

SABPP FACT SHEET

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PAY EQUITY

1. INTRODUCTION

Pay equity is a state that most societies believe is desirable, judging by the number of international conventions that deal with this issue. However, it is the general state across the globe that pay equity has not been achieved, even in those countries which have achieved the most in terms of eradication of discrimination against minorities of various types. The concept of pay equity is not well understood, and is explored further in the next section.



Pay inequity in South Africa is particularly evident between people of different genders, ethnic backgrounds, and disability status. There is also often inequity between permanent and temporary workers, between full time and part time workers, between “own” employees and employees sourced through labour brokers.

As at this month, September 2013, amendments to the Employment Equity Act of 1998 (EE Act) are under consideration by the Parliamentary Committee on Labour. Included in these amendments is a proposed new clause, aimed at eradicating pay differences based on arbitrary grounds. As and when this clause is signed into law, it will become an act of unfair discrimination for an employer to have any difference in terms and conditions of employment, based on any arbitrary ground(s), between people performing work of equal or substantially equal value.

This clause will be brought into effect through Ministerial regulation on how work can be judged to be of equal or substantially equal value.

It is thus important for HR professionals to be well versed in the issues around pay equity so that policies and practices in their organisations can be reviewed to ensure compliance with the amendment to the EE Act and to achieve the benefits of pay equity which are discussed later in the Fact Sheet. These issues can be complex, as illustrated in the following quote:

“[Gender] Pay equity is not about men and women earning the same; nor is it about changing the work that women do. Pay equity is about redressing the undervaluation of jobs typically performed by women and remunerating them according to their value. This is not necessarily a reflection of market factors or skill requirements, but may mirror differences in bargaining power, preconceived ideas about scarce skills/market rates or the historical undervaluing of “female” jobs.” - ILO, 2007, Equality at Work : Tackling the Challenges

This Fact Sheet will cover the economic benefits of pay equity, causes of pay inequities, methods for improving pay equity, legislation and experience internationally and in South Africa and a discussion around establishing the equal value of work.

In this Fact Sheet, for ease of reference, we will deal mainly with the issue of gender pay equity, but the principles and issues discussed in the Fact Sheet apply in exactly the same way to eradication of inequalities between people based on grounds other than gender.

1. PAY EQUITY, PAY EQUALITY AND EQUAL PAY FOR EQUAL WORK

The terms “equity” and “equality” do not mean the same thing. “Equity” means fairness, while “equality” means sameness. What is the same might not be fair, and what is fair might not be the same.

In the context of employment, the two terms often co-exist, particularly when the subject is the elimination of discrimination at work. The International Labour Organisation’s (ILO) report on Equality at Work¹ is about the removal of discrimination, which is concerned with access to employment, access to development and advancement, treatment at work (eradication of harassment for example) and also pay rates. The report, while not specifically defining “pay equity”, refers to it as a state where not only as active discrimination been removed but measures have been taken to promote equal opportunities in pay and to correct pay differentials. The ILO notes that the gender pay gap (measured at national level as the differences in income between men and women) has many causes (see section 4), of which pay differentials for equal work are only one.

Canada is the only country to use the term “pay equity” and defines it as “a compensation practice that is based primarily on the relative value of work performed, irrespective of the gender of employees, and it includes the requirement that the employer not establish or maintain a difference between the pay of male and female employees who are performing work of equal or comparable value.”² Several other countries which have moved beyond the simple concept of “equal pay for equal work” and define rather “equal pay for work of equal value”. See section 10 for a further discussion on “work of equal value”.

This Fact Sheet looks at the broader concept of pay equity and then focuses down to the practicalities of implementing equal pay for work of equal value.

2. ECONOMIC BENEFITS OF PAY EQUITY

The ILO argues that pay equity is important on three grounds:

- Human rights – pay differences based on group membership injure the dignity of the members of that group.
- Economic development – pay equity encourages members of minority groups to participate in the formal economy and therefore promotes a nation’s productive potential.
- Human resources – ensuring equal pay for work of equal value ensures a more effective use of skills, ensures better working relationships, prevents low morale, low productivity and labour turnover and also attracts talent from minority groups. It also avoids litigation for breach of employment legislation.

¹ ILO, 2007, Equality at Work : Tackling the Challenges , p. 99.

² Equal pay policies: international review of selected developing and developed countries. P Määttä. <http://ilo-mirror.library.cornell.edu/public/english/dialogue/govlab/legrel/papers/equalpay/41.htm>

Research by the ILO has shown case studies where, despite the fact that the gender pay gap in all countries studied is at least 10% (in Sweden) and is around 16% on average across European Union countries, it does not cost an organisation a similar amount to close the pay gap. A study quoted in the ILO Report give figures of around 1 - 2% of the salary/wage bill. This is because the pay gap within an organisation is generally lower than in society as a whole (see next section for the causes of pay inequities). However, data on wage gaps within organisations is difficult to collect and therefore reports on pay equity usually do not include statistics from within organisations. The study quoted identifies a number of good practices to reduce the costs and maximize the positive effects of closing the internal pay gaps.

One of the arguments sometimes used to justify lower pay rates for employees with disabilities is that it costs employers to make accommodations in the workplace. However, a study quoted by the ILO showed that sixty-five per cent of Australian employers rated the financial cost of workplace accommodations as neutral and 20 per cent indicated an overall financial benefit. The average recruitment cost of an employee with a disability was 13 per cent of the average recruitment cost of an employee without a disability. DuPont has conducted surveys showing over 35 years that disabled employees perform equally or better compared to their non-disabled colleagues. Only 4 per cent of disabled people of working age require additional adjustments in the workplace. Costs are generally negligible. Marks and Spencer has shown that two-thirds of the adjustments for disabled people do not involve any costs.³

3. CAUSES OF PAY INEQUITIES

As can be seen from the map below, gender pay gaps exist in all cultures.



³ www.JobAccess.gov.au/ and www.csreurope.org

According to the ILO, the gender pay gap exists because of a variety of factors:

Differences in productivity characteristics of men and women:

- Educational level; field of study; work experience; seniority in the job

Differences in the characteristics of organisations and sectors employing men and women:

- Size of the organisation; type of industry; unionisation at organisation and sector level

Differences in the jobs held by men and women:

- Women under-represented in higher-paid jobs; women over-represented in a smaller and lower-paying range of occupations than men; women and men concentrated in different segments of the same broad occupations; women over-represented in part-time work

Differences in the number of hours devoted to paid work:

- Men work longer hours (in paid work) than women

Discrimination in remuneration:

Direct discrimination:

- Different pay for men (higher) and women doing the same or similar jobs; different job titles (and pay) for the same or similar occupations

Indirect discrimination:

- Undervaluing of the skills, competencies and responsibilities associated with “female” jobs; gender biases in job evaluation methods; gender biases in job classification and job grading systems; gender biases in job remuneration systems.

The ILO analysis of causes of the gender pay gap can be extrapolated in exactly the same way to apply to any minority group. Analyses on racial pay gaps show little improvement in most countries around the world between 1995 and 2004. However, the ILO does report that in Brazil since 2001 there has been a significant improvement in the hourly wages of black men and women compared to white men. This is attributed to control over inflation together with net gains in the real minimum wage.

4. IMPROVING PAY EQUITY

The ILO identifies a mixture of public policy and action by individual employers as the way to address pay inequity, but notes that different approaches may be needed in different circumstances, as shown below⁴:

Model 1	Model 2	Model 3
Comprehensive approach aimed at the elimination of discriminatory remuneration practices and the pay gap due to discrimination.	Partial approach aimed at the elimination of discriminatory remuneration practices.	Mixed approach aimed at eliminating certain discriminatory practices and the overall gender pay gap.
Sweden & Quebec, Canada	UK, Netherlands	France, Switzerland
Compulsory	Voluntary	Compulsory
Requires the development of a JEM free from gender bias.	Requires the development of a JEM free from gender bias.	Requires regression analysis of wages according to sex, if residual gap higher than 5 per cent, further analysis leading to corrective measures (Switzerland).
Focuses on and compares female- and male-dominated jobs.	No precise guidelines on measuring wage gaps.	Assessment of wage distribution by sex, average monthly salary by sex and proportion of women in ten highest-paid occupations (France).
Measures wage gap between jobs of equal value.	No precise guidelines on eliminating wage gaps.	No requirement to develop a JEM free from gender bias.
Adjusts the wages of female dominated jobs to eliminate the gap within a set time frame.		No precise guidelines on measuring wage gaps.
		No precise guidelines on eliminating wage gaps.

5. INTERNATIONAL LAW

The foundation of international law in this area is ILO Convention 100: Equal Remuneration, 1951. This Convention states:

Article 1:

- a) The term “remuneration” includes ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether cash or in kind, by the employer to the worker and arising out of the worker’s employment.
- b) The term “equal remuneration for men and women for work of equal value” refers to rates of remuneration established without discrimination based on sex.

The scope of this Convention applies to all male and female workers, and involves job comparisons not limited to the same job, enterprise and/or sector. The determination of equal value is by the use of job evaluation methods, and these must avoid prejudices or stereotypes based on sex.

⁴ ILO report, page 76

The United Nations Global Compact has two relevant principles:

Principle 1:

Businesses should uphold the elimination of discrimination in respect of employment and occupation.

Women's Empowerment Principle 2:

Treat all women and men fairly at work – respect and support human rights and non-discrimination – pay equal remuneration, including benefits, for work of equal value and strive to pay a living wage to all women and men.

The European Union has a Directive (2006/54/EC) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The United States passed its Equal Pay Act in 1963, which prohibited “discrimination on account of sex in the payment of wages by employers ..”.

a) What is not discrimination

The ILO report states “Not all differences in treatment, however, are unlawful. For instance, those that are based on the actual exigencies of a job are not. Being male or female may be a legitimate requirement for jobs involving close physical contact or for the performing arts. Distinctions based on skills or effort are just and legitimate: disparities in remuneration that reflect differences in years of education or the number of hours worked are in order. Similarly, special measures that entail non-identical treatment of individuals with particular needs, owing to reasons such as their sex, mental, sensory or physical impairment or social origin, do not constitute discrimination. Giving effect to the principle of equal treatment and opportunities means more than treating persons in the same way; it also requires special measures and the accommodation of differences.

6. SOUTH AFRICAN LAW

The EE Act outlaws unfair discrimination:

“S. 5 Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

S. 6 (1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

(2) It is not unfair discrimination to:

(a) take affirmative action measures consistent with the purpose of the Act: or

(b) distinguish, exclude or prefer a person on the basis of an inherent requirement of a job.

S. 11 Whenever unfair discrimination is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.”

Disputes are referred to the CCMA for conciliation. If conciliation fails, the aggrieved party may refer the dispute to the Labour Court, or the parties may agree on other means of arbitration.

The proposed amendment to the EE Act states:

New subsection (4). A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1) or on any other arbitrary ground is unfair discrimination.

(5) The Minister, after consulting the Commission, may issue a regulation setting out the criteria and the methodology for assessing work of equal value in terms of subsection (4).”

b) Case Law

The two primary sources of case law on pay differentials⁵ confirm that pay differentials per se do not constitute unfair discrimination, only if paying different wages for equal work or work of equal value is the reason is direct or indirect discrimination on arbitrary grounds or the grounds listed in the EE Act. Further, factual grounds must be put forward as to what value should be attributed to the work that is claimed to be of equal value, and this might include factors such as skill, responsibility and the like.

7. INTERNATIONAL EXPERIENCE

Despite the existence internationally of laws prohibiting discrimination in pay and conditions of employment, pay inequity persists. In the United States in 2012, the gender pay gap was 17.8% on average. Differences in specific occupations ranged from IT programmers (5%) to police officers, CEOs, lawyers, and physicians and surgeons (20%)⁶.

Recent improvements in the gender pay gap in Europe have been attributed to the impact of the economic downturn, which has resulted in men experiencing a bigger drop in earnings than women.

Studies have shown that most of the gap can be attributed to differences in education, experience, race, industry and occupation, but a residual percentage seems to be due to discrimination in the workplace. This residual is thought to be around 9% in the US, in France 12% for women over age 35 (6% below that age), 80% in China and Australia.⁷

Class actions have been brought in the US, notably against Walmart, to force employers to eliminate wage gaps. So far, these have been unsuccessful in the legal processes.

8. SOUTH AFRICAN EXPERIENCE

Pay gaps between White males and every other minority grouping remain a prevalent feature of the South African labour market. Since 1994, earnings of both Black men and women have increased, but the gender

⁵ Landman, 2000, in Louw v Golden Arrow Bus Services; van Niekerk, 2009, in Mangena & Others v Fila South Africa.

⁶ <http://www.businessweek.com/articles/2012-06021/equal-pay-plaintiffs-burden-of-proof>

⁷ ILO report

wage gap has not changed between 1995 and 2005. This, it is surmised, is because women are still concentrated in informal, low-paying employment. Unionisation has not decreased the gender pay gap – in fact the gap is bigger among union members.⁸

A 2012 UJ Masters dissertation has looked at the gender pay gap in South Africa, using economic analytical methods. The table below shows earnings by occupational level and gender between 2001 and 2010, at constant 2008 prices.

	2001		2005		2010	
	Male	Female	Male	Female	Male	Female
Managers	123 552	84 942	135 203	101 226	137 872	109 463
Professionals	111 648	92 664	135 203	101 226	149 361	102 302
Technical	66 409	66 409	75 059	70 012	98 780	97 187
Clerical	46 332	46 332	56 009	49 008	55 243	51 151
Service & sales workers	27 799	19 408	27 891	19 603	30 691	23 529
Skilled agricultural & fisheries workers	21 189	11 583	20 630	21 003	22 506	19 506
	2001		2005		2010	
	Male	Female	Male	Female	Male	Female
Craft workers	30 763	19 756	28 005	18 203	35 465	40 460
Plant & machine operators	26 770	20 077	35 006	25 204	38 875	21 057
Elementary/domestic workers	13 900	12 355	18 203	16 803	20 378	16 368

As can be seen, the gender wage gap in the professional and service worker categories is widening over time. It could be that the categories are broad, hiding differences in skill levels within the categories and that male workers are concentrated within categories at the higher skill levels which pay more.

The detailed analysis performed for this dissertation seems to show that at the lower ends of the pay ranges for the different occupational categories, the pay gap is due to structural factors such as poorer education and less career advancement for women. However, at the higher ends of the pay ranges, there are differences between different segments of the racial/gender divide, so that African women are more discriminated against in terms of pay than women of other racial groups. The author's conclusion is that there are different returns in terms of pay for similar investments in terms of education and skills for women as compared to men and therefore policy measures such as equal pay for work of equal value are required to eradicate pay inequities.

The figures used in this section are derived from Statistics SA. It is not clear whether, using employers' pay data as submitted to remuneration survey companies, the gender wage gap in the formal sector is of the same scale and nature. Further research is needed in this area.

⁸ *An empirical investigation of the gender wage gap in South Africa.* P. Ncube, 2012. UJ Masters dissertation.

9. WORK OF EQUAL VALUE

Whilst it is not yet known what criteria and methodology the Minister will determine as the basis for equating value between different jobs, the methodology is likely to be based around job evaluation.

Job evaluation, using a variety of different methods, has been a common feature of South African HR practice for many decades, as a means to ensure internal equity of pay. Job evaluation has also been used to compare similar jobs across organisations as the means to ensure market-linked pay. According to the SABPP Best Practice Guide to Remuneration: “Two approaches to job evaluation are available to organisations. They can use a formal job evaluation system to evaluate jobs or they can match jobs to market benchmarks. These two approaches differ fundamentally, but achieve the same objective – they determine the relative value of the position against the value (complexity level) of similar positions in the organisation as well as to similar positions in the external market.”

However, in an attempt to cater for skills shortages which demand more flexibility in pay to meet market demands, many organisations have moved towards broad-banding jobs, thereby reducing the number of pay grades and in the process increasing the number of jobs and employees within one pay grade, which will have a very wide range between the minimum and the maximum pay for that grade. This practice may contribute to hidden pay discrimination. It could lead to arguments about whether work of equal value is really carrying the same pay rate. An analysis of pay within each grade for the various previously disadvantaged groups should be carried out regularly to ensure that pay inequities are not occurring.

Differences in pay rates between men and women can arise from differences in the weighting given to physical work on the salary structuring – for example an additional allowance for heavy or hot work for certain jobs in which most women are excluded for physical reasons. In Germany, a court decision by the Federal Labour Court was that any such allowances or differences in pay rates are only permitted if the system which takes such physical demands into account also takes into account other factors such as “necessary posture, time-controlled or repetitive work, nervous or sensory stress, noise and other environmental and social factors”, in order to avoid the perpetuation of the gender wage gap.

10. CONCLUSION

HR practitioners should pay close attention to developments in the field of “equal pay for work of equal value” to ensure that their organisation’s pay practices continue to comply with legislation as well as serving to attract and retain the best employees.

In view of the many hidden factors which contribute to inequity of pay between different groups of employees, HR practitioners should be alert to structural issues which contribute to lower earning power of these groups, and should put in place pro-active strategies to ensure that equity is reached over an appropriate time period, bearing in mind the social costs of pay inequity which must be balanced against the financial cost of bringing all groups to the same pay levels.

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