

## Dutch Civil Code

### Section 7:646 - 7:649 of the Dutch Civil Code Section 7:646 of the Dutch Civil Code

- (1) It is prohibited for employers to discriminate between men and women in entering into an employment agreement, providing training and instruction to an employee, in the conditions of employment, in granting promotion and in terminating an employment agreement.
- (2) Derogation from subsection 1 is permitted in entering into an employment agreement and in providing training and instruction in those cases in which the sex is determining. Section 5(3) of the Equal Treatment (Men and Women) Act then applies *mutatis mutandis*.
- (3) Derogation from subsection 1 is permitted in case of stipulations relating to the protection of women, in particular in connection with pregnancy or motherhood,.
- (4) Derogation from subsection 1 is permitted in case of stipulations which aim at placing female employees in a privileged position in order to eliminate or reduce *de facto* inequalities and provided that the different treatment is reasonably proportionate to the intended aim.
- (5) For the purposes of this section discrimination between men and women is defined as both direct and indirect discrimination between men and women. Direct discrimination is defined to include discrimination on the grounds of pregnancy, childbirth and motherhood. Indirect discrimination is defined as discrimination on the grounds of other characteristics than sex, for example civil status or family circumstances, resulting in discrimination on the grounds of sex.
- (6) The prohibition on discrimination contained in subsection 1 does not apply to indirect discrimination which is objectively justified.
- (7) Any stipulation contrary to subsection 1 is null and void.
- (8) If a person who considers that he has been wronged through discrimination as referred to in this section establishes before a court facts from which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that the action in question was not in breach of this section.

### Section 7:647 of the Dutch Civil Code

- (1) The termination of an employment agreement by the employer in contravention of Section 646(1) or on account of the fact that the employee has invoked Section 646(1) either at law or otherwise, is voidable.
- (2) If the employee has not invoked this ground for annulment within two months after the notice of termination, his right to do so lapses. Section 55 of Book 3 is not applicable.
- (3) The right of action in connection with the annulment is prescribed by the lapse of six months after the day as of which the employment agreement was terminated.
- (4) Termination as referred to in Section 646(1) does not result in the employer being liable to pay compensation.

### Section 7:648 of the Dutch Civil Code

- (1) It is prohibited for employers to discriminate between employees in the conditions under which an employment agreement is entered into, renewed or terminated, on the grounds of a difference in working hours unless such discrimination is objectively justified. Any termination of the employment agreement by the employer in contravention of the preceding sentence or on account of the fact that the employee has invoked the provision of the preceding sentence either at law or otherwise, is voidable. Section 647, subsections (2) and (3) apply *mutatis mutandis*.
- (2) Any stipulation in contravention of subsection (1) is null and void.
- (3) Termination as referred to in the first sentence of subsection (1) does not result in the employer being liable to pay compensation
- (4) The Equal Treatment Commission, mentioned in Section 11 of the Equal Treatment Act, is competent to examine whether discrimination as referred to in subsection (1) occurs or has occurred. Sections 12, 13, 14, 15, 20(2) and 33 of the Equal Treatment Act apply *mutatis mutandis*.

### Section 7:649 of the Dutch Civil Code

- (1) It is prohibited for employers to discriminate between employees in the conditions of employment on the grounds of the employment agreement being either for a fixed period or permanent, unless such discrimination is objectively justified.
- (2) Termination of the employment agreement by the employer on account of the fact that the employee has invoked the provision of subsection (1) either at law or otherwise, is voidable. Section 647, subsections (2) and (3) are applicable.
- (3) Any stipulation in contravention of subsection (1) is null and void.
- (4) The Equal Treatment Commission, mentioned in Section 11 of the Equal Treatment Act, is competent to examine whether discrimination as referred to in subsection (1) occurs or has occurred. Sections 12, 13, 14, 15, 20(2) and 33 of the Equal Treatment Act apply *mutatis mutandis*.

5. The provisions of subsections (1) through (4) do not apply to temporary employment agreements referred to in Section 690.