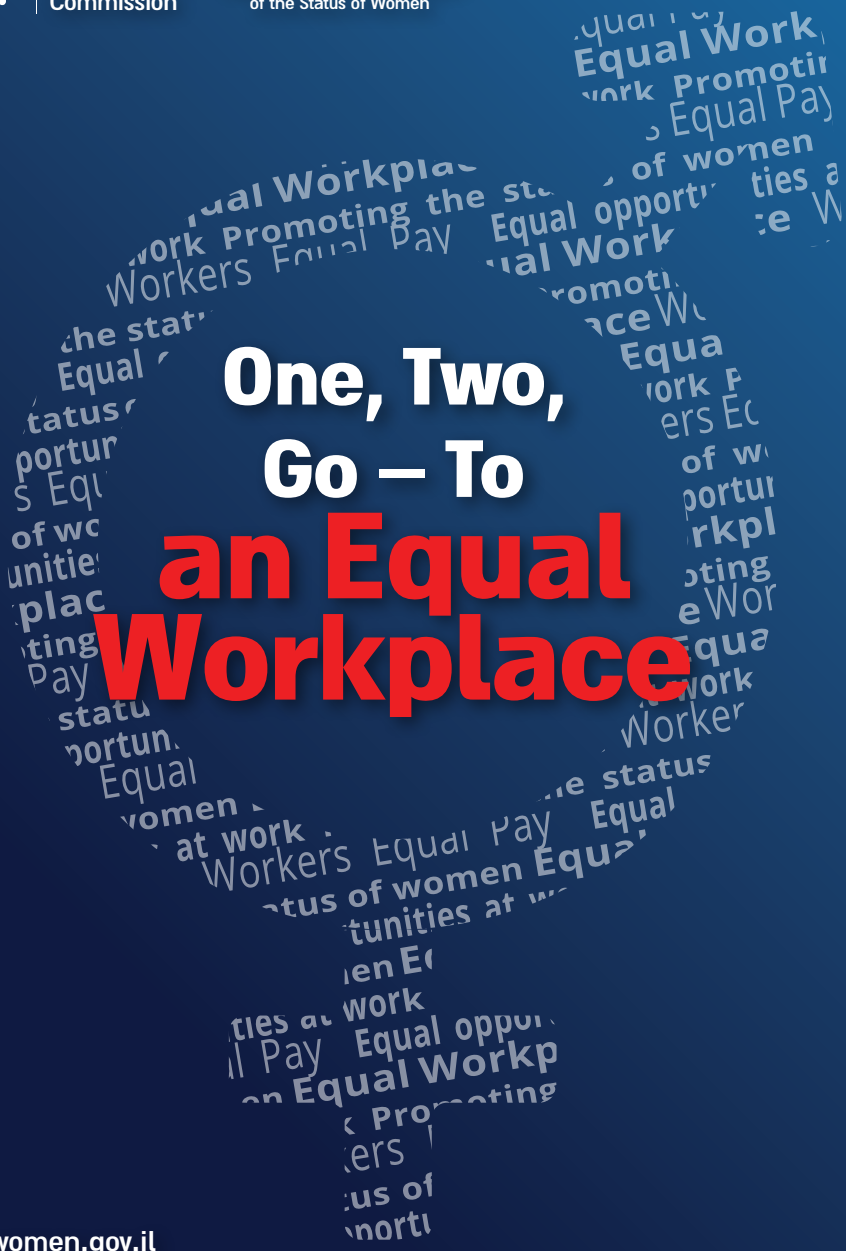
Equal Employment Opportunities Commission

Authority for the Advancement of the Status of Women

One, Two, Go – To an Equal Workplace



www.women.gov.il
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Introduction

In her ruling in the Galit Kedar case, Judge Sigal Davidov-Motola relates to the importance of the principle of equality:

> Applying the value of equality is of special importance in the world of employment because of the centrality of work in a person's life. There is a heightened awareness today of the importance of work in our lives and of the fact that it constitutes a primary source of satisfaction, meaning, fulfillment, self-definition, personal development, inter-personal relations, and social involvement.[1]

The State of Israel has adopted extensive social legislation that is intended to guarantee, among others, equal opportunity in the workplace. The most central of these laws is the Employment (Equal Opportunities) Law-1988 that seeks to guarantee equal opportunities, and to prevent unlawful discrimination in the labor market and unjustified harm to employees or those looking for work solely based on a specific personal characteristic that is unrelated to the job.

Nevertheless, it is a known fact that those claiming the existence of discrimination in the workplace face great difficulty in proving their claim, among others because of evidentiary hurdles and inbuilt knowledge disparities between employee and employer. As part of the effort to contend with the gap between existing legislation and enforcement, the Knesset passed Amendment No. 10 pertaining to the establishment of The Equal Employment Opportunity Commission, set up at the beginning of 2008.[2] The Commission's role is to advance the knowledge of employees and employers about the rights awarded as part of the Equal Opportunities in Employment legislation and to strive for their implementation and mainstreaming.

One of the common forms of discrimination in the labor market is discrimination on grounds of gender. Consequently, the legislator recognized a special need to enshrine the prohibition against gender-related discrimination in employment in specific laws, including: The Women's Equal Rights Law of Israel-1951 and The Male and Female Workers Equal Pay Law-1996 that categorically prohibit any discrimination between women and men in different areas related to employment.

The right to work, to make an honorable livelihood, and to not be employed under exploitive or discriminatory conditions is a part of basic human rights. It is important to ensure that every person can fully realize his/her abilities and will be given the equal opportunities promised by law.

1 (National) Labor Court Appeal 1842-05-14 Jerusalem Municipality v. Galit Kedar, published on the Nevo website (Heb.) 18.12.16.

2 Penal Code 2006 No. 2048 from 31.12.2006, p. 190 (Proposed Legislation 2006 No. 107, p. 88) – (hereinafter and above: "Amendment No. 10"), see Section 7.

Not Nice to Meet You: Discrimination in the Workplace

The right to work and make a decent living is a basic human right and is supposed to be equal for both male and female employees. In practice, discrimination in the labor market persists into the 21st century. Some of the forms of discrimination that may impinge upon the principle of equality, and the ways to prevent them, are presented below:

1 Discrimination when applying for a job

Discrimination may be direct (advertising in advance to only certain population groups) or indirect and even hidden (by posing demands that are irrelevant to the job or the result of which mean that certain population groups are excluded). An equal "Wanted" ad should be worded in a manner that applies to all suitable candidates including, among others, both men and women. The ad should include only the required professional background and a job description. The language and any illustrations should also be suited to a wide range of people. Job interviews should be absolutely non-discriminatory and avoid, among others, questions or remarks relating to gender traits.

Examples:

- A "wanted" ad seeking "young women" lacks equality. The employer's explanation according to which "women over the age of 40 will fail to integrate socially into the company" is also illegitimate. Both cases may ostensibly constitute discrimination on the grounds of age.
- Posing the question "Are you planning more children?" to women applying for a particular job may allegedly constitute discrimination on the grounds of parenthood.

A non-discriminatory "Wanted" ad must be worded in a manner that applies equally to all candidates suitable for the job, including both men and women. The ad should relate exclusively to the required professional background and the job description.

2 Discrimination in working conditions and promotion

The working conditions of every employee – men and women – and their opportunities for promotion, must be determined according to their experience and personal abilities and disregard the fact that they belong to a certain group such as: gender, age, ethnic origin etc. Many workplaces grant mothers special parenting-related rights such as shorter hours. Furthermore, the law stipulates that in workplaces where a female worker is entitled to a parenting-related right, the same right will be awarded to a male worker, if the relevant legal criteria are met. In this context, it is important to clarify that such provisions are not considered as discrimination.

How can discrimination in working conditions be avoided?

By preventing a situation whereby work promotion is subject to parameters other than the level of an employee's proficiency, aptitude, and professionalism. For example, promotion must not be limited because of an employee's age (either too young or too old) or sex.

3 Discrimination in Termination of Employment

The prohibition against discrimination also applies to the process of deciding to terminate an employee's employment and the process of doing so. Termination of employment must, according to law, be done solely for professional reasons and not for reasons related to characteristics such as gender, ethnic origin, sexual orientation, and age which constitute discrimination that contravenes the Employment (Equal Opportunities) Law.

There are provisions which determine that, in certain circumstances, it is forbidden to terminate a worker's employment, or that determine restrictions related to this process. One example is The Employment of Woman Law-1954 that awards women protection against termination of employment during periods of pregnancy, childbirth, fertility treatment, and other related absences. Furthermore, an employer may not terminate the employment of a woman employed for at least 6 months at the same workplace without special authorization from the Ministry of Labor and Welfare.

According to law, employment can be terminated only for professional reasons and not for reasons related to characteristics such as gender and age which are considered discriminatory according to the Employment (Equal Opportunities) Law.

4 Discrimination in Pay Between Male and Female Employees

Equal pay is one of the most basic and primary applications of the general principle of gender equality. One of the common expressions of discrimination against women in the workplace is in the area of pay.

In the words of former Labor Court Chief Justice Steve Adler, wages have been recognized as "one of the foundations of a dignified existence". In his ruling in the Orit Goren case, he states that "granting an equal opportunity to an equal wage for work of equal value is one of the linchpins in guaranteeing the status of the female worker".[3]

The Male and Female Workers Equal Pay Law-1996 is intended to advance equality and prevent discrimination between the sexes in all areas of pay or other work-related remuneration.

Section 2 of this law stipulates the obligation to pay equal wages to both sexes:

> "Male and female employees, employed by the same employer in the same workplace, are entitled to equal pay for the same work, for essentially equal work or for equivalent work; this provision shall also apply to any other remuneration, which an employee gives to or for the employee in connection with his work. For the purposes of this Law, "other remuneration" means any supplement, benefit, allocation, grant, fringe benefit, payment to cover expenses, payments for vehicle maintenance, use of telephone, overtime quota, purchase of professional literature, clothing, use of vehicles, or any other compensation in cash or in kind, direct or indirect, and even if they do not constitute wages."

3 High Court of Justice 1758/11 Orit Goren v. Home Center Ltd., published on the Nevo website (Heb.) 17.5.12.

Furthermore, Section 6 of the Law states that:

> (I) The Provisions of Section 2 shall not preclude any differential in wages or other remuneration rendered necessary by the character or nature of the work under consideration, including output, quality of work, seniority in the job, training or education, or the geographic location of the workplace, all provided that nothing by virtue thereof shall not constitute gender discrimination.
>
> (II) Where, in an action under this Law, a Labor Court finds that the types of work in dispute constitute equal work, essentially equal work, or equivalent work, and where the employer contends that there are circumstances as provided in subsection (i) that justify a wage differential or other remuneration, the burden of proof shall be on him.

The combination of the provisions in Sections 2 and 6 of the Equal Pay Law reveals that if wage differentials are found between a male employee and a female employee in a place where they perform the same work (or essentially equal work or equivalent work), the employer must prove the existence of circumstances that justify a disparity in wage or other remuneration called for by the nature or essence of the specific job. "In the absence of justifying circumstances, wage disparities between a female employee and a male employee for equal work may cause the male employee or female employee a feeling of humiliation and an impaired sense of self-worth".[4]

It is also worth mentioning that the Labor Court is entitled upon request of one of the parties, to appoint an occupational analysis expert to examine whether the jobs under dispute are the same jobs, essentially equal jobs, or equivalent jobs that by law require equal pay.

The law stipulates that, if asked to do so, an employer must provide an employee with information, as is necessary, about employees' pay levels, according to the type of work they perform, the type of jobs or levels of seniority.

4 Proposed legislation Male and Female Workers Equal Pay Law (Amendment No. 4) Compensation for Financial Damages and Protection of Claimant-2014.

Amendment No. 6 to the Male and Female Workers Equal Pay Law

Amendment No. 6 to the Male and Female Workers Equal Pay Law was published on 25.08.2020. The amendment obligates everyone employing more than 518 employees to prepare an internal report based on data gathered, that details the average wage of the workers employed by him, according to a breakdown of the type of employee, the type of job or the level of seniority. In the report, the employer will detail in percentage terms the average wage disparities between men and women in each group of employees in that workplace.

Based on the internal report, every year the employer will provide each employee with information about the group he/she belongs to in the employee breakdown and about the wage disparities in that group, in percentage terms.

In addition, based on the yearly report, the employer will once a year issue a public report (including on his website if one exists). Among others, this report will include the details of the average wage disparities in percentage terms, between the employees of that employer, without revealing the names of the groups of employees and in a manner that does not disclose the identity of individual employees. The first report will be issued no later than 01.06.2022.



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Types of Discrimination:

Discrimination on the grounds of sex: discrimination at work on the grounds of sex (gender) is the distinction between employees or job candidates based solely on their sex. For example, an employer who says that "this job is not so suitable for women".

Discrimination on the grounds of parenthood: discrimination in the labor market on the grounds of parenthood can be expressed, for example, by preferring job candidates who are not parents of young children or by terminating employment of parents of young children solely because they are parents. The term "motherhood penalty" expresses the price paid by women for being mothers. Studies in Israel and overseas indicate a drop in the wages of mothers and, on the other hand, a rise in those of fathers.

Discrimination on the grounds of pregnancy: discrimination at work on the grounds of pregnancy is the adoption of a double standards policy, either explicit or hidden, between female employees or job candidates who are pregnant and those who aren't.

Discrimination against pregnant women and mothers of young children: these employees are perceived as less committed to their job and their opportunities for promotion and training are therefore impaired, leading to a negative impact on their wage.

Discrimination on the grounds of fertility treatment: distinguishing between employees solely because they are undergoing fertility treatment.

Discrimination on the grounds of IVF treatment: distinguishing between employees solely because they are undergoing fertility treatment. For example, a female employee undergoing IVF treatment who is called for a hearing prior to termination of employment because of her frequent absences from the office.

It is important to emphasize that any determination whereby these cases constitute discrimination is based on the assumption that the employer's considerations were irrelevant to the nature and essence of the job.