

A.L. 317 ta' l-2005**ATT DWAR IS-SIGURTÀ SOĊJALI
(KAP. 318)****Regolamenti ta' l-2005 dwar Trattament Indaqg fi Skemi ta'
Sigurtà Soċjali Okkupazzjonali**

BIS-SAHHA tas-setghat moghtija bl-artikolu 134 ta' l-Att dwar is-Sigurtà Soċjali, il-Ministru għall-Familja u Solidarjetà Soċjali għamel dawn ir-regolamenti li ġejjin:-

1. (1) It-titolu ta' dawn ir-regolamenti hu Regolamenti ta' l-2005 dwar Trattament Indaqg fi Skemi ta' Sigurtà Soċjali Okkupazzjonali. Titolu u skop.

(2) Dawn ir-regolamenti jdahhlu fis-sehh id-disposizzjonijiet rilevanti tad-Direttiva tal-Kunsill 86/378/KEE, kif emendata bid-Direttiva tal-Kunsill 96/97/KE, dwar l-implimentazzjoni tal-prinċipju ta' trattament indaqg għall-irġiel u n-nisa fi skemi ta' sigurtà soċjali okkupazzjonali.

(3) L-iskop ta' dawn ir-regolamenti hu l-implimentazzjoni tal-prinċipju ta' trattament indaqg għall-irġiel u n-nisa fi skemi ta' sigurtà soċjali okkupazzjonali.

(4) Dawn ir-regolamenti għandhom japplikaw għal:

(a) membri tal-popolazzjoni tax-xoghol, inklużi persuni li jaħdmu għal rashom jew li jaħdmu għalihom infushom, persuni li l-attività tagħhom hija interrotta minn mard, maternità, incident jew qgħad involontarju u persuni li jkunu qegħdin ifittxu x-xoghol, haddiema irtirati u b'diżabilità, u dawk li jressqu l-pretensjoni tagħhom bis-sahha tagħhom, skond id-disposizzjonijiet li japplikaw tal-liġi u/jew tal-konswetudni;

(b) skemi okkupazzjonali li jipprovdu harsien kontra l-mard, l-invalidità, ix-xjuħija, l-irtirar kmieni, incidenti industrijali, mard okkupazzjonali u qgħad;

(ċ) skemi okkupazzjonali li jipprovdu għal benefiċċji soċjali ohra, kemm fi flus kemm f'xorta ohra, u b'mod partikolari benefiċċji tas-superstiti u *allowances* għall-familja jekk dawk il-

benefiċċji jinghataw lil persuni impjegati, u li jkunu jikkostitwixxu korrispettiv imhallas mill-prinċipal lill-haddiem minhabba fl-impjieg tiegħu.

(5) Dawn ir-regolamenti ma japplikawx għal:

(a) kuntratti individwali għal haddiema li jahdmu għal rashom;

(b) skemi għal haddiema li jahdmu għal rashom li jkollhom membru wiehed biss;

(ċ) kuntratti ta' assigurazzjoni, fil-każ ta' haddiema salarjati, li l-prinċipal ma jkunx parti fihom;

(d) disposizzjonijiet ta' għażla ta' skemi okkupazzjonali offruti lill-parteciċipanti individwalment biex jiggarantulhom:

(i) benefiċċji addizzjonali, jew

(ii) għażla tad-data meta jibdeu jinghataw il-benefiċċji normali għal haddiema li jahdmu għal rashom, jew għażla bejn diversi benefiċċji;

(e) skemi okkupazzjonali sakemm il-benefiċċji jkunu finanzjati minn kontribuzzjonijiet imhallsin minn haddiema fuq bażi volontarja.

Tifsir.

2. (1) Għall-finijiet ta' dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem ma tkunx titlob xort'ohra:

“l-Att” tfisser l-Att dwar is-Sigurtà Soċjali;

“prinċipju ta' trattament indaqs” tfisser li ma jkunx hemm trattament diskriminatorju dirett jew indirett bejn l-irġiel u n-nisa b' mod partikolari b' referenza għall-istatus ta' żwieġ jew ta' familja;

“skemi ta' sigurtà soċjali okkupazzjonali” tfisser skemi, maħsubin biex jissupplementaw jew jissostiwixxu l-benefiċċji provduti mill-Att, kemm jekk is-shubija f' dawn l-iskemi hi waħda obbligatorja kemm jekk issir b' għażla, u li għandhom l-iskop li jipprovdu lil persuni impjegati, li jahdmu għal rashom u li jahdmu għalihom infushom f' intrapriża jew fi grupp ta' intrapriži, kull xorta ta' attività ekonomika, settur jew grupp ta' setturi okkupazzjonali;

“trattament diskriminatorju” tfisser kull distinzjoni, esklużjoni, restrizzjoni jew differenza fit-trattament, kemm diretta

kemm indiretta, bejn l-irġiel u n-nisa li m'humiex ġustifikabbli f' soċjetà demokratika.

(2) Bla hsara ghad-disposizzjonijiet tas-sub-regolament (1) ta' dan ir-regolament, kliem u frażijiet użati f'dawn ir-regolamenti ghandu jkollhom, kemm-il darba r-rabta tal-kliem ma tkunx titlob mod ieħor, it-tifsira li ghandhom fl-Att.

3. (1) Hadd ma ghandu jassoġgetta persuna ohra ghal trattament diskriminatorju, kemm direttament kemm indirettament, b'mod partikolari ghal dak li hu:

Kunċett ta' trattament diskriminatorju.

(a) l-iskop ta' l-iskemi u tal-kondizzjonijiet biex dawn jintlahqu;

(b) l-obbligu li ssir kontribuzzjoni u l-kalkolu tal-kontribuzzjonijiet; u

(ċ) il-kalkolu tal-benefiċċji, inklużi benefiċċji supplementari dovuti fir-rigward tar-raġel jew tal-mara, jew ta' dipendenti, u l-kondizzjonijiet li jirregolaw ghal kemm żmien idum u kif jinżamm id-dritt ghal benefiċċji.

(2) Għall-finijiet ta' dawn ir-regolamenti:

(a) ghandu jiftiehem li jkun sar trattament diskriminatorju dirett meta xi persuna tiġi trattata b'mod inqas favorevoli minn kif ohra bhala tiġi, kienet jew tkun se tiġi trattata f'sitwazzjoni komparabbli;

(b) ghandu jiftiehem li jkun sar trattament diskriminatorju indirett meta xi provvediment, kriterju jew Prattika li jidhru newtrali jqiġghdu lil xi persuni fi żvantaġġ meta mqabblin ma' persuni ohrajn kemm-il darba dak il-provvediment, kriterju jew Prattika ma jkunx oġġettivament ġustifikat bi skop legittimu u l-mezzi biex jintlaħaq dak l-iskop ikunu adatti u neċessarji.

4. (1) Kull disposizzjoni kuntrarja għall-prinċipju ta' trattament indaqs f' xi liġi, kuntratt jew patt individwali jew kollettiv, regoli interni ta' intrapriżi jew regoli li jirregolaw lil xi organizzazzjoni reġistrata skond il-liġi li tkun tapplika, ghandha titqies bhala waħda nulla u bla effett.

Disposizzjonijiet f' kuntratti, pattijiet, regoli ohra jew kull liġi ohra.

(2) Id-disposizzjonijiet imsemmija fis-subregolament (1) ta' dan ir-regolament ghandhom jinkludu dawk id-disposizzjonijiet:

(a) li jistabbilixxu min huma l-persuni li jistgħu jipparteċipaw fi skema okkupazzjonali;

(b) li jistabbilixxu n-natura obligatorja jew ta' għażla ta' parteċipazzjoni fi skema okkupazzjonali;

(ċ) li jistipulaw regoli differenti fir-rigward ta' l-età tad-dhul fl-iskema jew l-inqas żmien ta' impjieg jew shubija meħtieġa biex jinkisbu l-benefiċċji tad-dhul;

(d) li jistipulaw regoli differenti, hlief kif hemm provdut fil-paragrafi (h), (i) u (j) ta' dan is-subregolament, għall-hlas lura ta' kontribuzzjonijiet meta haddiem johroġ minn skema bla ma jkun issodisfa l-kondizzjonijiet li jiggarrantixxu dritt differit għal benefiċċji fuq medda ta' żmien fit-tul;

(e) li jagħmlu kondizzjonijiet differenti għall-ghoti ta' benefiċċji jew li jirrestringu dawk il-benefiċċji lill-haddiema skond jekk humiex irġiel jew nisa;

(f) li jistabilixxu etajiet ta' rtirar differenti;

(g) li jissospendu ż-żamma jew akkwist ta' drittijiet tul perjodi ta' *leave* għall-maternità jew ta' *leave* għal raġunijiet familjari, mogħtijin bil-liġi jew skond xi patti u li jithallsu mill-prinċipal;

(h) li jistabbilixxu livelli differenti ta' benefiċċji, hlief daqstant kemm dan jista' jkun neċessarju biex jitqiesu fatturi ta' kalkolu li jsir minn attwarji li jiddifferixxu skond is-sess fil-każ ta' skemi b'kontribuzzjoni definita:

Iżda fil-każ ta' skemi finanzjati ta' benefiċċji definiti, ċertu elementi inkluzi:

(i) l-konverzjoni f'somma kapitali ta' xi parti minn pensjoni perjodika;

(ii) t-trasferiment ta' drittijiet għal pensjoni;

(iii) pensjoni li tiġi riveduta u li tithallas lil dipendenti wara li tiġi ċeduta parti minn pensjoni;

(iv) pensjoni mnaqqa meta haddiem jagħzel li jirtira kmieni;

jistgħu ma jkunux indaqs meta l-inugwaljanza ta' l-ammonti tkun tirriżulta mill-effetti ta' l-użu ta' fatturi li jhaddmu l-attwarji u li

jkunu jiddifferixxu skond is-sess, fil-waqt meta l-iffinanzjar ta' l-iskema ikun qed jiġi implimentat;

(i) li jistabbilixxu livelli differenti għall-kontribuzzjonijiet tal-haddiema;

(j) li jistabbilixxu livelli differenti għall-kontribuzzjonijiet tal-principali, hlief:

(i) fil-każ ta' skemi b'kontribuzzjoni definita, jekk l-iskop ikun li jingiebb indaq l-ammont ta' benefiċċji finali jew li dawn isiru kważi aktar indaq għaż-żewġ sessi;

(ii) fil-każ ta' skemi b'benefiċċji definiti, meta l-kontribuzzjonijiet tal-principali ikunu maħsubin biex jiżguraw li l-fondi meħtieġa jkunu biżżejjed biex ikopru l-ispejjeż tal-benefiċċji definiti;

(k) li jiġu stipulati *standards* differenti jew *standards* li japplikaw biss għal haddiema ta' xi sess speċifikat, hlief kif provdut fil-paragrafi (h), (i) u (j) ta' dan is-subregolament, fir-rigward tal-garanzija jew iż-żamma tad-dritt għal benefiċċji differiti meta haddiem johroġ minn skema.

(3) Għall-finijiet ta' dawn ir-regolamenti, meta l-ghoti ta' benefiċċji jithalla fid-diskrezzjoni tal-korpi ta' tmexxija ta' l-iskema, dawn ta' l-ahhar għandhom ikunu konformi mal-principju tat-trattament indaq.

5. Ebda haġa f'dawn ir-regolamenti ma għandha:

Azzjoni
pożittiva.

(a) tippregudika xi disposizzjoni ta' xi liġi li għandha x'taqsam mal-harsien tan-nisa għax ikunu ommijiet;

(b) għall-iskopijiet li tingħata pensjoni bis-sahha ta' skema okkupazzjonali, iżżomm lil xi principal milli jagħti lil persuni li jkunu diġà laħqu l-età ta' l-irtirar iżda li jkunu għadhom ma laħqux l-età ta' l-irtirar għall-iskopijiet ta' l-ghoti ta' pensjoni statutorja, pensjoni supplementari li jkollha l-għan li ġġib indaq l-ammont kollu totali ta' benefiċċju mħallas lil dawn il-persuni skond l-ammont imħallas lil persuni tas-sess oppost li jkunu jinsabu fl-istess sitwazzjoni u li jkunu diġà laħqu l-età ta' rtirar stipulat mil-liġi, sa dak il-waqt meta l-persuni li jkunu qegħdin jibbenefikaw mis-supplement ta' pensjoni jilħqu l-età ta' rtirar stabbilita mil-liġi.

6. Meta f'xi skema okkupazzjonali jiġi provdut dwar età tal-pensjoni flessibbli, allura t-talba li ssir sew minn irġiel sew minn nisa li

Età tal-pensjoni
flessibbli.

jressqu pretenzjoni taht l-istess kondizzjonijiet ghandha titqies bhala wahda kompatibbli ma' dawn ir-regolamenti.

Talba
ghal rapport.

7. (1) Meta ssir allegazzjoni li tkun saret xi forma ta' trattament diskriminatorju, il-persuna li taghmel l-allegazzjoni ghandu jkollha d-dritt li tibghat ilment bil-miktub lill-korp ta' tmexxija ta' l-iskema, hawn iżjed il quddiem imsejjah il-korp ta' tmexxija, dwar it-trattament diskriminatorju allegat li tkun irčiviet, fejn taghti kull dettall rilevanti u titlob twegiba. Meta jirčievi din in-notifika, il-korp ta' tmexxija ghandu jipprezenta twegiba bil-miktub fi żmien ghaxart ijiem tax-xoghol minn meta jirčievi l-ilment, u jaghti l-verżjoni tieghu tal-grajjiet u l-motivi ghaliex ikun qieghed jikkontesta l-allegazzjonijiet, kif ukoll spjegazzjoni tal-proċeduri rilevanti kollha adottati mill-korp ta' tmexxija biex ma jhallix li jkun hemm trattament diskriminatorju.

(2) Kull korrispondenza msemmija fis-subregolament (1) ta' dan ir-regolament ghandha tkun ammissibbli fi proċeduri mressqa quddiem kull qorti, u jekk jidher lill-qorti li l-korp ta' tmexxija deliberatament, u minghajr ebda skuża raġonevoli, naqas li jwieġeb fi żmien ghaxart ijiem tax-xoghol mid-data meta jkun irčieva dak l-ilment jew li t-twegiba tieghu kienet wahda evażiva jew ekwivoka, il-qorti tista' taghmel kull inferenza minn dak il-fatt li jkun jidhirlha ġust u ekwu li ghandha taghmel, inkluża inferenza li jkun ikkometta att illegali.

Tkeċċija
ingusta.

8. Impjegat li jkun tkeċċa ghandu jitqies li jkun tkeċċa ingustament jekk ir-raġuni, jew jekk ikun hemm aktar minn raġuni wahda, ir-raġuni prinċipali, tat-tkeċċija ta' dak l-impjegat kienet bi twegiba min-naha tal-prinċipal ghal ilment magħmul f'livell ta' intrapriża, jew għall-istituzzjoni ta' proċeduri legali mahsubin biex jinfurzar konformità mal-prinċipju ta' trattament indaqs.

Difiża
ta' drittijiet.

9. Ebda haġa ma ghandha żżomm lil xi assoċjazzjoni, organizzazzjoni jew entità legali ohra, li jkollhom interess legittimu li jiżguraw li jkun hemm konformità ma' dawn ir-regolamenti, milli tintervjeni jew f'isem jew b'sostenn ta' min jaghmel l-ilment, bl-approvazzjoni tieghu jew tagħha, fi proċeduri ġudizzjarji jew amministrattivi li hemm provduti għall-infurzar ta' obbligi taht dawn ir-regolamenti.

Reati.

10. Kull min jikser id-disposizzjonijiet ta' dawn ir-regolamenti ikun hati ta' reat u jista', meta jinsab hati, jehel multa ta' mhux iżjed minn elf lira.

L.N. 317 of 2005

**SOCIAL SECURITY ACT
(CAP. 318)**

**Equal Treatment in Occupational Social Security Schemes
Regulations, 2005**

IN exercise of the powers conferred by article 134 of the Social Security Act, the Minister for the Family and Social Solidarity has made the following regulations:-

1. (1) The title of these regulations is the Equal Treatment in Occupational Social Security Schemes Regulations, 2005. Title and scope.

(2) These regulations give effect to the relevant provisions of Council Directive 86/378/EEC, as amended by Council Directive 96/97/EC, on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

(3) The purpose of these regulations is to implement the principle of equal treatment for men and women in occupational social security schemes.

(4) These regulations shall be applicable to:

(a) members of the working population, including self-employed or self-occupied persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment, retired and disabled workers, and those claiming under them, in accordance with the provisions of applicable law, and/or practice;

(b) occupational schemes which provide protection against sickness, invalidity, old age, early retirement, industrial accidents, occupational diseases and unemployment;

(c) occupational schemes which provide for other social benefits, whether in cash or in kind, and in particular survivors' benefits and family allowances if such benefits are accorded to employed persons, constituting a consideration paid by the employer to the worker by reason of the latter's employment.

(5) These regulations shall not apply to:

- (a) individual contracts for self-employed workers;
- (b) schemes for self-employed workers having only one member;
- (c) insurance contracts, in the case of salaried workers, to which the employer is not a party;
- (d) optional provisions of occupational schemes offered to participants individually to guarantee them -
 - (i) additional benefits, or
 - (ii) a choice of date on which the normal benefits for self-employed workers will commence or, a choice between several benefits;
- (e) occupational schemes in so far as benefits are financed by contributions paid by workers on a voluntary basis.

Definitions.

2. (1) For the purposes of these regulations, unless the context requires otherwise:

“the Act” means the Social Security Act;

“discriminatory treatment” means any distinction, exclusion, restriction or difference in treatment, whether direct or indirect, between men and women which is not justifiable in a democratic society;

“occupational social security schemes” means schemes, intended to supplement or replace the benefits provided by the Act, whether membership of such schemes is compulsory or optional, and the purpose of which is to provide employed, self-employed and self-occupied persons in an undertaking or group of undertakings, any area of economic activity, occupational sector or group of sectors;

“principle of equal treatment” means the absence of direct or indirect discriminatory treatment between men and women in particular by reference to marital or family status.

(2) Subject to the provisions of sub-regulation (1) of this regulation, terms and expressions used in these regulations shall, unless the context requires otherwise, have the meaning assigned to them by the Act.

3. (1) It shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly, particularly with regard to:

Concept of discriminatory treatment.

(a) the scope of the schemes and the conditions of access to them;

(b) the obligation to contribute and the calculation of contributions; and

(c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

(2) For the purposes of these regulations:

(a) direct discriminatory treatment shall be taken to occur where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation;

(b) indirect discriminatory treatment shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a disadvantage when compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

4. (1) Any provisions contrary to the principle of equal treatment in any law, individual or collective contracts or agreements, internal rules of undertakings or rules governing any registered organisation in terms of applicable law, shall be considered null and void.

Provisions in contracts, agreements, other rules or any other law.

(2) The provisions referred to in sub-regulation (1) of this regulation shall include such provisions:

(a) determining the persons who may participate in an occupational scheme;

(b) fixing the compulsory or optional nature of participation in an occupational scheme;

(c) laying down different rules as regards the age of entry into the scheme or the minimum period of employment or membership of the scheme required to obtain the benefits thereof;

(d) laying down different rules, except as provided for in paragraphs (h), (i) and (j) of this sub-regulation, for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;

(e) setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;

(f) fixing different retirement ages;

(g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons, which are granted by law or agreement, and are paid by the employer;

(h) setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined-contribution schemes:

Provided that in the case of funded defined-benefit schemes, certain elements including:

(i) the conversion into a capital sum of part of a periodic pension;

(ii) the transfer of pension rights;

(iii) a revisionary pension payable to a dependant in return for the surrender of part of a pension;

(iv) a reduced pension where the worker opts to take early retirement;

may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex, at the time when the scheme's funding is implemented;

(i) setting different levels for workers' contributions;

(j) setting different levels for employers' contributions, except:

(i) in the case of defined-contribution schemes if the aim is to equalize the amount of the final benefits or to make them more nearly equal for both sexes;

(ii) in the case of funded defined-benefit schemes where the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined;

(k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in paragraphs (h), (i) and (j) of this sub-regulation, as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

(3) For the purpose of these regulations, where the granting of benefits is left to the discretion of the scheme's management bodies, the latter must comply with the principle of equal treatment.

5. Nothing in these regulations shall:

Positive
action.

(a) prejudice any provisions in any law relating to the protection of women by reason of maternity;

(b) for the purposes of granting a pension by virtue of an occupational scheme, preclude any employer from granting to persons who have already reached retirement age but who have not yet reached retirement age for the purposes of granting a statutory pension, a pension supplement the aim of which is to make equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached statutory retirement age, until such time when the persons benefiting from the supplement reach the retirement age established by law.

6. Where in any occupational scheme, there is provision for a flexible pensionable age, then a claim by either men or women claiming under the same conditions shall be construed to be compatible with these regulations.

Flexible
Pension Age.

7. (1) Where an allegation is made that some form of discriminatory treatment has occurred, the person making the allegation shall have the right to send a written notification to the scheme's management body, hereinafter referred to as the management body, of the alleged discriminatory treatment received, giving any relevant details and requesting a reply. On receipt of such notification, the management body shall submit a written reply within ten working days of the date of receipt of such notification, giving the management body's version of events and any grounds for disputing the allegations, as well as an

Request
of report.

explanation of any relevant procedures adopted by the management body to prevent discriminatory treatment.

(2) Any correspondence referred to in sub-regulation (1) of this regulation, shall be admissible in proceedings brought before any court, and if it appears to the court that the management body deliberately, and without reasonable excuse, omitted to reply within ten working days of the date of receipt of such notification or that the reply was evasive or equivocal, the court may draw any inference from that fact that it considers just and equitable to draw, including an inference that an unlawful act was committed.

Unfair dismissal.

8. An employee who is dismissed shall be regarded to have been unfairly dismissed if the reason, or if more than one, the principal reason, of the dismissal of that employee was a response on the part of the employer to a complaint made at undertaking level, or to the institution of legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Defence of rights.

9. Nothing shall prevent any association, organisation or other legal entity, having a legitimate interest in ensuring that these regulations are complied with, to engage itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure provided for the enforcement of obligations under these regulations.

Offences.

10. Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding one thousand liri.