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FLASH REPORT

Country:	Portugal
Title:	Changes to the Labour Code introduce 'gender identity' to the grounds of discrimination
Date:	1 June 2015
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<u>Context</u>	
Issue at stake:	Change in the Labour Code - Gender Identity
Ground of discrimination:	Sex
Source:	Legislation
Field:	Gender identity / gender reassignment
Applicable law:	Labour Code

Content

Law development: The Labour Code, approved by Law No. 7/2009 of 12 February 2009, was recently changed by Law No. 28/2015 of 14 April 2015. The change concerns Article 24 No. 1 of the Labour Code, which prohibits discriminatory practices against both workers and job applicants to a position of employment on several grounds indicated by the law. This provision was changed in order to add 'gender identity' (a term undefined in Portuguese legislation) as an autonomous ground of discrimination among the other grounds already indicated in the provision.

Key points of analysis: This change is intended to prohibit, and qualify as discriminatory, practices against workers based on gender reassignment and transsexualism. These discriminatory practices are now made more visible.

Analysis:

I. The Portuguese Labour Code (LC) establishes the right to equal opportunities in the access to a job, and the right to equal treatment in the course of the employment contract. It accordingly prohibits all discriminatory practices against job applicants to a position of employment and employees on several grounds.

This principle, which develops the constitutional principle of equality and non-discrimination (Article 13 of the Portuguese Constitution), is firmly stated in Article 24 of the LC. Article 24 No. 1 indicates several grounds of discrimination that follow under the scope of the prohibition: ancestry, age, sex, social orientation, marital state, family situation, economical situation, level of education, origin or social condition, genetic features, reduced working capacity, disability, nationality, ethnical origin or race, place of birth, native language, religion, political or ideological beliefs, and affiliation to a trade union.

This list of discrimination grounds is now enlarged with an autonomous reference to 'gender identity', introduced in Article 24 No. 1 by Law No. 28/2015, of 14 April. This.

change is intended to prohibit and qualify as discriminatory practices against workers based on gender reassignment and transsexualism

II. In the view of the author, this legal development was not necessary, mainly for two reasons. First, the list of discrimination sources indicated in Article 24 No. 1 of the LC is an open list, as explicitly mentioned in the provision, so it was already possible to accommodate other sources of discrimination under this provision. Second, discrimination against transsexuals or based on gender identity or gender reassignment procedures is qualified as sex discrimination, and sex is already indicated as a source of discrimination in this provision.

A new and autonomous reference to sex identity in this provision is therefore redundant. Still, it has the advantage of making discriminatory practices on the grounds of transsexualism or gender reassignment more visible.

Internet link source:

Available via: www.dre.pt, accessed on 14 April 2015.