

## A-Z Guide

# EQUAL PAY ACT



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# Overview

The Equal Pay Act 1972 deals specifically with pay equity between males and females doing the same work. While the Human Rights Act 1993 protects against discrimination on the basis of gender, it does not include the issue of pay equity.

Pay equity recognises that while on the surface two jobs may look very different to each other, they require the same or similar skills, responsibilities, experience, and effort of employees, working in the same or similar conditions. It also recognises that in some instances, wages for workers in female dominated occupations have suffered from gender-based discrimination because of perceptions and prejudices about the value of “women’s work”, and a tendency to minimise the skills, responsibilities, conditions and effort required by this work. By comparing the work and pay of female-dominated occupations with male-dominated occupations, pay equity ensures that workers in female-dominated occupations receive pay that properly recognises the value of the work that they do.

Equal pay is defined in section 2(1) of the Equal Pay Act 1972 as a “rate of remuneration for work in which rate there is no element of differentiation between male employees and females employees based on the sex of the employees.

In circumstances where employee has been treated differently by an employer in their employment conditions or pay, that employee would be entitled to make a complaint under the Human Rights Act 1993, or pursue a personal grievance under the Employment Relations Act 2000. The employee may take only one of the following steps;

- a. the employee may pursue a claim under the Equal Pay Act; or
- b. the employee may make a complaint under the Human Rights Act 1993; or
- c. the employee may apply to the Employment Relations Authority for resolution of a personal grievance under the Employment Relations Act 2000.

Refer to the **A-Z Guide on Human Rights** for more information about provisions requiring a choice of procedures and complaints under the Human Rights Act 1993.

The making of a complaint under the Equal Pay Act 1972 in the Employment Relations Authority does not limit the right to lodge a personal grievance under the Employment Relations Act 2000 for unjustified disadvantage or unjustified dismissal.

It is not illegal for an employer to set special rates of remuneration for special qualifications or experience. The provisions of the Equal Pay Act 1972 are enforced by labor inspectors who have the authority to go back through an employer’s wage and time records for previous 6 years.



# Pay Equity Claim Process

## Claim raised by an individual employee/s

### Raising a claim

An employee can raise a pay equity claim if they do work that is (or was historically) female-dominated and there are factors that indicate the work is currently or has historically been undervalued.

Every pay equity claim must be in writing and state that it is a pay equity claim made under this Act. A pay equity claim raised by an individual employee must state the employee's name, date the claim is being made, a brief description of their occupation. If the employee has authorised a representative to act on their behalf, they will need to provide the name and address for service of the representative.

The **employer** must decide within 45 working days whether they consider the claim is an arguable pay equity claim.

### Assessing if the claim is Arguable

The employer agrees, and parties proceed to bargaining.

The **employer** must notify all their other employees who perform the same or substantially similar work as the claimant within 20 working days. The **employer** and **employee** work through the pay equity bargaining process. This involves an assessment of the work and remuneration of the claimant and suitable comparator occupations. If a pay equity issue is identified, parties will then bargain to determine remuneration that does not differentiate based on sex. The parties reach an agreement.

Dispute resolution process\* is required when employer does not agree the claim is arguable, and the employee(s) challenge this decision.

### Settling a claim

A pay equity outcome includes:

- a settlement with new remuneration and possibly new terms and conditions of employment if the parties agree;
- an agreed (or determined) pay equity review process.

Alternatively, the outcome may be an agreement or determination that pay inequity does not exist.



<b>Claim raised by Union/s</b>	
Raising a claim	<p>A union can raise a pay equity claim on behalf of its members who do work that is (or was historically) female dominated and there are factors that indicate the work is currently or has historically been undervalued. The union can represent member employees who perform the same or substantially similar work across employers.</p> <p>A pay equity claim raised by a union or unions must state, the name and work address of the union, the date of claim, a brief description of the work performed by the employee/s. The Union is not required to name the employees who perform the work to which the claim relates.</p> <p>The employer must decide within 45 working days whether they consider the claim is an arguable pay equity claim.</p>
Assessing if the claim is Arguable	<p>The employer agrees, and parties proceed to bargaining.</p> <p>The <b>employer(s)</b> must notify all employees who perform the work described in the claim within 20 working days. Union claims cover all employees who have not made their own claim. Non-union employees can opt out of the union-led claim up until the endorsement vote. If a worker opts out, they can choose to raise their own individual claim. Alternatively, they will be offered the final union settlement, however they will have no input or vote in the process.</p> <p><b>The union(s)</b> and <b>employer(s)</b> work through the pay equity bargaining process. This involves an assessment of the work and remuneration of the claimant and suitable comparator occupations. If a pay equity issue is identified, parties will then bargain to determine remuneration that does not differentiate on the basis of sex.</p> <p>The parties reach an agreement. Employees represented by the union, and those who have not opted out, are notified and vote on whether to endorse the proposed settlement.</p> <p>Following this a majority vote is needed to endorse the proposed settlement. A majority vote against the settlement. Parties return to bargaining.</p> <p>Dispute resolution process* is required when employer does not agree the claim is arguable, and the employee(s) challenge this decision.</p>
Settling the claim	<p>A pay equity outcome includes:</p> <ul style="list-style-type: none"> <li>• a settlement with new remuneration and possibly new terms and conditions of employment if the parties agree;</li> <li>• an agreed (or determined) pay equity review process.</li> </ul> <p>Alternatively, the outcome may be an agreement or determination that pay inequity does not exist. A settlement would apply to all employees represented by the union. The settlement will also be offered to employees who opted out of union bargaining or are not members of the union</p>

\*Dispute Resolution Process-The dispute resolution process is tiered, and at any point parties can be referred back to the bargaining table

- Mediation
- Facilitation (Can be used in certain situations)
- Determination by the Employment Relations Authority or Court of issues under dispute
- Fixing: Once the Employment Relations Authority fixes remuneration, parties cannot be referred back to bargaining.



## Union Raised Claims raised with multiple Employers

Each employer who receives a pay equity claim raised by a union or unions with multiple employers must enter into a single multi-employer pay equity process agreement for the purposes of deciding whether the claim is arguable and for the purposes of the pay equity bargaining process.

The multi-employer pay equity process agreement must set out whether there will be 1 or more representatives for the employers and who the representative(s) will be and how decisions will be made. If this cannot be agreed upon then look to the Employment Relations Authority for direction.

## Opting out of multi-employer equity claim

An employer may opt out of a multi-employer pay equity claim by giving notice to all other parties only if the employer has genuine reasons, based on reasonable grounds, to do so. If an employer opts out of a multi-employer pay equity claim, the claim in respect of that employer must be progressed as a separate claim.

Unions may jointly opt out of a claim raised with an individual employer, as well as a single union may opt out of a claim raised with an individual employer. A notice opting out of a multi-employer pay equity claim must be given in writing and must state the party's genuine reasons for opting out and the reasonable grounds on which those reasons are based.

In *Duvenhae v Prosthetic Processes (Auckland) Ltd* (2003) 7 NZELC (digest) 98,736 the Employment Relations Authority rejected a claim that an employer had breached section 2A of the Equal Pay Act 1972. The female employee in this case was employed at around the same time as another employee, who had similar qualifications. Both the male employee and the female employee were employed to do the same work. The female employee was paid less than the male employee and she consequently laid a complaint against the employer. The Employment Relations Authority looked beyond the actual work that was to be performed and focused on the circumstances surrounding the appointment of the male employee. He had been taken on to eventually assume a managerial role and become an owner. Hence, the employer was entitled to pay him a higher salary as compared to the female employee. The claim failed because the Authority said that she and the other employee were not employed in the "same or similar circumstances".

## Obligation on employers to keep pay equity records

Every employer who has received 1 or more pay equity claims must keep a record showing, every pay equity claim lodged by a claimant and records of the pay equity bargaining process.

## Penalty for non-compliance

A person who fails to comply and every person who is involved in the failure to comply, is liable. If the person is an individual the penalty will not exceed \$10,000, if the person is a company or another body corporate this will not exceed



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\$20,000.

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# The Terranova Case

Terranova Homes and Care Limited operated rest homes and the Union brought an equal pay claim against the company under the Equal Pay Act 1972 on the basis that its female caregivers, were paid a lower rate of pay than would be the case if caregiving was a male dominated profession.

The Court of Appeal upheld the Employment Court's earlier finding that equal pay for work predominantly, or exclusively, performed by women *"is to be determined by reference to what men would be paid to do the same work abstracting from skills, responsibility, conditions and degrees of effort, as well as from any systemic undervaluation of the work derived from current, or historical, or structural gender discrimination"*. This may involve the Court having regard to what is paid to males in other industries.

The Court of Appeal held that section 9 of the Act can be used by the Employment Court to state general principles that will ensure claims can be processed in an efficient and manageable way. This will involve the Employment Court identifying appropriate comparators and giving guidance to the parties on how to adduce evidence of other comparator groups.

The Court of Appeal has referred the matter back to the Employment Court and stated that the best way forward is for that Court to state principles under section 9. A statement of principles will result, providing a workable framework for resolving such claims. The Court may state appropriate comparators and guide the parties on how to adduce evidence of other comparator groups or issues relating to systemic undervaluation.

## Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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