



Equal Pay in the Workplace

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Acknowledgement

This guide is based on information on the Acas website and has been adapted for the Isle of Man. MIRS acknowledges, and thanks Acas for, their consent to use their source material.

Introduction – not all pay differences are equal pay issues!

Employers must pay men and women equally if they are doing 'like work', which is work that is the same or broadly similar; or work that is of equal value (for example, in terms of effort, skill or other demands); or work that is rated as equivalent under a job evaluation study.

But that is not the end of the matter. If an employer can show that there is a genuine reason for any difference in pay that is not based on the sex of the individual, then the equal pay legislation may not apply.

A common reason that someone may be paid more for like work is because of his or her experience or 'length of service'. It is generally taken that the longer the service, the greater the experience and the more likely it is that an employee is better at the job. In such a way, having more experience can be a permitted justification for an employee to take home more pay than a less experienced person doing like work.

As ever with the law, there are exceptions. Experience cannot be put forward as an excuse for pay inequality in every situation. If there is 'serious doubt' that it is appropriate to justify a pay gap on length of service, then an employer has to show that it goes hand in hand with experience and that experience enables the worker to perform duties better. It is particularly difficult for employers to justify a pay gap if the difference in experience or service between parties is *based on a period spanning more than five years*, and there could be an increased risk of indirect age discrimination against younger claimants as well.

Equal pay

Key points

Employers must give men and women equal treatment in the terms and conditions of their employment contract if they are employed to do:

- 'like work' - work that is the same or broadly similar
- work rated as equivalent under a job evaluation study
- work found to be of equal value in terms of effort, skill or decision making.

Employees can compare any terms in the contract of employment with the equivalent terms in a comparator's contract. A comparator is an employee of the opposite sex working for the same employer, doing like work of equal value.

However, an employer may defend a claim if they can show the reason for the difference is due to a genuine factor and not based on the sex of the employee. For example, it might be possible for someone to be paid more than someone of the opposite sex who does similar work because:

- they are better qualified, if their skills are crucial to the job and hard to recruit
- they do night shifts, and the employer can prove that they can only cover night shifts by paying staff more.

Getting paid more must have nothing to do with someone's sex.

Example

A woman might get paid more than a man doing similar work because she is better qualified and skilled for the job. If there is an equal pay case, the employer might have to prove, for example, that the woman's qualifications and skills are crucial for the job, and that they had difficulties hiring and keeping people in the job now done by the woman. But getting paid more must be nothing to do with her sex.

If any circumstances only account for part of the difference in pay, someone might still have an equal pay case. Every case depends on the individual circumstances, and this can be a complex area so it is best to:

- get legal advice
- check the Statutory Code of Practice on Equal Pay which can be found at: https://www.gov.im/media/1370831/final_gd2020_0045_equal_pay_code.pdf

Equal pay and other forms of discrimination

By law, employers must not pay an employee less, or give them terms and conditions that put them at a disadvantage, because of their disability, race, religion, sexual orientation or another 'protected characteristic'.

If you are not getting equal pay

You should talk to your employer to try and resolve the issue if you feel you are not getting equal pay compared to someone who is all of the following:

- of the opposite sex

- does 'equal work' (work that equal pay law classes as the same, similar, equivalent or of equal value)
- works for your employer

Checking for evidence

To help see if there is an equal pay issue, you should check:

- your pay and how it is made up so you can compare it with others – for example, how much basic pay, overtime or commission you get
- pay and benefits for people of the opposite sex doing work you think is 'equal work' for your employer

You can ask your employer or manager for information about pay and contractual terms and conditions if you think you have an equal pay case.

Your employer can only give you general information about other people's pay and terms and conditions. They cannot share any personal details about other employees because of data protection law (GDPR).

For example, you could ask for general information about:

- how much people of the opposite sex who do the same or similar work as you earn
- the contractual terms and conditions for people of the opposite sex who do the same or similar work as you
- the reason for any differences in pay and terms and conditions, if there are any

It is best to talk to your employer first, if you feel you can, and then put your questions in writing.

You could also ask others at work about their pay and benefits, if it is about equal pay. For example, you could ask someone of the opposite sex who does the same or similar work how much they earn. They are allowed to tell you, but it is up to them to decide if they want to.

Raising an issue

It is usually best to raise an issue informally first by talking to your employer. If this approach does not work, you can raise the issue formally. This is known as raising a formal grievance. If you have any evidence at this stage, it is a good idea to share it with your employer when you raise the issue.

If an employee cannot resolve the problem informally or through the formal grievance procedure, they may complain to an Employment and Equality Tribunal under the Equality Act 2017 while still working in the job or up to six months after leaving the employment to which the claim relates.

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 and Equality Tribunal for equal pay. They might also be able to make a claim for sex discrimination, if they feel they were also treated unfairly because of their sex.

To make an equal pay claim, they must compare their pay and contractual terms and conditions against someone else (a 'comparator'). The comparator must:

- be of the opposite sex
- do 'equal work'
- work for the same employer

More than one comparator can be used. A comparator can be someone who currently works for you, or someone who used to.

An Employment and Equality Tribunal 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 comparator(s)
- if you followed the Statutory Code of Practice, for example if you've checked for equal pay issues

Preventing equal pay issues

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

Employees are entitled to know how their pay is made up. For example, if there is a bonus system, everyone should know how to earn bonuses and how they are calculated.

The Equality Act 2017 makes it unlawful to prevent employees from having discussions to establish if there are differences in pay. However, an employer can require their employees to keep pay rates confidential from people outside of the workplace.

The equal terms can cover all aspects of pay and benefits, including:

- basic salary
- basic wages
- pension
- working hours
- annual leave allowance
- holiday pay
- overtime pay
- redundancy pay
- sick pay
- performance-related pay, for example a bonus that is in the employment contract
- benefits, for example gym membership or a company car

To reduce the risk of unequal pay, it is 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 1 pay structure for the business and limit who can decide on salaries for new staff

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 the workplace has a trade union or employee representatives, you should agree the policy with them.

Checking for equal pay issues

You can check for equal pay issues in different ways, depending on how many staff you have.

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 workplace, or just one department to start with if it is the first one you have done. You should share the results with staff included in the audit.

To do an equal pay audit, you will 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'
- 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 the reasons for them and if they are legal or illegal – this can be a complex area so it is 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 the workplace 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

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'.

To do an equal pay review, you will 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.



Manx Industrial Relations Service

The Manx Industrial Relations Service (MIRS) is an independent organisation funded by Government and we provide a free, impartial and confidential service on any employment relations matter. We are here to help employers, employees and trade unions work together for the prosperity of the Isle of Man.

Information in this booklet has been revised up to the date of the last reprint - see date below. For more up-to-date information please check the MIRS website at www.mirs.org.im

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

May 2021