



HR Briefing

May 2010

EMPLOYMENT LAW UPDATE – EQUAL PAY

Key recommendations

This month we consider some recent judgments in relation to equal pay and the effect the Equality Act 2010 may have on the way businesses deal with equal pay issues, following the establishment of the new coalition government.

The Equality Act 2010 and related press attention has brought the issue of equal pay into the spotlight and highlighted awareness of the gender pay inequalities that exist both in the public and private sectors.

It is clear that there are still many issues surrounding equal pay in the workplace and recent cases demonstrate that employers should not ignore such issues, especially in light of the proposed changes under the Equality Act.

The Equality Act 2010 and the Conservative-Liberal Democrat coalition

The Equality Act 2010 is set to come into force in October of this year and is seen as the most radical overhaul in discrimination legislation in 35 years. There are many provisions regarding equal pay, which will effect how businesses deal with issues of equal pay in their workplace.

Some of the provisions of the Equality Act are likely to be reviewed following the establishment of the coalition government. It is likely, however, that the following changes will take effect:-

1. Equal pay audits on some employers;
2. The requirement for employers to compare the pay of those doing equal work, identify any pay gaps and establish plans to eliminate any gaps that cannot be satisfactorily explained;
3. Secrecy clauses in employment contracts preventing employees from disclosing their pay to others or from asking colleagues about their pay as part of a "relevant pay disclosure" would be unenforceable; and
4. The Equality Act's sex discrimination provisions will make it easier to bring an equal pay claim, even where there is no actual comparator.

Equal pay and male employees: South Tyneside v McAvoy

It has been decided by the EAT that male colleagues of female equal pay claimants can 'piggyback' on the female colleagues' claims. For example, male healthcare assistants would be able to claim equal pay with female healthcare assistants who have increased their wages by successfully comparing themselves to male porters.

Objective justification: Gibson and others v Sheffield City Council

Female carers brought equal pay claims against their employer, Sheffield County Council. It was common ground that they were paid less than street cleaners and gardeners, predominantly male groups, whose work was equivalent to theirs.

The difference in pay arose because the comparator groups, but not the carers, had received productivity bonuses in the past which were consolidated into their basic pay. The Council had tried to show that the bonuses paid to the predominantly male groups

- Men and women doing equal work and work rated as of equal value are entitled to equal pay.

- Employers should be able to objectively justify differences in pay that had an adverse impact on a particular gender if there is any evidence of sex discrimination.

- Employers should risk assess their pay structures and plan for the impact of the Equality Act 2010 considering whether there is a gender pay gap that needs addressing.

- Employers should seek to address any pay disparity that is identified.

- HR teams should understand the implications of current and future equal pay legislation.

The Council had tried to show that the bonuses paid to the predominately male groups had been due to a genuine material factor and not the difference in sex.

The tribunal and the EAT decided that the difference in pay was not tainted by sex and in the circumstances there was no requirement to show an objective justification. The case went to the Court of Appeal, who disagreed. The Court of Appeal held that the effect of the productivity bonus was discriminatory and tainted by sex. The council was therefore required to objectively justify the disparity.

Discriminatory bonuses: Birmingham City Council equal pay claim

More than 4,000 female Council workers brought equal pay claims against Birmingham City Council claiming that they had been excluded from bonuses paid to their male colleagues who worked as refuse collectors. The women worked across a range of 49 different jobs including lollipop ladies, cleaners, care assistants and cooks.

The bonus payments enabled male refuse staff to be paid up to 160% of their basic pay by way of bonuses. Thus, a refuse collector was able to take home £51,000, while women on the same pay grade received less than £12,000. The tribunal found these bonuses were discriminatory because they were effectively rewarding male workers for doing their jobs properly.

The Council knew they had a problem and had introduced a revised pay and grading structure, which they said was in line with the Equal Opportunity Commission equality guidelines, but they still continued to defend the claims all the way through to the final hearing.

Their defence failed and the council could now have to pay more than £600m in compensation.

Implications

Employers should plan for the impact of the Equality Act 2010 and aim to ensure they have adequate policies in place to deal with equality and continually monitor pay, addressing as necessary any gender pay gap.

If you have any queries on any of the above please contact **Alison Loveday** at alisonl@berg.co.uk to discuss further issues. Alternatively you contact **Alison** on **0161 833 9211**.

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- **Consider embedding equality of pay in the recruitment and retention policies, including monitoring starting salaries according to gender**
- **Monitor and if necessary review businesses processes for dealing with an equal pay claim.**
- **Provide guidelines to help managers in performance management and in the allocation of pay increases and bonus awards.**
- **Job evaluation schemes should be reviewed in consideration of the equal pay legislation.**