



Equal Pay Guide

What is Equal Pay?

Equal pay is the legal right for men and women to be paid the same when doing the same or equivalent work. The right is contained within the Equality Act 2010.

The law covers equality in *contractual* remuneration, such as salary, *contractual* pay rises and *non-discretionary* bonuses. It also extends to paid holiday entitlement, hours of work, contractual benefits-in-kind and pension provisions.

Whilst the law is worded neutrally, many instances are of females who are paid less than their male colleagues. This is known as 'the gender pay gap'. Statistically, according to the Fawcett Society, this means that from a date in early November, 'Equal Pay Day', women in the UK stop earning relative to men.

If the inequality is in respect of *discretionary* bonuses, *discretionary* pay rises or promotions, and an employee thinks they are being disadvantaged due to gender, they may have grounds to bring a sex discrimination claim. This claim could be brought together with, or alternatively to, a claim of equal pay.

My colleague and I do the same job. I have just found out that he is paid more than me. Do I have a claim?

Whilst still employed or within 6 months of leaving your job, you can make a claim of equal pay in the Employment Tribunal. You would need to demonstrate that either:

- a) your work is **'like work'** as compared to the other employee's (the same/broadly similar with differences which are not of practical importance); or
- b) your work is rated as **equivalent** (a job evaluation study would show it is of equal value in terms of demands on the employee or would be if sex-specific provisions were not considered); or
- c) the work is **of equal value** (where, despite not fulfilling a) or b), the work is nevertheless equal in terms of the demands of effort, skill and decision making).

To claim equal pay, you will need to identify a real comparator employee (the person who is doing the same, similar or equivalent job and is being paid more than you). They must be of the opposite gender, a current or previous employee of the same employer and employed in the same employment. They may be the person who did your job before you.

Does my employer have a defence if I am not receiving equal pay?

Your employer may argue that the comparator has been paid more than you for a reason unrelated to gender. For example, because they are more experienced, they bring in more money or there was a 'skills shortage' when they were hired so a higher salary was demanded. This is known as the 'material factor' defence. You may have evidence to refute these allegations. For example, if you can demonstrate that your colleague does not make more sales than you.

What steps should I take if I want to complain?

1. Informal grievance

The first step is to raise the issue of equal pay with your employer informally. It is often a good idea to raise any informal grievance in writing, rather than orally, so you have a record.

2. Formal grievance

If your employer does not resolve the issue informally, the next step is to raise a formal grievance. Your employer should have and follow a grievance procedure. A failure by either party to raise or deal with a grievance in accordance with the procedure can lead to an adjustment of any compensation award by up to 25%.

3. Make a claim

Where the grievance process has not been successful, you can begin proceedings in the Employment Tribunal.

i. ACAS

The first step is to go to the Advisory, Conciliation and Arbitration Service (“ACAS”) to instigate Early Conciliation. This is a mandatory requirement before submitting a claim in the Tribunal. Early conciliation is free and attempts to reach an agreement between you and your employer before proceedings must be issued.

ii. Tribunal

If you and your employer are unable to reach an agreement via ACAS you may choose to take the matter to the Employment Tribunal. You will need to complete a form setting out your complaint and the Tribunal will need to hear evidence from both parties before deciding. This includes disclosing documents and providing witness evidence. There is currently no fee for submitting a claim at the Tribunal.

FAQS

1. Are there any time limits?

Yes. You can make an equal pay claim at any time whilst you are still employed, or within 6 months of leaving. If the unequal pay was deliberately concealed, you have 6 months from when you found out about the discrepancy. If your claim is for discrimination, you have 3 months from the date of the discrimination taking place to submit a claim. You must contact ACAS for Early Conciliation before submitting a claim.

2. What evidence do I need to bring a claim?

You will need to try to gather as much evidence as possible, from keeping print-outs of emails and minutes from meetings to copies of your employment contract and any evidence of your comparable work. For example, if your employer circulates data on how colleagues are performing, this may be useful, and it may also be helpful to have copies of job descriptions/advertisements. If any of your colleagues are willing to act as witnesses they can also make a statement.

3. Will I be treated unfairly for bringing a claim or complaining?

It is unlawful for your employer to treat you unfairly for having brought a claim or for complaining about pay discrepancies. This would be victimisation, another type of complaint you can bring in the Tribunal.

4. I think this issue is quite widespread in my workplace. Can we bring a class action?

Yes. You may find that your employer has systematically paid women less than men, in which case your female colleagues may have a similar case to you. You could bring a group action with them.

5. What remedies could I be awarded by the Tribunal?

In an **equal pay** claim, the Tribunal can award:

- a declaration of your rights
- pay, including any occupational pension rights, being raised to that of your comparator
- equality in the terms of your contract
- compensation consisting of back pay for up to six years of employment plus interest (if the claim is about pay) and/or damages (if the complaint is about some other contractual term).

In a **discrimination** case, you can be awarded the money you lost and also damages for injury to feelings, or personal injury if you have developed stress-related illness. Damages can be 'aggravated', and so increased, if the employer's behaviour has been particularly severe. You may also be awarded interest on these amounts.

6. Am I allowed to discuss my salary with my colleagues?

Under the Equality Act 2010 it is illegal to prohibit employees from discussing their salaries. However, your contract may include a provision that you cannot disclose the amount of your pay packet to anyone else. This may or may not be enforceable, depending on the circumstances. If your contract has such a provision, it is advisable to discuss this with your solicitor.

If you have concerns about equal pay or sex discrimination, please contact us today for a free no-obligation consultation by calling either our London or High Wycombe offices on 0203 440 3705 or 01494 451355 respectively, or by email: employment@curzongreen.co.uk