for small and medium-sized enterprises. The projects concern a range of non-discrimination grounds, i.e. rather than focusing on just one (e.g. sex), each project will cover all of the non-discrimination grounds mentioned in the law. A special programme has been developed in collaboration with other ministries, the Equal Treatment Commission, the Royal Association MKB-Nederland and various NGOs, such as the Expertise Centre on Age and Society (LBL), the National Bureau against Racial Discrimination (LBR), COC Netherlands (Dutch Association for the Integration of Homosexuality), E-Quality (experts in gender and ethnicity) and the Dutch Council of the Chronically Ill and the Disabled (CG-Raad) (see next page).

### **Works council project**

Research has shown that in companies with an active works council, more attention is devoted to equal treatment and employees are treated more equally. Works council members have the opportunity to raise certain matters with the management and under the Works Councils Act (*Wet op de Ondernemingsraden, WOR*) one of their tasks is to combat discrimination within their company. The Ministry of Social Affairs and Employment plans to offer equal treatment training for works councils. With this in mind, it is to commission a special equal treatment training package for works council members to encourage them to devote more attention to the subject. The package will give them the 'ammunition' to put equal treatment on the agenda and increase their understanding and knowledge of aspects of equal treatment that may be relevant in the company.

### **Project for smaller employers**

Research has shown that small employers in particular are not sufficiently familiar with the rules on equal treatment. They need a tailor-made programme which clearly and succinctly explains the equal treatment regulations. Another option would be to do a quick scan of a company to bring equal treatment issues to the fore, or survey companies to see how well informed they are about equal treatment legislation and what they are doing in this area, if anything. The training courses given to small and me-

dium-sized businesses are being extended to cover equal treatment issues. The unique feature of all these projects is the collaboration with NGOs, the works council training institute and the Royal Association MKB-Nederland.

### **Project for ethnic minority groups**

Another priority of the Ministry of Social Affairs and Employment is equal treatment of ethnic minority groups. Here, too, targeted projects are used, such as the glasshouse horticulture project for ethnic minorities. A code of conduct has been drawn up to encourage equal treatment in the glasshouse horticultural sector, which employs many ethnic minority workers. In collaboration with organisations that represent ethnic minority groups, projects are being launched using these organisations' connections in their own communities. The target groups are informed about equal treatment legislation through information meetings, the media and figureheads from within the community.

### **Henk Beerten, President of COC Netherlands: "The pressure to get back in the closet is growing"**

"COC Netherlands is happy that the equal treatment laws in the Netherlands have been amended. This has given homosexual men and lesbian women equal rights. In the 1980s and 1990s we fought hard for same-sex marriages, and in 2000 we succeeded. This is an important victory for equal rights. But social equality is another matter. Many people think, now that same-sex marriage is legal, that everything has been sorted and that gays and lesbians can stop moaning. But the pressure is growing not to be open about it, to get back in the closet. It is socially unacceptable to discriminate, but below the surface it happens all the same. There are still young people whose parents throw them out because they are gay. There are people who don't dare to be honest about their homosexuality at work. In education, for example, that can sometimes cause problems for teachers. But there are also pupils and students who often haven't got the nerve to come out either.

"Another problem is that Dutch same-sex marriages are not always recognised in other European countries. If I wanted to work for the European Union in another EU country, my marriage would not be recognised everywhere. That would have implications, for example for my partner's work permit.

"In the Netherlands the Equal Treatment Commission monitors compliance with the law. COC Netherlands is not always happy with what it does. The Commission confines itself to the application of the law in situations regarding employment and goods and services. But discrimination happens in other areas, too."

## Organisations that combat discrimination

**Besides legislation and regulations, Dutch anti-discrimination policy includes a network of organisations that combat discrimination. Numerous organisations – national as well as local and regional – are active in this area. Some of these are in permanent consultation with the Ministry of Social Affairs and Employment, the main ones being:**

LBR	the National Bureau against Racial Discrimination
LBL	the Expertise Centre on Age and Society
CG-Raad	the Dutch Council of the Chronically Ill and the Disabled
E-Quality	experts in gender and ethnicity
COC	the Dutch national association representing the interests of homosexual men and lesbian women.

The Ministry of Social Affairs and Employment subsidises projects run by these organisations. For instance, the LBL, with financial support from the Ministry of Social Affairs and Employment, has launched a two-year project aimed at improving the expertise of works councils and trainee human resources officers in relation to age and employment.

The work of the named organisations usually focuses on raising public awareness, forming opinion and decision-making. The Ministry and the NGOs exchange information so that they can benefit from one another's knowledge and experience.

## List of addresses

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### Ministry of Social Affairs and Employment

#### Postal address

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The Netherlands

#### Address for visitors

Anna van Hannoverstraat 4  
2595 BJ Den Haag  
The Netherlands

Tel. +31 (0) 70 - 333 4444

Fax +31 (0) 70 - 333 4033

Internet [www.szw.nl](http://www.szw.nl)

Freefone information line (within the Netherlands): 0800 - 9051

### Equal Treatment Commission

#### Postal address

CGB Commissie Gelijke Behandeling  
Postbus 16001  
3500 DA Utrecht  
The Netherlands

#### Address for visitors

Kleinesingel 1-3  
3572 CG Utrecht  
The Netherlands

Tel. +31 (0) 30 - 888 3888

Fax +31 (0) 30 - 888 3883

E-mail [info@cgb.nl](mailto:info@cgb.nl)

Internet [www.cgb.nl](http://www.cgb.nl)

## **Pre-employment Medical Examination Complaints Committee**

### **Postal address**

Postbus 535  
3500 AM Utrecht  
The Netherlands

### **Address for visitors**

Kleinesingel 1-3  
3572 CG Utrecht  
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Tel.               +31 (0) 30 - 888 3899  
Fax                +31 (0) 30 - 888 3890  
E-mail            info@aanstellingskeuringen.nl  
Internet          www.aanstellingskeuringen.nl

## **E-QUALITY**

### **Postal address**

Postbus 85808  
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### **Address for visitors**

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Internet          www.e-quality.nl

## **COC Netherlands**

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Fax +31 (0) 20 – 626 7795  
Text telephone +31 (0) 20 – 620 7541  
E-mail [info@coc.nl](mailto:info@coc.nl)  
Internet [www.coc.nl](http://www.coc.nl)

## **Expertise Centre on Age and Society**

### **Postal address**

LBL, expertisecentrum leeftijd en maatschappij  
Postbus 9472  
3506 GL Utrecht  
The Netherlands

### **Address for visitors**

Kaaphoorndreef 72  
3563 AW Utrecht  
The Netherlands

Tel. +31 (0) 30 – 266 2000  
Fax +31 (0) 30 – 266 2837  
E-mail [info@leeftijd.nl](mailto:info@leeftijd.nl)  
Internet [www.lbl.nl](http://www.lbl.nl)

## **National Bureau against Racial Discrimination**

LBR, Landelijk Bureau ter bestrijding van Rassendiscriminatie

Schaatsbaan 51

3013 AR Rotterdam

The Netherlands

Tel. +31 (0) 10 - 201 0201

Fax +31 (0) 10 - 201 0222

E-mail [info@lbr.nl](mailto:info@lbr.nl)

Internet [www.lbr.nl](http://www.lbr.nl)

## **Dutch Council of the Chronically Ill and the Disabled**

### **Postal address**

CG-Raad, Chronisch zieken en Gehandicapten Raad Nederland

Postbus 169

3500 AD Utrecht

The Netherlands

### **Address for visitors**

Piet van Dommelenhuis, 3rd, 4th and 5th floor (report to 4th floor)

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Tel. +31 (0) 30 - 297 0404

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