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Australian Government

Fair Work
OMBUDSMAN

Best Practice Guide Gender pay equity

Working at best practice

Best practice employers take steps to ensure that gender-based pay discrimination is not part of their remuneration system.

At the beginning of the twentieth century when women began to enter the workforce in larger numbers, women were paid less than men, even when they performed the same work. Often women were paid one half or two-thirds of a male's salary. Having a 'male' and 'female' rate of pay is a classic illustration of pay inequality.

The undervaluation of women's work is still embedded in many workplaces. By eliminating discrimination when it comes to wages, employers create fairer working environments. Fairness, respect and equality are essential components of building harmonious, cooperative and productive workplaces.

This Best Practice Guide explains:

- what gender pay equity is

- why gender pay inequity happens

- the benefits of gender pay equity

- how to achieve gender pay equity.

There is also a checklist to assist best practice employers.

This guide illustrates best practice when it comes to gender pay equity. For specific information regarding your minimum legal obligations, contact the organisations listed under the 'For more information' section at the end of this guide.

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What is gender pay equity?

Gender pay equity is when men and women receive equal pay for work of equal or comparable value. In practical terms, this means that best practice employers ensure that:

- men and women performing the same work are paid the same amount

- men and women performing different work of equal value are paid the same amount

- the wages and conditions of jobs are assessed in a non-discriminatory way. This is done by valuing skills, responsibilities and working conditions in each job or job type (even where the work itself is different) and then remunerating employees accordingly

- the workplace's organisational structures and processes do not impede female employees' access to work-based training, promotions or flexible working arrangements

Case studies

1. Inequalities in part-time and full-time rates of pay

Alana and Steven both apply for sales positions at Perez Enterprises. They have similar levels of experience and past sales performance. Steven is successful and obtains a full-time position. Alana wants to work part-time to manage family responsibilities. She successfully obtains a part-time position. Perez Enterprises pays Alana a part-time salary. However, Alana realises that if she were working full-time hours she would not be earning as much as Steven.

This is gender pay inequality as Alana is earning less per hour than Steven even though she is performing the same work.

2. Work of the same value

Johan and Maya both completed three year university degrees in order to enter their professions. Johan is a qualified geologist and Maya is a qualified human resources professional. Both Johan and Maya have five years work experience in their fields and have recently been employed by the same mining company.

Maya is employed as the human resources manager and supervises the work of five human resources advisers. Johan is employed in the role of manager – geology and supervises the work of five geologists. Even though Maya and Johan are performing different work, a job evaluation of both positions looking at the skills, effort, responsibility and working conditions involved, determined that the work that they perform involves comparable skills and responsibilities. However, Johan is paid a higher salary than Maya.

This may be an example of gender pay inequity, as Johan and Maya are performing work of comparable value, but are receiving different pay. If, however, there was a valid reason for the difference in remuneration – for example, if there were a shortage of geologists in the labour market and therefore increased demand – then gender pay inequity may not be the reason for the difference in salary.

Differences in pay for men and women for work of comparable value have sometimes been found to be valid where they can be shown to reflect factors unaffected by the sex of the workers, including labour market supply and demand, or differences in industry economics.

Why does gender pay inequity happen?

According to statistics published by the Australian Bureau of Statistics, there is a pay gap in Australia between women and men. In February 2011, the average weekly earnings for full-time workers were approximately 17% lower for women than for men.

The reasons for the gap between earnings for women and men are numerous. A range of historical factors have played a part in creating the gender pay gap. Today, influencing factors can include:

- the undervaluation of skills in industries and areas where women predominate
- women's lack of access to work-based training
- different levels of eligibility for discretionary payments such as over-award payments, bonuses and performance pay
- inflexible organisational structures that restrict the employment prospects of workers with family responsibilities.

Identifying the reasons why pay inequity may exist in your business is the first step towards fixing the gap.

The benefits of gender pay equity

Gender pay equity makes good business sense. The benefits to your business of gender pay equity can include:

- achieving fairness and respect in the workplace
- creating a motivated, happy and productive workforce
- becoming an employer of choice
- attracting and retaining the best and brightest staff
- improving staff retention and thereby reducing turnover costs
- fulfilling a business' legal obligations
- inspiring consumer confidence
- preventing negative public relations issues arising from legal proceedings or allegations of gender pay inequity

- avoiding a costly discrimination complaint
- attracting government contracting opportunities.

Achieving gender pay equity in your workplace

In simple terms, gender pay equity is about ensuring that both women and men are paid fairly for the work they perform.

Equal pay is not just about equal wages. Equal pay takes into account discretionary pay, allowances, performance payments, merit payments, bonus payments and superannuation.

Addressing the issue of gender pay inequity involves understanding where pay disparities may exist in your workplace and giving regard to:

Obligations under the Fair Work Act

- Fair Work Australia (FWA) can make an equal remuneration order requiring certain employees be provided equal remuneration for work of equal or comparable value. An application for an equal remuneration order can be made by an affected employee, a union which is entitled to represent an affected employee or the Sex Discrimination Commissioner.
- Once an equal remuneration order has been made, it will prevail over a modern award, enterprise agreement, FWA order or any other industrial instrument if it is more beneficial than these instruments.
- An employer that contravenes an equal remuneration order can be liable for a penalty.

Obligations under the federal Equal Opportunity for Women in the Workplace Act 1999

- Employers with 100 or more employees are required to develop a workplace program that is aimed at eliminating discrimination and barriers for women and encouraging equal opportunity for women in the workplace. Employers are required to report on their program each year to the Equal Opportunity for Women in the Workplace Agency (EOWA).

- As part of a workplace program, employers are required to analyse their workplaces to determine if there is any pay disparity and outline strategies to address the gaps.

- Eligible employers who are committed to addressing the gender pay equity gap in their workplace can voluntarily apply to EOWA for an EOWA Employer of Choice for Women citation. The citation is designed to recognise employers who have policies and practices that support and achieve positive outcomes for women across their organisation.

Obligations under state, territory and federal anti-discrimination laws

- Anti-discrimination legislation makes it unlawful for an employer to discriminate on the grounds of sex in regard to the terms and conditions of employment provided to employees (which includes pay and other benefits).

Best practice initiatives

In addition to meeting their obligations under legislation, employers can also achieve gender pay equity through introducing initiatives that respond to the specific needs of their workplaces. A best practice business will endeavour to identify areas where equal opportunity may be improved and will design and implement policies and practices to achieve improvement.

For example, a best practice business may:

- ensure that there are transparent remuneration policies and practices in place

- recognise a wide range of skills and appreciate the value those skills can bring to the business

- provide flexible work arrangements to encourage women to return to the workplace following a period of parental leave (see Best Practice Guide No 1 'Work and family' and Best Practice Guide No 12 'Parental leave')

- ensure that employees on flexible working arrangements have access to quality work and the same benefits, training and promotional opportunities as full-time employees

- conduct a gender pay equity audit to identify whether there are any issues or areas that can be improved

- compare salaries for men and women upon commencement, yearly and on promotion to analyse where gaps exist and either seek justification for any imbalances or work to eliminate them altogether

- review overtime and shift arrangements to ensure that access is provided equally to male and female employees. For example, a business should not assume that women do not want to work overtime or night shifts

- strive to meet the requirements for an EOWA Employer of Choice citation regardless of employee numbers

- consider supporting Equal Pay Day in your workplace. Equal Pay Day is an initiative of EOWA which recognises that on average, women have to work an extra two months to earn what their male counterparts earn in a year.

Checklist for pay equity best practice

- Do your organisation's policies and practices support pay equity? Is there a transparent performance review process and equitable access to training, promotions, and rewards and benefits programs?

- Does your organisation have an equitable wage setting process that has been checked to ensure it is free of gender bias?

- Are jobs fully and fairly described and valued, and work value factors such as skill, level of responsibility and working conditions consistently measured?

- Has your organisation undertaken a pay equity audit to determine areas and occupations where gender pay inequity may exist? A pay equity tool is available from EOWA's website. An audit usually involves a review of the payroll data to identify the areas where there may be gender inequities.

- Are there flexible working arrangements? Are the flexible working arrangements available to all employees, and does the workplace culture support such arrangements?

- Is pay equity incorporated into your organisation's business objectives and goals?

- Does your organisation compare salaries for men and women upon commencement, yearly and on promotion to analyse where gaps exist and either seek justification for any imbalances or work to eliminate them altogether?

You can find more information and an online course on pay equity concepts, statistics, legislation and history, and checklists and guides on achieving pay equity at EOWA's website at www.eowa.gov.au/Pay_Equity/Pay_equity_site.asp.

For more information

Equal Opportunity for Women in the Workplace Agency

(02) 9448 8500
www.eowa.gov.au

Fair Work Ombudsman

13 13 94
www.fairwork.gov.au

Fair Work Australia

1300 799 675
www.fwa.gov.au

Discrimination

Fair Work Ombudsman
13 13 94
www.fairwork.gov.au

Australian Human Rights Commission
1300 369 711
www.humanrights.gov.au

Australian Capital Territory Human Rights Commission
(02) 6205 2222
www.hrc.act.gov.au

New South Wales Anti-Discrimination Board
(02) 9268 5544
www.lawlink.nsw.gov.au/adb

Northern Territory Anti-Discrimination Commission
1800 813 846
www.adc.nt.gov.au

Anti-Discrimination Commission Queensland
1300 130 670
www.adcq.qld.gov.au

South Australian Equal Opportunity Commission
(08) 8207 1977
www.eoc.sa.gov.au

Tasmanian Office of the Anti-Discrimination Commissioner
(03) 6233 4841
www.antidiscrimination.tas.gov.au

Victorian Equal Opportunity & Human Rights Commission
1300 891 848
www.humanrightscommission.vic.gov.au

Western Australian Equal Opportunity Commission
(08) 9216 3900
www.eoc.wa.gov.au

Acronyms used in this guide

EOWA Equal Opportunity for Women in the Workplace Agency

FWA Fair Work Australia

Disclaimer

Fair Work Ombudsman is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. It is your responsibility to comply with workplace laws that apply to you. The information contained in this publication is: general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. Produced December 2011. FWOBPG6a.

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