

The Equality Ombudsman in brief

The Equality Ombudsman (DO) is a public authority with the task of counteracting discrimination and promoting equal rights and opportunities. The DO's activities are largely aimed at preventing discrimination by means of legal supervision and promotional work.

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A society free from discrimination.
Read more about DO's activities on www.do.se

The Equality Ombudsman in 2018

Information about active measures

The DO started the year with a major information campaign aimed at improving employers' awareness of new and more stringent rules concerning so called active measures (positive duties to take measures to counteract discrimination and promote equal rights and opportunities). The initiative included the placement of opinion pieces, production of information packs and advertising campaigns. To provide support to employers, the DO also produced a digital web guide.



Major supervision of employers

The DO conducted a large scale supervisory operation, targeting several hundred employers in both private and public sectors. The purpose was to ensure compliance with national rules requiring routines against sexual harassment and victimisation. The supervision inter alia unearthed that 290 out of 310 municipalities did not have routines corresponding to the legal requirement (a follow up supervision made in 2019 indicates that most of them have taken measures to correct the deficiencies).

1 538 200

Sweden's largest obstacle course

On May 1st 2018, the prohibition against discrimination in the form of inadequate accessibility (for persons with disabilities) was extended to include all businesses offering goods and services to individual customers (in earlier legislation, smaller actors were exempted). In order to ensure that measures were taken to comply with the law, the DO took a number of information initiatives to raise awareness, including an advertising campaign with the headline "Sweden's biggest obstacle course has at least 1,538,200 participants – every day".



Case law regarding accessibility

A municipality which had failed to remedy inadequate wheelchair ramps for a wheelchair-using pupil at one of its schools, finally admitted discrimination in the Court of Appeal after having lost the case against the DO in first instance. The case is one of several pilot cases run by the DO testing different aspects of the prohibition against inadequate accessibility.



Leadership conference on inclusion

In October, the DO arranged a well visited conference entitled “Inclusive leadership in practice #LGBT” together with four other LGBT-strategic agencies”. A full day of lectures were combined with tailored seminars on how to create an inclusive work place based on an LGBT perspective.



Still from DO:s film "Sexuella trakasserier på jobbet".

Initiatives aimed at preventing sexual harassment

In the course of the year, and acting on the window of opportunity provided for by the Metoo-movement, the DO run a number of initiatives aimed at preventing sexual harassment in the workplace and in schools.

The DO inter alia organised highly specialized seminars for Director Generals of state authorities (entitled “Your leadership can make the difference”) and legal experts working for the social partners.

A print guide and a digital platform on counteracting sexual harassment were produced in conjunction with the Swedish Work Environment Authority (AV) following a government initiative.

Information films on sexual harassment produced by the DO were widely spread in designated target groups.

INFORMATION TILL ARBETSGIVARE – OM SEXUELLA TRAKASSERIER

2018

Mellan den som utsätts
och den som utsätter
står du.



Som **arbetsgivare** är det din skyldighet att förebygga och motverka sexuella trakasserier i din verksamhet.

Long-term change in several steps

For reasons of efficiency, the Equality Ombudsman (DO) aims to promote good practices/handle problems as far ‘upstreams’ as possible (at a societal and organisational level) so as to minimize individual instances of discrimination ‘downstreams’. Aside from the ordinary day to day work of supervision and information in the areas of society covered by the Discrimination Act, the DO has decided to make specific and long-term (from 2017 to 2021) efforts targeting identified problems within the labour market, the housing market (specifically the rental market), and social services.

Within those areas, the DO is coordinating various initiatives and using different tools (both promotional and legal) so as to attain maximum impact with respect to the problems in question.

Our communication – important for commitment and trust

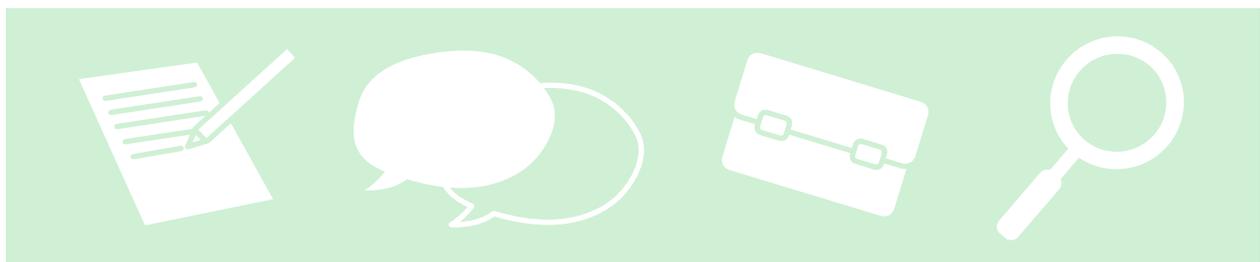
In order to increase awareness and create commitment for our issues, the DO has developed our strategic communication in digital channels. The efforts have resulted in a dramatic increase of visits to DO’s web page and followers in social media. To further support this positive development, a major overhaul of the DO’s brand profile was made (changes were launched in May 2019).

Supervision and strategic litigation

The DO’s task of ensuring that employers and other relevant actors comply with the provisions of the Discrimination Act must not be confused with the possibility to represent individuals in court in cases of public interest.

In its supervisory function, the DO investigates potential infringements and issues non-binding decisions. The decisions contain the DO’s assessment as to whether the law has been infringed or not and/or risks to be infringed. Investigations are initiated by the DO and generally have their basis in one or more reports from individuals, news media or information from civil society.

The DO also engages in strategic litigation in cases deemed to be of public interest (e.g. when there are doubts as to whether case law and legislation conform to EU law or Sweden’s international law obligations). In those instances, the DO represents one or more individuals in an action for damages under the Discrimination Act.



Some examples of the DO's supervision in 2018

AN EMPLOYER CANNOT CATER TO CARE RECIPIENTS DISCRIMINATORY PREFERENCES

Based on information in the media, the DO initiated an investigation of seven municipalities in the north of Sweden. According to the information in question, the municipalities catered to home care recipients' wishes to have ethnically 'Swedish' home care personnel. In its decision, the DO made it clear that allowing home care recipients to reject personnel with a non-Swedish background, could lead to discrimination in the municipalities' decisions pertaining to the recruitment and scheduling of personnel.

100-YEAR-OLDS COULD NOT USE BANK SERVICE

The DO investigated a state owned bank/lending institute that restricted payment options for customers aged 100 years and over. The restriction was due to a banking system in which an age limit was set for certain payment services. The purpose of the limit was to prevent minors from being able to use the service. The DO determined the limit to be discriminatory, as it was neither suitable nor necessary in relation to the stated purpose.

EXCLUSIONARY MARKETING

Following several reports from individuals and media attention, the DO decided to launch an investigation into what was presented as the first "man-free" music festival. According to information on the festival's web page and various interviews made with the organisers, the festival would not be open to cis-males. Applying the Feryn-case law from the Court of Justice, the DO determined that deterring men from attending was a violation of the Discrimination act. The fact that the festival chose not make a distinction based on gender "at the door", did not affect the finding.

Some examples of the DO's strategic litigation in 2018

RIGHT TO DEMAND EQUAL TREATMENT WHEN GREETING – BUT NOT NECESSARY TO GREET BY TOUCHING

The DO won a case for a muslim woman before the Swedish Labor Court concerning an employers' requirement that all employees greet by shaking hands. For reasons connected to her religious faith, the woman did not touch persons of the opposite sex outside her close family circle.

Based on expert evidence provided by the DO, the Labour Court determined her avoidance of physical contact with members of the opposite sex to be protected as a religious manifestation under article 9 ECHR, rejecting the argument from the employer that it was merely a cultural practise.

In determining that the policy adversely affected a certain group of muslims sharing her belief in a disproportionate fashion, the Labour Court inter alia held the policy was not necessary to secure the aim of equal treatment between men and women, as it was possible to secure this aim by requiring employees to greet without distinction (the woman

in question greeted men and women in the same fashion by placing her hand on her chest). In its proportionality assessment, the Court stressed the importance of not excluding entire groups from the labour market.

DISCRIMINATION WITH REFERENCE TO REQUIREMENTS IN COLLECTIVE AGREEMENTS

Central collective agreements in the temporary work sector provided that only applicants engaged in some other occupation amounting to at least 50 % could qualify for certain temporary positions on a part-time basis. A temporary work agency included a similar requirement in its advertisements and in its recruiting. The DO represented a woman – only capable of working 50 % because of her disability – who had been excluded from applying for work with the agency by reference to the requirement (i.e. since she did could not fulfil the requirement of another occupation of 50 %).

In its ruling, indirectly disqualifying the regulation in underlying the Collective agreements, the Labour Court determined that the requirement applied by the agency was discriminatory as it disproportionately excluded individuals with physical disabilities from the type of part-time work that was regulated by the collective agreements in question.

SUPREME COURT REQUESTS PRELIMINARY RULING FROM THE COURT OF JUSTICE OF THE EUROPEAN UNION

In a case, which is now pending before the Court of Justice, the DO has questioned whether the Swedish implementation of Directive 2000/43/EC is in conformity with Article 15 of the Directive (the duty to provide effective and dissuasive sanctions) as well as Article 47.1 of the Charter of Fundamental Rights (the right to an effective remedy) and Article 19.1 TEU (the duty to provide effective legal protection).

The question has arisen in a case that concerns ethnic profiling aboard an aircraft. The airline company accused, rejected the claim of discrimination, but agreed to pay the amount requested in damages (10 000 SEK) as “goodwill”. Since the individual victim’s interest of establishing a violation as such is not recognized in the Swedish legislation implementing the Directive, the admission to pay an amount in “goodwill” prevents the victim in question from a court hearing establishing that his rights have been infringed (and that the airline company has a duty to pay the requested amount as compensation/sanction for the violation).