

# Discrimination – When Do We Encounter It?

## Introduction

One of the fundamental constitutional principles and values in Poland is equality before the law. Pursuant to Article 32(1) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended – hereinafter: the Constitution), all persons are equal before the law. Everyone has the right to equal treatment by public authorities. Furthermore, no one may be discriminated against in political, social, or economic life for any reason (Article 32(2)).

The principle of equality specifically entails the obligation for legislators to create legal norms in such a way that entities deemed similar are subjected to similar legal situations (K. Complak [in:] Constitution of the Republic of Poland. Commentary, ed. M. Haczkowska, Warsaw 2014, Art. 32). Importantly, this principle applies both to the creation and application of law. However, it must be emphasized that this principle is not absolute, which means that treating similar entities (or situations) differently does not always constitute a violation of the general principle of equality. As noted by L. Garlicki and M. Zubik, “the prohibition of differentiation refers to unjustified (arbitrary) differentiation. It must be remembered that the starting point for considerations of equality (as well as, as discussed below, the prohibition of discrimination) is establishing the similarity of the compared entities. (...) Some of these differentiations may result from objectively distinguishing characteristics of individuals (age, sex, abilities), others from characteristics based on a position acquired by the individual in society (wealth, education, profession). Some differentiations may simply reflect actual differences between people; more often, however, differentiations are conceived as a means of mitigating or compensating for existing differences, in accordance with the concept of corrective justice, which constitutes one of the axiological foundations for considerations of equality” – L. Garlicki, M. Zubik [in:] M. Derlatka, K. Działocha, S. Jarosz-Żukowska, A. Łukaszczuk, P. Sarnecki, W. Sokolewicz, J. Trzciński, M. Wiącek, K. Wojtyczek, L. Garlicki, M. Zubik, Constitution of the Republic of Poland. Commentary. Vol. II, 2nd ed., Warsaw 2016, Art. 32.

The provisions of the Constitution also establish a standard for authorities applying the law in a democratic state. In the context of academic communities, particular attention should be paid to the creation of internal acts (e.g., study regulations, doctoral school regulations) in a manner consistent with the principle of equality.



It is also important to note that constitutional provisions constitute guiding norms and are specified further by various acts of generally applicable law of lower rank, which regulate specific segments of social relations. It should also be recalled that universities (and institutes) have legal personality and are parties to many legal relationships. In legal transactions, universities also act as employers; therefore, regulations concerning equal treatment and the prohibition of discrimination in labor law, primarily based on the Act of 26 June 1974, Labor Code (consolidated text Journal of Laws 2025, item 277, as amended – hereinafter: Labor Code), are particularly significant. These provisions apply directly only to employment relationships (employment contracts, appointments, elections, nominations, or cooperative employment agreements). Nonetheless, they are of considerable importance, as they often serve as the basis for anti-discrimination procedures adopted by universities or institutes concerning all groups of the academic community, including students and doctoral candidates.

Accordingly, pursuant to Article 112 of the Labor Code, employees have equal rights arising from performing the same duties; this particularly concerns the equal treatment of men and women in employment.

Equal treatment in employment means non-discrimination in any form, directly or indirectly, with respect to establishing or terminating employment relationships, employment conditions, promotion, and access to training for professional development, in particular regardless of sex, age, disability, race, religion, nationality, political beliefs, union membership, ethnic origin, creed, sexual orientation, fixed-term or indefinite employment, or full-time or part-time employment (Art. 183a §1–2 Labor Code).

The Labor Code distinguishes between two types of discrimination – direct and indirect.

### **Direct and Indirect Discrimination**

Direct discrimination occurs when an employee is, or could be, treated less favorably than other employees in a comparable situation due to one or more characteristics such as sex, age, disability, race, religion, nationality, political beliefs, union membership, ethnic origin, creed, sexual orientation, fixed-term or indefinite employment, or full-time or part-time employment. An example of such discrimination could be the refusal to hire someone due to prior criminal convictions or having young children.

Indirect discrimination arises when an apparently neutral provision, criterion, or action results in, or could result in, adverse disproportionate effects or a particularly unfavorable situation regarding the establishment or termination of employment, employment conditions, promotion, or access to training for professional development,

affecting all or a significant number of employees belonging to a group distinguished by one or more discriminatory grounds (age, sex, etc.). An exception occurs when the provision, criterion, or action is objectively justified by a lawful aim to be achieved, and the means used to achieve that aim are appropriate and necessary.

In practice, another distinction has been developed in relation to discriminatory behavior (also shown in the diagram above): discrimination by association and discrimination by assumption.

Discrimination by association generally refers to less favorable treatment of an employee because of their connection to a person with a protected characteristic. For example, an employee caring for a person with a disability may be subject to discrimination (see Court of Justice of the EU judgment of 17 July 2008, C-303/06 – Coleman case).

Discrimination by assumption occurs when an employee is treated less favorably because of a characteristic wrongly attributed to them. For instance, an employer may suspect that an employee is homosexual or a devout Catholic and, as a result, deny them a raise or promotion, or refuse to hire a woman due to fear she may become pregnant.

Currently, discrimination by association and by assumption are concepts recognized and applied in doctrine and case law. However, the legislator intends to introduce them into the provisions of the Labor Code, granting them normative status (Draft amendment to the Labor Code, UD183).

It is also worth noting that the concepts of harassment and sexual harassment are closely related to discrimination and, according to the Labor Code, constitute its qualified forms. Harassment is any unwanted behavior aimed at, or resulting in: 1) violating the dignity of an employee and 2) creating an intimidating, hostile, degrading, humiliating, or offensive environment. Sexual harassment is any unwanted behavior of a sexual nature or related to the sex of the employee, the purpose or effect of which is to violate the employee's dignity, particularly by creating an intimidating, hostile, degrading, humiliating, or offensive environment; such behavior may include physical, verbal, or non-verbal elements.

*Barbara Pietrzyk-Tobiasz, Ph.D.*