

# Insurance policies must not discriminate on the grounds of pregnancy and childbirth



For many years, Danish insurance companies have had unlawful and discriminatory insurance terms and conditions for pregnant women and women in childbirth. The unlawful terms and conditions have applied in particular for accident insurances and health insurances. Many companies have had to change their terms and conditions so that they no longer exempt injuries caused by pregnancy and childbirth. Even though terms and conditions have been changed, it is important to continue to monitor companies' practice and ensure it does not lead to discrimination against women on the grounds of pregnancy, childbirth and maternity leave.

## DISCRIMINATORY INSURANCE TERMS AND CONDITIONS

In 2020-2021, the Danish Institute for Human Rights<sup>1</sup> received a number of enquiries through our Equal Treatment Counselling,<sup>2</sup> in which women said that they had been denied insurance cover because they were pregnant. Insurance companies<sup>3</sup> had terms and conditions in their insurance policies stating the following, for example:

**“Injury or discomfort arising in connection with pregnancy and childbirth will not be covered.”**

Some insurance companies have corrected and amended these discriminatory conditions after coverage in the Danish media, and after the Danish Institute for Human Rights had brought a number of cases before the Board of Equal Treatment.<sup>4</sup> This meant that, in line with other women and men, pregnant women and women in childbirth could qualify for the cover to which they were entitled by law.

In summer 2021, the Danish Financial Supervisory Authority (Danish FSA)<sup>5</sup> reported 14 Danish insurance companies to the police for illegal discriminatory terms and conditions.<sup>6</sup> Following these reports, the prosecution service issued fines to the insurance companies in January 2022.<sup>7</sup>

The Danish Institute for Human Rights has since brought around 15 cases before the Board of Equal Treatment. In these cases, the women were awarded compensation because the board decided that the women had been subjected to discrimination on the grounds of gender in conflict with the legislation (forsikringsligebehandlingsloven).<sup>8</sup>

## THE REGULATIONS DERIVE FROM EU

Provision 3a, no. 3 of the relevant Danish Act (forsikringsligebehandlingsloven) states that discrimination on the grounds of gender is:

**“Any less favourable treatment of a woman related to pregnancy or maternity leave within 14 weeks after the birth of the child.”**

The provision implements Article 2(2)(c) of EU Directive 2006/54.<sup>9</sup>

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Furthermore, section 11 of the Act states that, if a person has been injured, the person shall be awarded compensation. This provision implements Article 18 of the EU Directive 2006/54, which, among other things, stipulates that the compensation is to be dissuasive and proportionate to the damage suffered.

## DISCRIMINATORY PRACTICE

In 2022, through our Equal Treatment Counselling, the Danish Institute for Human Rights became aware that some insurance companies have also had discriminatory and unlawful practice, even though the terms and conditions of a specific insurance policy do not specifically exempt claims due to pregnancy or childbirth. Practice has been that injury to a woman during childbirth cannot constitute an accident in the context of insurance law.

As a consequence of this, injury during childbirth has been exempted from cover under an accident insurance policy. Women have therefore not been able to obtain cover for the costs of treatment for pain and discomfort which have arisen suddenly during childbirth.

In February 2022, the Board of Equal Treatment decided a case in which a woman had broken her coccyx during childbirth.<sup>10</sup> The board determined that the insurance company had breached the prohibition against direct discrimination on the grounds of gender and referred to the circumstance that injuries sustained during an ordinary or normal birth were not covered. The woman's claim was upheld, and she was awarded compensation of DKK 20,000.

In August 2022, the Danish Insurance Complaints Board<sup>11</sup> made a similar ruling from the perspective of insurance law. In two decisions, the Danish Insurance Complaints Board determined that sudden injury occurring during childbirth entitled the injured party to accident insurance cover. In one of the cases<sup>12</sup> the board assessed:

**“...that during childbirth the complainant's coccyx had been exposed to sudden, strong and relatively short pressure, so that, during childbirth, the complainant had suffered an accident.”**

The Danish Institute for Human Rights considers that this development has had great importance for the equality of women in the insurance area in Denmark. The Institute will continue to follow the practice in insurance law closely, so that injuries to women in connection with pregnancy or childbirth can be covered equally compared to other injuries of the same nature.

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## ENDNOTES

- 1 The Danish Institute for Human Rights is Denmark's national body for equality.
- 2 Equal Treatment Counselling.
- 3 This applies for a large number of Danish insurance companies.
- 4 The Board of Equal Treatment is an independent board that decides matters concerning discrimination.
- 5 The Danish FSA supervises financial undertakings: banks, mortgage-credit institutions, pension and insurance companies, investment associations, investment firms, investment managers etc. The Danish FSA also supervises that undertakings comply with other financial legislation.
- 6 [https://www.finstilsynet.dk/Nyheder-og-Prese/Pressemeddelelser/2021/Forskelsbehandling\\_gravide\\_070721](https://www.finstilsynet.dk/Nyheder-og-Prese/Pressemeddelelser/2021/Forskelsbehandling_gravide_070721)
- 7 <https://anklagemyndigheden.dk/da/boeder-til-14-forsikrings-selskaber-koensdiskriminering-af-kunder>
- 8 Consolidating Act no. 950 of 14 August 2015 on equal treatment of men and women in connection with insurance, pensions and similar financial services. See this link (in Danish): <https://www.retsinformation.dk/eli/lta/2015/950>
- 9 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) See this link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>
- 10 Decision by the Board of Equal Treatment no. 9232 of 3 February 2022. See this link (in Danish): <http://www.retsinformation.dk/eli/accn/W20220923225>
- 11 The Insurance Complaints Board is a private complaints board established in 1975 by the Danish Consumer Council and the Danish Insurance Association. The Insurance Complaints Board has been approved by the Minister for Industry, Business and Financial Affairs and therefore "authorised" to hear insurance complaints.
- 12 Ruling by the Insurance Complaints Board of 10 August 2022 in case no. 97804. See this link (in Danish): <https://ankeforsikring.dk/adm-ankenævnet/Sider/viewdoc.aspx?CN=97804>