



## Asda equal pay store workers can compare pay to depot workers

An Employment Tribunal has found that a comparison between the pay of workers in different parts of the employer's business is potentially valid. The decision means that the UK's largest equal pay claim can continue, and provides interesting guidance for other private sector employers considering their vulnerability to similar challenges.

The issue related to female Asda store workers who sought to compare their wages to higher paid male depot workers. Asda claimed that such a comparison was illegitimate because the decisions on pay and conditions of the two groups of workers were taken in a different way by different decision-making bodies, although all of the workers were employed by the same employer.

The Employment Tribunal undertook a detailed analysis of the UK law both under the Equal Pay Act 1970 (which applied until 30 September 2010) and the Equality Act (which applied after that date), and the test under EU law. The conclusion was that in order to compare pay across employees not working in the same establishment (as here), there must also be a "single source" (i.e. one body that is responsible for the alleged disparity in pay and which has the power to restore equal treatment).

Asda highlighted the difference in the decision-making processes for the store and depot workers, highlighting the involvement of its parent company, Wal-Mart, at various stages of the process, as well as the division of its business into "Retail" and "Distribution" arms. The employer said that this meant that there was no "single source", and therefore the store workers should not be permitted to compare their pay to the depot workers. This was likely to lead to the dismissal of the workers' claims. However, the Tribunal found against Asda, and said that the store workers could compare their pay to depot workers because there was a "single source" in this case: Asda's Executive Board, which had the power to set pay for both groups of workers.

Employees in other companies working in female-dominated roles will be reassured by the judgment, which confirms the possibility of making comparisons across establishments provided the "single source" test is passed. However, the Asda claim also underscores the lengthy struggle an equal pay claim entails. This 53-page judgment on a discrete preliminary point follows another preliminary struggle that reached the Court of Appeal (regarding whether the claims should be heard in the Employment Tribunal or the High Court). Asda is apparently considering its options for an appeal on this comparison point too, so the claimants could find themselves

unwillingly making more new law before a judge is ever able to rule on the merits of their claims.

For employers, it is clear that a simple division of responsibilities will not defeat an equal pay comparison. Equal pay audits must be as creative as prospective claimants might be, and consider carefully what roles might be equivalent despite different locations or employers.