

The Equal Status Acts, 2000-2004 NOTIFICATION

IMPORTANT: This document warns of a possible legal claim. Please read it, and the attached Notes, carefully. The Notes explain what this document is about, explain some of the terms used, and set out the legal requirements this Notification must follow.

From: *(name and address of the “complainant”, the person who thinks they have been discriminated against or otherwise unlawfully treated)*

| | |
|-----------------|--|
| Name: | |
| Address: | |

To: *(name and address of the “respondent”, the person or organisation who the complainant thinks discriminated against them or treated them unlawfully)*

| | |
|-----------------|--|
| Name: | |
| Address: | |

1. I think that you have/may have treated me unlawfully by: *(please tick which box or boxes apply)*

- Discriminating against me,
- Harassing me, or allowing me to be harassed
- Sexually harassing me, or allowing me to be sexually harassed
- Failing to provide me with “reasonable accommodation” [see Notes: only for person with a disability]
- Victimising me *(see Notes)*

contrary to the Equal Status Acts, 2000 – 2004.

2. I think that you did so on the following ground(s):

(Please tick whichever box(es) apply)

- gender** *(male or female)*
- marital status** *(single, married, separated, divorced or widowed)*
- family status** *(pregnant; parent or acting parent of a child; parent or resident primary carer of a person with a disability who needs continuing care); (see Notes)*
- sexual orientation** *(heterosexual, homosexual or bisexual orientation)*
- religion** *(religious belief/background or lack of belief)*
- age** *(18 years of age or over, except regarding motor insurance): (see Notes)*
- disability** *(see Notes)*
- race** *(colour, nationality, ethnic or national origins)*
- membership of the Traveller community**
- victimisation** *(see Notes)*

3. Details of my complaint are as follows *(include details such as place, **date** and time when you say the respondent treated you unlawfully, and what you say led up to this treatment):*

Date:.....

Time:.....

Other details:

.....
.....
.....
.....

(CONTINUE ON SEPARATE PAGE(S), IF NEEDED)

4. I think that this involved me being treated less favourably than others (on the ground(s) mentioned above) in the following way:

(this section is not needed for harassment or sexual harassment cases)

.....
.....
.....
.....
.....
.....
.....

5. Please reply explaining why you treated me as you did. I attach Form ES.2, which can be used to reply.

6. Request for other information:

(If the complainant is not using this section, please go directly to next page)

Please reply in writing to the following questions which are relevant to my case:

(List your questions here, please number each one).

7. Please note that I intend to seek redress under the Equal Status Acts 2000-2004 if I am not satisfied with the reply I receive, or if you fail to reply within a month after it was sent to you.

Please send your reply to me at the address written below.

Signature of Complainant (or their representative):

.....

Date:

Contact Address:

.....

.....

NOTE TO THE PERSON RECEIVING THIS NOTIFICATION:

The following information is available from the Equality Tribunal. It may help you in dealing with this Notification:

- A reply form ES.2
- Explanatory notes “Information on receiving a Form ES.1, or using Form ES.2”
- A Guide to Procedures for cases under the Equal Status Acts.

The Equality Tribunal is located in Davitt House, 65a Adelaide Road, Dublin 2, lo-call 1890 34 44 24. You can also find this material on the website at www.workplacerelements.ie.

Complaints under the Equal Status Acts should be submitted in the first instance to Workplace Relations Customer Service, Dept. of Jobs, Enterprise & Innovation, O’Brien Road, Carlow.

INFORMATION ON USING FORM ES.1

*Please note that this Form and Information Notes are not legal advice, nor a legal interpretation. They are provided as a practical plain-language aid, to help both parties to have clear information about the issues in dispute. They remain subject to the exact wording of the Acts in every case.*¹

*These Notes only refer to the situation under the Equal Status Acts with effect from **18th July 2004**.*²

1. What is this form about?

Under the Equal Status Acts 2000-2004, it is generally unlawful in Ireland to discriminate when providing goods, services or facilities, on the basis of a person's gender, marital status, family status, sexual orientation, religion, age, disability, race, or membership of the Traveller community.

Some related conduct is also unlawful:

- harassment based on any of these factors, or sexual harassment,
- victimising a person for seeking rights protected by the Equal Status Acts,
- failing to provide "reasonable accommodation" (explained at point 9) for a person with a disability.

The Acts provide for a number of specific exceptions to these general rules.

Form ES.1 is the first step towards making a complaint of discrimination under the Equal Status Acts. Under the Equal Status Acts, a person who is thinking of bringing a complaint ("the **complainant**") *must* first send a written Notification to the person they wish to complain against ("**the respondent**"). The Notification must contain specific information, and must be sent within a specific time limit.

Form ES.1 is a Notification. It is designed to help both parties comply with the legal requirements about notification and reply.

¹ The full text of the Equal Status Acts 2000 – 2004 is available at www.workplacerelements.ie, or from the Government Publications Office.) Some of the relevant definitions from the Act are also set out below, at point 9.

² On 18 July 2004, the Equality Act 2004 came into force, making a number of changes to the original Equal Status Act 2000. Incidents which took place before 18 July 2004 will be decided according to the original text of the Equal Status Act 2000, which may differ from what is stated here.

Accessibility and special needs

If you have any particular difficulty in completing the form (for example due to disability or language or writing difficulties), please contact the Equality Tribunal. We will try to help in making alternative arrangements as appropriate.

2. What is the “request for information” (point 6 in form ES.1)?

Under the Equal Status Acts, you are entitled to question the respondent, in your Notification, so as to obtain information which is relevant to your case. (You do not have to do so). You can use point 6 in Form ES.1 to do this.

The respondent is not obliged to reply to your questions. However, if they do not reply, or if they give false or misleading information, the Acts provide that the Equality Tribunal may, if appropriate, take account of this when they are deciding your case.

3. Do I have to use Form ES.1 to notify my complaint?

No. There is no obligation to use this particular form. It is designed to make it easier for both parties to comply with the provisions of the Equal Status Acts concerning notification, request for information, and reply. But you can write your own notification, provided that it complies with all the requirements of the Equal Status Acts.

4. What do I do about sending the form?

Send it direct to the respondent (that is, the person or organisation you think discriminated against you). Please do not send this form to the Equality Tribunal.

Keep a copy of the notification you send. You should also send it by registered post, or get a **certificate of posting** from the Post Office.

If several persons are considering complaining about the same incident, then each complainant should send a notification.

Please send the Form ES.2 (attached) to the respondent with your Notification. They can use it to reply to you.

5. Is there any time limit for sending the notification?

Yes. This is important. The Equal Status Acts provide that you must send the Notification to the respondent within two months of the incident you are complaining about. **If you do not do this in time, any complaint you make afterwards may not be valid: if the complaint is not valid, the Equality Tribunal cannot deal with it.**

6. Can I do anything if I have missed the time limit?

In some circumstances, the time limit for notification can be extended to a maximum of four months from the incident. You must apply to the Equality Tribunal to extend time, and satisfy it that there is reasonable cause to do so. (The Tribunal's *Guide to Procedures under the Equal Status Acts* explains how to apply.)

In very limited circumstances only, the Equal Status Acts allow the Director of the Tribunal to dispense with some or all of the conditions for notification, (for example, to accept a complaint even though notification was not given within the time limits allowed). However, the Acts state that this can only be done:

- *exceptionally*
- *where the Director is satisfied that it is fair and reasonable in the particular circumstances*
- *having regard to all the relevant circumstances, including:*
 - *the extent to which the respondent is or is likely to be aware of the circumstances in which the prohibited conduct occurred*
 - *and the extent of any risk of prejudice to the respondent's ability to deal adequately with the complaint.*

You must apply to the Tribunal to dispense with notification.

The respondent will be given an opportunity to comment, if the Tribunal is considering granting an application to extend time or dispense with notification.

7. What happens after I send the form?

If you have received no reply after one month, or if you receive a reply and are not satisfied with it, you can then make a complaint under the Equal Status Acts to Workplace Relations Customer Service, Dept. of Jobs, Enterprise & Innovation, O'Brien Road, Carlow. You will need to complete a complaint form (Form ES.3), which is available from the Tribunal. The Tribunal will reply promptly, and will give you further information at that stage about how your claim will proceed.

Note that there is a separate time limit for making a complaint. The Tribunal must receive the complaint within **six months** of the incident you are complaining about (or six months from the last incident, if there have been similar incidents.)

8. What is the Equality Tribunal and what does it do?

The Equality Tribunal is an independent body set up by law to mediate, or investigate and decide on, complaints of discrimination. The Tribunal is impartial: it does not act on behalf of either party, and cannot advise any person on a claim. If you need advice, you should contact your solicitor, representative organisation, or support group.

Tribunal decisions (or mediated agreements) are legally binding. You can get information about the Tribunal by calling or writing to the Equality Tribunal, Davitt House, 65a Adelaide Road, Dublin 2; by phoning the Tribunal, at lo-call 1890 34 44 24; or on the Workplace Relations website at www.workplacereactions.ie.

9. What do the legal terms in form ES.1 mean?

The Equal Status Acts define the terms below as follows:

“age” : The Equal Status Acts provide that it is not discrimination on the *age* ground to treat a person under 18 years old more, or less, favourably than another person.

(There is one exception: it may be discriminatory to treat a licensed driver aged under 18 less or more favourably than another person, in relation to providing motor vehicle insurance.)³

However, it may still be unlawful to discriminate against a person aged under 18 on any of the *other* protected grounds, e.g. based on race or disability.

“disability” means—

“(a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,

(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,

(c) the malfunction, malformation or disfigurement of a part of a person's body,

(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or

(e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour”.

“direct discrimination”: takes place *“where a person is treated less favourably than another person is, has been, or would be treated in a comparable situation”* on any of the protected grounds (gender, disability, race, etc). For example, if a man is treated more or less favourably than a woman is treated in similar circumstances, and it appears that he was treated differently because he was male, there may be direct discrimination based on gender.

“discrimination”: The Equal Status Acts prohibit various forms of discrimination, including *direct discrimination, indirect discrimination, failure to provide “reasonable accommodation”* for a person with a disability (explained below), and *discrimination by association* (where a person is treated less favourably because they are associated with another person under a protected ground, for example because of the other person’s colour, disability, nationality, etc). *Victimisation* is also treated as a type of discrimination.

³ See section 3(3) Equal Status Acts 2000-2004.

"family status" means *"being pregnant or having responsibility—*
(a) *as a parent or as a person in loco parentis in relation to a person who has not attained the age of 18 years, or*
(b) *as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis,*
and, for the purposes of paragraph (b), a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability",

"goods" means any articles of movable property.

"ground" means the basis on which discrimination may occur: the "grounds" protected under the Equal Status Acts are ***gender, marital status, family status, sexual orientation, religion, age, disability, race, membership of the Traveller community, or victimisation.***

"harassment" means *"any form of unwanted conduct⁴ related to any of the discriminatory grounds ...[which] has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person",*

"indirect discrimination" may take place where *"an apparently neutral provision puts a person, [as a member of a group covered by a particular protected ground], at a particular disadvantage compared with other persons"* who are not a member of that group. (For example, an employment rule that part-time workers may not join the employer's pension scheme. The rule is apparently neutral: it does not discriminate directly on any of the protected grounds, since it applies irrespective of gender, nationality, age, etc. However, if the part-time workers are almost all female, they could argue that the rule, which is apparently neutral as regards gender, actually disadvantages women far more than men and hence discriminates indirectly against women.

⁴ "Such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material".

Indirect discrimination is subject to a further test: it may still be lawful if it is *“objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”*

“marital status” means *“being single, married, separated, divorced or widowed”*;

“reasonable accommodation”: The Acts define discrimination as including *“a refusal or failure by the [respondent] to do all that is reasonable to accommodate the needs of a person with a disability by providing [or allowing] special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service”*. However, this is not unlawful if providing the special treatment or facilities *“would give rise to a cost, other than a nominal cost, to the provider of the service in question.”*

“religious belief” includes *“religious background or outlook”*;

“sexual harassment” means *“any form of unwanted verbal, non-verbal or physical conduct⁵ of a sexual nature ...[which] has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person”*,

“service” means *“a service or facility of any nature which is available to the public generally or a section of the public, and, without prejudice to the generality of the foregoing, includes—*

(a) access to and the use of any place,

(b) facilities for—

(i) banking, insurance, grants, loans, credit or financing

(ii) entertainment, recreation or refreshment,

(iii) cultural activities, or

(iv) transport or travel

(c) a service or facility provided by a club (whether or not it is a club holding a certificate of registration under the Registration of Clubs Acts, 1904 to 1999) which is available to the public generally or a section of the public, whether on payment or

⁵ “Such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material”.

*without payment, and
(d) a professional or trade service,
but does not include pension rights within the meaning of the
Employment Equality Act 1998, or a service or facility in relation to
which that Act applies”*

"sexual orientation" means *“heterosexual, homosexual or bisexual orientation”*;

“Traveller community” means *“the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland”*,

“victimisation” means that a person who —
*“(i) has in good faith applied for any determination or redress provided for in the [Equal Status Acts],
(ii) has attended as a witness before the [Equality] Authority, the Director [of the Equality Tribunal] or a court in connection with any inquiry or proceedings under [the Acts],
(iii) given evidence in any criminal or other proceedings under [the Acts]
(iv) has opposed by lawful means an act which is unlawful under [the Acts], or
(v) has given notice of an intention to take” any of the above actions”*,

is treated less favourably on that account, than a person who has not done so is treated, has been treated or would be treated in otherwise similar circumstances.

(Persons who are claiming victimisation should tick the “victimising” box on page 2, and the “victimisation” ground box on page 3.)