

06



Australian Government

Fair Work
OMBUDSMAN

Best Practice Guide Gender pay equity

Working at best practice

Best practice employers take steps to ensure that gender-based pay discrimination is not part of their remuneration system.

At the beginning of the twentieth century when women began to enter the workforce in larger numbers, women were paid less than men, even when they performed the same work. Often women were paid one half or two-thirds of a male's salary. Having a 'male' and 'female' rate of pay is a classic illustration of pay inequality.

The undervaluation of women's work is still embedded in many workplaces. By eliminating discrimination when it comes to wages, employers create fairer working environments. Fairness, respect and equality are essential components of building harmonious, cooperative and productive workplaces.

This Best Practice Guide explains:

- what is gender pay equity

- why gender pay inequity happens

- the benefits of gender pay equity

- how to achieve gender pay equity.

There is also a checklist to assist best practice employers.

This guide illustrates best practice when it comes to gender pay equity. For specific information regarding your minimum legal obligations, contact the organisations listed under the 'For more information' section at the end of this guide.

- 01 Work & family
- 02 Consultation & cooperation in the workplace
- 03 Use of individual flexibility arrangements
- 04 A guide for young workers
- 05 An employer's guide to employing young workers
- 06 Gender pay equity
- 07 Small business & the Fair Work Act
- 08 Workplace privacy
- 09 Managing underperformance
- 10 Effective dispute resolution
- 11 Improving workplace productivity in bargaining

What is gender pay equity?

Gender pay equity is when men and women receive equal pay for work of equal or comparable value. In practical terms, this means that best practice employers ensure that:

- men and women performing the same work are paid the same amount

- men and women performing different work of equal value are paid the same amount

- the wages and conditions of jobs are assessed in a non-discriminatory way. This is done by valuing skills, responsibilities and working conditions in each job or job type (even where the work itself is different) and then remunerating employees accordingly, and

- the workplace's organisational structures and processes do not impede female employees' access to work-based training, promotions or flexible working arrangements.



Case studies

1. Inequalities in part-time and full-time rates of pay

Alana and Steven both apply for sales positions at Perez Enterprises. They have similar levels of experience and past sales performance. Steven is successful and obtains a full-time position. Alana wants to work part-time to manage family responsibilities. She successfully obtains a part-time position. Perez Enterprises pays Alana a part-time salary. However, Alana realises that if she were working full-time hours she would not be earning as much as Steven.

This is gender pay inequality as Alana is earning less per hour than Steven even though she is performing the same work.

2. Work of the same value

Johan and Maya both completed three year university degrees in order to enter their professions. Johan is a qualified geologist and Maya is a qualified human resources professional. Both Johan and Maya have five years work experience in their fields and have recently been employed by the same mining company. Maya is employed as the human resources manager and supervises the work of five human resources advisers. Johan is employed in the role of manager – geology and supervises the work of five geologists. Even though Maya and Johan are performing different work, a job evaluation of both positions looking at the skills, effort, responsibility and working conditions involved, determined that the work that they perform involves comparable skills and responsibilities. However, Johan is paid a higher salary than Maya. This is gender pay inequity because Johan and Maya are not receiving equal pay for work of equal or comparable value.

Why does gender pay inequity happen?

According to statistics published by the Australian Bureau of Statistics, there is a pay gap in Australia between women and men. In February 2009, the pay gap was 17.2%. This means that on average, women earned 17.2% less than their male counterparts. Put differently, women earn just over \$200 less than men per week based on average weekly time earnings.

The reasons for the gap between earnings for women and men are numerous. A range of historical factors have played a part in creating the gender pay gap. Today, influencing factors can include: the undervaluation of skills in industries and areas where women predominate; women's access to work-based training; different levels of eligibility for discretionary payments such as over-award payments, bonuses and performance pay; and inflexible organisational structures that restrict the employment prospects of workers with family responsibilities.

Identifying the reasons why pay inequity may exist in your business is the first step towards fixing the gap.

The benefits of gender pay equity

Gender pay equity makes good business sense. The benefits to your business of gender pay equity can include:

- achieving fairness and respect in the workplace

- creating a motivated, happy and productive workforce

- becoming an employer of choice

- attracting and retaining the best and brightest staff

- improving staff retention and thereby reducing turnover costs

- fulfilling a business' legal obligations

- inspiring consumer confidence

- preventing negative public relations issues arising from legal proceedings or allegations of gender pay inequity

- avoiding a costly discrimination complaint

- attracting government contracting opportunities.

Achieving gender pay equity in your workplace

In simple terms, gender pay equity is about ensuring that both women and men are paid fairly for the work they perform.

Equal pay is not just about equal wages. Equal pay takes into account discretionary pay, allowances, performance payments, merit payments, bonus payments and superannuation.

Addressing the issue of gender pay inequity involves understanding where pay disparities may exist in your workplace and giving regard to:

Obligations under the Fair Work Act

- Fair Work Australia (FWA) can make an equal remuneration order requiring certain employees be provided equal remuneration for work of equal or comparable value. An application for an equal remuneration order can be made by an affected employee, a union which is entitled to represent an affected employee or the Sex Discrimination Commissioner.

- Once an equal remuneration order has been made, it will prevail over a modern award, enterprise agreement, FWA order or any other industrial instrument if it is more beneficial than these instruments.

- An employer that contravenes an equal remuneration order can be liable for a penalty.

Obligations under the federal Equal Opportunity for Women in the Workplace Act 1999

- Employers with 100 or more employees are required to develop a workplace program that is aimed at eliminating discrimination and barriers for women, encouraging equal opportunity for women in the workplace and to report annually to the Equal Opportunity for Women in the Workplace Agency (EOWA) on the effectiveness of that program.

- As part of a workplace program, employers are required to analyse their workplaces to determine if there is any pay disparity and outline strategies to address the gaps.

- Relevant employers can voluntarily apply to EOWA for an EOWA Employer of Choice for Women citation if the business meets certain benchmark requirements including that the gender pay gap in the organisation is smaller than the average gap for the industry in which it operates.

Obligations under state, territory and federal anti-discrimination laws

- Anti-discrimination legislation makes it unlawful for an employer to discriminate on the grounds of sex in regard to the terms and conditions of employment provided to employees (which includes pay and other benefits).

Best practice initiatives

In addition to meeting their obligations under legislation, employers can also achieve gender pay equity through introducing initiatives that respond to the specific needs of their workplaces. A best practice business will endeavour to identify areas where equal opportunity may be improved and will design and implement policies and practices to achieve improvement.

For example, a best practice business may:

- ensure that there are transparent remuneration policies and practices in place

- recognise a wide range of skills and appreciate the value those skills can bring to the business

- provide flexible work arrangements to encourage women to return to the workplace following a period of parental leave (see Best Practice Guide No 1 'Work and family')

- ensure that employees on flexible working arrangements have access to quality work and the same benefits, training and promotional opportunities as full-time employees

- conduct a gender pay equity audit to identify whether there are any issues or areas that can be improved

- compare salaries for men and women on commencement, yearly and on promotion to analyse where the gaps are and seek justification for any gaps or eliminate the gaps altogether

- review overtime and shift arrangements to ensure that access to them is provided equally to male and female employees. For example, a business should not assume that women do not want to work overtime

- strive to meet the requirements for an EOWA Employer of Choice citation regardless of employee numbers

- consider supporting Equal Pay Day in your workplace. Equal Pay Day is an initiative of EOWA which recognises that on average, women have to work an extra two months to earn what their male counterparts earn in a year.

Checklist for pay equity best practice

- ✓ Do your organisation's policies and practices support pay equity? Is there a transparent performance review process and equitable access to training, promotions, rewards and benefits programs?

- ✓ Does your organisation have an equitable wage setting process?

- ✓ Has your organisation undertaken a pay equity audit to analyse payroll data to determine areas and occupations where gender pay differentials may exist? A pay equity tool is available from EOWA's website. An audit usually involves a review of the payroll data to identify the areas where there may be gender inequities.

- ✓ Are there flexible working arrangements? Are the flexible working arrangements available to all employees, and does the workplace culture support such arrangements?

- ✓ Is pay equity incorporated into your organisation's business objectives and goals?

- ✓ Does your organisation compare salaries for men and women on commencement, yearly and on promotion to analyse where the gaps are and seek justification for any gaps or eliminate the gaps altogether?

For more information

The EOWA website has a useful checklist for businesses to help assess whether your business meets the best practice standard for pay equity. The quiz titled How Does Your Business Measure Up? can be accessed by going to www.eowa.gov.au or calling (02) 9448 8500.

Fair Work Online

www.fairwork.gov.au

Fair Work Ombudsman

13 13 94

www.fwo.gov.au

Fair Work Australia

1300 799 675

www.fwa.gov.au

For information about discrimination

Fair Work Ombudsman
13 13 94
www.fwo.gov.au

Australian Human Rights
Commission
1300 369 711
www.humanrights.gov.au

Australian Capital
Territory Human
Rights Commission
(02) 6205 2222
www.hrc.act.gov.au

New South Wales
Anti-Discrimination
Board
(02) 9268 5544
www.lawlink.nsw.gov.au/adb

Northern Territory
Anti-Discrimination
Commission
(08) 8999 1444
www.adc.nt.gov.au

Anti-Discrimination
Commission Queensland
1300 130 670
www.adcq.qld.gov.au

South Australian Equal
Opportunity Commission
(08) 8207 1977
www.eoc.sa.gov.au

Tasmanian Office of
the Anti-Discrimination
Commissioner
(03) 6233 4841
www.antidiscrimination.tas.gov.au

Victorian Equal
Opportunity & Human
Rights Commission
1300 891 848
www.equalopportunity.commission.vic.gov.au

Western Australian Equal
Opportunity Commission
(08) 9216 3900
www.eoc.wa.gov.au

Acronyms used in this guide

EOWA Equal Opportunity for Women in the
Workplace Agency

FWA Fair Work Australia

Disclaimer

This information has been provided by the Fair Work Ombudsman (FWO) as part of its function to provide education, assistance and advice (but not legal or professional service advice). The FWO does not provide this information for any other purpose. You are not entitled to rely upon this information as a basis for action that may expose you to a legal liability, injury, loss or damage. Rather, it is recommended that you obtain your own independent legal advice or other professional service or expert assistance relevant to your particular circumstances. Produced April 2010. FWOBPG6a.

© Commonwealth of Australia 2010