acas working for everyone

Equal pay: employer responsibilities

1 . Preventing issues

By law, men and women must get equal pay for doing 'equal work'. This is work that equal pay law classes as the same, similar, equivalent or of equal value.

Equal pay law applies to both:

- pay
- contractual terms and conditions

Employers can prevent many equal pay issues by being clear and open with staff about pay and contractual terms and conditions.

To reduce the risk of unequal pay, it's good practice to:

- have an equal pay policy
- have up to date job descriptions that accurately describe the work that staff do
- make sure that men and women who do the same work do not have different job titles
- be consistent when deciding people's pay and contractual terms and conditions, for example have one pay structure for the organisation and limit who can decide on salaries for new staff

Find out more about:

- equal pay and the law
- risky practices for equal pay on the Equality and Human Rights Commission (EHRC) website

Having an equal pay policy

An equal pay policy can help you be clear and open with staff about your policy on pay and other terms and conditions.

An equal pay policy should say how you:

- will try to achieve equal pay
- will check whether the policy is working
- will deal with any complaints about equal pay
- are committed to resolving any unequal pay issues in your workplace

The policy should be clear and easy for staff to understand. If your organisation has a trade union or employee representatives, you should agree the policy with them.

Find out how to make an equal pay policy on the EHRC website

Checking for equal pay issues

The Equality and Human Rights Commission (EHRC) recommends different ways of checking for equal pay issues. It depends on the size of your organisation.

If you have 50 or more staff

You can check for issues by doing an equal pay audit if you have 50 or more staff.

You can audit the whole organisation, or just one department to start with if it's the first one you've done. You should share the results with staff included in the audit.

To do an equal pay audit, you'll need to:

- check if there are people doing 'equal work' (work that equal pay law classes as the same, similar, equivalent or of equal value)
- carry out job evaluations, where needed, to measure the value of different jobs and identify any that count as 'equal work' – find out about job evaluations from EHRC
- gather details on pay and contractual terms and conditions for people doing 'equal work' to see if there are any differences between men and women
- if there are differences, check if these could be linked to sex – this can be a complex area so it's a good idea to get legal advice
- decide on an action plan – for example, resolving any cases of unequal pay as soon as possible

If your organisation has a trade union or employee representatives, you should consult them when:

- carrying out an equal pay audit
- deciding how to resolve any cases of unequal pay

Find out how to do an equal pay audit on the EHRC website

If you have fewer than 50 staff

You can check for equal pay issues by doing an equal pay review if you have fewer than 50 staff. An equal pay review has fewer steps than an equal pay audit. You can choose to do an equal pay audit if you would prefer.

To do an equal pay review, you'll need to:

- check if there are people doing 'equal work'
- gather details on pay and contractual terms and conditions for people doing 'equal work' to see if there are any differences between men and women
- decide on an action plan – for example, resolving any cases of unequal pay as soon as possible

You should share the results with staff included in the review.

Find out how to do an equal pay review on the EHRC website

Answering questions about equal pay and terms and conditions

If an employee or worker believes they've been discriminated against by not getting equal pay, they might send you an email or letter describing what happened and asking you some questions.

You should try to answer these questions as it might help to resolve the problem and avoid possible legal action.

Find out more about answering questions about equal pay and terms and conditions

Risk of legal action against you

If someone feels they are not getting equal pay, they might be able to make a claim to an employment tribunal for equal pay.

To make an equal pay claim, they must compare their pay and contractual terms and conditions against someone else. This person is called a 'comparator'. The comparator must be someone who is both:

- the other sex
- doing equal work for the same or an 'associated' employer

Employers are 'associated' if any of the following apply:

- one of them has control over the other
- both are controlled by another organisation – for example a parent company
- a single organisation is able to set the terms and conditions for both

More than one comparator can be used. A comparator can be someone who is a current or former employee.

An employment tribunal judge will consider factors including:

- whether the person making the claim is doing equal work, compared to a comparator
- any differences in pay and contractual terms and conditions between the person making the claim and their comparators
- if you followed the EHRC Statutory Code of Practice on equal pay, for example if you've checked for equal pay issues

If you lose an equal pay claim, you can be forced to carry out an equal pay audit and publish the results.

This does not apply to organisations that:

- have fewer than 10 staff
- were less than 1 year old when the equal pay complaint was made

If there is no comparator

If there is no comparator, the employee or worker might be able to make a claim for sex discrimination instead of equal pay.

They would need to show they would have received better pay if they were of the other sex.

Get more advice and support

If you need help with an equal pay issue you can:

- contact the Acas helpline
- get legal advice
- get tailored support from Acas

You can also book Acas training on equality, diversity and inclusion.

2. Answering questions

An employee or worker might use a question and answer process if they believe they're not not getting equal pay or equal terms and conditions.

They might send you a statement by email or letter to explain what happened and ask questions. They might ask their trade union representative to send the statement on their behalf.

As an employer, you should take any complaint seriously. You should follow these steps if an employee, worker or their trade union representative sends you a statement.

By law you do not have to answer their questions about equal pay and terms and conditions. However, you should do so to try to resolve the problem and avoid possible legal action.

If the employee or worker makes a claim to an employment tribunal, the judge might use your answers as evidence. If you did not provide a response, the tribunal might also take that into account.

Step 1: Read and investigate the person's statement and questions

Read the person's statement. This will probably include:

- a description of what's happened to them
- why they think they've been discriminated against by not getting equal pay or equal terms and conditions
- any questions they have

Get as much information as you reasonably can. For example, you might need to carry out a workplace investigation.

Step 2: Decide if the work is equal

Decide if you agree, partially agree or disagree that the work is:

- 'like work' – work where the job and skills are the same or similar
- 'work rated as equivalent' – work that's found to be equivalent, usually using a job evaluation process
- 'work of equal value' – work that is not similar but is of equal value

If you disagree because you believe there is an 'objective justification' for the pay difference, you must explain how both of the following apply:

- there's a good business reason behind the discrimination
- the discrimination is 'proportionate, appropriate and necessary' – this means the business need is more important than any discriminatory impact on affected employees

Financial reasons alone are unlikely to justify discrimination.

Find out more about objective justification

Explaining your decision

If you agree you have not provided equal pay or equal terms and conditions, tell the employee or worker and explain what steps you're taking to put this right. This might include reviewing their pay package to resolve any unintended discrimination.

If you disagree because there are 'material factors' (special circumstances) which justify differences in pay or other terms and conditions, you need to explain these. For example, if staff work in different parts of the country, or if you need to match the market rate to recruit or retain staff for specific jobs.

If you're not sure about whether the pay difference may be justified, it's a good idea to get legal advice.

Find out more about:

- equal pay and the law
- using protected characteristics to make decisions

Step 3: Respond to the employee or worker

Consider the information you have found out through your investigation and answer all of the questions, sharing as much information as you can.

Reply as soon as possible to the request. If you cannot meet a deadline set by the person, let them know and agree on an alternative date.

You should send your response back to the employee or worker in the way they requested it, for example by email, letter or through their trade union representative. You can also have a meeting with them to go through your response if they want to.

If you do not understand the person's questions, ask them for more information.

If you decide not to answer a question, explain why.

If the employee or worker has asked you to provide statistics or policies, you should give them as much information as you can. For example they might ask you to provide:

- information on the percentages of men and women in the workforce
- copies of recruitment or equality and diversity policies

Sharing sensitive or confidential information

Where the information is considered to be commercially sensitive or confidential present the answer in a way that does not identify the people involved.

Explain your reasons if you're unable to give this information. For example, you can only provide confidential information with the consent of the person involved, or because of a legal duty. Make sure you follow data protection law (UK GDPR).

Get more advice and support

If you need help with an equal pay issue you can:

- contact the Acas helpline
- get legal advice