

How EU Law Offers Protection from Sexual Orientation Discrimination

Any discrimination based on any ground such as sex ... or sexual orientation shall be prohibited.
EU Charter of Fundamental Rights (Article 21).

Article 13 of the European Community Treaty empowers the EU to create legislation to combat discrimination on the grounds of sexual orientation. Currently the EU has created legislation combating sexual orientation discrimination only in the area of employment. The **Employment Equality Directive** bans discrimination in access to and conditions of employment and self-employment, vocational training, as well as guidance and membership of workers' and employers' organisations. It applies to both the private and public sectors. Member States had until the end of 2003 to implement the Directive.

Eighteen Member States have decided to go beyond the requirements of EU Law and extend protection beyond the workplace. This offers lesbian, gay, bisexual and transsexual (LGBT) people protection in a wider range of social spheres such as education, social protection, social security and health care, as well as access to goods and services, including housing. Members of racial and ethnic minorities already have this broader protection under the Racial Equality Directive 2000/43/EC.

Legal Protection in EU Member States

In eight Member States (Belgium, Bulgaria, Germany, Spain, Austria, Romania, Slovenia and Slovakia) anti-discrimination legislation on grounds of sexual orientation covers not only employment, but also all additional areas specified in the Racial Equality Directive.

In ten Member States (Czech Republic, Ireland, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Finland, Sweden, and UK) anti-discrimination legislation has been partially extended to cover other areas beyond employment.

In nine Member States (Denmark, Estonia, Greece, France, Italy, Cyprus, Malta and Poland) anti-discrimination covers only the areas mentioned in the Employment Equality Directive. Estonia, France, Greece and Poland are currently debating an extension of the legislation.

Despite this legal protection LGBT persons often choose not to reveal their sexual orientation or sexual identity in the workplace due to the fear of negative consequences. Those who are open about their sexuality often face exclusion from social activities, physical and verbal harassment, and have diminished employment prospects. In other spheres such as education and health care LGBT persons continue to face discrimination. Bullying and name-calling at school often lead to higher dropout rates among LGBT persons and most schools lack concrete plans to address prejudice. In health care LGBT persons can face prejudicial attitudes from professionals, which can deter them from seeking medical attention.

Equality bodies

National Equality bodies promote equal treatment, conduct research on discrimination and offer advice to victims. EU Law obliges Member States to establish Equality bodies in the area of race discrimination or sex discrimination only. The Employment Equality Directive does not require the establishment of these bodies in relation to other grounds of discrimination, including sexual orientation. Nevertheless, many Member States have gone beyond what is required by EU law to establish additional protection for LGBT persons.

Eighteen Member States (Belgium, Bulgaria, Germany, Greece, France, Ireland, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Romania, Slovenia, Slovakia, Sweden and UK) have set up single equality bodies dealing with all discrimination grounds. In Sweden, there was a specific Ombuds-organisation (HomO) dealing with sexual orientation discrimination and this has shown itself to be very successful in gaining the trust of homophobia victims. Currently, Sweden and Denmark are also moving in the direction of having a single equality body dealing with all forms of discrimination.

Nine Member States (Czech Republic, Denmark, Estonia, Spain, Italy, Malta, Poland, Portugal and Finland) currently have no equality body covering sexual orientation discrimination.

AN EQUAL RIGHT TO EQUAL TREATMENT

Article 21 of the Charter of Fundamental Rights of the European Union contains a general prohibition on discrimination on a broad list of grounds including sexual orientation. It does not create a 'hierarchy of grounds' where certain forms of discrimination are protected unevenly. Individuals have an equal right to equal treatment. This means that the prohibition on sexual orientation discrimination should be extended to offer protection outside the area of employment, and include access to good and services, in the same way as those discriminated against on racial or ethnic grounds.

This flyer is based on two reports: *Homophobia and Discrimination on the grounds of Sexual Orientation and Gender Identity in the EU Member States – Part 1 Legal Analysis* published by the European Union Agency for Fundamental Rights (FRA) in June 2008 and *Homophobia Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States – Part 2 The Social Situation* published in March 2009.

Note that under EU law transsexual, though not necessarily transgender, persons are protected against discrimination on the grounds of 'sex' in the context of employment. For an explanation of the rights of transgender persons see the accompanying publication, 'Challenges Facing Transgender Persons'.

The full report is available at: <http://fra.europa.eu>

All publications of the European Union Agency for Fundamental Rights can be ordered via its website free of charge.