

LABOR DISCRIMINATION PREVENTION

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The Protection against Discrimination act provides for a set of obligations for the employer as to the establishment of an anti-discriminatory work atmosphere. Under article 18 of the act “the employer in cooperation with the syndicates is responsible for the adoption of effective measures as to the prevention of any type of discrimination in the workplace”. This responsibility is to be interpreted in relation to all other responsibilities regarding the ensuring of equal labor conditions, equal remuneration for equivalent labor, equal opportunities for professional training and qualification, equal criteria for the enforcement of disciplinary fines, etc. Apart from being obliged to prevent any acts of discrimination, the employer is also responsible for the following activities: adapting the workplace as to the necessities of people suffering a disability, selecting an accessible placement for the act, as well as provisions and terms of the collective labor contract, regarding the protection against discrimination.

However, regardless of all measures adopted, prevention of all forms of discrimination could not be absolutely guaranteed. A legal obligation is to be interpreted as assuming responsibility in case an act of discrimination is committed anyway.

The law defines discrimination as unequal, disadvantageous treatment of individuals, based on gender, race, nationality, ethnicity, religion, personal or social status, family status, age, sexual orientation, etc. It prohibits unequal treatment, both the open and the covert one, towards certain individuals, based on their affiliation to a given group. Legal consequences resulting from harassment, respectively sexual harassment, are equivalent to those resulting from discrimination. The additional provisions of the Act on the Protection against Discrimination also define the concept of the “adverse treatment” (every act, action or omission, which directly or indirectly affects legal rights and interests).

Evidently, these definitions, being overly generalized, enable all sorts of situations to be interpreted as a manifestation of discrimination. An example case is the scheduling of annual leaves. Should the employer treat preferentially employees with marital duties, this could well be interpreted as discrimination towards single employees, based on the above mentioned legal provisions. Therefore, it is advisable that the subject is discussed prior to the actual scheduling. Provisions of anti-discriminatory nature could also be featured in the

administrative arrangements of the company (working regulations, Code of Ethics, etc.), so as to be at the disposal of the entire personnel.

Regardless of all preventative measures, an act of discrimination remains a possibility, leading to the issue of the potential reaction of the employer. He is legally obliged to interfere in a situation of this kind, or risks being charged with failure to perform his obligations under the Act on Protection against Discrimination.

In order to be able to respond, the employer must firstly be approached. Under article 17 of the Act on the Protection against Discrimination, a person considering himself a victim of harassment is ought to file a complaint. It is not clear why the legislator has not used the broader term “unequal treatment”, but instead has provided for an obligatory harassment complaint. It is possible that the employee is subjected to discriminatory behavior without perceiving it as harassment. Even if this is the case, the act of discrimination could not be tolerated. Provision under article 17 of the Act on the Protection against Discrimination is restricted in another sense. A signal could be made by a person different from the victim, which does not liberate the employer from the obligation to react.

It is to be accepted that regardless of the source of the signal, the employer is obliged to take it into consideration. It is necessary for him to evaluate whether the situation actually displays any discriminatory characteristics. The complaint should consist of certain data, describing the activities behind the term “unequal treatment” (harassment), on what basis does the person consider himself discriminated, respectively why does he believe others are treated preferentially. The mere fact of the employee being offended by a certain behavior does not necessarily make it discriminatory. Should the signal actually proceed from a discriminatory act, the employer is to determine the actual state of affairs. This could be realized by demanding explanations from the person, charged with discriminatory behavior. Under article 17 of the Law on the Protection against Discrimination, the employer is obliged to enforce a disciplinary fine upon the employer exercising harassment. Of course disciplinary procedure provided for in the Labor Code, ought to be complied with. Prior to enforcing any disciplinary fine, the employer is obliged to hear the employee or accept his written statements, and to gather and evaluate the collected evidence.

How can the employee protect himself against discrimination if he considers his employer to be in violation of his obligations under the Act on the Protection against Discrimination and believes the employer has not taken the necessary measures after receiving a signal? One of the possible methods is the initiation of proceedings before the Commission on Protection against Discrimination that can ascertain the violation and impose

the employer an administrative punishment, as well as appoint the necessary measures for the elimination of the violation. However, the Commission is not licensed to award any indemnification to the person, suffering discriminatory damages, as this is an exclusive competence of the Court. Therefore, based on the Commission's decision, the victim may file a financial indemnification claim against the employer for suffrage of non-material damages.

Alternatively, the person could file a claim directly before the Regional court. Such a claim aims to determine the violation, sentence the defendant to terminate the violation, restore the pre-violation state of affairs and pay an indemnification, as well as to oblige the defendant to refrain from further violations.