

Supervision of non-discrimination and prohibition of discrimination in working life in 2021

Report

Summary

Occupational safety and health authorities enforce non-discrimination in the workplace: the prohibition of discrimination, the prohibition of discriminatory job advertisements and the employers' duty to promote equality. The Occupational Safety and Health Authority enforces the Non-Discrimination Act both at the request of those who have experienced discrimination and at the initiative of the authorities. This report describes the findings of inspections carried out in 2021.

In 2021, occupational safety and health authorities received approximately 570 contacts concerning discrimination in the workplace. In most cases, contacts related to discrimination at work involved requests for advice on how to deal with the matter at the workplace or wanting to discuss whether a case involved discrimination or not.

In 2021, 210 enforcement requests related to discrimination were processed. A total of 134 inspections were carried out on the basis of enforcement requests, and these involved the enforcement of discrimination experienced by an individual employee or jobseeker. In 46 of the inspections carried out, it was found that the employer had acted in breach of the prohibition of discrimination. The discrimination observed was mostly related to the state of health (approx. 53%), other characteristics related to the person (approx. 35%) or to the person's origin, nationality or language (approx. 21%). Cases of discrimination related to disability, religion, family relationships or sexual orientation still come to the attention of the occupational safety and health authority quite rarely, and there were relatively few cases related to these.

Discriminatory treatment of employees or job-seekers addresses in 2021 was related to termination of employment in about 44% of the inspections carried out. Discrimination during the employment relationship was addressed in approximately 43% of the inspections carried out. About 15% of the inspections concerned recruitment.

Occupational safety and health authorities also enforce the rules against discrimination through spot checks. In 2021, 729 occupational safety and health inspections enforced compliance with the Non-Discrimination Act. Enforcement focused on discrimination against foreign workers in the payment of wages and other minimum terms and conditions of employment, the employer's obligation to promote equality and discriminatory job advertisements.

The prohibition of discrimination in the workplace related to foreign labour was enforced during approximately 640 inspections. In 73 of these cases, discrimination related to a person's origin, language or nationality was observed in pay or other minimum terms and conditions. This does not mean that there has been no discrimination in other cases, as there is often no real possibility for pay comparisons due to e.g. inadequate working time records. In fact, obligations concerning lacking or completely absent working time records and shift lists were often imposed during inspections.

The employer's obligation to promote equality at the workplace was enforced with 78 inspections, and violations were observed in more than half of these. 11 inspections related to discriminatory job advertisements were carried out.

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1. OSH authorities monitor discrimination in working life

Occupational safety and health authorities are responsible for supervising the enforcement of the Non-Discrimination Act (1325/2014) in working life. The Non-Discrimination Act contains provisions on the prohibition of discrimination, the prohibition of discriminatory job advertisements and the employer's obligation to promote equality.

Enforcement by OSH authorities focuses on compliance with the Non-Discrimination Act

- during employment
- during a service relationship under public law
- during on-the-job training and other similar activities at the workplace
- in recruitment.

The occupational safety and health authority is an independent and objective supervisory authority. The Divisions of Occupational Safety and Health of the Regional State Administrative Agencies act as regional occupational safety and health authorities.

The occupational safety and health authority assesses discrimination related to all grounds for discrimination defined in the Non-Discrimination Act. The Non-Discrimination Act prohibits discrimination on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.

On the other hand, provisions on the prohibition of discrimination based on gender are laid down in the Act on Equality between Women and Men. Its enforcement falls within the competence of the Ombudsman for Equality.

Five divisions of occupational safety and health at the Regional State Administrative Agencies

The OSH Divisions are responsible for regional enforcement, counselling and guidance. The key objective is to promote and maintain employees' work capacity and functional capacity and to prevent work-related health hazards and risks. Enforcement also ensures that work life rules are observed.

THE OSH DIVISIONS OF THE REGIONAL STATE ADMINISTRATIVE AGENCIES:

- 1 | Northern Finland
- 2 | Western Finland and Inland Finland
- 3 | Eastern Finland
- 4 | Southwestern Finland
- 5 | Southern Finland



The Occupational Safety and Health Authority enforces the Non-Discrimination Act both at the request of those who have experienced discrimination and at the initiative of the authorities. In 2021, the Non-Discrimination Act was enforced during 134 inspections initiated by clients and 729 inspections initiated by authorities.

Enforcement measures are determined in accordance with the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006, hereinafter the OSH Enforcement Act). Enforcement procedures are described in the Enforcement of Equality and Discrimination (Occupational Safety and Health Enforcement Guidelines 2/2016, [In Finnish](#)).

In 2021, approximately 860 inspections carried out nationwide addressed the prohibition of discrimination, the employer's obligation to promote equality, the non-discrimination plan or the prohibition of discriminatory job advertisements.

ACTIONS BY OCCUPATIONAL SAFETY AND HEALTH AUTHORITIES BASED ON CONTACTS:

- Guidance and advice for those experiencing discrimination
- Assessment of the requirements for enforcement
- Enforcement measures based on enforcement requests.

OSHEALTH AUTHORITIES ENFORCE THE FOLLOWING AT THEIR OWN INITIATIVE :

- Discrimination in the payment of wages and other minimum terms and conditions of employment, especially in the enforcement of foreign labour
- Discriminatory job advertisements
- The employer's obligation to promote equality and draw up an equality plan.

This report describes how the Occupational Safety and Health Authority enforced the Non-Discrimination Act in 2021. The report describes both client-initiated and authority-initiated enforcement and illustrates enforcement with authentic case studies. The report also describes the role of the occupational safety and health authority in the processing of workplace discrimination offences. Information on enforcement carried out in 2020 can be found in the report [Yhdenvertaisuuden ja syrjinnän kiellon valvonta työelämässä vuonna 2020 \(in Finnish\)](#).

2. Client-initiated enforcement

2.1. Contacts to the OSH authority concerning discrimination

Client-initiated enforcement is based on a job-seeker or employee experiencing discrimination contacting the occupational safety and health authority. You can contact the occupational safety and health authority by phone, email or letter.

In 2021, some 570 contacts related to discrimination at the workplace were recorded. In reality, the number of contacts is higher, as a contact related to discrimination may also be recorded in other categories. Contacts related to discrimination are often complex, and other labour law issues are also involved.

The telephone service of the OSH authority offers a person who has been experiencing discrimination guidance and advice on their matter and instructions on submitting a possible enforcement request. The OSH authority's telephone service provides a person experiencing discrimination a quick assessment of their case from the perspective of the Non-Discrimination Act. It is also common that the person contacting the authority does not know whether they have been subjected to discrimination and wants to speak with an inspector, who is familiar with discrimination, before bringing up their experiences of discrimination at their workplace. It is common for an inspector at the telephone service and the contact person to speak about whether the case constitutes discrimination as referred to in the Non-Discrimination Act or if it is something else.

In some cases of discrimination, the person contacting the authorities does not want the authorities to take enforcement measures in the name of the employee. Reasons for this include fear of stigmatisation or retaliation at the workplace. This applies in particular to certain minority groups, such as foreign workers, who have a higher threshold for requesting enforcement measures in their case. The phenomenon partly indicates that some of the discrimination in working life remains hidden.

Client-initiated enforcement of discrimination at the workplace in 2021:

- Around **570** contacts related to discrimination at the workplace
- Around **210** enforcement requests related to discrimination at the workplace
- **134** inspections related to discrimination at work carried out on the basis of enforcement requests.

However, all contacts are meaningful because the occupational safety and health authority can, at its discretion, carry out a general inspection at the workplace without the client initiating the case. In this case, enforcement is carried out in such a way that does not reveal the contact event.

The occupational safety and health authority also receives regular contacts about issues that do not constitute discrimination as referred to in the Non-Discrimination Act. The contact person usually is experiencing discrimination, but the case does not involve the grounds for discrimination referred to in the Act. This may involve, for example, favouring someone else or poor management. Instead of discrimination, the matter may involve, for example, harassment prohibited by the Occupational Safety and Health Act or other matters under the supervision of the occupational safety and health authority.

2.2. Cases of discrimination processed at the initiative of the client

In 2021, OSH authorities processed approximately 210 enforcement requests related to discrimination.

A discrimination case is usually initiated by submitting an enforcement request form, in which the client gives the OSH authority consent to process the matter in their name and for authorities to contact the employer concerning the matter.

In an enforcement request, the client states their own understanding of the grounds for discrimination on the basis of which they suspect they have been discriminated against. Clients may report several grounds for discrimination if they are unsure of the reason for the discrimination or suspect that they have been discriminated against in several different ways.

The most common grounds for discrimination reported in monitoring requests have remained the same in recent years. Experiences of discrimination based on state of health are the most common discrimination experience reported to the OSH authority year after year.

Figure 1 shows the grounds for discrimination reported by the clients who submitted an enforcement request in the cases processed in 2021. Almost half (47%) of the cases processed in 2021 were related to state of health. The majority of these concerned situations in which an employer had terminated an employee and the employee suspected that the reason had been the employ-

ee's sick leaves. A typical enforcement request concerned the termination of employment during the trial period, which was connected timewise with the employee's sick leaves.

The second most common reason for discrimination was "other personal characteristics" (approx. 35%). Many of these enforcement requests involved the employee having brought up shortcomings in their working conditions or demanded their rights at the workplace, after which the employee had been dismissed or selected for lay-off.

The smallest number of enforcement requests received were related to political activity and sexual orientation. However, the enforcement requests sent to the occupational safety and health authority do not specify the prevalence of discrimination in working life or what discrimination against groups is actually the most common in working life.

Those who experience discrimination often also mention harassment or other inappropriate treatment that endanger the employee's health or workload that are prohibited under the Occupational Safety and Health Act. In some cases, a case of discrimination that has been initiated is linked not only to occupational safety and health, but also other matters under the enforcement of the OSH authority, such as under the Working Hours Act or the Employment Contracts Act. It is also common that the person submitting an enforcement request does not know exactly what is meant by discrimination in the law and reports the inappropriate treatment they have experienced using the concept of discrimination.

Grounds for discrimination reported by clients in enforcement requests in 2021

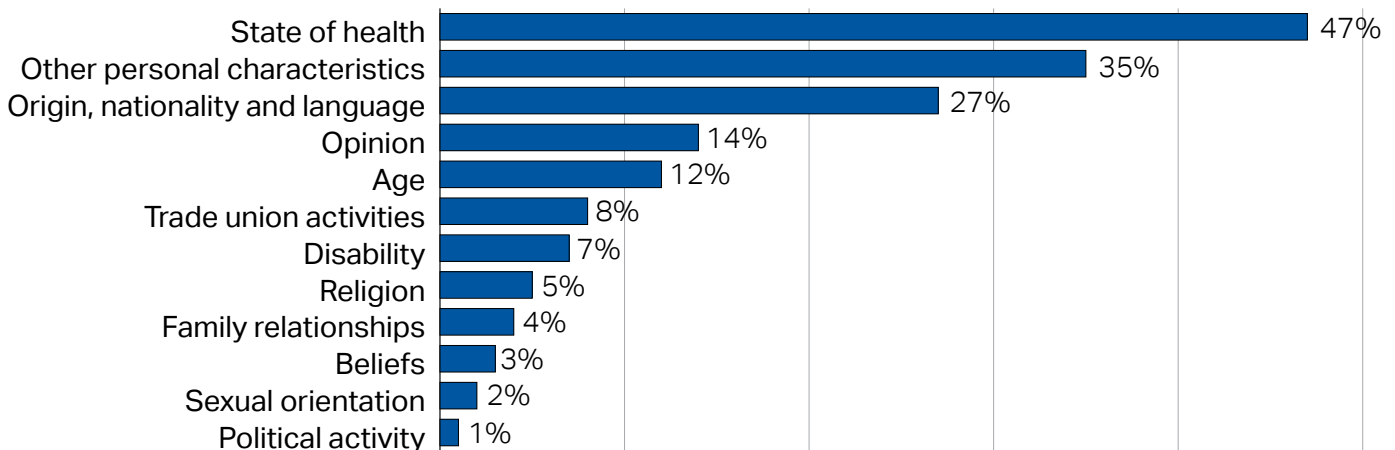


Figure 1. Grounds for discrimination reported by clients who submitted an enforcement request in the cases processed in 2021. Several grounds for discrimination may be listed in one enforcement request.

2.3. Procedural decisions

When an enforcement request related to discrimination is initiated by the OSH authority, it is first assessed whether the case may constitute discrimination prohibited under the Non-Discrimination Act. If necessary, additional information is requested from the client so that the preconditions for enforcement can be determined.

If, on the basis of the points raised by the client, there is no reason to suspect that the employer has violated the Non-Discrimination Act, a procedural decision will be made on the matter. The procedural decision lists the reasons for why the OSH authority will not take measures to investigate discrimination that the client who requested enforcement asked for.

In 2021, 75 procedural decisions were made that found that a request for the enforcement of discrimination would not lead to enforcement measures.

The most common reason for not taking enforcement measures was that the person who submitted the enforcement request did not bring up facts to support their suspicion or there was no causal link between the grounds for discrimination and the discrimination experienced. For example, the party who requested enforcement felt that they had been discriminated against on the basis of their age when a younger applicant had been selected for the position, but they did not provide any clarification to support their suspicion. However, the subjective experience of discrimination by the person submitting an enforcement request alone is not sufficient to create a suspicion of discrimination.

The second most common reason for not initiating enforcement measures in the case was that the treatment experienced by the person submitting the enforcement request was not discriminatory within the meaning of the Non-Discrimination Act. These cases often involved activities related

to the employer's normal right to supervise work or the fact that the employee had not been disadvantaged in the manner referred to in the Non-Discrimination Act. For example, issuing a justified warning or directing an employee to a work ability assessment do not usually constitute discrimination under the Non-Discrimination Act.

Each year, the OSH authority receives enforcement requests in which the client feels that they have been discriminated against, but there are no grounds for discrimination under the Non-Discrimination Act related to the person or case. For example, ordinary differences of opinion at the workplace are not opinions under the Non-Discrimination Act. Suspicions of discrimination related to gender and parenthood do not fall under the family relationships referred to in the Non-Discrimination Act, but are gender-based discrimination as defined in the Equality Act. Cases of gender-based discrimination are transferred to the Ombudsman for Equality.

The OSH authority also receives several enforcement requests each year, in which it is asked to enforce a matter that does not fall under the occupational safety and health authority's competence. For example, only a court of law can ultimately make a decision concerning a pay-related dispute or the legality of termination of employment.

In some cases, enforcement was not undertaken because the party who requested enforcement did not respond to requests for further clarification or asked for the case to be closed. In addition, enforcement measures will not be taken if too long has elapsed since the suspected discrimination.

In some cases, the OSH authority has targeted enforcement at the workplace on the initiative of the authorities if the party who requested enforcement did not want the matter to be processed in their name or if the matter concerned a report made by an external party that concerned the entire work community.

2.4. Inspections based on enforcement requests

An inspector will undertake enforcement measures on the basis of an enforcement request in cases where on the basis of information supplied by the client the employer has acted in violation of the Non-Discrimination Act.

In the case of an individual employee or job-seeker, the inspection is carried out on the basis of documents. In this case, the inspector sends a request for clarification to the employer asking for more information in the matter concerning the person who has experienced discrimination. After the employer's response has arrived, the person subjected to discrimination will be given a chance to present their views on the reports submitted by the employer. When sufficient information has been gathered in order to resolve the case, the inspector will assess whether the employer has violated the prohibition of discrimination. The inspector will prepare a written inspection report on the inspection, in which the employer's activities are assessed on the basis of the reports and information received.

The enforcement of the prohibition of discrimination includes a specific burden of proof provision, which divides the burden of proof in the demonstration of discrimination. The purpose of the burden of proof provision is to facilitate the

effective exercise of rights, as presenting evidence in cases of discrimination may be more difficult than usual, and, generally, only the employer can demonstrate that the alleged discrimination is based on a non-personal reason. The party initiating a case based on discrimination must be able to present the authority an account of the facts on which the claim is based. If, on the basis of the reports presented, it can be assumed that the prohibition of discrimination has been violated, a so-called presumption of discrimination will be created. In this case, the burden lies with the employer, i.e. in order to overturn the presumption of discrimination, the employer must prove that the prohibition of discrimination has not been violated.

In 2021, a total of 134 inspections related to discrimination were carried out on the basis of enforcement requests. Figure 2 shows which grounds for discrimination the inspections have addressed. One inspection may have addressed several different grounds for discrimination. More than one third of the inspections carried out assessed more than one of the grounds for discrimination, in which case it was a case of multiple or intersecting discrimination. The most common grounds for discrimination in cases of multiple discrimination were other personal characteristics, state of health and opinion.

The most common reason for discrimination in

Grounds for discrimination in inspections carried out on the basis of enforcement requests in 2021

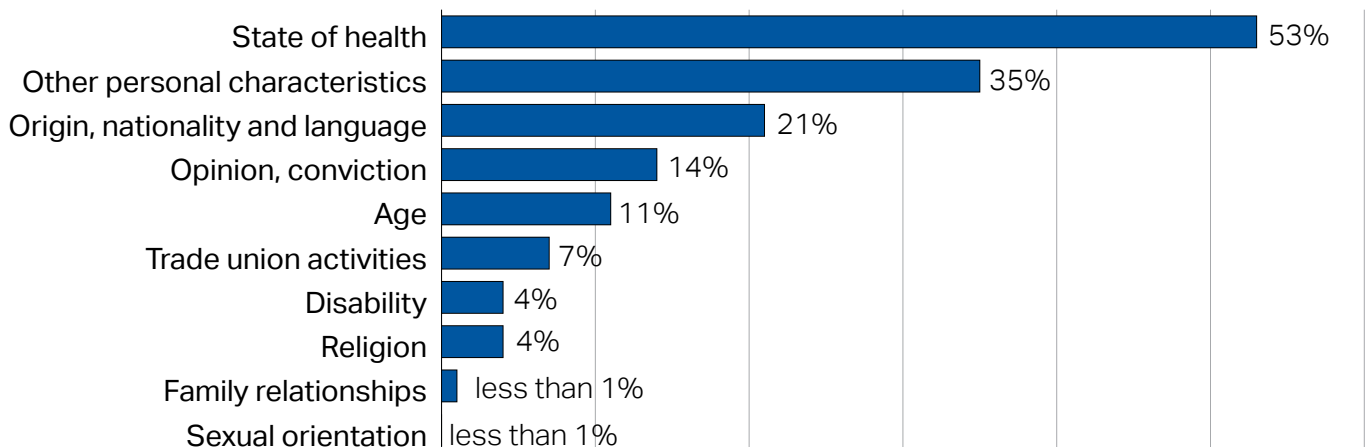


Figure 2. Grounds for discrimination in inspections carried out on the basis of enforcement requests in 2021
One inspection may have addressed several different grounds for discrimination.

Grounds for discrimination in inspections carried out on the basis of enforcement requests in recent years (number)

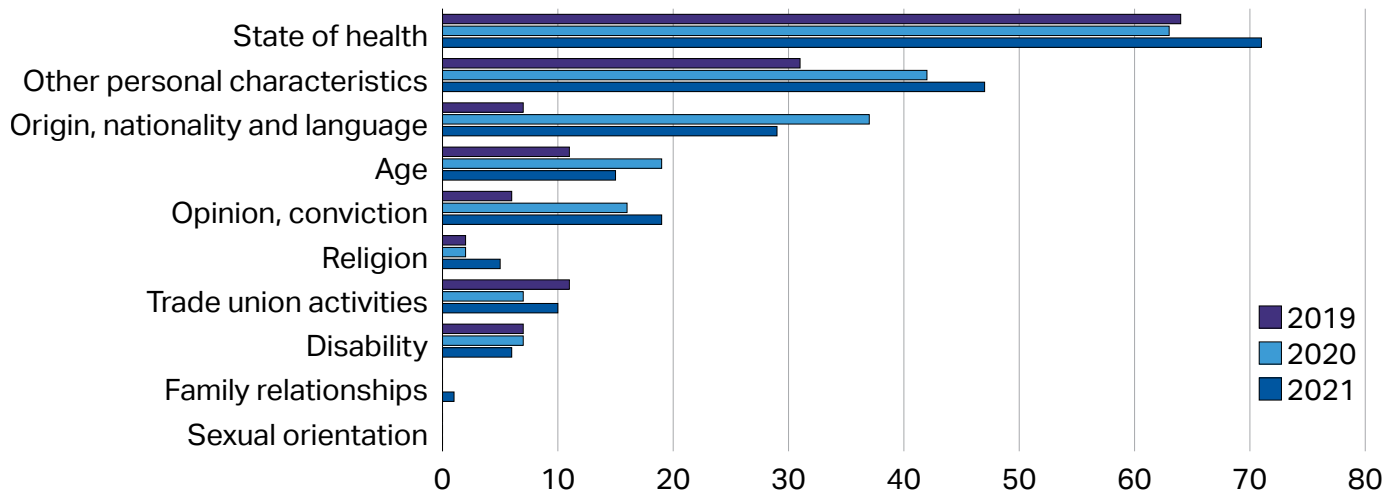


Figure 3. Grounds for discrimination in inspections carried out on the basis of enforcement requests in recent years (number) One inspection may have addressed several different grounds for discrimination.

all client-initiated inspections was state of health, and the second most common reason for discrimination was other personal characteristics. Other reasons related to the were person most commonly related to a person bring to light problems at the workplace. Most commonly, the party who requested enforcement felt that they had been selected for lay-offs or dismissals, or that their

duties had been changed after they had highlighted shortcomings in the workplace. Other suspected cases of discrimination based on other personal characteristics included contacting the occupational safety and health authority or other authority, demanding one's own rights and requiring, terms and conditions of employment in accordance with the collective agreement.

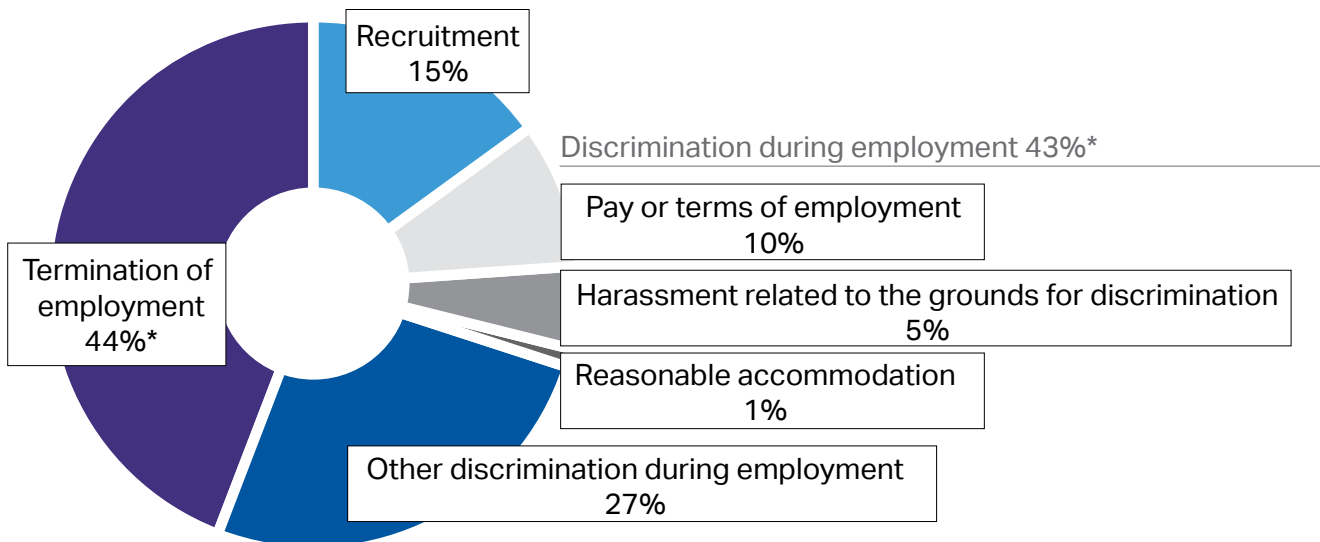
The discriminatory treatment of employees or job-seekers addressed in inspections carried out in 2021 was related in about 44% of inspections to the termination of employment (figure 4). The vast majority (about 75%) of cases related to termination of employment were found to involve discrimination on the basis of state of health. Some cases involved multiple discrimination, in which case other grounds for discrimination were addressed in addition to state of health.

Discrimination during the employment relationship was addressed in approximately 43% of the inspections carried out. In most cases, the employee felt that some grounds for discrimination had influenced, for example, the selection of people to be laid-off, changes in work tasks, determination of shifts or the payment of wages. In less than half

of the cases, grounds for perceived discrimination experienced during employment involved other personal characteristics. The occupational safety and health authorities also processed a few cases that involved harassment under the Non-Discrimination Act. Harassment was most often related to origin, nationality or language.

About 15% of the inspections concerned recruitment. In approximately half of the inspections related to recruitment, the person who submitted the enforcement request felt discriminated against on the basis of age. The second most common reason in cases of recruitment concerned suspected discrimination on the basis of other personal characteristics. The number of cases related to recruitment was somewhat lower in 2021 than in previous years.

Manifestation of discrimination at different stages of employment in 2021



* Some inspections dealt with both discrimination during employment and discrimination related to termination of employment.

Figure 4. Discrimination related to recruitment, that occurs during employment or is related to the termination of employment in inspections in 2021. Discrimination during employment is divided into the following areas: Pay or terms of employment, harassment related to the grounds for discrimination, reasonable accommodation and other discrimination during employment.

2.5. Conclusions of inspections

In 46 of the inspections carried out, it was found that the employer had acted in breach of the prohibition of discrimination. The employer was issued an improvement notice for the observed shortcomings.

The highest number of improvement notices for violating the prohibition of discrimination was given for discrimination due to health, origin and citizenship. The next largest number of obligations were imposed on the basis of language and other personal characteristics. More than half of the obligations imposed concerned termination of employment, which was based on grounds of discrimination.

In connection with the inspection report, clients are also provided information on the possibility of applying for compensation or damages under the Non-Discrimination Act. The client is also informed of the Non-Discrimination Ombudsman's possibility of providing assistance to a victim of discrimination.

Case descriptions:

Failure to select a disabled jobseeker constituted discrimination

The jobseeker was not selected for a position even though they were the only formally qualified applicant and person invited to an interview. During the interview, the jobseeker had pointed out that they needed a personal assistant during working hours. The jobseeker was informed by telephone that they could not be selected for the position due to reasons related to data protection, and because their personal assistant would be present during customer service situations. A presumption of discrimination was considered to have arisen in the case. The employer tried to overturn the presumption of discrimination by pointing out that although the employee had formal qualifications, the employer did not consider the employee to have sufficient competence and work experience. However, the employer's report was contradictory in this respect, as the jobseeker met the requirements of the job advertise-

Other deficiencies were also observed

In connection with the enforcement of discrimination, the occupational safety and health authority also supervises compliance with other aspects of labour legislation and intervenes in other shortcomings in labour legislation that arise. Inspections carried out on the basis of suspected discrimination revealed a number of other shortcomings in the activities of employers, due to which obligations were imposed on employers.

In 2021, a total of 63 obligations were imposed for other shortcomings in labour legislation in connection with discrimination cases. Some inspections found that the employer violated both the prohibition of discrimination and other labour legislation, while others found shortcomings other than discrimination. The largest number of obligations under other legislation were imposed due to harassment or other inappropriate treatment under the Occupational Safety and Health Act, the employee's induction training and the employee's consultation in connection with the termination of the employment relationship.

ment and had been invited to an interview in which the aim was to assess the suitability of the employee, not their competence. According to the jobseeker's report, they had previously worked in similar positions on a fixed-term basis, so the employer's general view of the jobseeker's competence was not credible. Secondly, the employer considered that the non-selection of the candidate was justified, as the presence of the jobseeker's assistant would not have been possible in customer service situations due to data protection, and the employer could not have exercised their right to supervise the external assistant. According to the jobseeker, a confidentiality agreement may be required from the personal assistant involved at any given time. In addition, in the

employment contract between the jobseeker and the personal assistant, the assistant undertakes, with their signature, to confidentiality on matters related to the jobseeker's employment relationship. According to the employer, customers have the right to refuse the presence of an external person, and according to the employer, it is not possible to allocate substitutes for these visits. However, the jobseeker pointed out that they had carried out similar work when employed by a former employer with a personal assistant present in customer service situations. In that case, it had been possible for the employee to verify the customer's permission to use an assistant in advance. The employer's reports did not indicate the grounds due to which permission could not now be verified in advance. Consequently, the justification for different treatment presented by the employer was not considered proportionate and the employer was found to have violated the prohibition of discrimination.

The provision of additional work may not be restricted due to a family member's health

The employee who had worked part-time suspected that the employer had cancelled their work shifts and transferred them to another employee after the employee had notified the employer that a member of the employee's family was to have surgery and this would result in sick leave for the employee. According to the employee, their working hours had also been reduced after the employee had been absent due to the health of their loved one. The employee had asked the employer about the grounds for reducing the number of shifts given to the employee and had been told that this was specifically due to their absences. According to the employer, the employee had weekly absences due to their child's state of health, and, therefore, the employer stated that the employee did not have the opportunity to work the necessary shifts. The inspection found that a presumption of discrimination had arisen based on the state of health of the employee's family member. The employer's report revealed that some of the employee's

Discrimination is also prohibited on grounds of discrimination related to a family member.

shifts had been postponed to another date, and these had thus not been completely cancelled. On the other hand, the employee had personally refused to accept some of the offered shifts. In this respect, the inspection found that, based on the employer's report, the employee had not actually been treated unfavourably with regard to the transfer or removal of shifts. However, based on the information received, the employer had failed to offer the employee additional work due to absences resulting from the state of health of their family member's. In this respect, it was found that the employer did not succeed in eliminating the presumption of discrimination, and, therefore, the employer was found to have violated the prohibition of discrimination.

The employee's previous sick leave and highlighting shortcomings in the workplace did not affect the termination of their employment

The employee suspected that they had been selected for dismissal due to their sick leaves and to them highlighting shortcomings in the workplace. The employee had several sick leaves approximately six months before the lay-off. The employee had tried to return to work tasks that were lighter on a part-time basis, but had to take sick leave again soon after the experiment had started. According to the employee, the employer had a negative attitude concerning the employee's sick leave. A few months after this, the company's employees had jointly written a letter to the company's shareholders in which they pointed out shortcomings in the workplace. These included practices related to the requirements of employees' availability and a disparaging attitude towards sick leaves. The employee felt that

the employee and their experience could be identified in a letter sent to the shareholders. While the employee was still on sick leave, all employees of the company were laid off, and after a few months of lay-off, the employee was informed of the termination of their employment. At the same time, two other persons were dismissed who, like the employee, could be identified in the letter sent to the shareholders. A presumption of discrimination was considered to have arisen in the case. In the information they provided, the employer explained that the party making the decision on dismissals was not aware of the letter sent to the shareholders or its contents. The entire personnel were laid off due to coronavirus. According to the employer, the employee was dismissed for financial and production-related reasons. The employee was selected for dismissal on the basis of their duties. According to the employer, an extensive customer survey was carried out before the dismissals, which showed that the tasks laid out in the employee's employment contract and their job description were no longer to be offered. According to the employer, no other employees who had a similar position and role to that of the employee in question remained at the workplace. The inspection found that the employer was able to revoke the presumption of discrimination.

Requiring COVID-19 vaccines resulted in discrimination based on state of health

The workplace had outlined that all those moving around the workplace were required to have two COVID-19 vaccinations. The policy led to people who were unable to take the vaccines due to their state of health being in an unfavourable position compared to others. According to the employer, the decision was made to require vaccinations because the workplace had a high number of coronavirus infections at that time. According to the regulations of the Regional State Administrative Agency, all employees in the workplace had to undergo a compulsory health examination,

and the employer also believed that this meant that the previous measures taken by the workplace to prevent coronavirus were not sufficient and that all those moving around the workplace should have an identity card and a certificate of either having gotten the vaccinations or having had the illness. During the inspection the matter was assessed as indirect discrimination. The inspection found that the employer's policy and instructions on vaccinations have an acceptable objective referred to in the Non-Discrimination Act, which is based on the obligation to ensure the safety and health of employees and other persons moving around the workplace. When assessing the appropriateness and necessity of the means used to achieve the target, the fact that the coronavirus epidemic at the workplace had been very extensive was taken into account. The appropriateness and necessity of the practice were supported by the fact that the employer had first taken other extensive measures to prevent the spread of the virus, but they had not been effective, as well as the fact that the work could not be performed remotely. In addition, the guidelines were appropriate due to the employer's statement that even when a person could not take the vaccination due to health reasons, work was allowed, if the coronavirus risk could be managed. However, according to the information provided, other persons who moved around the workplace, such as subcontractors or their employees, had not been informed of the possibility to work without vaccine protection if the risk caused by the coronavirus could be controlled. Based on the provided information, the instructions provided by the employer to the subcontractors clearly required vaccine protection. Therefore, the inspection found that the instructions on the vaccine requirement to parties such as subcontractors were not an appropriate means of achieving the objective. The way in which the instructions were communicated to the subcontractors effectively prevented employees who, due to their state of health, could not take the coronavirus vaccine from seeking access to the workplace. Consequently, the employer was considered to have violated the prohibition of discrimination.

The employer did not intervene in name calling targeting at an employee and violated the prohibition of discrimination

According to the employee, a hostile atmosphere had formed at the workplace and the employee had been subjected to character assassination. According to the employee, their ethnic background was a topic of speculation at the workplace, and other employees made inappropriate assumptions about their background. The employee had brought the matter to the attention of their supervisor and the matter was discussed in a joint meeting. However, according to the employee, harassment related to the employee's origin continued even though the supervisor was aware of the matter. In the report submitted by the employer, the employer denied being informed of the harassment experienced by the employee. However, the occupational safety and health representative at the workplace confirmed the employee's report that the supervisor was aware of harassment against the employee. According to the occupational safety and health representative, the supervisor in question had been present in the situation in which the employee was called names. The inspection found that the employer had neglected their obligation to take measures to eliminate harassment and thus violated the prohibition of discrimination.

If the employer does not intervene in harassment related to the grounds for discrimination, this may be discrimination referred to in the Non-Discrimination Act.

A worker with sound sensitivity was denied moderate accommodation

The employee had been diagnosed with sound sensitivity, and had provided the information to their employer. According to the employee, because of their sound sensitivity, the employee's workspaces caused undue workload and stress. Occupational health care had proposed measures to reduce the workload experienced by the employee. The employee had requested that they could work remotely due to their state of health. However, the employer did not follow the occupational health care proposals and did not take measures to reduce the workload caused by sound hypersensitivity. According to the employee, the employer also failed to find out what changes the employee's workstation and conditions required in order to be adequate for their health and reduce the workload experienced at the workplace. The employer stated that they had acted equally when investigating the workload experienced by the employee. According to the employer, attempts had been made to reduce the workload experienced by the employee, for example, by purchasing personal protective equipment, moving the workstation and isolating the workstation with acoustics partitions. According to the employer, they could not comply with all occupational health due to the nature and requirements of the employee's work. According to the employer, the nature of the tasks also did not allow for the possibility of remote work. The inspection found that the measures taken by the employer had been carried out before the diagnosis received by the employee and did not take into account the occupational health care service's review of the employee's workstation. After the employee's state of health was verified, the employer had not taken any measures,

even though it was known that the measures taken thus far were not sufficient. The inspection found that the employer had not provided sufficient information on the refusal of adjustments and that the employer had violated the prohibition of discrimination.

The operator did not discriminate on grounds of origin in recruitment

The operator had excluded a jobseeker of foreign origin from the recruitment platform they maintained. The operator had become aware of the applicant's origin based on the information provided in their job application. The jobseeker had previously gotten short-term jobs through the recruitment platform. The occupational safety and health inspector assessed whether the jobseeker's previous short-term employers who had been the operator's clients had possibly given the operator instructions or orders to discriminate against the jobseeker on the basis of their origin as defined in the Non-Discrimination Act, and whether the applicant had been excluded from the recruitment platform for a discriminatory reason. According to the information submitted by the operator, the jobseeker had been removed from the recruitment platform due to negative feedback received from their workplaces. According to the operator, based on feedback received from the four previous worksites where the jobseeker had worked, the operator had considered it appropriate to completely remove the applicant from the recruitment platform. The operator stated that based on the feedback they received, the jobseeker had been deemed unsuitable for the job assignments offered. The inspection found that there was no evidence that the jobseeker's previous employers had issued instructions or orders to discriminate against the applicant on the basis of the jobseeker's origin or that the client feedback given had been related to their origin. The operator was also not considered to have violated the prohibition of discrimination.

There is no unambiguous legal definition for disability - in the context of the inspections it was not always unambiguous whether a person should be considered disabled in the situation in question. A person with a disability may be a person with a long-term physical, mental, intellectual or sensory impairment that restricts or impedes work or performance at work. In addition, if a disease causes long-term impairment of functional capacity in relation to the performance of the work, it may be a disability.

The employer refused to conclude an employment contract when the jobseeker asked about the compliance of the salary with the collective agreement

After the interview, the employer informed the jobseeker by telephone that the employer would like to employ the jobseeker. In this context, the parties tentatively agreed on the start date and pay of the work, and the employer informed the applicant of the collective agreement that would be complied with in the employment relationship. In addition, the employer and the jobseeker agreed on when the actual employment contract would be signed. The day following the telephone conversation, the jobseeker sent a message to the employer stating that he would like to check the compliance of the promised salary with the collective agreement. The jobseeker asked the employer to take into account the effect of his previous work experience on the salary in accordance with the collective agreement. The jobseeker said that they would like to review the matter so that they would not be left feeling that their pay was appropriate. The employer did not respond to an enquiry concerning the

verification of the jobseeker's salary. Instead, the employer informed the jobseeker by email that they were cancelling the job offer. The jobseeker responded to the employer specifying that they would like to further discuss the matter and stated that they were also ready for work on the salary offered by the employer. It was determined that there was a presumption of discrimination based on other personal characteristics. In the information they provided, the employer pointed out that the job offer was cancelled because the employer considered that the applicant was not a suitable employee for the company. The employer justified the jobseeker's unsuitability on the basis that the jobseeker opened an unjustified discussion on pay in a situation where the pay offered to them was clearly higher than the minimum wage in the applicable collective agreement. According to the employer, the jobseeker's previous work experience was not in the same field, and it therefore did not need to be taken into account when determining their pay. However, on the basis of the additional information, the jobseeker had not claimed that the pay offered was in violation of the collective agreement, but had asked the employer to check whether the pay offered had taken their work experience into account correctly. The audit inspection found that regardless of how the collective agreement should have been interpreted in this situation, the jobseeker had the right to check with the employer how the pay provisions of the collective agreement were applied. Thus, the employer did not revoke the presumption of discrimination, and the employer was considered to have violated the prohibition of discrimination.

The employer was unable to demonstrate that the worker's state of health did not affect the decision to lay-off the worker

A worker had been put on sick leave for a couple of months. When the worker told the employer about their sick leave, the employer

had shouted at the worker and threatened them with the termination of their employment and with the non-payment of wages. Approximately one week after this, the worker was informed of their future lay-off by the employer's representative. A presumption of discrimination based on the worker's state of health was considered to have arisen in the case. The employer denied that the lay-off was due to the employee's state of health and pointed out that the employer's business activities were small-scale and that the company's solvency was tested due to delays in external subsidies. According to the employer, the worker was laid off because the employer was unable to pay wages at that time. The employer suspected that the worker had misunderstood what the employer had said during a telephone conversation. The employer's representative had already notified the employee of the lay-off, but the lay-off had not yet started when the employer - after noticing that the ground for laying-off the employee no longer existed - had cancelled the lay-off by ripping up the lay-off notification. However, the employer's reports did not indicate that the employer had informed the employee of the cancellation of the lay-off. The inspection found that the employer's statement on the grounds for lay-offs was contradictory. Based on the additional information provided, the employer had failed to explain the grounds for the lay-off before informing the employee of the lay-off. The employer's justification for the delay in applying for the subsidies and the resulting temporary decline in their solvency did not overturn the assumption of discrimination. The evaluation also took into account the fact that the clauses in the employee's employment contract concerning sick pay were in violation of the collective agreement applied to the employment. The inspection found that the employer was not able to demonstrate that the employee's state of health did not affect the lay-off decision made by the employer. Consequently, the employer was considered to have violated the prohibition of discrimination.

3. Supervisory activities on the initiative of authorities

3.1. Discrimination in payment of wages and other minimum terms and conditions

The occupational safety and health authority may, at its own initiative, investigate whether discrimination occurs in the workplace in the payment of wages or other terms of employment. In general, the matter is dealt with in the enforcement of foreign labour, which assesses whether the employer has fulfilled its statutory obligations related to the use of foreign labour, such as ensuring the right to work, and whether the employer has complied with the minimum terms of employment. In this case, the inspector determines, for example, by examining the working hours register, shift schedules and payslips, whether the employer has discriminated against employees in the payment of wages and other minimum terms of employment on the basis of their origin, nationality or language.

In 2021, the prohibition of discrimination was enforced during approximately 640 inspections related to the use of foreign labour. Discrimination based on origin, language or nationality in the related to the payment of wages or other minimum terms and conditions was observed in 73 inspections, or about 11% of the inspections. This does not mean that no discrimination had taken place in other inspected cases, as it is normal in supervision that a real pay comparison cannot be made due to inadequate working time documents at the workplace. In fact, obligations concerning lacking or completely absent working time records and shift lists were often imposed during inspections.

In the case of foreign workers, the most common form of discrimination that emerges during inspections was pay discrimination. This is apparent when a foreign employee is paid less than they should be paid under a generally applicable collective agree-

In 2021, compliance with the Non-Discrimination Act at the initiative of the authorities was enforced by means of 729 OSH inspections.

The prohibition of discrimination was enforced during approximately 640 inspections related to the use of foreign labour.

ment. The enforcement of pay is hampered by the fact that working hours records are often incomplete or incorrectly kept. Discrimination occurred in all sectors. This occurred both in the activities of Finnish companies and in the activities of foreign companies posting workers to Finland. Some employers relied on their ignorance of the provisions laid down in the generally applicable collective agreement. Some employers tried to overturn the presumption of discrimination by claiming such things as employees has worked overtime voluntarily, workers were satisfied with the pay they received, or the employees themselves wanted to do a longer working week to be able to spend longer leaves in their home country. The occupational safety and health authority notes that discrimination still exists even when the employer has not thought that they acted in a discriminatory manner if the procedure must be regarded as discrimination based on objective grounds.

Examples of discrimination cases highlighted in the enforcement of foreign labour in 2021:

Case study: Seasonal work in the agricultural sector

The employer did not have working hour records of hourly work performed by seasonal foreign workers in the agricultural sector in accordance with the Working Hours Act. Workers had repeatedly worked more than 8 hours without having been paid overtime pay. In addition, the employees had worked on Sundays, but they had not been paid separate compensation for Sunday work. The minimum wages of foreign workers had also been below the provisions of the generally applicable collective agreement in the sector. All the workers performing berry picking for the company were foreigners or had a foreign background. The employer was found to have violated the prohibition of discrimination.

Case study: Restaurant sector

A restaurant worker had not been paid any salary for the work performed. According to the employer, the worker had only been at the restaurant as a trainee. The restaurant's other workers had not been properly informed of the key terms of employment, which had caused confusion in the employees' pay. Shortcomings and ambiguities related to the payment of wages had also been caused by an inadequate work schedule prepared at the workplace and a missing working hours register.

The inspection formed a presumption that the foreign employees of the company had been discriminated against on the basis of their origin and nationality. The employer was found to have violated the prohibition of discrimination.

Case study: Foreign company in shipbuilding

The inspection found that based on the working hours register and gate clocking-in data that there was a suspicion that the employer had paid posted workers significantly lower hourly wages than had to be paid under the collective agreement applicable in the technology industry. Based on the documents, the number of hours spent at the workplace were considerably higher than the working time recorded in the working hours register on which the payment of wages is based. There was a presumption that the employer had treated posted workers less favourably on the basis of their origin and nationality than employees are generally treated in companies complying with the collective agreement applicable in the technology industry. The employer disputed the assumption of discrimination by presenting working hours account agreements and stating that the wage differences are due to differences in qualifications and not ethnic origin or nationality. Based on the information received from the employer, the employer had failed to comply with the working hours account agreement concluded with its employees, meaning this information did not overturn the presumption of discrimination. The employer was found to have violated the prohibition of discrimination.

3.2. Prohibition of discriminatory job advertisements

Under section 17 of the Non-Discrimination Act, an employer may not unlawfully require applicants to provide personal characteristics or aspects referred to in the Non-Discrimination Act when advertising a vacancy, a job or a position. During an inspection, the inspector determines whether the characteristic or aspect mentioned in the job advertisement is a legitimate requirement for the performance of the task in accordance with the Non-Discrimination Act.

In 2021, occupational safety and health authorities carried out 11 inspections concerning discriminatory job advertisements. In practice, the inspections were carried out in such a way that the OSH

authority sent employers a request for clarification. Some employers admitted that they did not have an acceptable basis for the application criterion in question, but contested discrimination. Employers appealed to ignorance, human error or the fact that someone else had drawn up the job advertisement.

3.3. Employers' obligation to promote equality

All employers are obligated to actively promote equality and develop genuinely non-discriminatory working conditions and practices. Promoting equality is not only a question of compliance with the prohibition of discrimination, but a more extensive obligation. Promoting equality means both active measures to prevent discrimination as well as supporting those at risk of discrimination or those in a disadvantaged position with regard to equality or taking steps to improve their status. Under the Non-Discrimination Act, the employer must first assess how equality is implemented in the workplace from the perspective of different grounds for discrimination. The assessment will be used to determine what the needs are for promoting equality in the workplace and for identifying the grounds for discrimination that are significant for the implementation of equality in the workplace in question. After that, the employer must develop working conditions and operating practices based on the needs of the workplace.

An employer who regularly employs at least 30 persons must have a plan for the necessary measures to promote equality. During the inspection, the inspector determines how the implementation of equality has been assessed and whether the employer has promoted equality in the workplace on the basis of this assessment. In a workplace with at least 30 employees, the inspector determines whether the employer has a plan for the necessary measures to promote equality.

In 2021, OSH authorities carried out a total of 78 inspections focusing on the employer's obligation to promote equality or draw up an equality plan. The majority of the inspections covered both of these. Shortcomings in the preparation or content of the equality plan were found in 68 inspections, or nearly 90% of the inspections. Deficiencies in the promotion of equality were found in 52 inspections. The

EXAMPLES OF DISCRIMINATORY JOB ADVERTISEMENTS IN 2021:

- The employer was looking for a refrigerator fitter, and the jobseeker was required to be fluent in Finnish.
- The employer was looking for a part-time cleaner. According to the job advertisement, the position required that the applicant spoke fluent Finnish.
- The employer was looking for a hostess caretaker for a permanent employment relationship. According to the job advertisement, the candidate was required to be a member of the Evangelical Lutheran Church of Finland.
- The jobseeker was required to provide information on their origin and any possible health restrictions related to work in the job application form attached to a job advertisement.
- A job advertisement concerning a vacancy on the employer's website required jobseekers to provide information on their nationality.
- Jobseekers were asked to provide information on the performance of military service and family relationships in the job application forms linked to the employer's job advertisements.

monitoring found that many workplaces are still uncertain about what the promotion of equality refers to and what the equality plan should cover.

Common shortcomings:

- The identification or assessment of all relevant grounds for discrimination was inadequate.
- The planning of concrete measures to promote equality was inadequate.
- The equality plan did not cover the entire work community.
- The equality plan addressed measures promoting gender equality under the Equality Act, but did not promote the development needs arising from personal characteristics under the Non-Discrimination Act.
- Development targets had not been discussed in cooperation with the personnel.

4. Discrimination in the workplace as a crime

4.1. OSH authorities report suspected offences to the police

Under the OSH Enforcement Act, the occupational safety and health authorities are obliged to submit a report to the police if there are likely grounds for suspecting an offence related to discrimination in the workplace. However, there is no need to file a notification to the police if the act can be considered minor in view of the circumstances and public interest does not require the notification to be submitted. The wording of the definition of an occupational discrimination offence laid down in the Criminal Code differs from the wording of the provision on discrimination laid down in the Non-Discrimination Act. Thus, meeting the criteria for discrimination in the workplace offences are assessed separately by comparing the facts of an enforced case to the distinctive characteristics of a discrimination in the workplace offence.

In 2021, the OSH authorities filed 32 pre-trial investigation reports of suspected workplace discrimination offences with the police. Some of the notifications involved several grounds for discrimination.

GROUNDS FOR DISCRIMINATION IN PRE-TRIAL INVESTIGATION NOTIFICATIONS IN 2021:

- National or ethnic origin, nationality, language: 14
- State of health: 11
- Union activities or equivalent: 8
- Societal opinion or similar: 2
- Disability: 1
- Religion: 1

An employer, or a representative thereof, who when advertising for a vacancy or selecting an employee, or during employment without an important and justifiable reason puts an applicant for a job or an employee in an inferior position

1) because of race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference, inheritance, disability or state of health, or

2) because of religion, political opinion, political or industrial activity or a comparable circumstance

shall be sentenced for work discrimination to a fine or to imprisonment for at most six months.

*Criminal Code
Chapter 47, section 3*

The OSH authority's reporting obligation also applies to gender discrimination, even though its enforcement is the responsibility of the Ombudsman for Equality.

In 2021, the OSH authority submitted 3 requests for the investigation of gender-based discrimination in the workplace. The likely grounds for suspecting an occupational discrimination offence on the basis of gender were found in connection with other supervision by the occupational safety and health authority, and they were related to the use of family leave, protection against the dismissal of pregnant workers and the enforcement of the appropriateness of the grounds for the termination of the employment relationship.

4.2. OSH authorities participate in the investigation and legal proceedings of workplace discrimination offences

The occupational safety and health authority acts as an independent expert at different stages of the processing of cases involving discrimination at work. On the basis of the OSH Enforcement Act, the occupational safety and health authority participates in the investigation of workplace discrimination offences and on the basis of pre-trial investigation materials from the police issues an opinion before the conclusion of the consideration of charges after the prosecutor has reserved an opportunity to do so. When cases of discrimination at the workplace are dealt with orally in courts, the occupational safety and health authority has the right to be present and to speak in the capacity of the authority to be heard.

The occupational safety and health authority provides information on the most important decisions concerning offences in the workplace. Press releases can be ordered through the STT press release service (sttinfo.fi). The occupational safety and health authority's bulletins are also published on the Occupational Safety and Health Administration's website Tyosuojelu.fi.

THE FOLLOWING BULLETINS ON OFFENCES CONCERNING DISCRIMINATION IN THE WORKPLACE WERE PUBLISHED IN 2021 (IN FINNISH):

- > [Ehdollinen vankeusrangaistus kiskonnantapaisesta työsyrynnästä.](#)
24 February 2021 Western and Inland Finland
- > [Vuokratyö päättyi työsuhteen koeajalla työntekijän terveydentilan vuoksi – sakkoja työsyrynnästä.](#)
22 March 2021 Southern Finland

Tyosuojelu.fi

Website of the Occupational Safety
and Health Administration in Finland