EQUAL PAY FACTSHEET

Overview of equal pay under the Equality Act 2010

The equal pay provisions are not about what is fair but about sex equality.

If you are paid less than a person of the opposite sex doing similar or equal work for the same or an associated employer (the comparator), you should be paid the same unless there is a good reason for the pay difference. A good reason includes that they are better qualified, have longer service or other factors. This is referred to as ‘equal pay’.

‘Pay’ include wages, overtime, holiday pay, pensions, non-discretionary bonuses and other conditions of employment (company car, health insurance).

Discretionary benefits should also be the same for male and female workers but they come under ‘discrimination’ law (not equal pay law); you have to show you were treated less favourably because of your sex. With discrimination, unlike equal pay, there does not need to be an actual comparator of the opposite sex.

It is important to distinguish between discrimination and equal pay as the law is different as are the time limits within which you have to bring a claim.

For further information see the Equality and Human Rights Commission Code of Practice, which provides guidance about the law, gives practical examples and how to prevent discriminatory pay practices https://www.equalityhumanrights.com/en/publication-download/equal-pay-statutory-code-practice

Who is protected by equal pay law?

The Equality Act protects employees, workers, apprentices and the self-employed who provide personal performance. Although claims are usually brought by women, men can bring a claim. The rest of this factsheet uses a female, by way of illustration.

How do I identify a man doing similar/equal work?

There must be a man, who you must name, and he must be in the same employment doing:

1. Work which is the same or broadly similar (like work). If the work is broadly similar, the question then is whether there are difference of practical importance, having regard to their frequency and the extent of the differences;
2. Work rated as equivalent under a job evaluation scheme, which is analytical, (work rated as equivalent)
3. Work which is different but of equal value in terms of the demands on the worker. This often needs an expert to say whether the effort, skills, decision-making are equal for each job (work of equal value).

Note:

- You can have more than one comparator, if it is not clear who is doing similar/equal work,
- It is for you to choose your comparator(s),
- The comparator may either be doing the job at the same time as you or previously,
- Your comparator may be employed by an associated employer so it is not essential that you work at the same workplace provided your terms and conditions are the same.
How do I find out what other employees doing similar/equal work are paid?

You can ask your colleague what they are paid but many people prefer not to say. Guidance from ACAS advises that you:

- Identify the comparators, who are doing similar/equal work and receiving better pay and terms
- Explain why the comparators are doing equal work
- Ask how pay is determined and what in the comparators’ job descriptions could explain any difference in pay.

Although not suggested by ACAS, you will need to ask about the pay and other terms of your comparators. If the employer refuses to provide information, this may be ordered by a tribunal once you have filed a claim.

Lack of transparency by employers makes it difficult for someone who suspects that they are not receiving equal pay to find out what her peers are paid.

What if there is no comparator doing similar/equal work?

You can argue that this is direct sex discrimination based on the fact that you would have been paid more if you were a man, relying on a “hypothetical comparator”.

What is my employer likely to argue?

The employer may deny that the work is similar, rated as equivalent or equal and/or there is a good reason for the difference, which is not related to your sex (the material factor defence). The employer must show that the factors justifying a difference in pay are the real reason for the difference and they must be significant and relevant and not tainted by sex, directly or indirectly. Factors commonly argued include:

- Experience and qualification
- Geographical differences, eg London weighting,
- Unsocial hours, rotating shifts, night working,
- Market forces, eg where a man is paid more because of a skills shortage.

What are the time limits for bringing a claim?

You must claim, first by filing with ACAS under Early Conciliation, either when you are still in the job or within 6 months of leaving the job. There is an exception if you did not know you were not getting equal pay, but you should take advice. If you have changed job, you need to file within 6 months of leaving the job about which you are claiming equal pay. If the time limit has passed, you may be able to bring a claim in the High Court, but you must get advice.

What can the tribunal order if the equal pay claim succeeds?

If the workers succeeds in proving she was paid less, an equality clause will be part of her contract so that her contract is the same as her comparators. The tribunal can make a declaration of the worker’s rights and order the employer to pay arrears of pay.

What can I do to try and sort it out without going to a tribunal?

It is worth having a chat with your boss or HR to raise your concerns and explain why you think you may be paid less. If you want to keep your job, it is best to avoid putting in a formal grievance in the first instance, as it is rare for grievances to be upheld and they often make the employment relationship difficult.