Achieving Equal Pay in the Workplace

Your Guide to Changing Policy and Practice

Making an Equal Pay Claim

If your employer refuses to engage with you to make meaningful changes to policies and practises in the workplace and you think that there are examples where workers are being paid unequally, then these people should be supported in filing equal pay claims. If someone feels they are not getting equal pay, they might be able to make a claim to an employment tribunal.

There are ways you can find out if you/they are being paid equally. You could start by asking your colleagues and checking job advertisements. If you are a trade union representative you could survey your members.

You will need to identify if – or to what extent – there is a connection between your pay and being a woman (or a man)*[i]*.

The law requires the following:

- To find the right comparator: They have to be doing the same job as you, employed (or previously employed) by the same employer and they have to be a man (or woman if you are a man looking to make a claim);
- The comparator is doing equal work;
- A comparison of your terms and conditions with those of your comparator; and
- Consideration of whether there is any legal explanation for the discrepancy in pay and whether the difference is due to sex discrimination, i.e. being a woman (or a man).

An employment tribunal will establish if there are sufficient grounds for compensation to be paid. You may have to fill out a questionnaire, which will help clarify the issues.

This is legally quite technical and if you are a member of a trade union you should seek help from your trade union rep. If you are not already a member, you should consider joining a trade union.

Whether or not your union is recognised by your employer for the purposes of bargaining on pay and conditions, there is nothing preventing a union from supporting members in lodging an equal pay claim with an employer and acting as the members' representative.

Possible pitfalls: legal points to be aware of

Individuals and trade union reps need to be aware that if you have identified a comparator of the opposite sex who is paid more for work of equal value, but there is also someone of the opposite sex who is paid the same or less than you, the employer can use this to argue against an equal pay claim. There may still be indirect sex discrimination, in which case the fact that there are others of the opposite sex who are not paid more will not defeat a claim.

Employers might argue that they are 'taking proactive steps' to reduce the risk of any equal pay claim as part of their mitigation; some have been successful with this argument.

An employer can also justify unequal pay if the difference is due to a genuine material factor not related to gender. There are a number of reasons why a court has sided with an employer on an equal pay case, including differences in experience, years of service, qualifications, tasks, locations and shifts. It is important that you consider these issues when picking a person to compare pay rates with. Again, look out for any indirect sex discrimination. An employer can only rely on a material factor as a defence if the factor is untainted by any discrimination.

TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006 can be a big stumbling block in equal pay cases. Staff transferring in from another employer with higher pay than those already employed by that company can create unequal pay situations. TUPE preserves the terms and conditions of transferring employees and prevents the new employer from putting them on a lower pay rate, even if this would bring them into line with current employees doing the same work.

There is no time limit on the impact of TUPE, and so such pay differences can be maintained and embedded over a long period of time. When tackling unequal pay in your workplace, you will need to consider if TUPE is a factor and how it might impact on the pay of staff. However, as with any form of pay protection, the longer the pay discrepancy exists, the harder it is for the employer to establish that it is the cause of the discrepancy. In any event, as with other factors, if the TUPE results in indirect sex discrimination, the employer would need to justify it. Also, financial considerations aside, there is nothing to prevent an employer raising the pay of its existing employees to parity with the staff transferred in.

Timeline

You can raise an equal pay claim providing you are still in the job, or within 6 months of leaving the job. Your trade union will help check that a claim is made within the timeline.



[i] Current legislation, and by extension a lot of the information we have about the extent and causes of unequal pay in our economy, maintains a binary distinction between 'women' and 'men'. Do try and make sure that you are sensitive to the fact that this language excludes the experiences of people who do not identify as either gender, as well as the specific experiences of people who have transitioned, and support them to achieve better representation both nationally and in your workplace. Request further support from your union around this issue. There is a glossary of useful terms *(www.equalpayatwork.org.uk/glossary/)* , where you can find out more about the terms and examples we use.