



## Equal Pay

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It is a fundamental principle of employment law and most would agree that men and women should receive equal pay for equal work, but the law in this area is complex. What do employers need to know about handling this issue?

### What is the duty to pay equal pay?

In summary, men and women should be paid equal pay for equal work. This means an employee is entitled to contractual terms that are as favourable as those of a 'comparator' of the other gender in the same employment if they are employed to do 'equal work' (see below for a summary of what these terms mean).

Employers can have a defence if the difference in contractual terms is due to a 'material factor' which is not sex discriminatory. This might be factors such as past performance, geographical reasons or seniority. Factors that are on the face of them gender-neutral but which have a disproportionate adverse impact on women can potentially be objectively justified by the employer.



## Risks

There are significant risks if it is found that an employer has failed to pay equal pay. Should they successfully bring a claim for equal pay, each employee can be awarded arrears of up to 6 years' pay plus interest.

## Tricky areas

Although the principle of equal pay can seem straightforward it can be legally complex and factually tricky to show whether an employee is or is not being paid equal pay. For example:

### 1. Comparators are much broader than might be expected

A comparator can be a current or previous employee, including a predecessor in the same job.

Note that the comparator must be (or have been) working "in the same employment" as the person claiming equal pay but this is defined broadly and can include not only where they have worked at the same establishment (i.e. place of work) but also where:

- they have worked at different establishments if 'common terms' of employment apply; or
- the employees' terms and conditions are attributable to a single source.

### 2. What is 'equal work'

'Equal work' is work that is assessed as being either 'like work', 'work rated as equivalent' or 'work of equal value' as the comparator. What do these terms mean?

- 'Like work' is where the work being done by the employee and the comparator is the same or broadly similar.
- 'Work rated as equivalent' is where an employer has chosen to carry out a Job Evaluation Study (JES) analysing groups of jobs which deems the work as equivalent. JES studies are not mandatory.
- 'Work of equal value' is where the first two types of equal work do not apply but the roles are equal in terms of the demands made on the claimant and comparator, looking at factors such as effort, skill and decision making.

## Steps employers may take

- A key first step is to carry out an equal pay audit to identify any discrepancies in pay. This should be carried out with great care. Done correctly and supported by lawyers this will be legally privileged and allow you to consider addressing areas of risk as appropriate for your business.
- In addition to pay discrepancies employers may want to review discrepancies in benefits which could give rise to sex discrimination claims.

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This note is for information only and is not legal advice. It reflects the position as at 17 September 2021. For any questions, please get in touch with [Natasha Adom](#) or your normal GQ|Littler contact.