

Law of the Kyrgyz Republic

«On State Guarantees for Ensuring Gender Equality »

The present Law regulates relations for ensuring equal rights and opportunities to persons of a different sex in social, political, economic, cultural and other areas of life; it is designed to protect women and men against discrimination on the basis of sex and is aimed at establishing progressive (modern) democratic relations between men and women based of national traditions.

Chapter I

General provisions

Article 1 – The Basic Concepts

Gender is a behavior of persons which has been accrued and is socially defined.

Gender policy – State and public activities directed towards establishing equality among relations of persons of different sex.

Gender Relation is a nature of behavior and treatment between persons of a different sex in the process of communication or implementation of various types of joint activities.

Gender-legal expertise – monitoring of the national legislation and other normative acts with the aim of determining their compatibility with gender legislation.

Gender statistics is the statistics that reflects relevant positions of persons of a different sex in all spheres of social and political life and accentuates gender problems and relations in the society.

Gender equality is an equal social status of persons of different sex in a society.

Equality of rights, obligations and responsibility of persons of a different sex means equality of these rights, obligation and responsibility before the law, except for the mitigating circumstances established by the legislation of the Kyrgyz Republic.

A relation based on an equal partnership is the cooperation or joint participation in the governmental and public life based on equal terms of persons of a different sex.

Gender-based discrimination is any difference, exception or preference, which limit rights and interests of persons on the basis of sex.

Outright gender discrimination is the discrimination which directly indicates a person's sex.

Latent gender discrimination is the discrimination without a direct indication of a person's sex.

Sexual harassment is immoral behavior, as well as illicit actions of sexual character in relation to persons of a different sex, expressed verbally (threats, intimidations, obscene remarks) or physically (touches, pat), humiliating and insulting the person subject to labor, official, material, family and other dependence.

Violation of equal rights is an active or passive behavior of humiliation, contempt or restriction of rights or rendering of privileges in based on a person's sex.

Household work is an independent form of labor activity aimed at satisfaction of needs of family.

Article 2 - Goals and objectives of the present Law

The objectives of the present Law are to provide the persons of a different sex the following:

- equality of rights, duties and responsibilities;

- equality of opportunities;
- equal partner relations in all spheres of life;
- equality in family relations;
- equality social, political, economic, labor and other activity;

Article 3 - Objects of Gender Equality

Objects of gender equality are public, social relations which are subject to legal regulation.

Article 4 - Subjects of gender equality

Subjects of gender equality are physical and legal persons and the state.

Article 5 - Legislation of the Kyrgyz Republic in the field of gender relations

Gender relations are regulated in the Kyrgyz Republic by the Constitution of the Kyrgyz Republic, international agreements in the field of gender equality that the Kyrgyz Republic is party to, the present Law, and other normative legal acts of the Kyrgyz Republic

Article 6 - Prohibition of gender discrimination

Both explicit and implicit gender-based discrimination shall be prohibited in any field of activity in relation to persons of different sex.

The subjects of gender equality, who have committed explicit or implicit gender discrimination, shall be made liable according to the legislation of the Kyrgyz Republic.

The following is not gender discrimination:

- Protection of maternity functions;
- conscription of men for the military service in the circumstances provided by laws of the Kyrgyz Republic
- adoption of temporary special measures on the basis of the present Law aimed at achieving de-facto gender equality;

Article 7 - Main Principles of the State Policy on Gender Equality

The following elements form the foundation of the state policy on gender equality:

- formation, enhancement and development of normative legal base ensuring gender equality;
- development and implementation of the targeted state programs aimed at achieving gender equality;
- protection of the society against information, popularization and propaganda, aimed at violating the principles of gender equality;
- fostering and popularizing the culture of gender equality;
- observance of the universally recognized principles and norms of international law and international obligations of the Kyrgyz Republic in relation to the gender equality.

Article 8 - Impediments for Achieving Gender Equality

Behavior of persons based on norms of common law, traditions and culture which contradicts the requirements of the present Law are considered as impediments for the achievement of gender equality.

Norms of common law, traditions and cultures containing elements of gender discrimination are not supported.

Chapter II

Guarantees of gender equality in public administration and civil service

Article 9 – Guarantees of gender equality in public administration

The state guarantees equal participation of persons of different sex in state administration. The state guarantees equal participation of persons of different sex in legislative, executive and judicial branches of government through legal, organizational and other mechanisms.

Article 10 - Guarantees of gender equality in civil service

Persons of different sex have equal rights, duties, responsibilities and equal opportunities for joining civil service and for the further work in governmental and municipal bodies.

Heads of state bodies are obliged to provide equal access for the persons of different sex to civil service according to their abilities and professional skills.

The state guarantees adherence to the principles of equal partnership among persons of different sex in legislative, executive and judicial branches of government, and in bodies of local self-government.

Employment for the vacant posts in the civil service, including senior positions, is based on competitions, in which persons of different sex participate to an equal extent and on equal terms.

Announcement of competitions only for persons of one sex is not allowed.

Chapter III

Guarantees of gender equality in economic and social relations

Article 11- Equal access to all forms of ownership

The state guarantees to the persons of different sex implementation of their property rights.

The state provides persons of different sex with equal opportunities of access to all forms of ownership.

Article 12 - Equal access to carrying out of business activity

The state guarantees to persons of different sex equal access to business activities.

Gender-based discrimination is prohibited in carrying out of business activity.

Article 13 - Equal access to management of the enterprises

The state ensures equal opportunities of access to management of enterprises (business entities) for persons of different sex.

Gender-based discrimination in the field of management of enterprises (business entities) is not allowed.

Article 14 - Equal access to land use

The government provides persons of different sex with equal rights for use of land, which is granted or is handed over for use for unlimited time (without indication of the term) or for the use within limited period of time (temporarily).

Rights to land are equally protected for persons of both sex.

Article 15 - Equal access to social privileges

Persons of different sex shall enjoy equal access to social privileges.

Members of a family enjoy equal access to childcare benefits or to entitlements granted to caretakers for elderly or disabled family members.

Chapter IV

Gender equality in labor relations

Article 16 - Freedom of choice of labor activity

An employer, in lieu of the implementation of the relevant work, shall ensure equality among persons of different sex.

Employer irrespective of forms of ownership is obliged to ensure that work conditions are equal for persons of both sexes.

An employer is obliged to provide the persons of both sexes with an opportunity to combine the labor activity with family duties.

Article 17 – Equal Access to Work Pay

Equal access to work pay among persons of different sex implies equal pay given equal qualifications among employees and equal conditions of work.

Reduction in payment or deterioration of working conditions on the basis of sex is considered as manifestation of gender-based discrimination.

Article 18- Guarantees of equality in case of massive lay-offs of employees

In case of a massive lay-off of employee, the number of the dismissed persons of one sex should be proportional to the existing number of personnel.

Article 19 – Equal approach to household work

The principles of gender equality in labor relations shall extend to the household work.

Persons of different sex shall carry equal obligations in relation to the household work.

Household work cannot constitute the basis for gender-discrimination and can be carried out equally by persons of different sex.

Article 20 – Guarantees of the Recognition of the Household Work

The state recognizes the household work as one of the forms of the public- productive labor.

Property, generated through the household work of family members, is the property of the family.

Article 21 – Rights of Persons of Different Sex on Substitution of Posts

Persons of different sex that within 3 years have not been promoted and assigned for training with the purpose of further improvement of their professional skills, have the right to request and receive from the head of governmental body and institutions of local self-government a written substantiation of the reasons of such actions as well as the data concerning experience and qualification of the person that was appointed (employed, promoted) for the position claimed by them or was assigned for training.

Article 22 – Prohibition of Pressure or Persecution of those persons of different sex who have been subjected to sexual harassment by an employer

The employer has no right to expose employees of different sex to pressure or persecution on the basis that an employee has rejected the employer in his sexual harassments or have filed a complaint against the employer for gender-based discrimination.

In case of pressurizing or persecuting employees on the basis of above-mentioned motives, the employer shall be made liable according to the legislation of the Kyrgyz Republic.

Chapter V

Mechanisms Ensuring Gender Equality

Article 23 – The Competence of the Jogorku Kenesh of the Kyrgyz Republic in ensuring gender equality

The Jogorku Kenesh of the Kyrgyz Republic by means of adopting the laws forms a legal basis for the state policy of gender equality in all spheres of the state and public life.

The Jogorku Kenesh of the Kyrgyz Republic within the limits of the competence appoints in view of representation of no more than 70 % of persons of one sex the following posts:

- judges of the Constitutional Court of the Kyrgyz Republic;
- judges of the Supreme Court of the Kyrgyz Republic;
- members of the Central Election Committee on Elections and Referenda of the Kyrgyz Republic, auditors of the Accounting Chamber of the Kyrgyz Republic.

The Jogorku Kenesh of the Kyrgyz Republic at least once a year shall hear the governmental report on the state of affairs in the field of gender equality. The report is presented by the Government of the Kyrgyz Republic in the order determined by the Jogorku Kenesh of the Kyrgyz Republic, and is subject to publication in the mass media.

Article 24 -The competence of the Government of the Kyrgyz Republic in ensuring gender equality

The government of the Kyrgyz Republic within the limits of its powers:

- participates in the development and ensures implementation of the uniform state policy in the Kyrgyz Republic, aimed at achieving gender equality in all spheres of public life;
- creates targeted state programs on gender equality, ensures implementation of such programs;
- provides funds for actions for the implementation of the state policy in the field of gender equality through the state budget, extra-budgetary sources and other sources allowed by the legislation of the Kyrgyz Republic;
- directs and supervises activities of executive agencies of the government for protection and observance of gender equality;

Article 25 - The competence of the National Council on Women, Family and Gender Development under the President of the Kyrgyz Republic

The National Council of Women, Family and Gender Development under the President of the Kyrgyz Republic within its mandate, undertakes the oversight of the implementation of the present Law.

The National Council of Women, Family and Gender Development under the President of the Kyrgyz Republic published annual reports on the implementation of the present Law.

Article 26 - Activities of bodies of local self-government in the area of gender policy implementation

Institutions of local self-government carry out activities for the development and implementation of the gender-equality policy, coordinate their actions with activities of the executive branches of government agencies in order to support relevant state, regional and local programmes.

Article 27 - Participation of civil society and other non-governmental organizations in the promotion of gender policy

Civil society and other non-governmental organizations:

- participate in the development and implementation of decisions made by the governmental bodies and institutions of local self-government in support of gender equality policies;
- represent and protect rights of citizens in courts and other governmental bodies;
- nominate and support candidates, whose programs include protection of principles of gender equality ;
- have the right to receive from appropriate governmental bodies and institutions of local self-government the methodological, information and other support in accordance with the and in the order established by the governmental regional and local programs, which are aimed on elimination of gender discrimination;

Civil society organizations have the right to develop annual public reports.

Article 28 - Implementation of the oversight of the enforcement of the present Law

Oversight of due and uniform enforcement of the present Law is carried out by the Office of the General Prosecutor of the Kyrgyz Republic

Article 29 – Gender and legal examination of the legislation and other normative legal acts of the Kyrgyz Republic

Gender-legal expertise is conducted to examine and identify facts of violations of gender equality in laws, other normative legal acts of the Kyrgyz Republic as well as in the national, governmental and local programs on gender equality

Gender-legal expertise is carried out by the state bodies, independent civil society organizations and other non-governmental organizations.

Note: Please see the presidential order (15 February 2004 N 56) “On Adopting the Decree on the Commission for Gender Expertise of Normative Legal Acts Under the Secretariat of the National Council of Family, Women and Gender Development under the President of the Kyrgyz Republic”.

Article 30 - Gender statistics

The National Statistical Committee of the Kyrgyz Republic supervises the collection of gender-based statistics in the Kyrgyz Republic.

State bodies, institutions of local self-government and heads of legal entities regardless of forms of ownership are obliged to submit to the National Statistic Committee of the Kyrgyz Republic appropriate information on gender issues.

Article 31 - Consequences of failure to enforce the present Law

In case of identifying facts of violation of gender equality, the bodies that carry out control and oversight of the enforcement of the present Law, have the following rights:

- to submit to the governmental bodies, institutions of local self-government and heads of legal entities written instructions for elimination of these facts of violation of gender equality with a deadline for implementation;
- to utilize possibilities presented by the legislation of the Kyrgyz Republic in order to ensure gender equality;
- to publish through the mass media the names of those legal entities, regardless of their forms of ownership, which violate the provisions of the present Law.

Article 32 - Liability of officials for violation of the present Law

Officials of state bodies and institutions of local self-government, state and municipal organizations, conducting organizational - administrative or administrative functions as well as heads and other staff

of organizations undertaking similar functions shall be made liable for violations of the provisions of the present Law according to the legislation of the Kyrgyz Republic

Chapter VI

Procedures of consideration of gender equality violations

Article 33 - Procedures of consideration of the facts of violation of gender equality

Appeals addressed to the following subjects form part of the procedure for consideration of the facts of gender discrimination, sexual harassments, pressure, persecution and other forms of violation of gender equality:

- to the President of the Kyrgyz Republic
- to the Jogorku Kenesh of the Kyrgyz Republic ;
- to the Government of the Kyrgyz Republic;
- to the Ombudsman (Akyikatchi) of the Kyrgyz Republic
- to institutions of local self-government;
- to courts;
- to the National Council of Women, Family and Gender Development under the President of the Kyrgyz Republic
- to employers;
- to civil society organizations and other non-governmental organizations;
- to law enforcement bodies.

Article 34 – Coordination of Activities of Various Bodies for Settlement of Disputes Pertaining to Violations of Gender Equality

The coordination of activities of various bodies for settlement of disputes pertaining to violations of gender equality are carried out by the National Council of Women, Family and Gender Development under the President of the Kyrgyz Republic.

Article 35 – Registration and Documentation of Facts of Violation of Gender Equality

Registration and documentation of all facts of violation of gender equality is carried out by the National Council of Women, Family and Gender Development under the President of the Kyrgyz Republic.

State bodies, civil society organizations and other non-governmental organizations register facts of violation of gender equality and present the information to the National Council of Women, Family and Gender Development under the President of the Kyrgyz Republic for conducting monitoring in the field of ensuring gender equality.

Article 36 - Enactment of the present Law

The present Law shall come into force from the date of official publication.

The government of the Kyrgyz Republic shall bring normative legal acts in conformity with the present Law in the period of three-months;

President of the Kyrgyz Republic

Bishkek, 12 March 2003