

Equality at work

A practical guide for Equality Delegates

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A practical guide for Equality Delegates

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Editors

La Chambre des Salariés
18 rue Auguste Lumière
L-1950 Luxembourg
T +352 27 494 200 F +352 27 494 250
www.csl.lu csl@csl.lu
Nora Back, president
Sylvain Hoffmann, director

Ministry of Equality between women and men
6A Boulevard Franklin D. Roosevelt L-2450 Luxembourg
T +352 247-85814
F +352 241886
www.mega.public.lu
contact@mega.public.lu
Taina Bofferding, minister

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Preface

Nora BACK, President of the Chamber of Employees

Despite the principle of equal opportunities and treatment for women and men being a key policy concern and an essential value that should guide our society, gender inequalities in economic and social life remain particularly stark today. More than ever, concrete measures and actions promoting equal opportunities driven by a strong will to go beyond formal equality are necessary. In this context, one avenue for promoting absolute equality between women and men lies at the level of companies. The principle of equality is an essential element of professional dynamics and job diversity, which is indispensable for economic and social development.

Equality Delegates are vital players whose mission is to defend equal treatment regarding access to employment, training and professional promotion, as well as remuneration and working conditions. They can, therefore, act to create an equal workplace in their company. The Chamber of Employees, in collaboration with the Ministry of Equality between Women and Men, has decided to reissue this practical guide to support Equality Delegates in carrying out their missions. After a presentation of their role and prerogatives, they will understand the concepts of "equality" and "discrimination" and the actors involved. A more concrete third part composed of tools and examples will inspire them. Finally, they will find helpful information, such as a glossary, legal references, competent institutions and works to consult.

We hope this practical, educational, free guide will contribute to this individual and collective awareness.

Luxembourg, September 2021

“Let’s make equality between women and men a reality.”

Nora BACK & Taina BOFFERDING

Taina BOFFERDING Minister of Equality between women and men

Equality between women and men is a fundamental principle enshrined in Luxembourgish law. It is the cornerstone of our collective strength, fostering the recognition and well-being of every individual. The challenge lies in translating this principle into tangible actions in our daily lives.

As integral parts of our society, businesses merit our utmost attention. Gender equality in the workplace is critical in maintaining a healthy social climate and ensuring genuine recognition for all contributions. Any imbalance is not only experienced as a personal injustice but also acts as a poison to social cohesion.

As Equality Delegates, you are pivotal in scrutinising practices and proposing solutions. You can drive change towards a more inclusive society and combat unacceptable disparities. Your actions on the ground significantly contribute to bringing equality to life daily.

The Ministry of Equality offers a range of practical tools to achieve true equality at all levels. The Ministry guides teams and business leaders in developing action plans through its Positive Actions program. The goal is to enable women and men to achieve a healthy work-life balance, recognise their efforts fairly, and empower each individual to express their full potential.

By uniting our forces – the Ministry, the Chamber of Employees, and all those committed to action on the ground – we can ensure collective well-being.

Luxembourg, September 2021

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1 Equality Delegates

1.1. Who are Equality Delegates?¹

Equality Delegates are employee representatives who advocate for an equal workplace for women and men. They achieve this by monitoring that working conditions are consistent in the professional environment.

Their nomination is mandatory when the company they work for reaches the threshold of 15 employees. They are designated by the newly elected delegation at the constituent meeting from among the employee delegates or their substitutes. The delegation informs the employer and the Inspection du Travail et des Mines in writing within 3 days.

Equality Delegates are protected against any essential modification of their employment contract and against any dismissal. They may request the President of the Labour Tribunal to enforce this protection². For more information, please visit the website of the Chamber of Employees: <https://www.csl.lu/en/>.

1.2. What are their missions?

One of the missions of Equality Delegates is to promote equality in the company, *"To transform legal equality into tangible equality, experienced in everyday reality."* (Ms Bofferding, Minister of Equality between women and men). Equality Delegates have the general mission of defending equal treatment between women and men at work at every stage of the employment relationship³:

- access to employment, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy;
- access to professional training;
- access to professional promotion;
- compensation ;
- work conditions ;
- layoffs.

¹ Article L. 414-15 of the Labor Code

² Article L. 415-10 of the Labor Code

³ Article L. 414-15 of the Labor Code

For this purpose, Equality Delegates, acting alone or in concert with the staff delegation, are notably authorised to:

- to express their opinion and make proposals on any question relating, directly or indirectly, to one of the areas mentioned above;
- to propose to the employer awareness-raising actions for the company's employees;
- to prepare and present to the employer a plan of measures aimed at promoting equal opportunities between men and women;
- to present to the employer any individual or collective complaint regarding equal treatment between men and women;
- to prevent and resolve individual or collective disputes that may arise between the employer and salaried staff regarding equal treatment between men and women;
- to refer, in the absence of a settlement of the disputes mentioned above, to the Inspection du Travail et des Mines (ITM) for any complaint or observation;
- to convene once a year, separately, salaried staff of both sexes;
- to ensure equality training for apprentices in the company;
- to collaborate in the establishment and execution of any initial professional training regime and particular apprenticeship;
- to provide consultations in an appropriate location for the establishment's salaried staff, outside or during working hours. In the latter case, the Equality Delegates must agree with the company manager on the time and arrangements for organising these consultations, the duration of which is charged to their hour's credit. ;
- to express their opinion before creating part-time positions in the company.

The Equality Delegates can also intervene in these matters:

- Sexual harassment⁴: Equality Delegates are responsible for ensuring the protection of employees against all forms of sexual harassment during work relationships. To this end, they can propose any preventive action necessary to the employer. In this regard, they can also assist and advise any employee who is the subject of sexual harassment. They are required to respect the confidentiality of the facts they become aware of in this capacity unless exempted from doing so by the person being harassed. The employee subject to sexual harassment has the right to be accompanied and assisted by a delegate in interviews with the employer or his/her representative.

⁴ Article L. 245-6 of the Labor Code

- Parental leave⁵: The staff delegation, if any, is informed by the employer of any postponement of parental leave. The employee concerned, the staff delegation, the Equality Delegate or the unions benefiting from general national representativeness or representativeness in a crucial sector of the economy, linked by collective employment agreement at the company and represented within the staff delegation, can contact the Inspection du Travail et des Mines if they consider that the reason for the postponement is not justified. The direction of the Inspection du Travail et des Mines or its delegate can prevent or resolve discrepancies.
- Pregnant women⁶: Employers must communicate to any woman employed in their company, to the staff delegation and Equality Delegates, if any, the list of work which pregnant or breastfeeding cannot be asked to do, as well as the determination of the measures taken to eliminate any risk to the safety and health of these women and to eliminate any possible repercussions on pregnancy or breastfeeding.
- Evolution of employment⁷: Company managers are obliged to inform and consult the staff delegation and Equality Delegates on the situation, structure and probable developments of employment within the company as well as any anticipated anticipation measures envisaged, particularly in the event of a threat to employment; To this end, they must, in particular, provide the staff delegation and Equality Delegates with statistics broken down by sex on recruitment, promotions, transfers, dismissals, remuneration and training of employees every six months.
- CAE and CIE⁷: Company managers must inform and consult the staff delegation and Equality Delegates on the conclusion of employment support contracts (CAE) and employment initiation contracts (CIE).
- Selection criteria⁸: In companies employing at least 150 employees, decisions relating to establishing or modifying general criteria concerning personal selection must be made by mutual agreement between the employer and the staff delegation. In the event of hiring, promotion, transfer, dismissal and, where applicable, the priority criteria for admission to the early retirement of employees; the establishment and implementation of any continuing professional training program or collective action; the establishment or modification of general criteria for assessing employees.

⁵ Article L. 234-46(4) of the Labor Code

⁶ Article L. 334-1 of the Labor Code

⁷ Article L. 414-3 of the Labor Code

⁸ Article L. 414-13 of the Labor Code

Staff representatives must regularly report to the delegations at the level of the economic and social entity and the Equality Delegates on the results of the discussions on this subject. Even though the employer claims they are confidential, they provide the Equality Delegates with an up-to-date list of general criteria. In the latter case, Equality Delegates must maintain secrecy regarding these criteria unless they refer those who violate the principle of equal treatment to the Inspection du Travail et des Mines.

- Consultation of an employee's personal file⁹: Each employee has the right to access the individual files that concern them twice a year during working hours. He/she may, on this occasion, be assisted by a member of the staff delegation or by the Equality Delegate, who are required to keep the content of personal files confidential to the extent that they have not been released from this obligation by the employee. The employee's explanations regarding the contents of their file must be included in it upon the request of the individual concerned.

Practical examples:

- After his appointment, inform employees of his role and his areas of intervention during a meeting or through an email or a flyer;
- Monitor that the employer guarantees gender equality in hiring matters, ask for candidate selection criteria;
- Ensure that the employer respects equal treatment in terms of remuneration and the promotion of qualifications;
- Monitor that the employer ensures equality in the career development of its employees;
- Propose the establishment of a procedure to prevent moral and sexual harassment and ensure that information is made available to all employees of the company;
- Participate in the implementation of an awareness policy and continued commitment to equality between women and men by all employees;
- Make information relating to equality available to the staff delegation and employees;
- Encourage the use of parental leave by both mothers and fathers.

⁹Article L. 414-17 of the Labor Code

The mission of Equality Delegates¹⁰ targets the problem of equality between the sexes, while the mission of the delegations of the staff as a whole encompasses the other criteria following discriminatory measures:

- belonging or not belonging, true or supposed, to nationality, race or ethnicity;
- disability ;
- age;
- sexual orientation;
- religion or beliefs.

Note:

Specific protection for women in the event of pregnancy and maternity is provided for in the Labor Code¹¹: “The provisions relating to the protection of pregnancy and maternity do not constitute discrimination, but a condition for the realisation of equal treatment between men and women.”

1.3. What are their prerogatives?

Meet with delegation If the designated Equality Delegate is a substitute member of the delegation, he/she can participate in all decisions about his/her special mandate, and he/she may assist at all delegation meetings concerned with voice advisory¹².

Staff delegations may meet¹³ once per month during service hours, subject to at least 5 working days' notice given to the management unless a shorter deadline is agreed. They must meet at least during service hours 6 times per year, including 3 times with the company's management.

Time spent in meetings is paid as time of work.

Contact employees¹⁴

Members of the staff delegation have the right to contact all company employees. As such, they are authorised to move freely within the company, to construction sites or other temporary workplaces and have contact with employees after informing the employer. They also have the right to contact them through all communication available within the company.

¹⁰Articles L. 251-1 s. of the Labor Code

¹¹ Article L. 241-4 of the Labor Code

¹² Article L. 414-15 last paragraph of the Labor Code

¹³ Article L. 415-6 of the Labor Code

¹⁴ Article L. 414-46 of the Labor Code

Communicate¹⁵

Equality Delegates may freely post communications, reports, and positions on various media accessible to staff, which are reserved for this use, including electronic means, to the extent that they are directly related to their responsibilities.

Get information¹⁶

Equality Delegates are bound by professional secrecy for all questions relating to manufacturing processes.

In addition, they are required to keep confidential information of a confidential nature and expressly qualified as such by the head of the company in the legitimate interest of the company, both about employees. Only about third parties, unless an obligation of confidentiality, in turn, binds the employees or third parties. The head of the company may refuse to communicate information or conduct consultations when their nature is such that, according to objective criteria, they would seriously hamper the operation, management or future of the company, would harm them or compromise a planned operation.

Note:

Members of the delegation who consider the classification of information as confidential or the refusal to communicate information or consultations to be abusive may appeal within two weeks to the director of the Labor and Mines Inspectorate. The decision of the director or his/her delegate must be sent to the parties no later than the 8th day from the sending of the request.

It will be written and duly motivated and will take into account the interests and needs of employees and their representatives, as well as the economic necessities and constraints that must be taken into account by the company manager or in the exercise of his or her duties power of management of the company by the principles of good management. Within 15 days of its notification, the decision of the director of the Labor and Mines Inspection or his/her delegate may be the subject of an appeal for annulment before the Administrative Court.

Specific hours credit¹⁷

To carry out their missions, the delegates to equality receive a specific hour credit:

¹⁵ Article L. 414-16 of the Labor Code

¹⁶ Article L. 415-1 of the Labor Code

¹⁷ Article L. 414-15 of the Labor Code

- 4 paid hours per month, if the company occupies between 15 and 25 employees during the twelve months preceding the 1st day of the month of posters announcing elections;
- 6 paid hours per month, if the company occupies between 26 and 50 employees during the twelve months preceding the 1st day of the month of posters announcing elections;
- 8 paid hours per month, if the company occupies between 51 and 75 employees during the twelve months preceding the 1st day of the month of posters announcing elections;
- 10 paid hours per month, if the company occupies between 76 and 150 employees during the twelve months preceding the 1st day of the month of the poster announcing the elections;
- 4 hours per week, if the company occupies more than 150 employees for the twelve months preceding the 1st day of the month of posting announcing the elections.

Company workforce	Hours credit
Between 15 and 25 employees	4 hours/month
Between 26 and 50 employees	6 hours/month
Between 51 and 75 employees	8 hours/month
Between 76 and 150 employees	10 hours/month
150 employees and more	4 hours/week

This overtime credit is reserved for the exclusive use of Equality Delegates. They have the right to leave their job without reducing their remuneration to the extent necessary for accomplishing their missions after having informed the head of the company and provided that this does not hinder the good functioning of the service.

Specific training leave¹⁸

The employer must give Equality Delegates free time, known as training leave, to participate, without loss of remuneration, training activities organised by trade union organisations or by specialised institutions coinciding with regular working hours and aimed at improving economic, legal, social and psychological valuable knowledge for the execution of their mission.

¹⁸ Article L. 414-15 of the Labor Code

Equality Delegates thus have two half-days of training leave work per year, which cannot be deducted from their annual recreation leave.

The duration of training leave is assimilated to a period of work, the related remuneration expenses being borne by the State, about companies whose total number of employees does not exceed 150.

2 What knowledge helps carry out their mandate?

Rethinking the workspace to address different gender-related issues involves considering thoughts and problems on inequalities and discrimination between women and men in the workplace.

2.1. What do we mean by “equality”?

In the Constitution, the principle of equality is first enshrined in Article 10 bis paragraph 1: “Luxembourgers are equal before the law”.

There is also a constitutional principle of equality between men and women, proclaimed by Article 11, paragraph 2 of the Constitution in these terms: “Women and men are equal in rights and duties. The State ensures that it actively promotes the elimination of obstacles that may exist regarding equality between women and men.”

Article 111 states that “any foreigner on the territory of the Grand Duchy enjoys the protection granted to people and property, except for the exceptions established by law”.

The Labor Code states in its article L. 241-1: “Any discrimination based on sex, either directly¹⁹ or indirectly²⁰ by reference, in particular, to marital or family status is prohibited.

Discrimination based on sex change is assimilated to discrimination based on sex.
[...]

¹⁹ *Direct discrimination occurs when one person is treated less favourably than another who has been or would be in a comparable situation based on one of the grounds of discrimination.*

²⁰ *Indirect discrimination occurs when a neutral provision, criterion or practice is likely to result in a particular disadvantage for people of a specific nationality, affiliation or non-affiliation, actual or supposed, to a certain race or ethnicity, gender, sexual orientation, religion or belief, disability or age, in relation to other people, unless this provision, this criterion or this practice is objectively justified and that the means of achieving this objective are appropriate and necessary.*

Harassment²¹ within this chapter and sexual harassment as defined in Article L. 245-2 are considered “discrimination based on sex and are therefore prohibited.”

Article L. 251-1 of the Labor Code provides that “any direct¹⁹ or indirect²⁰ discrimination based on religion or belief, disability, age, sexual orientation, membership or non-membership, true or supposed, to a nationality, race or ethnicity is prohibited”.

Articles L. 225-1 et seq. of the Labor Code establish equal pay: “Every employer ensures, for the same work or work of equal value, equal pay between men and women.”

The Penal Code also provides for the repression of discrimination in its articles 454 and the following: “Constitutes discrimination any distinction made between natural persons because of their origin, their skin colour, their sex, their sexual orientation, their family situation, their age, their state of health, their disability, their morals, their political or philosophical opinions, their union activities, their membership or non-membership, true or supposed, to a specific ethnicity, nation, race or religion.”

2.2. Why should we act against discrimination?

Reason #1

The law prohibits discrimination.

The Labor Code prohibits discrimination in the workplace and provides remedies for the benefit of victims, associations or unions.

The Penal Code criminalises discrimination and punishes it with imprisonment and fines.

²¹Without prejudice to the specific provisions relating to sexual harassment and moral harassment in the workplace, harassment is considered a form of discrimination based on the grounds of discrimination cited above when unwanted behaviour linked to one of the motives is manifested, which has the object or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Reason #2

Prevent a person from being treated less well for reasons not legitimate.

According to the law, to discriminate means “to treat a person less favourably compared to another person placed in the same or comparable situation and this for a reason forbidden”.

Eliminating discrimination, therefore, means eliminating unfair treatment.

Reason #3

Any illegitimate difference in treatment attacks human rights, equal rights of individuals and equal opportunities.

Employment and work constitute essential elements to guarantee equal opportunities for all, and it is through this that citizens participate in economic, social, and cultural life. As a result, labour law includes a strict legal framework to combat discrimination in the workplace.

Reason #4

A healthy company does not tolerate discrimination.

The employer must guarantee the health and safety, not only physical but also mental, of its employees. Therefore, he is obligated to end any situation of discrimination or discriminatory harassment. Also, a company that respects this legal obligation and does not tolerate discrimination guarantees all its employees a good working climate and avoids unnecessary waste of time.

2.3. What are the grounds for discrimination?

Religion

Treating one person worse than another because of their religion is prohibited by the Labor and Penal Code. It is the same in the other direction; that is to say, it is also discriminatory to treat one person worse than another because they do not belong to a particular religion.

Beliefs

The Labor Code prohibits discrimination based on beliefs. The Penal Code supports this idea by prohibiting and penalising discrimination based on

political or philosophical opinions. The terminology used by the Labor Code is, therefore, broader. Larousse defines “conviction” as “a principle, an idea which has a fundamental character for someone”. It is a fundamental religious, philosophical, political or ethical belief.

Sexual orientation

This motive targets the sexual preferences that human beings can display, such as preferring men or women or preferring men and women.

Age

The “age” motif targets all ages. This could also be a situation in which young people are treated less well than older people or vice versa. Note that the differentiation criterion “seniority of service” is often used by the legislator and the employer to base decisions in the context of work performance.

This criterion is often linked to the “age” reason prohibited by law to the extent that employees with more seniority are also often older. As a result, using this criterion can lead to situations of indirect discrimination. But if, for objective reasons, the difference in treatment generated by applying the seniority criterion is justified, then it will no longer be a question of prohibited discrimination but of authorised treatment differences.

Disability

The Labor Code does not define “disability”. To explain the concept of disability, the Court of Justice of the European Union (CJEU) used the definition provided by the United Nations Convention on the Rights of Persons with Disabilities ratified by the European Union.

A disability, therefore, corresponds to “a limitation, resulting in particular from lasting physical, mental or psychological impairments, the interaction of which with various barriers may obstruct the full and effective participation of the person concerned in professional life based on the equality with other workers. In this regard, obesity may constitute a disability within the meaning of the Equal Treatment in Employment Directive.

In this respect, the Court specifies that disability not only designates the impossibility of carrying out a professional activity but is also a hindrance to the exercise of such an activity. Any other interpretation would contradict

the directive's objective, which consists of enabling disabled people to access or pursue employment.

The origin of this disability, and in particular the fact that the person may have contributed to its occurrence, is irrelevant to the implementation of equal treatment.

The Court of Justice of the European Union has also decided that situations in which the victim is discriminated against because of the disability of a person close to them are also covered.

Membership or non-membership, actual or supposed, to a nationality, race or ethnicity

If the Labor Code prohibits any discrimination based on membership or non-membership, actual or supposed, of nationality, race or ethnicity, the Penal Code also speaks of “skin colour”. However, the notion of skin colour joins the notions of race and ethnicity to the extent that it often allows us to characterise/distinguish different races/ethnic groups.

The Labor Code does not define “race” and “ethnicity”.

Sex: being a man or woman, gender identity²²

The principle of non-discrimination based on sex requires equal treatment between women and men. Any direct or indirect discrimination²³ regarding marital or family status is also prohibited.

Sex change

This ground aims to prohibit discrimination against transgender people.

The legislator has extended the scope of application of the principle of non-discrimination by providing that “any discrimination based on change of sex is assimilated to discrimination based on sex”.

At the same time, the Penal Code criminalises discrimination and punishes it with imprisonment and fines.

²² *Gender identity is the deep, personal feeling of being male or female, neither or both.*

²³ *See definitions on page 14 et seq.*

The Penal Code supplements the list set out in the Labor Code by adding the following grounds:

- origin;
- skin colour ;
- health status ;
- the mores ;
- union activities;
- belonging or not belonging, true or supposed, to a nation.

2.4. Which actors can help Equality Delegates in their missions?

The Ministry of Equality between Women and Men (MEGA)

Equality between women and men in all areas and levels of society constitutes a strong government commitment. Luxembourg thus has a ministry exclusively dedicated to equality between women and men, MEGA²⁴.

MEGA coordinates actions. The overall approach is transversal. Each ministerial department must respect gender equality in developing its policies, legal texts, programs and action plans by systematically considering the gender dimension (“Gender Mainstreaming”). In its efforts, the Ministry of Equality also works closely with social partners and civil society.

To bring equality to life daily, MEGA has developed the “National Action Plan for equality between women and men”²⁵. This roadmap combines the coming years' thematic priorities, measures and commitments. The plan echoes the ministry's areas of action with equality in society (impact of gender stereotypes; fight against all forms of sexual and sexist violence)²⁶, equality in local life²⁷, employment²⁸ and education²⁹

²⁴ www.mega.public.lu/fr.html

²⁵ www.mega.public.lu/fr/societe/politique-niveau-national.html

²⁶ www.mega.public.lu/fr/societe.html

²⁷ www.mega.public.lu/fr/communes.html

²⁸ <https://mega.public.lu/fr/travail.html>

²⁹ <https://mega.public.lu/fr/education.html>

Regarding employment, the Positive Actions program is a vital instrument of the ministry to advance gender equality at work. The ministry supports companies to develop and certify their good practices. Concretely, the company establishes its individual action plan based on an inventory. The Equality Delegate is directly involved in the formed working group (see the Positive Actions program page 48 et seq.).

So that everyone can become aware and contribute to a more inclusive society, the ministry also makes data available to the general public. The ministry's Observatory³⁰ reflects the situation of women and men in Luxembourg through seven areas. The online site emphasises gender equality in employment, education, and public and private life. Collecting and processing data relating to equality between women and men is crucial for developing targeted actions. "We can only change and improve what we measure," as Minister Taina Bofferding notes.

The Center for Equal Treatment (CET)³¹

Luxembourg has set up an independent body responsible for combating discrimination, namely the Center for Equal Treatment (CET). Any person who considers themselves the victim of direct or indirect discrimination can contact the CET for advice and to gather information. However, the prerogatives and means of action of the CET vis-à-vis employers remain limited.

The CET aims to promote, analyse and monitor equal treatment of all persons without discrimination based on nationality, race, ethnic origin, gender, sexual orientation, religion or beliefs, disability and age.

In carrying out its mission, the CET may, in particular:

- publish reports, issue opinions and recommendations and conduct studies on all issues related to discrimination;
- produce and provide all information and documentation as part of its mission;
- provide assistance to people who consider themselves victims of discrimination by providing them with an advice and guidance service aimed at informing victims about their individual rights, the legislation, case law and the means to assert their rights ;
- mener ou commanditer des enquêtes et des analyses indépendantes sur les restrictions et obstacles injustifiés au droit à la

³⁰ <https://observatoire-egalite.lu/>

³¹ www.cet.lu

libre circulation ou sur la discrimination fondée sur la nationalité à l'encontre des travailleurs de l'Union et des membres de leur famille au sens du règlement (UE) n° 492/2011 du Parlement européen et du Conseil du 5 avril 2011 relatif à la libre circulation des travailleurs à l'intérieur de l'Union.

The Inspection du Travail et des Mines (ITM)³²

A reception service concerning the theme of equal pay between men and women has been launched by the Inspection du Travail et des Mines.

This offer, aimed at employees and employers, operates at the ITM offices in Esch-sur-Alzette, Diekirch, Strassen and Wiltz.

In the event of pay inequality, you can contact him either:

- by telephone at +352 247-76102 (specific hotline for the ITM in terms of equal pay);
- by e-mail to egalite.salariale@itm.etat.lu;
- by sending a letter to the Inspection du Travail et des Mines, 3, rue des Primeurs, L-2361 Strassen
- or even by visiting one of the 4 offices located at Strassen, Esch-sur-Alzette, Diekirch, Wiltz

³² www.itm.public.lu

3 How to promote equality at work?

The Equality Delegates aim to ensure an egalitarian space and promote actions on equality at work. Progressive awareness of the issues of inequality in the world of work must mobilise all employees and, first and foremost, business leaders or management themselves. The question then arises: How can equality policy be integrated as an objective of personnel policy?

3.1. Implementation of gender provisions underrepresented³³

We speak of under-represented sex when, in a given profession or trade, the representation of the sex in question is equal to or less than 40% of all employees exercising this profession or trade on the national territory.

An employer who hires a person of the underrepresented sex may, if necessary, receive financial assistance. Such an employer must, before requesting reimbursement of a share of the Employment Fund, seek the opinion of the Equality Delegate.

Then, he sent a written request to the minister responsible for labour. Their request must contain:

- the description of the number of personnel drawn up on the last day of the month preceding the introduction of the request for company personnel with the specification of the sex, profession, trade, level of the hierarchy, and functions of all employees;
- the description of the vacant position, in particular from the points of view of hierarchy, function and required profile;
- the opinion of the Equality Delegate.

Such an employer will be authorised, derogating from article L. 241-2 of the Labor Code, to broadcast or publish job offers or advertisements relating to employment and favouring employees of the under-represented sex.

Furthermore, to ensure full equality between male and female employees, the employer may provide specific advantages intended to facilitate the exercise of professional activity by the employee(s) of the under-represented sex he or she engaged or to prevent or compensate for disadvantages in the professional career of this employee(s).

To benefit from these two exemptions, the employer must first have a written certificate from the Minister of Equality between Women and Men certifying the

³³ Articles L. 242-1 s. of the Labor Code

state of under-representation of employees of the sex they are. It's about privileging.

3.2. The positive actions

The Positive Actions program is an instrument of the Ministry of Equality between Women and Men (MEGA) to help advance equality between women and men at work.

It allows companies to receive support to develop and certify their good practices regarding equality between women and men.

Participation in the Positive Actions program is voluntary. MEGA offers advice and financial support. Any Luxembourg company in the private sector can apply to participate in the Positive Actions program. Companies with at least 25 employees are targeted³⁴.

The Positive Actions program is based on three thematic pillars:

1. Equal treatment:

- during recruitment;
- in the calculation of remuneration;
- in the promotion of qualifications.

2. Equality in decision-making:

- through professional promotion;
- in access to continuing training;
- in equal participation in decision-making.

3. Equality in reconciling professional life

- and private life:
- after parental leave;
- in the organisation of work;
- for life balance and increased work satisfaction;

The procedure takes place in 2 phases, each lasting one year.

Phase 1

Year N

- Step 1: Submission of the request for participation
- Step 2: Signature of the agreement

³⁴ Companies with fewer than 25 employees can use the guide developed for them by MEGA

- Step 3: Creation of a project working group within the company
- Step 4: Analysis of the situation in the company
- Step 5: Preparing a report and presenting the results
- Step 6: Development of the action plan
- Step 7: Validation of the action plan and delivery of ministerial approval

Phase 2

Year N+1

- Step 1: Implementation of the action plan
- Step 2: Certification of good practices and presentation of the trophy

You can find details of this program, “Good practices carried out in private sector companies”, as well as more information on the dedicated MEGA website:

www.actionspositives.lu

3.3. Examples of actions to implement in business

Examples provided by MEGA

1. Craft sector – Classify to progress towards equality

Context

A company whose jobs are largely occupied by women has chosen, as part of its participation in the Positive Actions program of the Ministry of Equality, to analyse in detail the fairness of its internal organisation.

Tracks developed

The company worked on classifying the different positions with a description of the tasks and on establishing an egalitarian bonus system with equal base salaries.

The objective was to ensure that remuneration evolved equally for everyone based on responsibilities and missions. A seminar and coaching sessions were organised with the (co)managers to make them responsible for equal opportunities and team spirit.

Work plans have become more flexible, allowing for a better work-life balance. Professional interviews were set up for all team members to discuss training and career plans.

Feedback

Employees praised the transparent and encouraging system and a more flexible system for organising work. Individual development strengthened the motivation of teams to work together.

2. Industrial sector – Training for diversity

Context

A company in the industrial sector, with a professional environment comprising mainly men, has committed to obtaining better diversity in its teams as part of Positive Actions.

Tracks developed

The company worked on several areas: It trained recruitment managers, raised awareness among human resources and department heads, put forward a gender diversity clause in the mandates given to recruitment companies, and worked to eliminate stereotypes in job postings and job descriptions.

To strengthen the attractiveness of professions for people of the under-represented sex, the company has developed partnerships with schools, training centres and universities. It has also supported employees working in technical professions, sharing their experiences and career paths as “role models” among young people.

Feedback

Mixed teams work better. They prove to be more efficient thanks to the diversity and complementarity of their skills. Increasing the number of women in a previously very male-dominated environment has strengthened exchanges, made it possible to modify work stages and contributed to improving working conditions for women and men.

Other examples:

- Organise thematic meetings with staff on the projection of inequalities to reconstruct the origins of this inequality and explore together the implications of this phenomenon, which harms the proper functioning of a company.
- To improve working conditions, raise awareness among employees about the reflection of inequalities, stereotypes and sexism.
- Guarantee the principle of equal pay between men and women.
- Guarantee the principle of recognition of professional practices, titles and diplomas.
- Offer thematic conferences with sociologists, psychologists or other people specialising in equal treatment (multidisciplinary framework) to prevent and repair discrimination in the company and to implement effective policies of equal treatment.
- Act in an egalitarian corporate space and promote actions on equality in the company by proposing thematic actions based on international days:

March 8 - International Women's Day

4th Thursday in April - International Day of Girls in ICT

July 30 World Day Against Human Trafficking

November 19 - International Men's Day

November 25 - International Day for the Elimination of Violence Against Women

The various days proclaimed at the international level, particularly by the United Nations, traditionally constitute the opportunity to present the progress made in equality between women and men to the establishment's staff. They also offer the opportunity to discuss and identify the main challenges to overcome in the future together.

- Ensure the dissemination of information and works relating to equal treatment.
- Develop improvement or innovation approaches to enable employees and managers of the company to become aware of certain verbal and non-verbal violence, imaginary representations, power relations, forms of power, social roles, and unconscious biases.
- Organise meetings to combine joint reflections and field actions.
- Promote equality in adult continuing education.
- Invest in prevention policies.
- Improve the collection and processing of statistical data relating to workplace violence and gender-based violence.
- Closely monitor the treatment of victims; better coordinate support for victims.
- Take stock of the management strategy to encourage the development of an egalitarian society within the company.

3.4. Equality between women and men in terms of teleworking

Equality Delegates should also fight against gender stereotypes to think differently about teleworking around a more egalitarian and more inclusive use. Teleworking has been subject to legal regulation for more than 10 years now.

Indeed, at the European level, the social partners had signed a framework agreement on teleworking on July 11, 2002. Following this agreement, in February 2006, an agreement relating to the legal regime was signed at the national level. On the other hand, they were teleworking between the social partners, namely the OGBL, the LCGB, and the UEL. This agreement has been renewed several times for the last time on December 15, 2015.

The social partners at the national level considered it appropriate to modernise the said convention to adapt it to the challenges of digitalisation and to regulate both regular and occasional teleworking.

The new agreement signed on October 20, 2020, was declared a general obligation by the grand-ducal regulation of January 22, 2021. It entered into force on February 2, 2021.

This agreement is on www.legilux.public.lu, section: Grand-ducal regulations / January 2021.

www.legilux.public.lu/eli/etat/leg/rgd/2021/01/22/a76/jo

4 Useful information

4.1. Glossary of terms on equality between women and men³⁵

The equality policy between women and men uses several concepts and terminology linked to different aspects of gender.

Thus, sex refers to the biological differences between women and men. Gender, on the other hand, refers to the social differences between women and men that, over time, differ from one era to another, from one society to another.

The different terms relating to equality can be consulted in the ministry's list below.

Positive Actions

Measures aimed at a particular group seek to eliminate and prevent or compensate for disadvantages resulting from existing attitudes, behaviours, and structures.

Gender analysis

Examination of any difference in condition, needs, participation rate, access to resources and development, heritage management, decision-making power and image between women and men about their roles because of their gender.

Diversity

Differences between the values, attitudes, cultural frameworks, beliefs, ethnic environments, sexual orientations, skills, knowledge and experiences unique to each group member.

Equality between women and men/gender equality

The principle of equal rights and equal treatment of women and men. Notion means, on the one hand, that every human being is free to develop their abilities and to make choices, independently of the restrictions imposed by the roles reserved for women and men and, on the other hand, that the various behaviours, aspirations and needs of women and men are considered, appreciated and promoted on an equal footing.

Equal treatment between women and men

Ensure the absence of discrimination based on sex, direct or indirect.

Equal opportunities between women and men: There are no barriers to economic, political, and social participation due to gender.

Gender impact assessment

³⁵ www.mega.public.lu/fr/support/glossaire.html

Assessment of the discriminatory consequences of proposed actions to make modifications to ensure that the discriminatory effects are neutralised and that gender equality is promoted.

Gender/Gender

This concept refers to social differences between women and men that are acquired, subject to change over time, and widely variable within and among different cultures.

Gender mainstreaming

Systematic integration of conditions, priorities and specific needs of women and men in all policies to promote activities based on equality between women and men or to mobilise all policies and general measures with the sole aim of achieving equality by actively and demonstrably taking into account, at the planning stage, their impact on the specific situation of women and men during their implementation, monitoring and evaluation.

Intersexuality (intersex person)

A person born with sexual characteristics (genital, hormonal, gonadal or chromosomal) that do not correspond to standard binary definitions of female and male bodies established by medicine. These are natural and healthy variations of the human sexes.

Sex

Biological characteristics that distinguish women and men.

Gender stereotypes

Preconceived ideas that arbitrarily assign women and men roles determined and limited by their sex.

4.2. Legal framework for online Equality Delegates

The Constitution of the Grand Duchy of Luxembourg

www.legilux.public.lu/eli/etat/leg/recueil/constitution

Labour Code

www.legilux.public.lu/eli/etat/leg/code/travail

Articles L. 241-1 et seq.: Equality of treatment between men and women

Articles L. 242-1 to 242-3: Implementation of the provisions regarding the underrepresented gender

Articles L. 243-1 to 243-5: Positive Actions

Articles L. 245-1 to 245-8: Sexual harassment

Articles L. 251-1 to 254-1: Equal treatment in matters of employment and work

Articles L. 411-1 et seq.: Delegations

Article L. 414-15: Equality delegate

Penal Code

www.legilux.public.lu/eli/etat/leg/code/penal

Articles 454 and 455

Teleworking agreement

www.legilux.public.lu/eli/etat/leg/rgd/2021/01/22/a76/jo

4.3. Online directory of public institutions

- **The Center for Equal Treatment** www.cet.lu
- **Chamber of Employees** www.csl.lu
- **The Inspection du Travail et des Mines** www.itm.public.lu
- **The Official Journal of Luxembourg** www.legilux.public.lu
- **The Ministry of Equality between Women and Men**
www.mega.public.lu
www.observatoire-egalite.lu
www.actionspositives.lu

4.4. Useful links

Understanding Europe - Salary inequalities between women and men in Europe.

www.touteurope.eu/societe/les-inegalites-salariales-entre-les-femmes-et-les-hommes-en-europe/

Parental leave - Men are still missing

www.touteurope.eu/economie-et-social/conge-parental-les-hommes-manquent-encore-a-l-appel/

Women's rights: what is the outcome in Europe?

<https://www.touteurope.eu/societe/dossier-droits-des-femmes-quel-bilan-en-europe/>

4.5. Useful works (only in French)



Le congé parental

www.csl.lu

> rubrique : **publications**



L'égalité salariale : une des priorités du gouvernement

www.mega.public.lu

> rubrique : **publications**



Les femmes et les hommes dans la prise de décision économique au Luxembourg

www.mega.public.lu

> rubrique : **publications**



Les Actions Positives en bref

www.actionspositives.lu

> rubrique : **boîte à outils**

4.6. Programme Actions Positives

Legal basis

Art. L. 243-1 to L. 243-5 of the Labor Code

Definition:

“Positive Actions means concrete measures providing specific advantages intended to facilitate the exercise of a professional activity by the under-represented sex or to prevent or compensate for disadvantages in the professional career.

The measures referred to within the meaning of this chapter are:

1. the implementation of a new work organisation;
2. concrete recruitment measures before and/or after hiring;
3. special training actions;
4. measures relating to changes in the profession;
5. promotional actions;
6. actions promoting access of the under-represented sex to positions of responsibility and decision-making;
7. measures aimed at better reconciling family and professional life.”

Introduction

The Positive Actions program is an instrument of the Ministry of Equality between Women and Men (MEGA) to help advance gender equality at work.

It allows companies to receive support to develop and certify their good practices regarding equality between women and men.

Participation in the Positive Actions program is voluntary. MEGA offers advice and financial support.

Any Luxembourg company in the private sector can apply to participate in the Positive Actions program. Companies with at least 25 employees are targeted³⁶.

The 3 pillars of the program

The Positive Actions program is based on three thematic pillars for gender equality.

1. Equal treatment

- during recruitment;
- in the calculation of remuneration;
- in the promotion of qualifications.

2. Equality in decision-making

- through professional promotion;
- in access to continuing training;
- in equal participation in decision-making.

3. Equality in the balance between professional and private life

- after parental leave;
- in the organisation of work;
- for life balance and increased work satisfaction.

Procedure and development

The procedure takes place in 2 phases, each lasting one year.

Phase 1

Year N

- Step 1: Submission of the request for participation
- Step 2: Signature of the agreement
- Step 3: Creation of a project working group within the company
- Step 4: Analysis of the situation in the company
- Step 5: Develop a report and present results
- Step 6: Development of the action plan
- Step 7: Validation of the action plan and delivery of ministerial approval

Phase 2

Year N+1

- Step 1: Implementation of the action plan
- Step 2: Certification of good practices and presentation of the trophy

Phase 1

STEP 1

Submission of the request for participation

To begin, the company submits its application for participation in MEGA:

- Cover letter
- Documents to be provided: Tax certificate, VAT certificate, Social Security certificate
- Self-assessment sheet (15 questions distributed in 3 sections)

www.actionspositives.lu/docs/Fiche_dAuto-Evaluation.pdf

The application file is submitted, for opinion, to the Positive Actions Committee.

STEP 2

Signature of the agreement

Once the request has been validated, MEGA and the company have agreed. This agreement defines the conditions of collaboration.

Company commitment to:

- survey all staff;
- measure the salary structure using the software provided;
- provide the numerical data necessary for the evaluation;
- build an action plan following the investigation.

MEGA mandates an external consulting office to support the company in its project.

STEP 3

Creation of a project working group within the company

The project group is composed of:

- members of management;
- human resources ;
- the company Equality Delegate;
- external consultants.

A MEGA representative intervenes according to the stages. At the same time, MEGA provides a toolbox. It comprises documents promoting and self-evaluating Positive Actions, including a link to the LOGIB software to analyse salary practices.

www.actionspositives.lu/boite-a-outil

STEP 4

Analysis of the situation in the company

Participating in the Positive Actions program systematically begins with analysing the company's situation in collaboration with the external consultant. MEGA finances this analytical work.

This involves taking stock of the situation based on the 3 thematic pillars of the program.

> *Surveying all staff:*

- Anonymous
- Online or paper version or both
- 20 mins. approximately are required to complete the questionnaire.

> *Evaluation of the salary structure:*

- Access to LOGIB software to analyse practices and salary structure.

The software allows user companies to acquire knowledge about their current salary structure and allows them to identify the causes of possible salary inequalities. <https://actionspositives.lu/en/logib-3/>

This tool mainly aims at private sector companies with over 25 employees. Companies with fewer than 25 employees can use the guide developed for them by MEGA.

The “Equal pay between women and men” guide supports companies with fewer than 25 employees achieving equal pay.

<https://actionspositives.lu/en/toolbox/>

STEP 5

Preparation of a report and presentation of results

The consulting office prepares a report based on the following:

- quantitative and qualitative data from the survey carried out among staff;
- results of data entered into the LOGIB software;
- Interviews were carried out within the project group.

This will make it possible to have an inventory of the situation in the company, to identify the strong points and the avenues which will make it possible to establish the action plan.

The report's content is presented to the project group, and the results are explored further.

STEP 6

Development of the action plan

Based on the inventory, the project group develops the individual action plan for the company based on a standard MEGA model.

The action plan now consists of 7 actions around the 3 thematic pillars:

- Equal treatment;
- Equality in decision-making;
- Balancing private and professional life.

Reason for 2 actions per theme and 1 additional action for the theme that needs it the most.

STEP 7

Validation of the action plan and delivery of ministerial approval

The action plan formalises the company's commitment to equality.

It is presented for opinion to the Positive Actions Committee.

Verification by the Positive Actions Committee:

- if all certificates of compliance with legislation are in order (taxation, social security, VAT);
- if the company complies with labour law (Ministry of Labor) and the right of establishment (Ministry of the Economy).

Once the action plan has been approved, the company:

- obtains ministerial approval;
- signs a grant agreement for the actions to be implemented.

The amount is determined based on MEGA's overall budget for the Positive Actions program and the cost budgeted by the company for the 7 actions.

The ministerial approval is valid for one year when the company undertakes to carry out the measures in the action plan. Go to Phase 2.

Phase 2

STEP 1

Implementation of the action plan

During the implementation of the action plan during the 12 months of validity of the accreditation, progress and achievements are documented and evaluated to obtain the label.

A report on the progress and budget (MEGA standard model) will be established per semester, with supporting documents.

STEP 2

Certification of good practices and presentation of the trophy

Once the action plan has been implemented, a Positive Actions label is awarded to companies that have fully transposed their action plan as part of their participation in the program.

This label validates the actions carried out and the resources employed.

The Ministry of Equality presents the trophies during an official ceremony, thus marking the company's commitment. A ceremony takes place every year.

Companies that have already obtained the label can certify the continuation of their commitments from the 3rd year after year N+1.

Benefits for companies and employees

Participating in the Positive Actions program:

- strengthens mechanisms and action plans for equality;
- allows unexplained discrepancies to be detected and ensures fairness;
- promotes greater diversity at all levels;
- supports sustainable development commitments;
- contributes to the retention of talent and promotes the attraction of new ones; builds trust with internal teams and external partners;
- has a positive impact on the well-being of the teams in place.

The Positive Actions program encourages

- exemplary measures and good practices;
- flexibility models favourable to all;
- opening up to new avenues for organising work;
- developing continuous training;
- overcoming gender stereotypes at work.

The Positive Actions program offers:

- communication channels for better integration of women and men in the company;
- an in-depth analysis of the situation;
- measurement tools to determine areas for improvement and their monitoring;
- a regular self-assessment process;
- an intra-company network.

Labeled companies

Over the last ten years, more than 90 companies have had their good practices recognised. <https://actionspositives.lu/en/winners/>

There is an Actions Positives network which brings together Luxembourg companies in the private sector that have participated in the MEGA program.

Additional materials and links

Equal pay for work of equal value

> 2017 equal pay brochure.

The principle of equal pay states that no employee can be discriminated against regarding remuneration.

<https://mega.public.lu/fr/publications/publications-ministere/2017/egalite-salariale.html>

Women and men in economic decision-making in Luxembourg

> The 4th edition (2017 publication) of a report commissioned by the Ministry of Equal Opportunities provides concrete figures regarding the evolution of the representation of men and women in economic decision-making.

<https://mega.public.lu/fr/publications/rapports-activites-ministere/annee-2017.html>

Balancing professional and private life

<https://mega.public.lu/fr/travail/conciliation-vie-pro-privie.html>

The first 4 questions > Bilingual flyer FR/EN.

The program's progress, numerous testimonials and examples of good practices are available on the MEGA website.

<https://actionspositives.lu/en/page-daccueil-english/>

IN YOUR COMPANY, YOU WANT:

**LET'S MAKE GENDER EQUALITY
A REALITY! PARTICIPATE IN THE
POSITIVE ACTIONS PROGRAM
OF THE MINISTRY OF EQUALITY
BETWEEN WOMEN AND MEN**