



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Belgium
Title:	Enforcement of the federal anti-discrimination legislation
Date:	2 March 2018
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Update of news report:	Belgium - Final adoption and publication of the Brussels' legislative act setting up new anti-discrimination tools on the job market (PDF 142 kB)
<u>Context</u>	
Issue at stake:	New powers of enforcement for the Labour Inspectorate in employment matters
Ground of discrimination:	Race and ethnic origin; sex; age, disability, beliefs, sexual orientation and various other criteria.
Source:	<i>Moniteur belge/Belgisch Staatsblad</i> , 5 February 2018
Field:	Employment
Applicable law:	Federal Act of 15 January 2018 containing various provisions in matters of employment.

Content

Law development: Three identical Royal Decrees of 24 October 2008, ancillary to the three federal Anti-Discrimination Acts of 10 May 2007 ("Race", "Gender" and "Discrimination in General"), have appointed the Labour Inspectorate of the Federal Public Service "Employment, Labour and Social Dialogue" to monitor compliance with these Acts in the field of employment. However, proving the existence of discriminatory practices, especially in recruitment, had promptly revealed itself as a stumbling block.

Consequently, Chapter 9 of the Act of 15 January 2018 inserted new provisions into the Social Penal Code in order to enable labour inspectors to use mystery calls to the purpose of collecting evidence of penal offences as defined by the three Acts of 10 May 2007. According to the Statement of Purposes of the bill which was tabled in the House of Representatives (federal Parliament), the use of mystery calls (i.e. a labour inspector passes himself/herself off as a client or a job seeker) is only permissible if the principles of fairness and respect of the rights of defence are maintained. Hence, provocation and "fishing expeditions" are prohibited; there must be a strong presumption that discrimination is perpetrated, based on professionally conducted data mining and data matching. Moreover, in every case the use of mystery calls must be sanctioned previously by the public prosecutor or the *auditeur du travail/arbeidsauditeur* (specialised public prosecutor in matters of social law).

Key points of analysis: Both the "Race" and the "Gender" Acts of 10 May 2007 (which implement Directive 2000/43/EC and all the Gender directives, respectively) provide that in employment matters, failing to comply with their provisions is not only a breach of

labour law, but a penal offence as well. In contrast, the "Discrimination in General" Act only designates a limited number of breaches as penal offences (e.g. provocation or instruction to discriminate). Consequently, the use of mystery calls will be severely restricted as to the types of discrimination covered by Directive 2000/78/EC.

Internet link source: All legal instruments mentioned are available in French and Dutch on <http://www.juridat.be>.

Statement of Purposes of the Act of 15 January 2018 (*Documents parlementaires/Parlementaire Stukken*, n°54-2768) are available in French and Dutch on <http://www.lachambre.be> or <http://www.dekamer.be>.