

Enforcement of non-discrimination and prohibition of discrimination in working life in 2022

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 non-discrimination. The OSH Authority enforces compliance with 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 2022.

In 2022, OSH authorities received approximately 540 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 2022, 220 enforcement requests related to discrimination were submitted. A total of 129 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 36 of the inspections carried out, it was found that the employer had violated the prohibition of discrimination.

The discriminatory treatment of employees or jobseekers addressed in around half of the inspections carried out in 2022 was related to the termination of employment. In approximately one third of the inspections it was assessed that there had been discrimination during the employment relationship. In most cases, the employee felt that some grounds for discrimination had caused changes in work tasks or the assignment of shifts or the payment of wages. About 8% of inspections concerned harassment as provided in the Non-Discrimination Act. Harassment was most often related to origin, nationality or language. The employer's obligation to make reasonable

adjustments or to provide a report on the refusal of adjustments was addressed in 5% of the discrimination inspections. Approximately 15% of inspections assessed discriminatory treatment in recruitment.

The greatest number of obligations for violating the prohibition of discrimination imposed due to discrimination for reasons related to health. The next largest number of obligations were imposed due to discrimination based on language and other personal characteristics.

Some discrimination in working life remains hidden, as various minority groups may have a high threshold to contact the authorities and report the discrimination they experience. The authorities receive very few contacts on discrimination against persons with disabilities or discrimination experienced on grounds of sexual orientation, so there have also been few inspections related to these grounds for discrimination.

OSH authorities also enforce the rules against discrimination through spot checks. In 2022, 1,035 OSH 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 non-discrimination and discriminatory job advertisements.

A total of 909 inspections were carried out to enforce the prohibition of occupational discrimination related to foreign employees. Discrimination in the payment of wages or other minimum terms and conditions of employment based on origin, language or nationality was observed in 9% of inspections at Finnish companies other than those that are seasonal companies. Deficiencies were found at 12% of inspected seasonal work companies. Deficiencies were similarly observed at 12% of posting companies.

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1. OSH authorities monitor discrimination in working life

Occupational safety and health (OSH) authorities are responsible for supervising compliance with 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 non-discrimination.

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 OSH authority is an independent and objective supervisory authority. The OSH Divisions of the Regional State Administrative Agencies act as regional OSH authorities. The OSH 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.

The OSH Authority enforces the realisation of equality in working life both at the request of those who have experienced discrimination and at the initiative of the authorities. In 2022, 129 customer-initiated and 1,035 official-initiated inspections were carried out.

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 OSH divisions of 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.

OSH Divisions of the Regional State Administrative Agencies:

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



1,164 inspections addressed the prohibition of discrimination, the employer's obligation to promote non-discrimination, an equality plan, or the prohibition of discriminatory job advertisements.

The 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. Enforcement procedures are described in the enforcement of equality and discrimination guidelines ([in Finnish](#)).

Actions by OSH authorities based on contacts:

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

OSH 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 non-discrimination and draw up an equality plan.

This report describes how the OSH Authority enforced the Non-Discrimination Act in 2022. 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 OSH authority in the processing of workplace discrimination offences. Information on enforcement in previous years can be found in the [Enforcement of non-discrimination and prohibition of discrimination at work reports, which are published in the OSH Administration's online service Tyosuojelu.fi](#).

Reform of the Non-Discrimination Act to bring about changes to enforcement

The reform of the Non-Discrimination Act will enter into force on 1 June 2023 and will bring changes to enforcement. In the future, the equality of working life and the prohibition of discrimination will be monitored by both the OSH authority and the Non-Discrimination Ombudsman.

Authorities will work in closer cooperation with one another to ensure the legal protection of the client. The aim is to make more efficient use of the special expertise of both the Non-Discrimination Ombudsman and the OSH authority in the supervision of equality in working life. Discrimination in working life often involves other labour law issues in which OSH authorities have special expertise.

Key amendments:

- **Obligation to promote non-discrimination:** the employer must take into account all grounds for discrimination. The assessment must also be carried out with regard to recruitment, and the workplace equality plan must contain the conclusions of the assessment of non-discrimination.
- **Reasonable adjustments:** the assessment primarily takes into account the needs of disabled persons.
- **Harassment related to the grounds for discrimination:** harassment and other discrimination can be addressed even if it does not target just one individual.

2. Client-initiated enforcement

2.1. Contacts concerning discrimination

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

In 2022, some 540 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 may also involve other labour law issues.

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. When contacting the telephone service, an inspector familiar with discrimination assesses whether the case may involve discrimination. The person contacting the service may not be able to assess whether they have been discriminated against and will want to discuss the matter with an expert 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 sexual minorities, Roma people or persons with disabilities, who may have a higher threshold to request enforcement measures in their case. The phenomenon partly indicates that some of the discrimination in working life remains hidden.

The OSH authority also receives regular contacts about issues that do not constitute discrimination as referred to in the Non-Discrimination

- Around 540 contacts related to discrimination at the workplace
- Around 220 enforcement requests related to discrimination at the workplace
- **129** inspections related to discrimination at work carried out on the basis of enforcement requests.

Contacts by sector	number
Health and social services	81
Public administration and national defence	50
Wholesale and retail	48
Hotel and restaurant sector	42
Industry	39
Transport and warehousing	39
Instruction and training	37
Construction	27
Administrative and support services	26
Real estate operations	25
Other service activities	16
Professional, scientific and technical activities	15
Agriculture, forestry and fisheries	15
Information and communication	12
Electricity, gas and heat supply, refrigeration business	10
Arts, entertainment and recreation	10
Financing and insurance activities	6
Water supply, sewerage and waste water management, waste management etc.	1
Unspecified sector	42
Total	541

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 OSH authority.

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

In 2022, OSH authorities processed approximately 220 enforcement requests related to discrimination.

Normally, a discrimination matter is initiated with a form requesting enforcement, in which the customer consents to the matter being processed in their name and to the authorities contacting their employer. In an enforcement request, the client details 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 dis-

crimination 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 2022. Just under half (46%) of the cases processed in 2022 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 employee's sick leaves.

The second most common reason for discrimination was *other personal characteristics* (approx. 30%). 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's employment has been terminated.

The smallest number of enforcement requests received were related to *political activity*.

However, the enforcement requests sent to the OSH authority do not specify the prevalence of discrimination in working life or what groups experience the most discrimination in working life.

Those who experience discrimination often also mention harassment or other inappropriate treatment that endangers the employee's health or other inappropriate treatment or excessive workload, which are prohibited under the Occu-

Grounds for discrimination reported by clients in enforcement requests in 2022

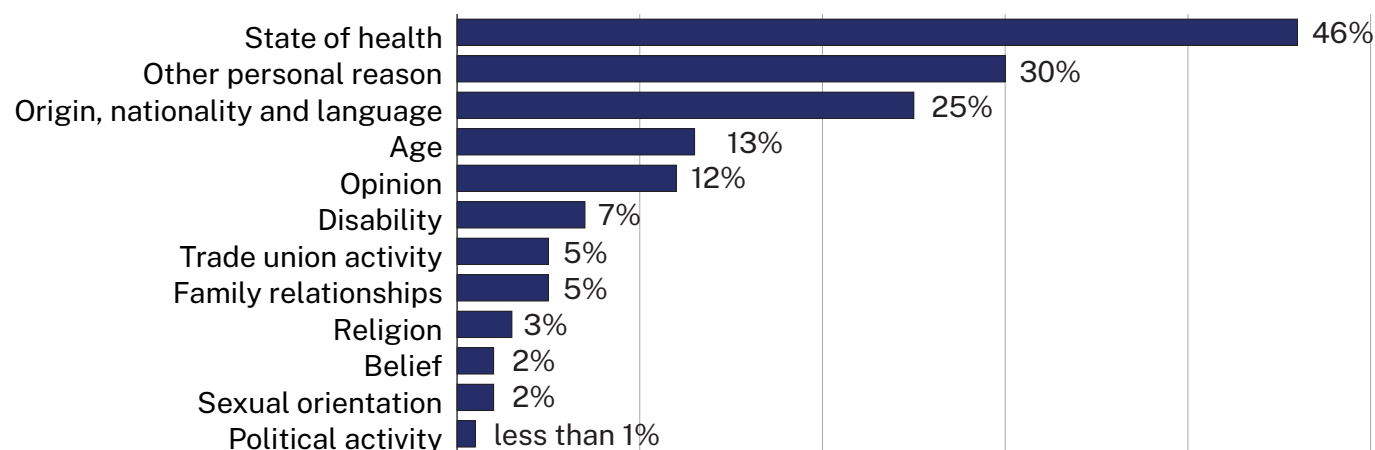


Figure 1. Grounds for discrimination reported by clients who submitted an enforcement request in the cases processed in 2022. Several grounds for discrimination may be listed in one enforcement request.

pational Safety and Health Act. It is also common that, a case of discrimination that has been initiated is linked not only to OSH, but also other matters under the enforcement of the OSH authority, such as the Working Hours Act or the Employment Contracts Act. Often, the person submitting an enforcement request is not fully aware of what is meant by discrimination in the law and reports the inappropriate treatment they have experienced using the concept of discrimination.

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 party who requested enforcement asked for.

In 2022, 92 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 the fact that the information presented by the person submitting the enforcement request did not reveal a possible causal link between the grounds for discrimination and the discrimination experienced. The subjective experience of discrimination by the person submitting the enforcement request alone is not sufficient to create a suspicion of discrimination and does not lead to enforcement measures.

The second most common reason for not initiating enforcement measures was that the grounds for discrimination presented were not grounds for discrimination referred to in the Non-Discrimination Act. For example, a person submitting the enforcement request felt that they had been discriminated against on the basis of an opinion, but

the enforcement request did not reveal whether the opinion was one referred to in the Non-Discrimination Act. Opinion refers to such things as a person's political and societal opinions and views. Discrimination on the basis of opinion is essentially related to the freedom of expression safeguarded by the Constitution of Finland. The OSH authority also received some suspicions of discrimination related to gender and parenthood, even though they are not part of the family relationships referred to in the Non-Discrimination Act, but are gender discrimination as defined in the Equality Act. Cases of gender-based discrimination are transferred to the Ombudsman for Equality.

During 2022, several procedural solutions were made in cases where the person submitting the enforcement request did not respond to requests for further clarification or requested that the matter be closed. In a few cases, no enforcement measures were taken because too much time had passed since the suspected discrimination. In some cases, the OSH authority carried out inspections at workplaces 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 prepare a written inspection report, which assesses whether the employer has violated the prohibition of discrimination.

The enforcement of the prohibition of the discrimination defined in the Non-Discrimination Act 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 2022, a total of 129 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. Just under 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* and *state of health*.

The most common ground for discrimination in inspections carried out on the basis of enforcement requests was *state of health*. The second most common ground was *other personal characteristics*. Other personal characteristics often involved speaking up about shortcomings at the workplace or demanding one’s own rights. Most commonly, persons who submitted enforcement requests felt that they had been selected for dismissal or that their duties had been changed after they had brought up shortcomings in the workplace. Other suspicions of discrimination based on *other personal characteristics* involved the person’s legal status, contacts with the OSH authority or other authority and aspects related to the person’s appearance.

Grounds for discrimination in inspections carried out on the basis of enforcement requests in 2022

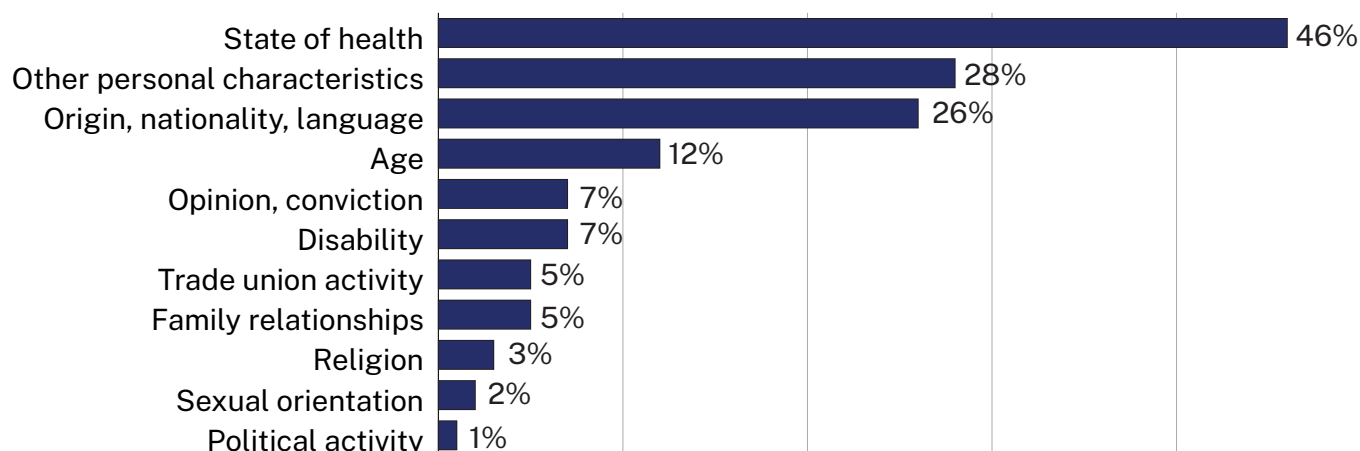


Figure 2. Grounds for discrimination in inspections carried out on the basis of enforcement requests in 2022 One inspection may have addressed several different grounds for discrimination. recent years. One inspection may have addressed several different grounds for discrimination.

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

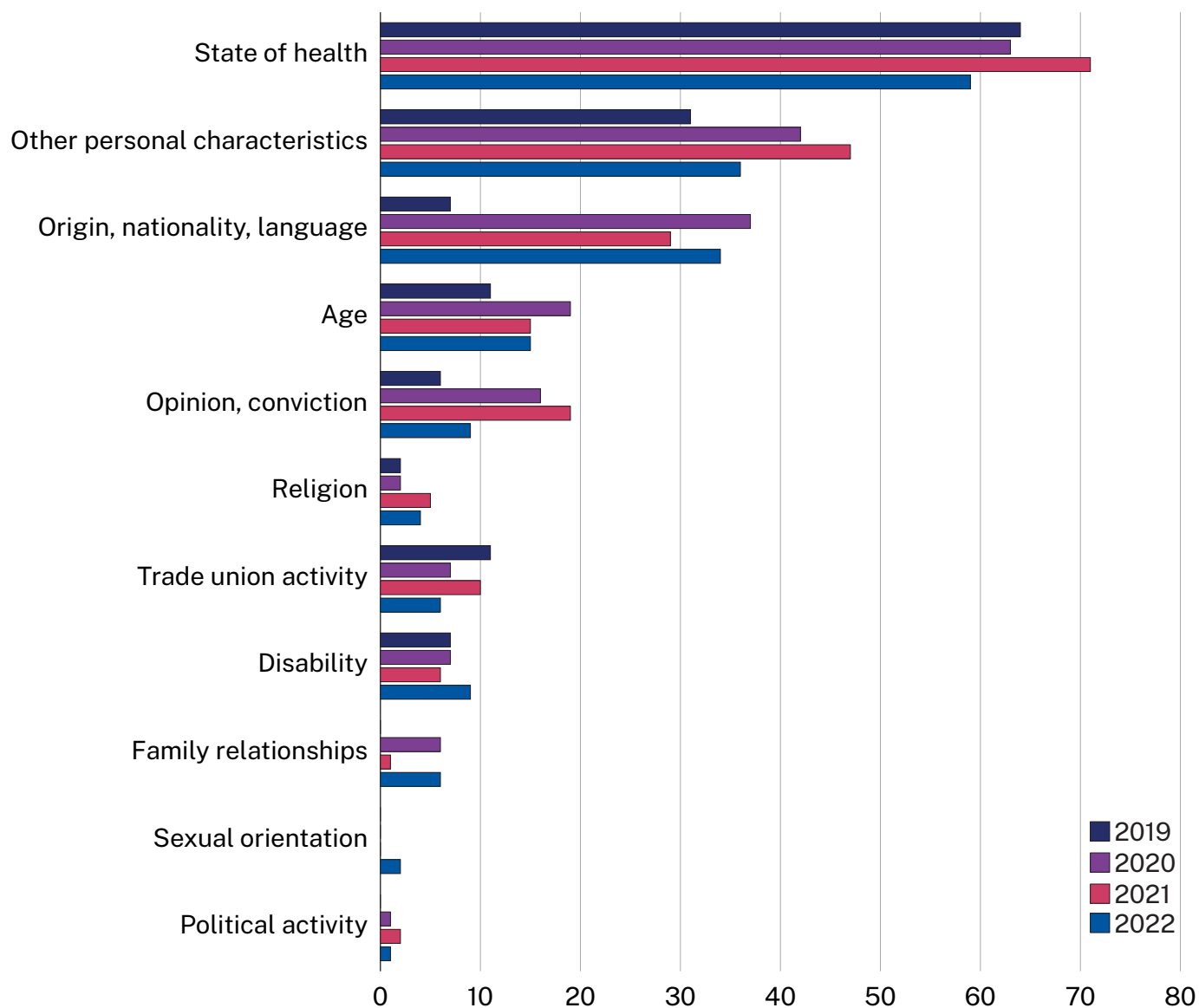


Figure 3. Grounds for discrimination in inspections carried out on the basis of enforcement requests in recent years. One inspection may have addressed several different grounds for discrimination.

The discriminatory treatment of employees or jobseekers addressed in around half of the inspections carried out in 2022 was related to the *termination of employment*. In over half (about 57%) of cases related to termination of employment, discrimination was assessed on the basis of state of health. Many cases involved multiple discrimination, in which case other grounds for discrimination were addressed in addition to state of health.

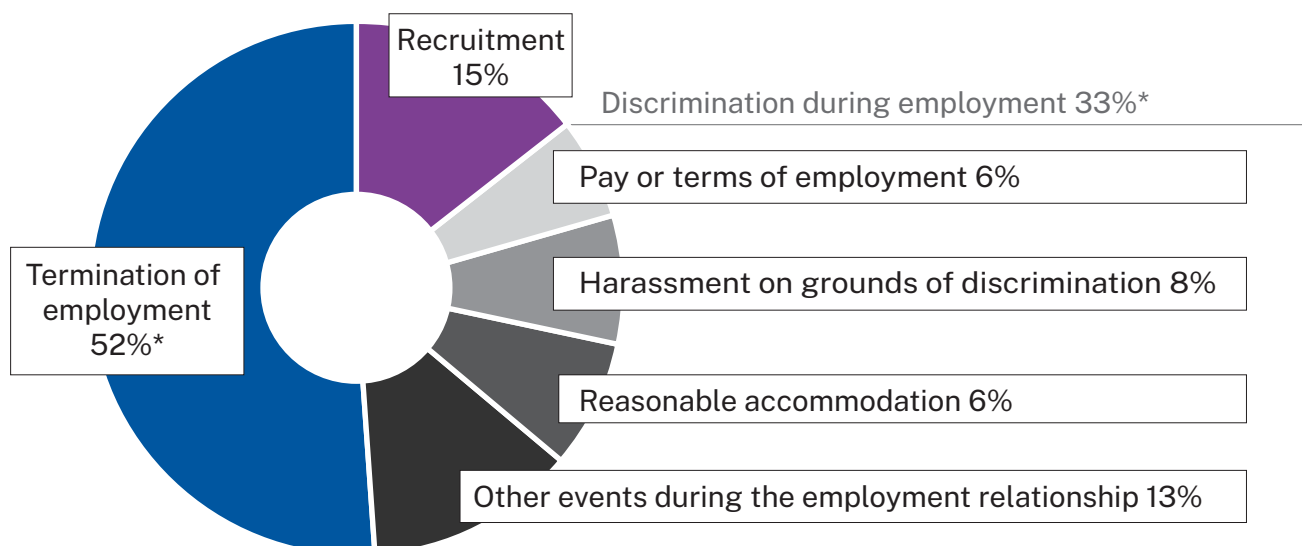
About one third of the inspections assessed discrimination *during the employment relationship*. In most cases, the employee felt that some grounds for discrimination had caused changes in work tasks or the assignment of shifts or the payment of wages. Just over half of inspections assessed discrimination experienced during the employment relationship on the basis of origin, nationality and/or language. About 8% of inspections concerned harassment as provided in the Non-Discrimination Act. Harassment was most often related to origin, nationality or language. The employer’s obligation to make reasonable

adjustments or to provide a report on the refusal of adjustments was addressed in 5% of the discrimination inspections.

Approximately 15% of the inspections carried out on the basis of enforcement requests concerned discrimination during *recruitment*. The most common grounds for discrimination in inspections that concerned recruitment, were age (more than 30%), origin and nationality, and state of health.

Requests for enforcement concerning suspected discrimination related to temporary agency work have become more common in recent years. In temporary agency work, compliance with the prohibition of discrimination focuses on the case-by-case enforcement of either a private recruitment agency or a user company leasing an employee. In some cases, both are monitored, which means that one request for enforcement may lead to more than one inspection.

Manifestation of discrimination at different stages of employment in 2022



* Some of the inspections covered both discrimination during the employment relationship and discrimination related to the termination of the employment relationship.

Figure 4. Discrimination related to recruitment, that occurs during employment or is related to the termination of employment in inspections in 2022. 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 36 of the inspections carried out, it was found that the employer had acted in breach of the prohibition of discrimination. The employer was issued written advice or an improvement notice for the observed shortcomings.

The greatest number of obligations for violating the prohibition of discrimination imposed due to discrimination for reasons related to health. The next largest number of obligations were imposed due to discrimination based on language and other personal characteristics. Although the greatest number of inspections were related to the termination of employment, only about 20% of imposed obligations were related to the termination of employment. The majority of imposed obligations (64%) concerned discrimination experienced during an employment relationship, which is clearly higher than in previous years. Approximately 20% of imposed obligations concerned discrimination in recruitment. In addition to the prohibition of discrimination, the inspections carried out on the basis of requests for enforcement also imposed a number of obligations for the employer's noncompliance with the prohibition of countermeasures, with the promotion of non-discrimination or with the preparation of an equality plan. Some obligations were also imposed for discriminatory job advertisements.

In connection with the inspection report, the client is 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 study descriptions:

Requirement of face masks was discrimination on the grounds of health and disability

Based on a risk assessment carried out by the employer, the employer required the staff of the educational institution to wear masks and required the entire staff to wear face masks at the workplace. An employee had informed their employer that, due to their state of health and

Other observed shortcomings

In connection with the supervision of compliance with non-discrimination legislation, the OSH authorities also supervise compliance with other aspects of labour legislation and intervene if other deficiencies in labour legislation are noticed. Inspections carried out on the basis of suspected discrimination revealed a number of other deficiencies in the activities of employers, due to which obligations were imposed on employers. In 2022, a total of 31 obligations were imposed for other deficiencies concerning compliance with labour legislation in connection with discrimination cases. In some cases, it was found that the employer violated both the prohibition of discrimination and other labour legislation, while others found shortcomings other than discrimination. The greatest number of obligations under other legislation were imposed for harassment or other inappropriate treatment under the Occupational Safety and Health Act, the examination and assessment of risks of work, and excessive workload.

disability, they were unable to wear face masks. The employee had previously submitted an occupational health care statement to the employer stating that the employee should not wear face masks because of the physical symptoms caused by them. Despite this, the employer refused to make other arrangements to enable the employee to work, but required all employees to wear face masks on the basis of the general risk assessment of the workplace. The employer informed the employee that it is not acceptable for the employee to be at the workplace without a face mask and that the employee was to be placed on unpaid leave if they did not wear a face mask at the workplace.

The employer's requirement for face masks was considered to an apparently equal rule, criterion or practice that put e.g. workers who cannot use face masks due to their health or disability, at a disadvantage. Thus, it was found that a presumption of indirect discrimination on the basis of health and disability had arisen. Ac-

According to the employer's report, the requirement concerning face masks was based on an assessment of risk that the employer carried out pursuant to the Occupational Safety and Health Act. The risk assessment was based on the region's COVID-19 infection situation and the hospital district's situational data. Based on the risk assessment, the employer had issued obligatory instructions to all employees to use separately defined face masks at work. According to the employer, face masks had to be used in spaces where several people were present, working or taking a break. According to the employer, the decision concerned all employees equally, and the employer did not give any employees separate permission to work without a face mask. In their response, the employer also appealed to a general statement issued by the occupational health care provider, which claimed the use of face masks does not involve health hazards. The employer pointed out that if an employee does not comply with the employer's order to wear appropriate face masks during working hours, the employee will be removed from the workplace based on health security and placed on unpaid leave in the absence of meeting prerequisites for working.

The inspection found that the employer's goal of preventing possible Covid19 infections was appropriate as such for an obligating instruction. However, on the basis of the investigation, it was found that the employer's measures and decisions were based only on a general risk assessment, and the employer had not sufficiently taken into account the employee's personal characteristics, state of health or disability. As a result, it was determined during the inspection that the employer's action of placing a person who, due to their state of health and disability, is unable to wear a face mask on unpaid leave was not in this case a proportionate means of ensuring the health safety of the workplace. It was determined during the inspection that the employer had not demonstrated that the means used to achieve the end target were necessary and proportionate as required by the Non-Discrimination Act, so the employer was found to have violated the prohibition of discrimination.

Private recruitment agency discriminated against a jobseeker due to their height

A jobseeker had applied for work through a private recruitment agency and suspected that they were not selected for a position due to their short stature. The jobseeker had asked the representative of the private recruitment agency whether their height would be an obstacle to working. The person handling recruitment had said that the belts used in the work were situated at quite a height, but that they would look into the matter. The jobseeker had asked the recruiter why the user company had not been selected them for the position. The recruiting person had reported that the user company had issued instructions on the height of the jobseeker, which the applicant did not fulfil.

The inspection found that it could be assumed in the matter that the height of the jobseeker had contributed to the fact that they were not presented to the user company at all or that an offer of employment was cancelled after the employer had been informed of the jobseeker's height. Consequently, a presumption of discrimination arose on the basis of disability and other personal characteristics.

The employer tried to justify different treatment by highlighting occupational safety aspects related to work. The line belts used in the work were located at a height, and the jobseeker's work on the line in question would pose an occupational safety and health risk to themselves and would also pose a risk to others working on the line.

It was determined during the inspection that the employer's objective of ensuring the safety of all employees was justified as such. However, on the basis of the reports received, it remained unsubstantiated that the user company had in fact set the conditions described by the private recruitment agency for the height of the employee. The employer had also failed to investigate the possibilities of adjustments if the height of the jobseeker had actually restricted their work. Consequently, the employer was considered to have violated the prohibition of discrimination.

A user company violated the prohibition of discrimination when it did not investigate harassment based on origin

A temporary agency worker had experienced harassment related to their origin, nationality, language and religion when another employee at the workplace had called them names and insulted them. The temporary agency worker felt that the behaviour of the other employee created a threatening and hostile atmosphere for them at the workplace. The other employee had e.g. told jokes related to their religion and inappropriately underestimated their language proficiency. The temporary agency worker told several supervisors about their experiences and requested a shift change so that they would not have to work in the same shift with the person in question, but they were urged to remain silent and the matter was not investigated in spite of several requests by the temporary agency worker. The worker's shift had been changed, but the harassment they experienced continued until the end of their assignment. In its report, the temporary agency worker's user company pointed out that the employee had requested a shift change but had not explained the reasons for their wish. According to the user company, the supervisors at the workplace had been consulted when investigating the matter and they had no knowledge of the employee's religion.

It was determined during the inspection that it was unclear whether the reports presented by the user company had been made during the worker's assignment or after the assignment ended and the employee had started investigating the matter with the help of a trade union. During the inspection, it was found that several supervisors at the workplace had been informed of the harassment experienced by the worker also after the shift change, but the employer had still not taken measures to stop the harassment. It was determined that the user company had neglected its obligation to eliminate harassment related to the grounds for discrimination at the workplace and thus violated the prohibition of discrimination.

A company using temporary agency workers must also take into account the obligations laid down in the Non-Discrimination Act when exercising its right to direct and supervise temporary agency workers.

A fixed-term employment relationship was not extended after an employee refused to get vaccinated

An employee had been in a fixed-term employment relationship with the employer for less than a year. A new fixed-term contract had been agreed orally, and the employer intended to apply for a pay subsidy for the employee's employment relationship. Before concluding the contract, the employer had announced that it would require all employees to take the vaccine against the Covid19 virus. The employer had inquired about whether the employee in question had gotten vaccinated, at which time the employee had stated that the employer had no legal grounds to request information on the employee's state of health and therefore did not provide the employer with information on the vaccine. After this, the employer no longer worked on applying for a pay subsidy and did not enter into a new fixed-term employment contract with the employee. The employer denied having required the employee to be vaccinated and to provide information on their state of health in the recruitment situation. According to the employer, the new fixed-term contract had been dependent on external funding. No funding was provided and, in the end, one was hired for the position.

During the inspection it was determined that even though the employer was able to demonstrate the lack of external funding, the employer was not able to disprove that the employee had been required to provide informed on their vaccination status in the recruitment situation.

An employee's employment was terminated immediately after they requested a shift schedule

On their first day at work, signing their employment contract the employee had asked the employer for a work schedule and otherwise indicated that they were familiar with the sector's collective agreement. According to the employee, it was a practice at the workplace that the next day's working hours were reported the previous evening in the WhatsApp group. According to the employee, they had been told that it was impossible to draw up a work schedule in the sector, but after some investigation, the employee had been promised work schedules for a week in advance. However, the following day, the employer terminated the employee's employment relationship on the basis of the probationary period and did not give any reasons for the termination of the probationary period despite the employee's requests. The employee felt that the opinions he expressed and the demands the employee made for their rights the previous day were the reason for the termination. During the investigation, the employer denied the employee's allegations of discrimination. According to the employer, the employee had been told that it was not possible to prepare work schedules for three weeks during the COVID-19 pandemic, but the lists would still be prepared for one or two weeks. According to the employer, the reason for the termination during the probationary period was the employee's unsuitability for work tasks and the work community. The employer pointed out that on their first work day, the employee had strongly undermined the employer's instructions and advice concerning the performance of the work and had not shown any willingness to adapt to the workplace. According to the employer, it was impossible to continue the employment relationship for these reasons. The employee, on the other hand, pointed out that they had not refused any of the tasks assigned to them, nor had they failed to follow the instructions or questioned matters, as the employer had claimed in their report. Furthermore, the employee pointed out that the employment

contract was signed at the end of their first work day, and as soon as the employee arrived at work the following morning, the employer announced the termination of the employment relationship.

It was determined during the inspection that the employer had not been able to effectively assess the employee's suitability for the work or work community. The employer was found to have violated the prohibition of discrimination.

The employee's opinions did not affect the termination of the employment relationship

During their employment relationship, an employee had expressed their societal opinions related to equality and feminism at their workplace several times. The employee had e.g. expressed their opinions and views during workplace meetings and in the communication channel shared by the entire workplace and mirrored them to the employer's activities. The employee's employment relationship was terminated during the probationary period only a short time after the employee had last expressed their opinion. According to the employee, they had also been told at the hearing concerning their termination that their opinions and views on equality were the real problem. Thus, a presumption of discrimination based on the worker's opinions arose in the case. In their report, the employer disputed that the opinions or views expressed by the employee had been the reason for the termination of the employment relationship during the trial period. According to the employer, the termination was due to deficiencies in the employee's work performance. According to the employer, the employee's actions had caused a lack of trust between the parties, which could no longer be corrected. According to the employer, a neutral means of communication played an important role in the employee's work tasks, and the employer stated that it had received feedback on the employee from several different stakeholders. The employer also pointed out that they had spoken with the employee several times about the matter, and the employer had

given the employee suggestions on how to correct their actions and wishes on how to carry out the work. In addition to deficiencies related to work performance, the employer pointed out that the employee criticised the employer's activities in different contexts when it did not correspond to the employee's own values. According to the employer, the employee had been told at the hearing that their way of expressing matters was not in line with the employer's communication practices.

During the inspection it was determined that the employer was able to demonstrate that the employee's opinions as such were not the reason for terminating the employment relationship. Instead, the termination of the probationary period was due to the employee's work methods and deficiencies in their work performance. Consequently, the employer had not violated the prohibition of discrimination.

The employer demonstrated that the termination of employment was not due to the employee's religious scarf or sick leave

The employee's employment relationship was terminated on the basis of the probationary period a short time after she had started wearing a head scarf related to her religion at the workplace. According to the employee, supervisors at the workplace had asked her about the use of the scarf. The employee had also fallen ill and gone on sick leave only a few days before her termination during the probationary period. The employee suspected that her religion or state of health had an impact on the termination of her employment relationship. The employer denied that the employee's religion or state of health had affected the decision to terminate the employee's employment relationship during the probationary period. According to the employer, the reasons for the termination of the employment relationship included shortcomings in the employee's work performance, being late

for shifts and non-compliance with the instructions for both work and absences. According to the employer, several supervisors had assessed the employee's work performance, which had been commented from their first week at work. According to the employer's report, the employee had been given feedback, and they had been offered additional orientation and support for their work. The employee felt that they had received good feedback and praise for their work skills. However, the employer highlighted concrete examples of non-compliance with instructions. With regard to the scarf related to the employee's religion, the employer pointed out that there is no obstacle for wearing scarves in the workplace. According to the employer, there are employees in the workplace who practice several different religions, and efforts have been made to take the needs of those of different religious denominations into account in workplace arrangements, for example by organising a separate prayer facility. According to the employer's knowledge, one discussion had taken place between the employees on the use of the scarf, but the supervisors had not discussed the matter other than to note that use of a scarf is acceptable.

During the inspection the examples of discussions and questions related to the use of the scarf presented by the employee were of a normal tone of discussion. Taking into account the employer's other report on how different religions had been taken into account in the activities of the workplace, it was determined that nothing had emerged in the matter on the basis of which it could be assumed that the use of the scarf had affected the termination of the employment relationship. Regarding the employee's state of health, the inspector found that despite the events taking place close to one another, the employer had shown in its report that the employee's state of health had also not affected the termination of the employee's employment relationship.

3. Supervisory activities on the initiative of authorities

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

The OSH authority may, at its own initiative, investigate whether discrimination occurs in the workplace in the payment of wages or other terms of employment. This matter is usually looked into in the supervision of the use of foreign labour, and an effort is made during every inspection of the terms and conditions of employment to assess whether the employer has complied with Finnish labour legislation in pay. Compliance with the prohibition of discrimination in working life is monitored at the same time. 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. The comparison is made to either Finnish employees at the workplace or, if all employees at the workplace are foreigners, to the general legal level.

In 2022, the prohibition of discrimination was enforced during a total of 909 inspections related to the use of foreign labour. The site of most of the inspections (841) were Finnish companies. Of these, 90 were companies with seasonal workers. In addition, 68 inspections were carried out at foreign companies posting workers to Finland and inspections focused on monitoring the prohibition of discrimination. Discrimination based on origin, language or nationality in the related to the payment of wages or other minimum terms and conditions of employment was observed in 9% of inspections of Finnish companies other than those employing seasonal workers. Approximately 12% of the inspections revealed shortcomings in seasonal work companies. Deficiencies were similarly found in around 12% of the inspections at posting companies. These figures have not changed much from 2021.

In 2022, compliance with the Non-Discrimination Act at the initiative of the authorities was enforced by means of **1,035** OSH inspections.

The prohibition of discrimination was enforced during **909** inspections related to the use of foreign labour.

It should be noted that this does not mean that there was without a doubt no discrimination at other inspection sites. The reason for this is that it is common for it to be impossible to carry out a genuine pay comparison because of inadequate working time documents in the workplace. In fact, obligations arising from inadequate working time records and shift rosters or absence of them 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 agreement. Failure to pay for overtime is also common. Serious pay gaps are observed in the supervision of foreign labour far more often than indicated by the aforementioned percentages, but it is not possible in all situations to demonstrate that this is due to discrimination. It is particularly difficult to monitor cases where some of the foreign employees in the workplace are paid in accordance with the collective agreement but others are not.

Discrimination occurred in all sectors, and it occurred both in the operations of Finnish companies and in the operations of foreign companies posting workers to Finland. The most common response of employers to a presumption of dis-

crimination that emerges during an inspection was appealing to their own ignorance of the pay provisions of 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 OSH 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.

Case study:

Work carried out at berry pickers' base

According to information provided by employees with a foreign background working at the berry pickers' base, they had worked up to 13-15 hours almost every day for a month. They had not been paid any supplements in accordance with the collective agreement. No work schedule had been drawn up for the workplace, and the working hours register kept by the employer was inconsistent with what the employees said. According to their statements, the employees had to pay for upkeep, meaning accommodation, food and car use. The employees had signed an employment contract, but they had not been given a copy of it. There was a presumption that the employer had treated some employees less favourably on the basis of their origin and nationality than workers in a comparable position in the labour market are usually treated.

The employer denied that they had discriminated against anyone on the basis of their nationality, but it was determined during the inspection that the employer had not presented anything that would have disproved the presumption of discrimination. The employer was found to have violated the prohibition of discrimination.

During the inspection, deficiencies were observed and obligations imposed concerning

such things as the preparation of a shift schedule, keeping a working hours register, compensation for overtime and Sunday work, and matters related to occupational health care.

Case study:

Forestry work

Foreign employees who had worked in planting had been paid significantly smaller wages than would have been required by the collective agreement. The work was carried out in accordance with the collective agreement for the forestry sector. According to the collective agreement's provisions, an employee submits a notification of working hours to the employer and the actual working hours are recorded with an accuracy of at least 15 minutes. The employer did not submit working hours reports for the inspection, so it was determined that it is justified to assume that no working hours reports have been prepared and that the actual working hours could not be verified.

According to the employer's report, the employees had worked 10 days at a time and then left to visit their home country for a week. The sum listed in the documents was paid for this 10 day period. It was determined during the inspection that the employer's report did not disprove the presumption of discrimination. In any case, if the employees had worked 10 days a month as stated by the employer's representative and the reported 8 hours each working day, the hourly wage of the employees was significantly below the wage specified in the collective agreement.

The inspection found that foreign employees had been placed in a unfavourable position because the employer's negligence resulted in the salary not being in accordance with the collective agreement. The employer was found to have violated the prohibition of discrimination.

The inspection revealed deficiencies and also imposed obligations concerning the provision of occupational health care, the provision of key terms of employment to the employee and compliance with the Act on Posting Workers.

3.2. Prohibition of discriminatory job advertisements

When advertising an open position, public office or post, an employer may not unlawfully require that applicants have the personal characteristics or qualities referred to in the Non-Discrimination Act. 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 2022, the OSH authorities carried out 18 inspections concerning discriminatory job advertisements. In 13 inspections, the employer was found to have violated the prohibition of 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.

Examples of discriminatory job advertisements in 2022:

- Finnish as the mother tongue was required for the role of a social media coordinator in trade.
- A sales assistant was required to have proficiency in Finnish at the level of native speaker.
- A job advertisement video published on Twitter seeking an employee for machining and programming work, and the requirements for the position specified that the applicant be a man who spoke Finnish as their mother tongue.
- Installers of heavy goods vehicles and welders were required to be Finnish citizens.
- Applicants for a position as a waiter were required to be between 22 and 32 years old.
- A cemetery worker was required to be a member of the Evangelical Lutheran Church.
- For the position of technical foreman, it was considered an advantage if jobseekers lived close to the employer's premises and had completed military service.

3.3. Employer's obligation to promote non-discrimination

All employers are obligated to actively promote non-discrimination 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 non-discrimination. 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 non-discrimination.

In 2022, OSH authorities carried out a total of 108 inspections focusing on the employer's obligation to promote non-discrimination and draw up an equality plan. Shortcomings in the preparation or content of the equality plan were found in 89 inspections, meaning nearly 82% of the inspections. Deficiencies in the promotion of equality were found in 81 inspections. During enforcement it was observed that many workplaces were willing to act correctly, but the workplaces did not

Common shortcomings:

- The identification or assessment of all relevant grounds for discrimination was inadequate.
- The planning of concrete measures to promote non-discrimination 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.

More information on drawing up an equality plan and concrete measures to promote non-discrimination:

- [Equality.fi](https://www.equality.fi)
- Guide: Promoting equality in the workplace - Instructions for employers (OSH Administration, [in Finnish](#))
- [How to promote diversity in recruitment?](#) (Finnish Institute of Occupational Health)
- Handbook on working towards equal inclusion of persons with disabilities in working life (Publication of the Non-Discrimination Ombudsman and the Human Rights Centre, [in Finnish](#))
- Room for diversity! Guide to promoting equality for sexual and gender minorities (Seta Gender diversity & intersex centre of expertise, [in Finnish](#))

know what the promotion of equality entailed and what an equality plan should cover. During inspections information was provided to workplaces on the promotion of equality and equality planning.

4. Discrimination in the workplace as a crime

4.1. OSH authorities report suspected offences to the police

Under the OSH Enforcement Act, the OSH 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 2022, the OSH authorities filed 48 pre-trial investigation reports of suspected workplace discrimination offences with the police. Of these, 18 were related to extortion-like workplace discrimination.

Grounds for discrimination in pre-trial investigation notifications in 2022:

- National or ethnic origin, nationality, language: 29
- State of health: 7
- Union activities or equivalent: 6
- Age: 3
- Sexual orientation: 1
- Religion: 1
- Disability: 1

The OSH authority's reporting obligation also applies to gender discrimination, even though its

An employer or a representative of an employer who, when advertising for a vacancy or selecting an employee or during an employment relationship, without a serious and acceptable reason, puts a job applicant or an employee in a unfavourable position

1) on the basis of his or her race, national or ethnic origin, nationality, colour, language, sex, age, family relations, sexual orientation, genetic inheritance, disability or state of health, or

2) on the basis of his or her religion, societal opinion, political or vocational activities or another 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*

enforcement is the responsibility of the Ombudsman for Equality.

In 2022, the OSH authority submitted one request for the investigation of gender-based discrimination in the workplace. Probable grounds for suspecting discrimination at work based on gender came to light in connection with other

OSH enforcement. These were related to the use of family leave, the protection against dismissal of pregnant workers and the monitoring of the appropriateness of the grounds for termination of the employment relationship.

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

The OSH 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 OSH authority participates in the investigation of workplace dis-

crimination 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 OSH authority has the right to be present and to speak in the capacity of the authority to be heard.

The OSH authority provides information on the most important decisions concerning offences in the workplace. The OSH authority's media releases can be ordered through the STT press release service (sttinfo.fi). The media releases are also published on the OSH Administration's website at Tyosuojelu.fi (www.tyosuojelu.fi/tietoa-meista/ajankohtaista/tiedotteet-ja- uutiset).

The following media releases on offences concerning discrimination in the workplace were published in 2022 (in Finnish):

- [Työnantaja maksoi kolmelle työntekijälle liian pientä palkkaa – hovioikeus pysytti käräjäoikeuden tuomion kiskonnantapaisesta työsyrynnästä](#)
4 January 2022, Southern Finland
- [Kiskonnantapaisesta työsyrynnästä parturialan yrittäjälle annettu tuomio pysyi hovioikeudessa – työelämään tutustumisaika oli työsuhteessa tehtyä työtä](#)
5 January 2022, Eastern Finland
- [Työnantaja ei maksanut ravintola-työntekijälle yleissitovan työehtosopimuksen mukaista palkkaa – tuomio törkeästä kiskonnasta](#)
18 February 2022, Southern Finland
- [Ulkomaisille työntekijöille ei maksettu asianmukaista palkkaa – toimitusjohtajalle sakkoja](#)
15 March 2022, Southwestern Finland
- [Työpaikan laiminlyönneistä viranomaiselle ilmoituksen tehnyt työntekijä irtisanottiin – toimitusjohtajalle tuomio työsyrynnästä](#)
17 March 2022, Southwestern Finland
- [Työntekijä kanteli työolojen epäkohdista, sai varoituksen ja menetti lisätehtävän – toimitusjohtajalle sakot työsyrynnästä](#)
3 June 2022, Northern Finland
- [Työsuhte päätettiin koeajalla syrjivällä perusteella: työnantajalle sakkoa työsyrynnästä](#)
12 July 2022, Southern Finland
- [Työnantaja irtisanoi raskaana olleen työntekijän – hovioikeus ei muuttanut käräjäoikeuden tuomiota työsyrynnästä](#)
19 August 2022, Eastern Finland
- [Ravintoloitsijalle ehdollista vankeutta ihmiskaupasta](#)
30 August 2022, Southern Finland
- [Työnantaja syrji etnisen taustan vuoksi – hovioikeus ei muuttanut käräjäoikeuden tuomiota työsyrynnästä](#)
04 October 2022, Southern Finland
- [Kenkäkaupan toimitusjohtajalle sakkorangaistus työsyrynnästä](#)
05 December 2022, Southern Finland

Tyosuojelu.fi

Website of the Occupational Safety
and Health Administration in Finland