

Equal Pay

Making sure pay and benefits are fair for all



Overview

The Equality Act 2010 ('The Act') prohibits discrimination between the sexes in the terms of their contracts of employment. Typically, this is about matters such as salary, contractual bonus payments and benefits.

Complaints about sex discrimination in employment on matters other than pay or benefits are normally brought as sex discrimination claims, rather than equal pay claims. It can sometimes be difficult to establish which is the correct claim, for example in respect of discretionary bonuses. In these cases it is usually safest to bring both claims.

'The Act' says that women can claim equal pay with colleagues of the opposite sex where they are in the same employment and doing:

- Work which is the same or broadly similar (which is termed 'like work')
- Work rated as equivalent under an analytical job evaluation scheme ('work rated as equivalent')
- Work which is different but which is of equal value in terms of demands of the jobs ('work of equal value').

Equal pay

'The Act' applies to all contractual terms including wages, contractual bonuses, shift payments, overtime, length of service increments, sick pay, holiday pay, health insurance and occupational pensions.

Like work

To establish like work, you must be able to show that you are undertaking work of the same or broadly similar nature as a member of the opposite sex, and that the differences are not 'of practical importance in relation to the terms of their work'.

Work related as equivalent

If a job evaluation study shows that your job is equivalent to the job of a comparator of the opposite sex (or would have been had the study itself not been discriminatory), then this would be sufficient to establish that the work is rated as equivalent.

Work of equal value

Alternatively, you can show that, even if you and your comparator do a different job, your work is of equal value to your comparators work in terms of the demands of the jobs when factors such as effort, skill and decision making are considered. These claims are more difficult and complex to prove, and usually require the appointment of experts to assess and grade the jobs compared.

Making a claim

First of all, you must identify a valid comparator of the opposite sex. The comparator must be employed by the same employer or an associated employer. If the comparator is not employed at the same location as you, then the employer must provide common terms and conditions for the locations where both you and your comparator work.

In choosing comparators, you should consider as many individuals as possible. There is no limit to the number of comparators who can be named, although clearly the more there are, the more complex the case becomes. A comparator does not even need to be employed at the same time as you - they can be a predecessor in your role for example.

Once you have shown that your work is equal to your comparator's, it is up to your employer to prove that the reason for the difference is not due to your sex.

In an equal pay claim, you must be able to point to an actual comparator. It is not possible to bring an equal pay claim on the basis of a hypothetical comparator. However, in a change from the previous legislation, the Equality Act 2010 provides a remedy for an employee who thinks that they are suffering from sex discrimination in pay, but cannot point to an actual comparator. Where there is no actual comparator, an employee can instead bring a direct sex discrimination claim in relation to contractual pay.

Time limits

The time limit for bringing an equal pay claim is different to most employment claims. You can bring a claim at any time whilst you are still employed under the contract which is the subject of your complaint or within six months of the end of your employment. If your role has changed or you have transferred employment, the change of role or transfer of employer may in some cases be treated as the end of your employment, and the six month period may run from that date.

Please note that in most cases, the time limit will not be automatically extended where an internal grievance is lodged first. You should however follow the ACAS Code of Practice on Discipline and Grievance Procedures (which can be downloaded from the ACAS website). This is aimed at assisting parties to resolve disputes within the workplace. If your claim is successful but the Tribunal considers that you have failed to comply with the Code, your compensation could be reduced by up to 25%. (There are also penalties on the employer if they do not comply with the Code).

Please note that the time limit for bringing a claim is not affected by compliance with the ACAS Code. If your claim relates to matters that happened on or before 6th April 2009 and continue beyond that date different rules may apply.



"Equal pay claims can be of significant value, as they may be backdated for up to six years"

These issues can be complicated and you should take prompt legal advice if you think you may have a claim. Where possible however, you should seek legal advice within three months of becoming aware of any issue since there can often be a difficult legal question as to whether your claim is for equal pay, sex discrimination or both. The time limit for pursuing a sex discrimination claim is shorter, three months less one day from the treatment complained of.

Questionnaire: Collecting the facts

In making or considering a claim for equal pay, an equal pay questionnaire is a useful tool for collecting relevant evidence. The focus of the questionnaire is on establishing whether you are receiving less favourable pay and contractual terms and conditions than a colleague or colleagues of the opposite sex. It also highlights whether the employer agrees that you and your comparator are doing 'equal work'.

The questionnaire can be sent to your employer either before you file your claim with an Employment Tribunal, or within 28 days of doing so. Whilst the employer is not obliged to respond, a Tribunal can rely on a failure or delay in responding to infer that there has been discrimination in pay. If an employer does provide a response, it should do so within eight weeks of receiving the questionnaire.

Compensation

If you succeed in your claim for equal pay, then you may be entitled to backdated pay and interest for up to six years from the date you lodged your claim, provided you can show that you were doing equal work for that period. As a result, equal pay claims can be of significant value.


Equal pay claims are probably the most complex of all employment claims so it is very important to take advice as early as possible.


For information on sex discrimination claims, please see our factsheet 'Sex Discrimination - Sex discrimination in employment and your legal rights'.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This information was correct at time of going to press August 2011.