

Berlin State Anti-Discrimination Act (LADG)

dated 11.06.2020

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The Act was passed by the Berlin House of Representatives on 04.06.2020 and came into force on 21.06.2020.

Part 1

General

Section 1

Purpose of the Act

The purpose of the Act is to effectively establish and enforce equal opportunities, to prevent and eliminate all forms of discrimination, and to promote a culture wherein diversity is valued.

Section 2

Prohibition of discrimination

No person may be discriminated against in public law on the grounds of gender, ethnic origin, racist and anti-Semitic attribution, religion and belief, disability, chronic illness, age, language, sexual and gender identity or social status.

Section 3

Scope

(1) This Act shall apply to the Berlin administration, to public-law bodies, institutions and foundations directly under state law, to the Berlin Court of Auditors and to the Berlin Commissioner for Data Protection and Freedom of Information as well as to the courts and the authorities of the public prosecutor's office of the State of Berlin, the Constitutional Court and the Berlin House of Representatives, insofar as they perform administrative tasks (public entities). With the exception of Section 11 of this Act and without prejudice to Section 24 of the General Act on Equal Treatment, it shall not apply to the initiation, implementation and termination of public-law service and employment relationships of the public bodies named in the first sentence.

(2) Insofar as the State of Berlin directly or indirectly holds or acquires majority holdings in legal persons under private law or partnerships, it shall ensure that such persons also apply the provisions of this Act accordingly. Insofar as it holds or acquires minority

shareholdings in legal persons under private law or partnerships, or operates joint facilities with the Federal Government in accordance with Article 91e of Basic Law, the State of Berlin shall commit to ensure that these legal persons apply the provisions of this Act accordingly.

(3) This Act shall not affect the validity of any other clauses relating to the prohibition of discrimination or requirements of equal treatment laid down by law and the procedural rules existing for their enforcement. This also applies to statutory regulations and regulations under the law which serve to protect certain groups of persons, in particular to all measures for the advancement of women and equality policy programmes of the State of Berlin.

Part 2

Forms of Discrimination; Prohibition of Measures

Section 4

Forms of discrimination

(1) Direct discrimination shall be taken to occur where one person is treated less favourably than another person is, has been, or would be treated in a comparable situation on one or more of the grounds referred to in Section 2, and the difference in treatment is not justified under Section 5. Less favourable treatment of a woman related to pregnancy or maternity leave shall constitute direct discrimination within the meaning of this Section. Direct discrimination shall also be deemed to occur where the person committing the discrimination presumes the existence of one or more of the grounds referred to in Section 2. Failure to take measures and to act in a manner that would end discrimination shall be deemed equivalent to conduct or action where there is an obligation to act.

(2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons on one or more of the grounds referred to under Section 2, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Harassment shall be deemed discrimination when unwanted conduct related to one or more of the grounds referred to in Section 2 takes place with the purpose or effect of violating the dignity of the person concerned, in particular when it creates an intimidating, hostile, degrading, humiliating or offensive environment.

(4) Sexual harassment is discrimination if, in particular, unwanted physical contact, an unwanted remark of a sexual nature, the showing of pornographic images, as well as requests for sexual acts has the purpose or effect of violating the dignity of the person concerned.

(5) An instruction to discriminate against a person constitutes discrimination. Such an instruction shall in particular be taken to occur if someone instructs a person to behave in a manner, which discriminates or may discriminate against another person on one or more of the grounds referred to in Section 2.

Section 5

Justification of unequal treatment; positive action

(1) Unequal treatment is justified if it is based on a sufficient objective reason.

(2) Unequal treatment shall also be justified where appropriate and suitable measures are taken to prevent or compensate for existing disadvantages of structurally disadvantaged persons arising from one or more of the grounds referred to in Section 2 (positive action).

(3) Where unequal treatment is based on several grounds, it shall only be justified if the justification covers all the grounds on which the difference of treatment is based.

Section 6

Prohibition of disciplinary action

(1) Discrimination on the grounds of asserting rights under this Act or of refusing to carry out an instruction in violation of this Act shall be prohibited. The same applies to discrimination against a person who assists another person in this regard or who testifies as a witness.

(2) The rejection or toleration of discriminatory conduct by the person concerned shall not be used as a basis for a decision affecting that person. Paragraph 1 sentence 2 applies accordingly.

Part 3

Legal Protection; Collective Claims

Section 7

Presumption provision

Should facts be substantiated that make the existence of a violation of Section 2 or Section 6 predominantly likely, it is the responsibility of the public body to refute the violation.

Section 8

Liability for damages; recourse to legal proceedings

(1) In the event of a violation of Section 2 or Section 6, the public body under whose area of responsibility the discrimination has taken place shall be obliged to compensate the discriminated person for any resulting damage. The assertion of a claim pursuant to sentence 1 shall be excluded if the person entitled to claim has intentionally or negligently failed to avert damages by lodging legal remedies.

(2) On account of damage other than pecuniary loss, the discriminated person may claim appropriate compensation in money.

(3) If, as a result of unequal treatment that is not justified, damage is suffered by a person who is in a close personal relationship with a person to whom one or more of the characteristics referred to in Section 2 are attributed, the former shall be entitled to claim compensation for damage done to them under paragraphs 1 and 2.

(4) The limitation period for claims under paragraphs 1 to 3 is one year. The period shall begin at the end of the year in which the claim arose and the person entitled to the claim became aware of the circumstances giving rise to the claim and of the party obliged to pay compensation, or should have become aware of them without gross negligence. Otherwise, the provisions of the German Civil Code shall apply.

(5) Claims under paragraphs 1 to 3 shall be subject to recourse to the general courts of law.

Section 9

Anti-discrimination collective legal claims

(1) A group entitled under Section 10 may, without having to explain the infringement of its own rights, file an application for a ruling and assert that administrative acts, general rulings or other administrative acts infringe Section 2 or Section 6, if there is a significance that goes beyond individual concern.

(2) A collective claim pursuant to paragraph 1 shall only be admissible if the group entitled under Section 10 has complained of an infringement to the public entity. The action may not be brought before the expiry of three months from the date of the complaint. It is inadmissible if the public entity has taken remedial action. The public entity shall inform the Senate Administration responsible for anti-discrimination of the outcome of the complaint procedure.

(3) With the assertion of a violation of Section 2 or Section 6, a group entitled under Section 10, which is not itself involved in the proceedings, may apply for judicial legal protection in place of the person entitled to bring an action and with their consent. In this case, the person must meet all the procedural requirements, as in the case of a

request for relief themselves who is entitled to bring an action. An agreement in accordance with sentence 1 shall be declared for the first time by the person authorised to bring an action when the action is brought and thereafter declared annually upon request by the court in writing or for the records of the officers of the court. If the agreement is not declared within the period set by the court, the legal standing of the group entitled under Section 10 shall lapse.

(4) A collective claim shall not be admissible if the measure in question has been taken on the basis of a decision in a court proceeding.

Section 10

Recognition as an anti-discrimination organisation with the right to bring collective claims

(1) Anti-discrimination associations are associations of persons, which, on a non-commercial and non-temporary basis, operate in accordance with their statutes and represent the particular interests of persons who are discriminated against on the basis of one or more of the grounds referred to in Section 2. Recognition as an anti-discrimination association with the right to bring an action must be granted to associations of persons upon application if they

1. have their registered office in Berlin and their statutory area of activity also covers the territory of the State of Berlin,
2. have existed for at least five years at the time of recognition and have been active within the meaning of Section 1 of the General Act on Equal Treatment or Section 1 in conjunction with Section 2 of this Act during this period,
3. on the basis of their previous activities, they can be expected to guarantee the proper performance of their duties, and
4. on the basis of Section 5 (1)(5) sentence 1 alternative 1, or because of the pursuit of non-profit or charitable purposes pursuant to Section 5 (1)(9) of the Corporation Tax Act in the version promulgated 15 October 2002 (Federal Law Gazette I p. 4144), last amended by Article 5 of the Act dated 18 July 2017 (Federal Law Gazette I p. 2730), as amended, are exempt from corporate income tax.

Through recognition, they are entitled to the powers granted by Section 9. If at least seven anti-discrimination associations have joined together to form an association that fulfils the requirements of sentence 1 (umbrella association), the latter may be recognised as an anti-discrimination association with the right to bring an action if it fulfils the requirements of sentence 2 numbers 1, 3 and 4.

(2) This recognition applies to the territory of the State of Berlin.

(3) Recognition shall be withdrawn if the conditions for granting it are not met and this situation is not remedied even after a request to do so. Recognition shall be revoked if any of the conditions for its issue subsequently cease to apply. Means of redress shall not have suspensive effect in the cases referred to in sentences 1 and 2.

(4) Recognition as an anti-discrimination association with the right to bring an action, its withdrawal and revocation shall be carried out by the Senate Administration responsible for anti-discrimination. Insofar as the competences of other Senate Administrations are affected by sentence 1, agreement shall be reached with them within the framework of the recognition procedure.

Part 4

Diversity – Promoting a Culture of Valuing Diversity

Section 11

Promoting a culture of valuing diversity

(1) The prevention and elimination of all forms of discrimination and the promotion of a culture wherein diversity is valued shall be taken into account as an overarching guiding principle in all actions of public entities.

(2) Public entities shall also include an examination of their structural and procedural organisation, as well as their processes with regard to structural risks of discrimination, and shall implement appropriate countermeasures to achieve the objectives of this Act.

(3) The fulfilment of these obligations is a particular duty for staff who hold managerial and executive roles and should be included in the assessment of their performance.

(4) The acquisition of, and further training in, diversity competence, including anti-discrimination law, should be ensured for all employees, in particular through further training and qualification measures. Participation in further training and qualification measures is obligatory for employees who hold managerial and executive roles. Competence in diversity matters should be taken into account when assessing the suitability, competence and professional performance of staff.

(5) Section 3 (2) shall apply accordingly.

Section 12

Measures for promoting a culture of valuing diversity

(1) The Berlin Senate shall take statewide measures to promote a culture wherein diversity is valued within the Berlin administration and the Senate shall continuously work to develop this culture.

(2) A report on the implementation of the measures shall be submitted to the House of Representatives for information purposes at least every five years.

(3) Strategies and programmes for the creation and implementation of equal opportunities, which are the responsibility of individual Senate Administrations, shall not be affected by the measures.

Part 5

Responsibility; Ombuds Office

Section 13

Responsible Senate Administration

The tasks under this Act shall be incumbent on the Senate Administration responsible for anti-discrimination, unless otherwise provided for by the allocation of responsibilities of the Senate. It shall work towards the implementation of the purpose of this Act, in particular by

1. raising awareness of the dangers of discrimination and developing proposals for prevention measures,
2. identifying structural discrimination and contributing to its reduction,
3. receiving complaints submitted to it, passing them on and, if necessary, requesting opinions,
4. promoting a needs-based and efficient advisory infrastructure,
5. initiating or carrying out research into discrimination, its causes and its consequences, and
6. supporting public entities in achieving the objectives formulated in Section 11.

Section 14

Ombuds Office

(1) The Senate Administration responsible for anti-discrimination shall establish an Ombuds Office, the role of which is to cooperate with the respective bodies and departments within the administration responsible for the respective characteristics.

(2) The Ombuds Office shall support persons who approach it in enforcing their rights under this Act by providing information and advice. Within the framework of its activities, it may seek to resolve a dispute amicably. It is authorised to call upon experts at any time, to obtain expert opinions, pass on complaints and make recommendations

for action. The Ombuds Office may process personal data insofar as this is necessary for the fulfilment of its tasks.

(3) The public entities referred to in Section 3 (1) sentence 1 are obliged to support the Ombuds Office in the fulfilment of its tasks, in particular in respect of providing the necessary information and submitting any statements that are requested. Upon request, the Ombuds Office is to be granted access to files, unless there are important overriding public interests in individual cases.

(4) If, after sufficient clarification of the facts and after unsuccessfully attempting to settle the dispute amicably, the Ombuds Office establishes a violation of Section 2 or Section 6, it shall make a complaint about this violation to the public entity and request it to remedy it.

(5) The Ombuds Office is not subject to any instructions in respect of Ombuds Office matters and may not be discriminated against because of the fulfilment of its tasks. It shall ensure the confidentiality of information obtained in the course of its activities.