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EOUVE EQUAL PAY

An introductory guide

Martin Oelz Shauna Olney Manuela Tomei



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First published 2013

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Oelz, Martin; Olney, Shauna; Tomei, Manuela

Equal pay: an introductory guide / Martin Oelz, Shauna Olney, Manuela Tomei; International Labour Office, International Labour Standards Department, Conditions of Work and Equality Department - Geneva: ILO, 2013

ISBN: 978-92-2-126932-8 (print)

ISBN: 978-92-2-126933-5 (web pdf)

International Labour Office; International Labour Standards Dept; Conditions of Work and Equality Dept.

equal pay / wage differential / work of equal value / role of ILO / ILO Convention / ILO Recommendation / comment / text

Also available in French: *Guide d'introduction à l'égalité de rémunération*, ISBN: 978-92-2-226932-7 (Print), 978-92-2-226933-4 (Web PDF), Geneva, 2013; and in Spanish: *Igualdad salarial: guía introductoria*, ISBN: 978-92-2-326932-6 (Print), 978-92-2-326933-3 (Web PDF), Geneva, 2013.

ILO Cataloguing in Publication Data

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Preface

Ensuring that the work done by women and men is valued fairly, and ending pay discrimination, is essential to achieving gender equality and a core component of decent work. The principle of equal remuneration for men and women for work of equal value, as set out in the Equal Remuneration Convention, 1951 (No. 100), needs to be implemented if equality is to be promoted and pay discrimination is to be addressed effectively, particularly since women and men often do different jobs.

While the principle of equal remuneration for men and women for work of equal value, often referred to as “equal pay”, has been widely endorsed, what it actually entails and how it is applied in practice has proved difficult to grasp.

Unequal remuneration is a subtle chronic problem, which is difficult to overcome without a clear understanding of the concepts and the implications for the workplace and society in general, as well as the introduction of proactive measures. The challenge of applying the principle has acquired even more prominence in the context of the current economic crisis, with “equal pay” appearing to some as merely an added cost. This Guide clarifies the concepts underlying the principle of equal remuneration for work of equal value and provides guidance on its practical application. While the Guide addresses specifically equal pay between men and women, as this is a long-standing concern of the ILO and continues to raise challenges today, it is hoped that it will also offer insights to address equal pay on grounds other than sex.

Equal remuneration for men and women for work of equal value can be applied in a variety of ways according to each national context. Thus the national examples provided are not intended to be models that must be followed, but rather approaches that can inspire further thought. The Guide is aimed at government officials, workers’ and employers’ organizations, policy-makers, practitioners, trainers, as well as others interested in this dynamic and evolving area. It draws on the ILO’s policy work in this domain, the technical assistance provided by the Office to ILO’s constituency, and the related comments of the ILO supervisory bodies.

This Guide may be used in a number of ways, including to –

- raise awareness and understanding of the principle of equal remuneration for work of equal value;
- help apply the principle in national law and practice;
- assist national equality bodies in promoting the principle;
- help wage-fixing institutions in applying the principle;
- negotiate equal pay provisions in collective agreements;
- develop workplace policies, including job evaluation methods;
- provide trainers with information and examples for awareness raising and capacity building;
- provide a basis for ratification of Convention No. 100;
- improve application and reporting of Convention No. 100;
- encourage measures for realizing rights at work under the ILO Declaration on Fundamental Principles and Rights at Work, and improve related reporting.

This Guide is a collaborative effort between the International Labour Standards Department and the Conditions of Work and Equality Department. It was written by Manuela Tomei, Director of the Conditions of Work and Equality Department, Shauna Olney, Coordinator, Equality Team in the International Labour Standards Department, and Martin Oelz, Legal Specialist, Conditions of Work and Employment Branch in the Conditions of Work and Equality Department. We hope this Guide will provide insights and food for thought to advance pay equity between men and women, and contribute to the follow-up to the 2012 Resolution concerning the recurrent discussion on fundamental principles and rights at work, and the 2009 Resolution concerning gender equality at the heart of decent work.

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Acknowledgements

The authors are grateful to the many colleagues who provided very helpful comments on earlier drafts as well as information and examples to enrich the text. Our thanks in particular to Simonetta Cavazza, Dimitrina Dimitrova, Simel Esim, Nelien Haspels, Grace Hemmings, Jane Hodges, Frank Hoffer, Lucette Howell, Gudrun Jevne, Albertina Jordao, Katerine Landuyt, Claire Marchand-Campmas, Adrianna Mata-Greenwood, René Robert, Kristen Sobeck, Maria Marta Travieso and Lisa Wong. We would also like to thank Dain Bolwell for his editing work and the ILO International Training Centre, Turin for the layout and production, in particular Valeria Morra and Manuela Flamini.

Note on terminology

Equal remuneration and equal pay. The right to equal remuneration for men and women for work of equal value is commonly referred to as “equal pay”. In this Guide, the terms “equal pay” and “equal remuneration” are used interchangeably, though they sometimes have different meanings in law, which are discussed in Part 4.

Equal remuneration and pay equity. Equal remuneration for men and women for work of equal value is the principle that is designed to achieve pay equity between men and women. Pay equity is about fairness in pay (See Part 4).

Remuneration is defined in Convention No. 100 to include “the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment.” (See Part 4).

Earnings include

- (a) remuneration in cash or in kind to an employee for the work done, together with remuneration for time not worked;
- (b) net earnings from self-employment; or
- (c) total earnings from both employment and self-employment (See Part 2).



Why equal remuneration for
work of equal value matters

1. Is equal pay a fundamental right?

Women and men have the right to receive equal remuneration for work of equal value (commonly referred to as “equal pay”). Not only should men and women get equal pay for doing the same or a similar job, but also when they do work that is completely different but which, based on objective criteria, is of equal value. Equal pay is a recognized human right, to which all men and women are entitled.¹

Though it may seem to be a recent concept, the right to equal remuneration for women and men for work of equal value has been acknowledged by the ILO since 1919.² The principle is set out in the opening lines of the ILO Constitution,³ which recognizes that it is a key element of social justice. The ILO Declaration of Philadelphia of 1944, part of the ILO Constitution, affirms that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”

The 1998 ILO Declaration on Fundamental Principles and Rights at Work states that all member States have an obligation to respect, promote and realize the principles concerning fundamental rights, whether or not they have ratified the relevant Conventions. These fundamental rights include the elimination of discrimination in respect of employment and occupation.⁴ The 2008 ILO Declaration on Social Justice for a Fair Globalization affirms that gender equality and non-discrimination are principles cutting across the ILO’s Decent Work Agenda.⁵

The Equal Remuneration Convention, 1951 (No. 100) was the first international instrument on this issue. It was no coincidence that the Convention was adopted after the Second World War, as women had been on the front line of production during the war in many countries. Equality in pay for women and men was an important first step towards wider equality in society, with differences in pay being one of the most obvious and measurable forms of discrimination.⁶ Adopted over 60 years ago, the Convention was forward-looking at the time and is still particularly relevant. The Convention allows for the means of application to evolve, and such evolution has continued.

Paying women less than men for the same work or for work of equal value is a common form of discrimination in employment. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is closely linked to Convention No. 100. Convention No. 111 prohibits distinctions, exclusions or preferences made on various grounds, including sex, that have the effect of impairing equality of opportunity or treatment in employment or occupation. The Recommendation accompanying Convention No. 111 refers to the need to formulate a national policy for the prevention of discrimination in employment and occupation having regard to a number of principles. These principles include equality of opportunity and treatment with respect to remuneration for work of equal value for all.⁷ With over 90 per cent of ILO member States having ratified Conventions Nos. 100 and 111, there is a clear consensus on the importance of the rights and principles they set out.⁸

2. Is unequal pay a problem in all countries?

Unequal pay is a stubborn and universal problem. Ever since they entered the labour force, women have, in general, been paid less than men. At one time, in many countries this was an express policy. This was based on the assumption that women did not need to earn a “living wage” as their husbands were the “breadwinners”. Women were “secondary earners”. This created a vicious cycle of low paying jobs justifying the continuation of lower pay for women. However, over the years, the policy of expressly setting different pay rates for men and women doing the same or similar jobs has been discontinued almost everywhere. But differences in pay persist for men and women doing jobs that are different but of equal value.

As a result of historical and stereotypical attitudes towards the role of women, a smaller and different range of occupations are held predominantly or exclusively by women than by men. This concentration of women into certain occupations translates into downward pressure on average wages in those occupations, thus discouraging men from entering those jobs. As a result, women’s average pay continues generally to be lower than men’s in all countries and for all levels of education, age groups and occupations.

3. Why is it important to promote equal pay?

No lasting improvements in the economic status of women can be expected as long as women's time and talents are valued less than men's. Promoting equal pay also helps to address one important cause of the gender pay gap, namely, pay discrimination. It also contributes to enhancing overall gender equality in the world of work.

Addressing gender pay differentials is important to -

- improve the unequal domestic division of labour between men and women, and women's allocation of time between paid and unpaid work over their life cycle;
- help change stereotypical views regarding women's aspirations, preferences, capabilities and "suitability" for certain jobs;
- reduce women's financial dependence, thus increasing their influence and status in the household and in the community;
- make women and their families less vulnerable to fall into poverty;
- make it less likely that low-income households, including those headed by women, become poor or remain poor;
- increase women's pensions and decrease the risk of poverty in old age;
- ensure sustainable recovery for women in times of economic crisis;
- reduce pressure on families to work more hours;
- decrease recourse to child labour;
- lower turnover rates and increase productivity;
- increase the capacity of enterprises to attract and retain the best people.



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4. What are the costs and benefits of implementing equal pay?

While addressing existing pay inequality has cost implications for the employer, there are also considerable benefits. Pay equity adjustments may entail different types of costs: i) increased wages; ii) administrative costs; and iii) possible negative impact on some employees. The evidence is that wage costs can be relatively low.⁹ Administrative costs include the development of new job evaluation methods and classification systems, training and the consultancy fees required. Dissatisfaction among employees whose jobs have either not been assessed or upgraded may also result, which could reduce motivation and productivity in the short term. However, the process should not result in lowering the wages of any workers.

There are also many proven benefits to pay equity, including:¹⁰

- *Better recruitment and selection practices.* Pay equity produces more effective recruitment and selection practices, more effective continuous training, improved retention rates of new employees after probation and improved performance of new employees.
- *The identification of overlooked requirements of female-dominated jobs.* Recruitment to these requirements results in better quality products and services, as well as more internal flexibility. This results from the identification of skills that can be transferred between female- and male-dominated jobs.
- *An enhanced work environment based on equality principles.* This results in greater satisfaction and commitment to the organization.
- *Increased reputation and attractiveness.* This results in lower recruitment costs for qualified staff and less time that jobs remain vacant due to more attractive positions.
- *Improved labour relations.* Pay equity means fewer disputes, faster settlement of complaints and disputes, as well as more efficient negotiation of collective agreements.
- *Greater economic autonomy of women workers.* For women workers this means more financial certainty and makes more women with suitable skills available to the enterprise.
- *Lower legal costs and penalties.* Employers avoid pay discrimination and equal pay legal cases which can result in substantial awards and be very time consuming.¹¹ This can provide some protection from falling share prices as well as a better image and reputation.
- *A more coherent pay policy.* A harmonized wage structure based on the value of jobs saves staff time in managing the pay system and provides for a more efficient distribution of the total wage bill between different jobs.

Overall, women benefit from a fairer system of recognition and remuneration, their families benefit economically, employers benefit from having the right people with the right skills, and society benefits from both social justice and productivity.



5. Does there need to be an overall gender equality policy too?

An overall gender equality policy is essential for promoting equal pay. The achievement of pay equity is inextricably linked to the realization of gender equality. The gender pay gap can only be closed where continuing and sustainable progress is made concerning gender equality at work and in society at large. Conversely, gender equality cannot be achieved without equal pay for work of equal value.¹²

Occupational segregation of women into certain jobs, occupations and sectors increases the probability that work mainly done by women is being undervalued as compared to male-dominated work. Discrimination against women in recruitment, access to training, advancement and promotion, as well as unequal sharing of household and family responsibilities between men and women has a direct impact on the remuneration levels of women. At the same time low and unequal remuneration for women will impede further progress towards women's and men's participation in employment on an equal footing. When women earn less than their male partners, more equal sharing of household and family related tasks and responsibilities is less likely to occur, with many women dropping out of the employment process altogether. Equal pay issues should therefore be included and addressed in gender equality policies and plans at all levels, and gender pay differentials are an important indicator of progress made in achieving gender equality.

Together with the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No.156), the Maternity Protection Convention, 2000 (No. 183), the 1998 Declaration on Fundamental Principles and Rights at Work, and the Convention on the Elimination of all Forms of Discrimination against Women, form the international legal and policy framework for promoting gender equality in the world of work. Convention No. 111 requires ratifying countries to implement a national policy to promote equality of opportunity and treatment of men and women in employment and occupation. This includes equality of opportunity and treatment with respect to recruitment, training, promotion and advancement, as well as remuneration and conditions of work.



DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

Each Member ... undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) RECOMMENDATION, 1958 (NO. 111)

[The national] policy ... should have regard to the following principles ... all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of – ... remuneration of work of equal value.



Endnotes

- ¹ See the Resolution concerning the recurrent discussion on fundamental principles and rights at work, International Labour Conference, ILO, Geneva, 2012, conclusions, para. 5. See also the International Covenant on Economic, Social and Cultural Rights, 1966, Article 7(a)(i) and the Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 11(1)(d).
- ² Article 427 of the Treaty of Versailles: ILO, Geneva, Official Bulletin, Vol. 1, April 1919 to August 1920.
- ³ Constitution of the International Labour Organization, as amended in 1946 to add a specific reference to equal remuneration for work of equal value in the Preamble (originally set out in Article 41): ILO, Geneva, Official Bulletin, 15 November 1946, Vol. XXIX, No. 4.
- ⁴ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, Article 2(d).
- ⁵ Part I(B). Decent work has been defined by the ILO and endorsed by the international community as being productive work for women and men in conditions of freedom, equity, security and human dignity. Decent work involves opportunities for work that is productive and delivers a fair income; provides security in the workplace and social protection for workers and their families; offers better prospects for personal development and encourages social integration; gives people the freedom to express their concerns, to organize and to participate in decisions that affect their lives; and guarantees equal opportunities and equal treatment for all. See ILO: *Toolkit for mainstreaming employment and decent work* (Geneva, 2007), p. vi.
- ⁶ ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Geneva, 2012, para. 652.
- ⁷ Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), Para. 2(b) (v).
- ⁸ As of January 2013, Convention No. 100 was ratified by 171 member States, and Convention No. 111 by 172 member States.
- ⁹ For example, in Canada, where there were pay equity adjustments, total salaries increased in Ontario by between 0.5 per cent and 2.2 per cent and in Quebec between 0.5 per cent or less and 3.76 per cent. See M.-T. Chicha: *A comparative analysis of promoting pay equity: Models and impact*, (Geneva, ILO, Declaration Working Paper, No. 49, 2006). However, when such matters have been litigated, some courts and tribunals have made significant awards to compensate for pay discrimination.
- ¹⁰ See M.-T. Chicha, *ibid.*
- ¹¹ See for example Fair Work Australia, Equal Remuneration Case: Australian Municipal, Administrative, Clerical and Service Union and others; Australian Business Industrial [2012] FWA 1000, 1 February 2012. The order of Fair Work Australia in this matter, issued on 22 June 2012, established wage increases from 23 to 45 per cent. See also *Public Service Alliance of Canada v. Canada Post Corp.*, 2011 SCC 57, [2011] 3 S.C.R. 572, in which the Supreme Court of Canada reinstated a decision finding unequal pay among male and female postal workers based on a claim filed in 1983. The original Tribunal hearing comprised 410 hearing days.
- ¹² See International Labour Conference, 98th Session, June 2009, Resolution concerning gender equality at the heart of decent work.



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The gender pay gap

1. What is the gender pay gap?

Gender inequalities in pay are often assessed through an indicator known as the gender pay gap. The gender pay gap measures the difference between male and female average earnings as a percentage of the male earnings. For instance, if women's monthly average earnings are 70 per cent of men's monthly earnings, then the gender pay gap is 30 percentage points.

The gender pay gap can refer to differences in men's and women's hourly, weekly, monthly or yearly earnings. Usually, the hourly gender pay gap is smaller than the weekly, monthly and yearly gender pay gaps. This is because women tend to engage in paid work for fewer hours than men, as women continue to have greater family and domestic responsibilities. Women are therefore less likely to receive overtime pay, for example. Legal restrictions on women working overtime or at night may also be a factor.

The gender pay gap encompasses differences in men's and women's earnings, which refer to (a) remuneration in cash or in kind paid to an employee for the work done, together with remuneration for time not worked; (b) net earnings from self-employment; or (c) total earnings from both employment and self-employment.¹³ The difference between the gender gap in wage rates and the gender gap in self-employment earnings can be significant. The gender gap for total earnings tends to be larger than the gender gap for wages.

2. How large is the gender pay gap?

Globally, the gender pay gap is estimated to be 22.9 per cent; in other words, women earn 77.1 per cent of what men earn.¹⁴ However, the size of the gender pay gap varies by sector, by occupation, by group of workers, by country and over time. It is usually smaller in the public sector than in the private sector and is highest among older workers. The pay differential between men and women with family responsibilities, as well as between women with and without family responsibilities, is also significant.

The more women are found in a certain job category, the lower the wages for all workers in that type of job.¹⁵ Low-wage employment is much higher for women than men, and this gendered distribution of

low-wage employment is also linked to the vulnerability of female-dominated occupations to low-pay risk.¹⁶ The gap is largest in some manual jobs where there are few women. But it is also true for some non-manual occupations such as top managers and legislators. From 2003 to 2006 in the European Union (EU) the hourly gender pay gap stagnated at 15 per cent, increasing to 17.1 per cent in 2009.¹⁷ Among OECD countries, Japan and the Republic of Korea have the largest gender pay gap of around 30 to 40 per cent respectively for full-time employees.¹⁸ In Latin America, a study indicated that the gender gap in hourly earnings in the non-agricultural sector was 22 per cent, but it was 36 per cent for monthly earnings, and in many countries in Asia, the Middle East and North Africa the gap was more than 40 per cent in some sectors.¹⁹

Albeit slow, there has been some progress towards more equal earnings between men and women, though it is estimated that at the current rate of progress, it would take more than 75 years to bridge the gap.²⁰ The graph below shows that most countries have seen a decline in the monthly gender pay gap across the economy between 1995 and 2009. The pay gap tends to be larger in countries with a high incidence of part-time employment in which women tend to be over-represented, for example in the United Kingdom, the Netherlands and the Republic of Korea. Where women who work part-time earn less than their full-time female peers, then the monthly gender pay gap becomes even worse once the part-timers are included.²¹



EVOLUTION OF MONTHLY GENDER PAY GAPS IN 48 COUNTRIES, CA. 1995 TO CA. 2009



Source: ILO Statistics; Eurostat.

The table below looks at gender pay gaps in Latin American countries, comparing the average pay of male and female urban wage earners of a certain age bracket, and according to years of education completed.

GENDER PAY RATIOS IN LATIN AMERICA (2010 OR LATEST AVAILABLE)

Female to male urban wage earners between 20 and 49 years,
working 35 hours or more

Country	Years of education		
	0-5	6-9	10-12
Argentina	73.6	70.8	78.6
Bolivia (2007)	70.8	70	67.8
Brazil (2009)	71.8	68.8	67.9
Chile (2009)	84.5	77.7	78.8
Colombia	80.0	78.1	78.5
Costa Rica	62.4	82.5	82.0
Dominican Republic	64.8	59.8	66.2
Ecuador	80.7	80.9	83.7
El Salvador	89.3	81.0	86.7
Guatemala (2006)	103.3	73.8	83.6
Honduras	86.3	83.3	84.3
Mexico	70.6	71.4	76.7
Nicaragua (2005)	80.1	76.8	82.2
Panama	69.3	70.9	84.2
Paraguay	81.9	77.1	80.9
Peru	65.4	63.7	69.4
Uruguay	57.2	64.5	69.6
Venezuela	84.5	82	82.7

Source: CEPAL, Statistical Yearbook for Latin America and the Caribbean, 2011.

The gender pay gap over time can narrow either through a “levelling up” or a “levelling down” process. Levelling up is when women’s earnings increase, while men’s earnings remain stagnant or rise at a lower rate than women’s. The gender pay gap levels down when both women’s and men’s earnings decline, but men’s earnings decline faster, or there is an increased proportion of men among the low paid. Hence both the relationship between male and female earnings as well as trends in average male earnings over time need to be looked at.

3. What causes the gender pay gap?

Different factors explain the gender pay gap. The relative importance of these factors varies by country and over time. These factors include -

● **gender differences in education and training**

Overall the gender gap in education has closed, and women’s educational achievements have been noteworthy. However, in some countries women still tend to have fewer years of schooling than men. This is because girls’ education is seen as less useful, or less economically beneficial than boys’. Also girls are usually the first to be kept from school to do domestic work or care for sick relatives. Therefore these women have fewer, less-skilled and lower paid jobs available to them. Stereotyped assumptions and social pressures also tend to channel boys and girls, women and men, into different education and training, with women having a narrower range of education and training opportunities.

● **gender differences in work experience**

Women have more intermittent work patterns than men. They often withdraw from the labour force because of their child-rearing responsibilities, although a growing proportion of women remain in the labour market after giving birth. Skill loss due to work interruptions is penalized for both women and men (who often face military service and unemployment), but is greater for women. When they return to work, unlike men, women tend to lose access to jobs that are commensurate to their skill level.



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● occupational gender segregation

Women work in a smaller and lower-paying range of occupations and industries than men. This is called horizontal occupational segregation. Women work as, for example, secretaries and nurses or day care workers, which are typically paid less than jobs mostly performed by men, such as truck drivers, machinists and miners. This is often a result of stereotyped assumptions regarding what type of work is “suitable” for women.

Women are under-represented at highly paid levels and kept in lower level positions. This is called vertical occupational segregation. It applies even in sectors where the majority of the workforce is women, such as in the health and education sectors.

Female-dominated jobs (often defined as occupations where more than 60% of employees are women) are generally less paid and less valued than male-dominated jobs. The lower rates of pay discourage men from entering these jobs. As a result women are concentrated in different jobs than men. This reinforces the view

that low pay results from market factors and skill requirements rather than the under-valuation of women's jobs. Women's skills are often overlooked, as they are regarded as "natural" female characteristics rather than acquired through experience or training. The classification of occupations as "skilled" or "unskilled" thus also often has a gender bias.

● **part-time v full-time work**

The majority of part-time workers are women. In OECD countries, women represent almost three out of every four people in part-time employment²² and this may contribute to pay differentials. Discrimination can be direct when the hourly pay rate of part-time work is lower than that of full-time work, or indirect when, for instance, limits to lower earnings for national insurance contributions are detrimental to part-timers.

● **enterprise size and union density**

There are also differences between enterprises employing women and men. The size of enterprises employing mainly women is usually smaller than those enterprises employing mainly men, and the trade union density is generally lower. Average pay levels tend to be lower in smaller and low-unionized enterprises.

● **pay discrimination**

Pay discrimination occurs in different forms. In a few cases, sex is still a specific criterion for determining wage rates, which is direct discrimination. This is still found in exceptional cases in some collective agreements and minimum wage instruments that set different rates for women and men, for example in agriculture.²³ There are also some discriminatory legislation and collective agreements limiting the allowances and benefits to which women are entitled.²⁴ However, the main problem is pay discrimination in practice, rather than being set out in laws or collective agreements.

Direct discrimination also occurs when the same job acquires different titles, depending on the sex of the jobholder. Jobs with female titles typically earn less than "male" jobs. The box below illustrates some of these cases.



DIFFERENT JOB TITLES FOR THE SAME WORK

Male job title	Female job title
Salesman	Shop Assistant
Assistant Manager	Manager's Assistant
Technician	Operator
Information Manager	Librarian
Office Manager	Typing Supervisor
Tailor	Seamstress
Flight attendant	Stewardess
Personal Assistant	Secretary
Administrator	Secretary
Chef	Cook
Janitor	Cleaner

Pay discrimination can also occur when women and men doing different jobs, which are of equal value, are paid differently. Such discrimination may result from gender bias in job evaluation methods and job grading systems. These occur because skills, effort, responsibilities and working conditions associated with typically female jobs are unrecognized or undervalued. Women therefore tend to rank lower in job grades and pay scales in the enterprise.

The systems that provide for different pay beyond the basic wage, such as overtime, merit, seniority pay, productivity and family allowances can also contribute to indirect discrimination. Because women have more family responsibilities they work less overtime. Even when they do work overtime, the overtime calculation is less advantageous than for men. Women also have more career interruptions. This is a disadvantage especially when seniority is a large part of overall pay. Productivity bonuses may be higher for skills or responsibilities associated with jobs carried out mainly by men. In some countries women are denied family allowances because only men can be heads of household by law. In addition, men and women can have different bargaining opportunities so that

men obtain higher payments for similar working arrangements and performance levels.

OCCUPATIONAL SEGREGATION



The ILO Committee of Experts has noted that “historical attitudes towards the role of women in society, along with stereotypical assumptions regarding women’s aspirations, preferences, capabilities and “suitability” for certain jobs, have contributed to occupational sex segregation in the labour market. As a result, certain jobs are held predominantly or exclusively by women and others by men. These views and attitudes also tend to result in the undervaluation of “female jobs” in comparison with those of men who are performing different work and using different skills, when determining wage rates.”²⁵

The **Vietnam Country Gender Assessment 2011**, of the World Bank and the Asian Development Bank found that while the gender pay gap had declined since the 1990’s, this trend had come to a halt between 2006 and 2008, with the pay gap stagnating at approximately 25 per cent. An earlier Gender Assessment for Vietnam, had analyzed the gender pay gap as the central indicator of the effect of economic growth on economic opportunities for men and women. According to the earlier Country Assessment, the gap could be explained by the segregation of job opportunities for men and women and the low value attached to women’s work in particular sectors.



Endnotes

- ¹³ The *Resolution concerning an Integrated System of Wages Statistics*, adopted by the 12th International Conference of Labour Statisticians (1973), defines wage rates as: “basic wages, cost-of-living allowances and other guaranteed and regularly paid allowances, but exclude overtime payments, bonuses and gratuities, family allowances and other social security payments made by employers. *Ex gratia* payments in kind, supplementary to normal wage rates, are also excluded”. According to the same resolution, earnings are defined as “remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers’ contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay”. In practice, however, wage and earnings indicators are developed based on country specific criteria that are not always comparable. Therefore the term “wages” and “earnings” are usually employed to refer to both wage rates and earnings.
- ¹⁴ ILO: *A new era of social justice*, Report of the Director-General, Report I(A), International Labour Conference, 100th Session, Geneva, 2011.
- ¹⁵ B.F. Reskin and P. Roos: *Job Queues, gender queues: explaining women’s inroad into male occupations* (Philadelphia, Temple University Press, 1990); T. Gálvez, “Discriminación de género en el Mercado laboral: la brecha de ingresos 2001”, in L. Abramo (ed.): *Trabajo decente y equidad de género en América Latina* (Santiago de Chile, ILO, 2006), pp. 95-128.
- ¹⁶ ILO: *Global Wage Report 2010/2011: Wage policies in times of crisis*, Geneva, 2010.
- ¹⁷ European Commission: *Gender gaps in European labor markets: Measurement analysis and policy implications*, Staff working paper SEC(2003) 937, 2003; European Commission: *The gender pay gap in Europe from a legal perspective* (Brussels, 2010); United Nations Economic Commission for Europe Conference of European Statisticians: Note by Eurostat – *The unadjusted gender pay gap in the European Union*, UNECE Work Session on Gender Statistics (Geneva, 26-28 April 2010), Working Paper 1; Eurostat, *Gender pay gap statistics 2010*, at ec.europa.eu/eurostat [1 Nov. 2012].
- ¹⁸ OECD: *Employment Outlook*, 2012, Statistical Annex Table I.
- ¹⁹ M. Corley, Y. Perardel and K. Popova: *Wage inequality by gender and occupation: A cross-country analysis* (Geneva, ILO, Employment Strategy Papers No. 20, 2005), p.1.
- ²⁰ *A new era of social justice*, op. cit.
- ²¹ S. McGuinness, E. Kelly, P.J. O’Connell and T. Callan: “The impact of wage bargaining and worker preferences on the gender pay gap”, in *European Journal of Industrial Relations* (2011, Vol. 17, No. 3), pp. 277-293.
- ²² Source: OECD: *Women and men in OECD countries*, at www.oecd.org/dataoecd/19/14/38172488.pdf
- ²³ *Giving globalization a human face*, op. cit., paras 680, 684.
- ²⁴ *Ibid.*, paras 693-694.
- ²⁵ ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts), general observation on Convention No. 100, published 2007.



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Convention No. 100: The right to equal remuneration for men and women for work of equal value

1. What does Convention No. 100 state?²⁶

- defines “remuneration” to include the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable, directly or indirectly, whether in cash or in kind by the employer to the worker and arising out of the worker’s employment. This broad definition makes it clear that all elements in addition to the ordinary, basic or minimum wage or salary should be considered as part of the remuneration for the purposes of the Convention;
- indicates that “equal remuneration for men and women workers for work of equal value” refers to rates of remuneration established without discrimination based on sex;
- requires member States to promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value;
- allows for flexibility in the manner of promoting and ensuring application. The Convention refers to this being done “by means appropriate to the methods in operation for determining rates of remuneration”;
- provides that the principle may be applied by means of one or more of the following: national laws or regulations, legally established or recognized machinery for wage determination, collective agreements;
- provides for the promotion of objective job evaluation on the basis of the work to be performed, where this will assist in giving effect to the provisions of the Convention;
- allows for flexibility in the evaluation methods that can be used – the methods are decided by the authorities responsible for the determination of rates of remuneration or by the parties to collective agreements;
- provides that different rates between workers, based on such objective evaluation, are not contrary to the principle of the Convention;
- acknowledges the key role of workers’ and employers’ organizations;
- states that member States are to cooperate as appropriate with employers’ and workers’ organizations to give effect to the provisions of the Convention.
- Recommendation No. 90 provides further guidance on a number of these issues.



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2. When are differences in remuneration permitted?

Differences in remuneration are permitted when there are objective differences in the value of the work to be performed. The concept of equal remuneration for work of equal value requires a means of measuring and comparing different jobs on the basis of objective criteria such as skills, working conditions, responsibilities and effort. Where job evaluation based on objective criteria, free from stereotyped notions of the value of jobs typically undertaken by women or men, results in some jobs having different values from others, these differences should be reflected in levels of remuneration.

Job evaluation, which aims at measuring the relative value of jobs based on the work to be performed, is different from performance appraisal. However, performance appraisal, which evaluates the performance of an individual worker, can have an impact on the remuneration. If there are, for example, performance or productivity bonuses provided, differences in overall monthly remuneration may be justified. This is not discriminatory provided that the criteria for performance and productivity are not themselves discriminatory and everyone has the opportunity to have the advantage of these bonuses. If, for example, part-time workers are not eligible for certain bonuses, and most of the part-time workers are women, this could result in indirect wage discrimination.

Recommendation No. 90, which accompanies Convention No. 100, gives particular emphasis to the importance of the social partners in the context of job evaluation, and provides that Members should, in agreement with the employers' and workers' organizations concerned, establish or encourage job evaluation methods.²⁷

3. Which workers are covered?

The scope of Convention No. 100 is broad, as it refers to “all workers” without any qualification. There are no exclusions or reservations permitted. It includes migrant workers whether permanent or temporary, whether regular or irregular. Workers in agriculture, family undertakings and domestic service are also to benefit. The principle is to be applied very broadly so all groups should be covered in all sectors. It applies in the public and private sectors, including manufacturing, services and agricultural, whether formal or informal.

4. Is equal remuneration relevant to all countries?

Equal remuneration is a fundamental right that is relevant to all countries, though the manner in which it is implemented in practice may vary from country to country and over time. The Convention allows every country to promote and ensure equal remuneration in ways that best suit their national context. There is flexibility in the

means of application, though the principle of equal remuneration must be respected and the measures taken should be effective. The principle is inextricably linked with securing gender equality.



Endnotes

- ²⁶ The text of the Convention and its accompanying Recommendation (No. 90) is found at Appendix 3.
- ²⁷ Equal Remuneration Recommendation, 1951 (No. 90), Para. 5.

SLOW DOWN
MEN AT
WORK

4

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Understanding the concept
of “equal remuneration for
work of equal value”

1. What is the difference between “equal remuneration for work of equal value” and “pay equity”?

“Equal remuneration for work of equal value” is the principle that is designed to achieve “pay equity”. Pay equity is about fairness in pay. The two terms are, however, often used interchangeably.

Both terms are concerned with redressing the undervaluation of jobs typically performed by women. Pay equity entails ensuring that -

- the same or similar jobs are paid equally; and
- jobs that are not the same, but are of an equal value, are paid equally.



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2. What is equal work?

The concept of “work of equal value” includes but goes beyond “equal work”. Equal pay for equal work means that similarly qualified women and men will be paid equally when they perform the same or virtually the same work in equivalent conditions. This limits the application of the equal pay principle to work undertaken by women and men in the same area of activity and in the same enterprise.²⁸

Where two people are doing work that is the same or similar, they should be paid equally. A clear form of pay discrimination is when women receive lower pay than men when they are performing the same or similar job. This form of discrimination still exists, but it is easier to identify and to remedy than a claim of work of equal value.

In some countries the law provides for equal pay where work is performed under similar conditions, or requiring similar qualifications and skills. Such an approach, while included in the concept of equal value, is limited to comparing like with like. Convention No. 100 also refers to work that is not at all alike, but is still of equal value.

3. What is work of equal value?

Equal pay for work of equal value covers not only cases where men and women do the same or similar work, but also the more usual situation where they do different work. When men and women perform work that is different in content, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions, but is overall of equal value, they should receive equal remuneration. This concept is critical to eliminating discrimination and promoting equality, since women and men often perform different jobs, under different conditions and even in different establishments. Women continue to be concentrated in a limited number of jobs, and jobs held predominantly by women tend to be undervalued.

Equal value can apply where jobs performed by women and men:

- are performed under different conditions
- require different qualifications or skills
- require different levels of effort

- involve different responsibilities
- are performed in different places or enterprises, or for different employers.

Some of the jobs that have been compared in the context of equal pay include:

Wardens in accommodation for the elderly	with security guards
MOSTLY WOMEN	MOSTLY MEN

School meal supervisors	with park supervisors
MOSTLY WOMEN	MOSTLY MEN

Caterers and cleaners	with gardeners and drivers
MOSTLY WOMEN	MOSTLY MEN

Social and community service workers	with state and local government employees
MOSTLY WOMEN	MOSTLY MEN

Social affairs managers	with engineers
MOSTLY WOMEN	MOSTLY MEN

Speech therapists	with pharmacists
MOSTLY WOMEN	MOSTLY MEN

Librarians	with refuse collectors
MOSTLY WOMEN	MOSTLY MEN

Flight attendants	with pilots and mechanics
MOSTLY WOMEN	MOSTLY MEN

Account clerks	with letter carriers, mail handlers and sorters
MOSTLY WOMEN	MOSTLY MEN

The ILO Committee of Experts has noted that “In its examination of governments’ reports submitted under the Convention, the Committee has been pleased to note cases in which the principle has been applied to compare the remuneration received by men and women engaged in different occupations, such as wardens in sheltered accommodation for the elderly (predominantly women), and security guards in office premises (predominately men); or school meal supervisors (predominately women) and garden and park supervisors (predominately men). Comparing the value of the work done in such occupations, which may involve different types of qualifications, skills, responsibilities or working conditions but which is nevertheless work of equal value overall, is essential in order to eliminate pay discrimination which results from the failure to recognize the value of work performed by men and women free from gender bias.”²⁹

THE NOTION OF “WORK OF EQUAL VALUE” IN PRACTICE



In **Australia**, a recent landmark case decided by Fair Work Australia, the highest labour tribunal in the country, brought about pay adjustments in the Social, Community, Home Care and Disability Services Industry (SACS). The Tribunal accepted that for employees in this industry, more than 80 per cent of whom are women, there was no equal remuneration for men and women for work of equal value, using comparable service workers in state and local government employment as a reference group. Accepting the argument of the applicants, the Tribunal agreed that low pay in the SACS industry was gender-based. Following an invitation to make submissions on how to determine the extent to which lower wage rates in the SACS industry were due to gender considerations, applicant unions and the Government negotiated an equal remuneration order, which was issued by the Tribunal in June 2012.³⁰

In **Canada**, the Supreme Court of Canada in a decision of November 2011, reinstated a decision of the Canadian Human Rights Tribunal, finding that clerical work, performed mostly by women, was of equal value to the higher paying sorting and delivery work (postal operations) which was performed mainly by men. The decision concerns work of a different nature but which was determined through the Hay method of evaluation to be of equal value.³¹

In **Iceland**, a claim for equal pay between a female manager of the social affairs department of a municipality and a male engineer was successful before the Supreme Court.³²



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4. What does the term “remuneration” cover?

To determine if remuneration is equal, it is important to compare all the elements of the earnings package. “Remuneration” should be given the widest possible meaning if equality is to be achieved in the workplace. It is a term going well beyond the basic pay package to include “any additional emoluments whatsoever”,³³ and whether paid “directly or indirectly” and “in cash or in kind”. It also includes payments or benefits received regularly or only occasionally. Remuneration includes for example overtime and bonus payments, company shares, and family allowances paid by the employer, as well as benefits in kind such as the provision and laundering of work clothes (see box below).

The basic or minimum wage is often only a small part of the overall payments and benefits that a worker receives. Therefore, if there is only equality in the amount of the ordinary, basic or minimum salary, and not in respect of other work-related payments or benefits, discrimination will be perpetuated. Other elements of remuneration,

such as allowances, can be significant and should be provided to workers without discrimination based on sex.

The definition of “remuneration” in Convention No. 100 makes it clear that the payments at issue are those arising out of the worker’s employment. With respect to social security benefits, therefore, those financed by the employer or the industry concerned are covered by the Convention, while those paid through public social security schemes are not.

ELEMENTS OF REMUNERATION - EXAMPLES

Basic wage
Minimum wage
Ordinary wage
Overtime pay
Productivity bonus
Performance payments
Seniority increment
Family, child or dependency allowance
Tips/gratuities
Laundering provided or an allowance
Travel allowance or expenses
Car provided
Accommodation provided or an allowance
Clothing provided or an allowance
Commission
Life insurance
Employer or industry social insurance
Company shares or profits
Food provided or an allowance

It does not matter whether the term “remuneration” or “pay” is used in the national context, as long as it includes the wide range of elements foreseen in Convention No. 100.

Endnotes

- ²⁸ Much of this Part is based on the information and analysis provided in the General Surveys. For more information on the issues raised in this Part, see *Giving globalization a human face*, op. cit.; and ILO: *Equal remuneration*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 1986.
- ²⁹ Committee of Experts, general observation on Convention No. 100, published 2007.
- ³⁰ Fair Work Australia: [2011] FWAFB 2700; [2012] FWAFB 1000; FWA order, 22 June 2012.
- ³¹ Public Service Alliance of Canada v. Canada Post Corp., op.cit.
- ³² Supreme Court, Case No. 258/2004, decision of 20 January 2005.
- ³³ Convention No. 100, Article 1(a).



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Comparing jobs and determining equal value

1. How is equal value determined?

“Value” is the worth of a job for the purpose of determining remuneration. Convention No. 100 clarifies what cannot be used in determining “value”, namely that rates of remuneration are to be established without discrimination based on sex. But the Convention is not about proving discrimination, it is about the importance of assessing value. The Convention underlines the importance of objective job evaluation in this respect. Differential pay rates for jobs which correspond to differences determined by such objective methods are consistent with the principle of equal remuneration for work of equal value.

Determining whether work is of equal value should be made on the basis of objective criteria, free from gender bias. Objective job evaluation methods are the best means of determining the value of the work to be performed.

The ILO Committee of Experts has stressed the importance of job evaluation: “The concept of “equal value” requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions ... Job evaluation is a formal procedure which, through the analysis of the content of jobs, gives a numerical value to each job ... For the purpose of ensuring gender equality in the determination of remuneration, analytical methods of job evaluation have been found to be the most effective.”³⁴

“Whatever methods are used for the objective evaluation of jobs, particular care must be taken to ensure that they are free from gender bias: it is important to ensure that the selection of factors for comparison, the weighting of such factors and the actual comparison carried out, are not inherently discriminatory. Often skills considered to be “female”, such as manual dexterity and those required in caring professions, are undervalued or even overlooked, in comparison with traditionally “male” skills, such as heavy lifting.”³⁵

2. What is a job evaluation method?

A job evaluation method (often called a JEM) is a process that compares jobs to determine the relative position of one job to another in a wage or salary scale. Any employer who pays different wage rates for different jobs uses some form of job evaluation method, whether informal or formal.

There are two types of formal job evaluation methods:

- global or ranking evaluation methods; and
- analytical job evaluation methods.

Global or ranking methods rank jobs on the basis of the importance of the job requirements. They examine the whole job rather than its individual components. This tends to identify the characteristics of the jobholder with the characteristics of the job itself. Ranking methods ascertain the importance of jobs within organizations, but do not determine the difference in value between them.³⁶

Analytical job evaluation methods break jobs down into components or factors and sub-factors, and attribute points to them. Factors include:

- Skills and qualifications acquired through education, training or experience;
- Responsibility for equipment, money and people;
- Effort, which can be physical, mental and psychosocial; and
- Working conditions, which encompass both physical (noise, dust, temperature, and health hazards) and psychological aspects (stress, isolation, frequent interruptions, simultaneous requests and client aggression).

By determining the numerical value of a job, analytical job evaluation methods show whether two different jobs have the same value or not. Different jobs that have the same numerical value are entitled to equal remuneration. Job evaluation is concerned with the content of the job, not with the skills and characteristics of those performing the job, nor with their performance.

3. How can gender stereotyping and bias in job evaluation be avoided?

Analytical job evaluation methods were first conceived in the 1950s. At that time, physical effort, a characteristic of male jobs, was emphasized. Important aspects of female jobs, such as cleaning, looking after others and organizing others were disregarded. Today job evaluation methods rely on a larger set of factors. This is due to the technological advances over the past 50 years, the job shift from manufacturing to services and the greater attention paid to “soft skills”.

But even when job evaluation methods capture the skills of typical female jobs, these often score lower than male jobs.³⁷ Responsibility for money or equipment, for instance, is often valued more than responsibility for people. This is due to the false assumption that the skills associated with looking after others or cleaning – jobs that resemble the work performed by women for free at home – are intrinsic to women’s nature and not acquired through learning and experience. This leads to the systematic under-estimation of female-dominated jobs. It translates into lower wage rates for women. The box below lists many requirements of “women’s jobs” that are often overlooked.

FREQUENTLY OVERLOOKED JOB CHARACTERISTIC IN “WOMEN’S WORK”³⁸



Skills

- Knowing emergency procedures when caring for people
- Using a number of computer software and database formats
- Operating and maintaining different types of office, manufacturing, treatment, diagnosis or monitoring equipment
- Manual dexterity in giving injections, typing or graphic arts
- Writing correspondence for others, minute taking, proof reading and editing other’s work
- Handling complaints
- Innovating – developing new procedures, solutions or products
- Establishing and maintaining manual and automated filing or records management and disposal
- Training and orientating new staff
- Dispensing medication to patients

- Continuing reordering and reprioritizing tasks to meet external demands
- Interpersonal skills – including non-verbal communication, knowing how to create the right atmosphere, counselling someone through a crisis
- Gathering and providing information for people at all levels in the organization

Physical and emotional demands

- Adjusting to rapid changes in office or plant technology
- Concentrating for long periods – computers or manufacturing equipment
- Performing complex sequences of hand eye coordination in industrial jobs
- Providing a service to several people or departments while working under a number of simultaneous deadlines
- Frequent bending or lifting – including adults or children
- Regular light lifting
- Restricted movement, awkward positions
- Providing caring and emotional support to individuals (e.g. children or those in institutions)
- Dealing with upset, injured, irate, hostile or irrational people
- Dealing with death and dying
- Exposure to corrosive substances or materials e.g. skin irritations from cleaning

Responsibility

- Acting on behalf of absentee supervisors
- Representing the organization through communication with clients and the public
- Supervising staff
- Shouldering the consequences of errors to the organization
- Managing petty cash
- Keeping public areas such as waiting rooms and offices organized
- Preventing possible damage to equipment
- Coordination of schedules for a number of people
- Developing work schedules
- Product quality

Working conditions

- Stress from noise in open spaces, crowded conditions and production noise
- Exposure to disease
- Cleaning offices, stores, machinery or hospital wards
- Long periods of travel and/or isolation
- Stress from dealing with complaints

These often overlooked requirements are key to developing job evaluation methods that redress gender bias in the description and assessment of “male” and “female” jobs. The box below outlines some of these methods.

SELECTED JOB EVALUATION METHODS FREE FROM GENDER BIAS³⁹



Steps to Pay Equity method

This method was developed by the Equal Opportunities Ombudsman of Sweden to facilitate pay equity. It is a quick and easy method for determining the demands and degree of difficulty associated with particular jobs. Steps to Pay Equity can ascertain whether differentials in men's and women's wages are due to sex discrimination. This method can be used for different purposes: to determine work of equal value in connection with wage surveys required under the law; rank different jobs; compare two or more jobs; determine whether a job evaluation is required and develop criteria for assessing the employee's ability to perform the work.

ABAKABA and EVALFRI methods

The Analytical Evaluation of Jobs (ABAKABA) was developed in Switzerland in 1996. ABAKABA should be used with a screening instrument known as VIWIV (or do I earn what I deserve?). It is aimed at women who suspect they may earn less than a male colleague in a comparable job. ABAKABA and VIWIV can be used for all job classes in an organization, from clerical to manual, irrespective of the level or content. The EVALFRI method is an adaptation of ABAKABA commissioned by the Fribourg Council of State for public employees.

ISOS - a gender neutral job evaluation method

This method was developed in 2003 by the Polytechnic University of Catalunya in cooperation with several European universities at the request of the Women's Bureau of the Ministry of Labour and Social Affairs of Spain. ISOS is a user-friendly, computerized job evaluation system that is compatible with the most common software programs. ISOS assigns points to the examined jobs on the basis of the responses given to a close-ended questionnaire. The Women's Bureau makes the electronic version of the ISOS system available free of charge in Spanish.

NJC JES - National Joint Council Job Evaluation System

This method was developed jointly by representatives of employers' and workers' organizations through national councils for application to UK local government. This system applies to all occupations within an organization and is points-based.

A non-discriminatory job evaluation method means making values explicit and balanced so that they do not favour either “male” or “female” jobs. It ensures a transparent remuneration system where jobs that have the same points get the same remuneration, irrespective of sex. The application of a job evaluation method entails different stages. Gender biases must be detected and addressed at each one. The following box outlines these stages.



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PHASES OF ANALYTICAL JOB EVALUATION FREE FROM GENDER BIAS⁴⁰



- 1. Establish and train the job evaluation or pay equity committee.* Usually a committee is set up at the workplace to carry out a job evaluation process. It should have an equal number of men and women. The women should not all have low-status jobs. The men should not all hold management positions. There should be equal numbers of workers and managers. The committee must be trained in the technical aspects of the job evaluation method used, in sex discrimination in remuneration and on the concepts related to equal pay.
- 2. Select the jobs to be evaluated and compared.* This requires identifying female- and male-dominated jobs. One key criterion is the proportion of women or men performing a particular job. A job where more than 60% of the workforce is of either sex is often considered female- or male-dominated. All jobs – whether part-time or full-time, temporary or permanent – must be taken into account. In highly female-dominated sectors, there may be no male-dominated jobs. One approach to address this is to look to industry-level pay equity initiatives or initiatives taken by sector-based committees. In some cases, a hypothetical comparator has been used.⁴¹
- 3. Select the method.* Analytical methods are better to identify and redress sex discrimination in remuneration and promote equality. Once the method has been chosen, the factors and sub-factors or job requirements should be identified which should adequately cover overlooked aspects of “women’s” work. All relevant aspects of “male” and “female” jobs must be described because only what appears is measured.
- 4. Assign weight to each factor.* Each factor has an evaluation scale with different levels of intensity or frequency. Not all factors are equally important to the work of an enterprise, and their weighting must reflect these differences. The weighting must be transparent and free from gender bias.
- 5. Gather job-related information.* The content of the jobs to be evaluated must be known. Information can come from formal job descriptions, questionnaires and/or interviews of jobholders. The questions must be adapted to both female- and male- dominated jobs. Jobholders, as well as supervisors, must be involved in data gathering and both parties must endorse the information. Possible disagreements must be discussed and resolved.
- 6. Examine the results.* On the basis of both the information gathered and the agreed set of factors, sub-factors and corresponding evaluation scales, the committee draws up the job descriptions of the evaluated jobs.
- 7. Determine the value of the jobs.* Points are then assigned to the jobs reviewed, according to their revised job descriptions and factor weightings. These are grouped in point intervals.

8. Analyze and adjust score outcomes. Once the evaluation work and the points calculation have finished, the score outcomes must be examined. This entails verifying if there are systematic differences in the way “male” and “female” jobs scored, and in the wage rates for those jobs.

The **ILO** has developed a step-by-step guide for gender neutral job evaluation for equal pay, which offers more details and practical guidance on this issue (see Appendix 1).



4. What is required for a job evaluation method to be successful?

The key ingredients of a successful job evaluation method are:

- ☑ Participation of all stakeholders concerned in all phases of pay equity implementation. This is key to enhancing the understanding and acceptance of pay equity among management and labour.
- ☑ Training for all parties involved. This is essential for a smoother process and sounder outcomes.
- ☑ Transparency, which is crucial to building employees' trust in the process and ensuring that all parties carry out their duties effectively.
- ☑ Communication so that all employees, even those whose jobs will not be assessed, are informed about the rationale, methods, phases and expected outcomes of pay equity implementation.
- ☑ Support for an enabling environment for the implementation of pay equity at the workplace level. This includes: guides and other training materials, supply of training, awareness-raising campaigns about sex discrimination in remuneration; advice to workers' and employers' organizations and the creation of pay equity commissions or Ombuds offices.
- ☑ Sectoral committees, which can be especially useful when small and medium sized enterprises (SMEs) are involved. These committees can prepare job evaluation methods and associated questionnaires, training modules and guides that are relevant to particular sectors, as well as reduce the administrative costs of implementing pay equity, including the fees of a pay equity consultant.



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Endotes

- ³⁴ *Giving globalization a human face*, op. cit., paras 695, 700.
- ³⁵ Committee of Experts, general observation on Convention No. 100, published 2007.
- ³⁶ Global or ranking evaluation methods are not accurate and are difficult to use when there are more than 10 job classes. Furthermore, the comparison and ranking process must be repeated each time a new job class is introduced. The evaluators' judgement is heavily influenced by the traditional value of the job. See Pay Equity Task Force: *Pay equity: A new approach to a fundamental right, Final report 2004*, Ottawa, Canada.
- ³⁷ Even the Hay-Guide-Chart-Profile-Method, that has helped reveal the existence of sex discrimination and social prejudices in the assessment of women's work, displays some gender biases. Its heavy emphasis on skills, mental effort and responsibility favours high-ranking positions where men prevail, and disregards aspects such as caring and being responsible for other people, that characterize jobs performed by women. See Ch. Katz and Ch. Baitsch: *L'égalité des salaires en pratique: deux outils d'évaluation du travail non discriminatoire à l'égard des sexes: ABAKABA et VIWIV* (Geneva, vdf and Georg Editeur, 1996), p. 27.
- ³⁸ Adapted from J. Burns: *Job evaluations for unions*, Seminar March 2005.
- ³⁹ See A. Harriman and C. Holm: *Steps to Pay Equity: An easy and quick method for the evaluation of work demands* (Stockholm, Equal Opportunities Ombudsman, 2001); Ch. Katz and Ch. Baitsch: *L'égalité des salaires en pratique: deux outils d'évaluation du travail non discriminatoire à l'égard des sexes: ABAKABA et VIWIV*, op. cit.; S. Hastings: *Pay inequalities in local government*, submission by Sue Hastings to Local Government Pay Commission on behalf of the Trade Union side. See www.unison.org.uk/acrobat/B823.pdf; Pay Equity Task Force: *Pay equity: A new approach to a fundamental right*, op. cit.
- ⁴⁰ See ILO: *Promoting equity: Gender-neutral job evaluation for equal pay: A step-by-step guide*, (Geneva, 2008); ILO: *Equality at work: Tackling the challenges*, Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 2007.
- ⁴¹ For example in Austria and Canada (Quebec): See *Giving globalization a human face*, op. cit., para. 699.



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Wage fixing and equal pay

1. What type of wage fixing is relevant to equal pay?

There are four main types of wage fixing, and each has a role in promoting equal pay. These involve –

- i. centralized wage fixing by the government or government institutions;
- ii. collective bargaining;
- iii. arbitration by labour tribunals or other bodies; and
- iv. agreement between the employer and the worker.

Often hybrid systems are in place in the formal economy whereby minimum wages are set by legislation or by arbitration, and wages above that level are set through collective bargaining. Regardless of the wage fixing system in place, equal pay should be an integral component of that system.

2. What is the role of minimum wages?

Centralized wage fixing is often carried out through the setting of minimum wages. A minimum wage policy sets a floor for the wage structure to protect low-wage earners. Since women are disproportionately represented among low-pay earners,⁴² they benefit more from this policy. By fixing comparable wages across sex-segregated occupations and different workplaces, a minimum wage policy can help address sex discrimination in overall pay structures. In order to maximize the impact of minimum wages on gender equality, coverage has to be broad. In other words, industries and sectors in which women are concentrated should not be excluded from coverage of generally applicable national minimum wage rates, and where rates are set at the industry level or by occupation, coverage for jobs and sectors where women prevail should be ensured. Equally important is setting the minimum wage at the right level and ensuring effective enforcement.⁴³

Convention No. 100 refers to the “legally established or recognized machinery for wage determination” as one of the means to apply the principle of equal remuneration.⁴⁴ In many countries “machinery for

wage determination” involves the setting of minimum wages. The setting and enforcement of minimum wages is an important means of applying the Convention. Studies show that minimum wages can help decrease wage inequalities between men and women, if they are set at an adequate level and are regularly reviewed and adjusted.

In the **United Kingdom**, the Low Pay Commission concluded that in narrowing the gender pay gap, the minimum wage had the greatest impact on women’s pay since the Equal Pay Act 1970.⁴⁵ In 2009 in the United Kingdom, women accounted for two-thirds of workers in jobs paid at the minimum wage.⁴⁶ An **OECD** study found that minimum wages reduce the spread between wages earned by men and women workers because women tend to be over- represented in jobs at the base of the wage scale.⁴⁷

The **Minimum Wage Fixing Convention**, 1970 (No. 131) and its accompanying Recommendation No. 135 give guidance on the setting of minimum wages. The Recommendation lists the following forms of wage fixing machinery to set minimum wages:

- Statute
- Decisions of the competent authority, with or without formal provision for taking into account recommendations from other bodies
- Decisions of wage boards or councils
- Industrial or labour courts or tribunals
- Giving the force of law to provisions of collective agreements

Different wage rates for men and women are clearly prohibited under Convention No. 100. Job titles indicating the sex of the job holder (e.g. maid and barman) should be avoided, as they reinforce stereotypes as to whether certain jobs should be carried out by a man or a woman. Gender-neutral terminology should be used to avoid such stereotypes.

Where minimum wages are set by sector and occupation, discriminatory under-rating of work in female-dominated sectors and occupations should be assessed and remedied. Mechanisms should also be put in place to ensure it is avoided in future. Due to the continuing tendency to undervalue work performed by women, gender stereotyping leads to minimum rates for such occupations and sectors that do not reflect the value of the work performed.

Equal remuneration for men and women for work of equal value must be made a concern that is taken into account throughout the minimum wage setting process, for example by analyzing and comparing the content of the work involved on the basis of objective criteria.

DOMESTIC WORKERS: ENSURING MINIMUM WAGE COVERAGE



Domestic work is among the lowest paid occupations in any labour market. Low levels of education among domestic workers explain this to some extent, but gender-based undervaluation and pay discrimination also play a role. Some 83 per cent of domestic workers globally are women, according to recent ILO estimates.

Domestic work involves to a large extent tasks that women have traditionally shouldered in the home without pay, such as cleaning, cooking, shopping, laundry, as well as caring for children, the elderly or other members of the household in need of care. Undervaluation of domestic work results from the fact that the required skills and competencies are not appropriately recognized when remuneration is fixed because of stereotypical perceptions that these are innate and not acquired through experience or on-the-job training.⁴⁸

Recognizing that minimum wage fixing is an appropriate instrument for addressing low pay among domestic workers and related pay discrimination, in view of their low unionization and weak bargaining power, **the Domestic Workers Convention, 2011 (No. 189)** calls for “measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.” (Article 11).

In **Chile**, domestic workers have been entitled to the national minimum wage since 1 March 2011. This was achieved through progressively increasing the domestic workers’ minimum wage rate, which was previously set at 75 per cent of the general rate.

In **Portugal**, the minimum wage rate applicable to domestic workers had been gradually increased and, in 2004, a single national minimum wage was established for the first time, thus aligning the rate for domestic workers with that for other occupations.

In **Switzerland**, a preparatory study commissioned by the Government had compared the remuneration of domestic workers with pay in sectors with similar characteristics and qualifications, finding that some 8.8 per cent of the pay differential could not be explained by objective and observable characteristics such as age or education. As a result, a sectoral minimum wage for domestic workers was introduced at the federal level in 2010.



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3. What is the role of collective bargaining?

In many countries, collective bargaining is one of the main ways of determining terms and conditions of employment, including pay. Collective bargaining, and the conclusion of collective agreements, is therefore crucial in promoting equal pay and ensuring its application in practice. Collective bargaining has also been identified as an important factor in reducing the gender pay gap.⁴⁹

Where legislation does not reflect fully the principle of equal remuneration for work of equal value, collective agreements can ensure that the principle is applied. Even where there is full legislative expression of the principle, collective agreements can provide more effective and accessible monitoring and enforcement. Bargaining can also be used to address directly pay inequalities and problems of low pay though the adjustment of pay levels.

The **Right to Organise and Collective Bargaining Convention**, 1949 (No. 98) calls for the establishment of machinery for the promotion and encouragement of collective bargaining with a view to regulating terms and conditions of employment through collective agreements.

According to the **Collective Bargaining Convention**, 1981 (No. 154), the term “collective bargaining” extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organizations, on the one hand, and one or more workers’ organizations, on the other, for –

- determining working conditions and terms of employment; and/or
- regulating relations between employers and workers; and/or
- regulating relations between employers or their organizations and a workers’ organization or workers’ organizations.

Collective agreements are specifically mentioned in Convention No. 100 as a means of applying the Convention generally, and in the context of establishing job evaluation methods.⁵⁰

Collective bargaining is the process of negotiation between employers or their organizations and workers’ organizations on any issue related to terms and conditions of employment or any other

matter of mutual interest. The Government, when not directly involved as an employer, can take a facilitative role in this process.

The Government can promote collective bargaining by⁵¹ -

- facilitating the voluntary establishment and growth of free, independent and representative employers' and workers' organizations;
- ensuring that such organizations are recognized for the purpose of collective bargaining;
- establishing objective criteria to determine the organizations that have the right to undertake collective bargaining, based on representativeness, and in consultation with workers' and employers' organizations;
- establishing mechanisms for the promotion and encouragement of collective bargaining;
- allowing collective bargaining to take place at any level, including the establishment, undertaking, branch of activity, industry, or regional or national levels;
- ensuring both parties have access to the information required for meaningful negotiations;

In **Belgium**, a collective agreement on equal remuneration between men and women workers was extended by Royal Order, providing that all sectors and enterprises must review and adapt their job classification systems (choice of criteria, weighting of criteria, converting values into remuneration).

In **Iceland**, the Government and the Confederation of University Graduates agreed to make the elimination of the gender pay gap an explicit objective of collective negotiations. As a result, a single salary schedule was negotiated to eliminate discrimination in relation to overtime payments and fringe benefits. Collective agreements have also been negotiated between 15 unions and the City of Reykjavik which include provisions for job evaluation.

In **Singapore**, the Government and the social partners issued the Tripartite Declaration on equal remuneration for men and women performing work of equal value. A tripartite agreement was reached that equal pay clauses should be inserted in collective agreements at the company level. This is being promoted through the website of the Industrial Arbitration Court, which also proposes a model clause.

- providing training on collective bargaining, as determined by the employers' and workers' organizations concerned;
- establishing procedures for the settlement of labour disputes.

The Government can also:

- maintain a public database on agreements concluded;
- maintain statistics on the number and type of collective agreements and their coverage.

The Government can also promote equal pay through collective bargaining:

- as an employer by setting an example in supporting equal remuneration for work of equal value clauses in public sector collective agreements;



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- by providing a legislative framework for equal remuneration that can be used by the parties to negotiate, implement and monitor application through a collectively agreed process;
- by extending collective agreements to all workers and employers in a particular branch of activity or geographical area;
- by providing training on equal remuneration issues, including job evaluation methods;
- through other measures to encourage the social partners to give full effect to the principle of equal remuneration for men and women for work of equal value.



Endnotes

- ⁴² See ILO: *Global Wage Report 2010/11: Wage policies in times of crisis*, Geneva, 2010, p. 37.
- ⁴³ See ILO: *Global Wage Report 2008/09: Minimum wages and collective bargaining: Towards policy coherence*, Geneva, 2008, p. 52. To reduce the gender pay gap and benefit women, minimum wages should cover all forms of wage work, including non-standard forms of work and homework. The level of the minimum wage determines who is concerned and in what numbers. The challenge lies in setting it at a level that will bring about improvements in the situation of low-paid workers, without generating adverse impact on employment and inflation. See J. Rodgers and J. Rubery, "Perspectives: The minimum wage as a tool to combat discrimination and promote equality", in *International Labour Review* (2003, Vol.142, No. 42), pp. 543-556.
- ⁴⁴ Article 2(2)(b).
- ⁴⁵ J. Rubery: *Pay equity, minimum wage and equality at work* (Geneva, ILO, Declaration Working Paper No. 19, 2003), p. 48.
- ⁴⁶ Committee of Experts, United Kingdom, direct request, 2012.
- ⁴⁷ F. Eyraud and C. Saget: *The fundamentals of minimum wage fixing* (Geneva, ILO, 2006), p. 88.
- ⁴⁸ See ILO: *Remuneration in domestic work* (Geneva, ILO, Domestic Work Policy Brief No. 1, 2011).
- ⁴⁹ See S. Hayter and B. Weinberg: "Mind the gap: Collective bargaining and wage inequality", in S. Hayter (ed.): *The role of collective bargaining in the global economy: Negotiating for social justice* (Geneva, ILO, 2011), pp. 136-186.
- ⁵⁰ Convention No. 100, Articles 2(2)(c) and 3(2).
- ⁵¹ See the Collective Bargaining Recommendation, 1981 (No. 163) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).



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The role of Government, and employers' and workers' organizations

1. What is the Government's role under Convention No. 100?

- Under international law, treaties in force for a country must be implemented in good faith.⁵² The ILO Constitution states that ILO Members must make provisions of ratified Conventions effective.⁵³ This is the responsibility of the Government. Of course, for equal remuneration to be effective in practice, the social partners, namely the workers' and employers' organizations, must have a key role.
- Under Convention No. 100, each ratifying Member is obliged to promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.⁵⁴ The Government has specific roles and responsibilities in the realization of the right to equal pay that vary depending on the degree and manner in which the Government is involved in the process of determining remuneration. The adoption, implementation and enforcement of legislation giving full expression to the principle of equal remuneration for work of equal value is a key means of promoting and ensuring equal pay.
- The Government must *ensure equal remuneration for work of equal value* whenever it has a direct or indirect influence on the setting or payment of remuneration. This is the case when the Government itself is the employer or when industries or undertakings are under public ownership or control. It also applies when the Government can influence wage policies or levels in other ways, particularly through minimum wage fixing and the enforcement of legislation. Public procurement may also be used as a means of ensuring the application of equal remuneration.⁵⁵
- Where the Government is not in a position to influence levels of remuneration it must nevertheless *promote the application of the principle of equal remuneration for work of equal value*. Where remuneration is determined by collective agreements or individual contracts in the private sector as well as in the informal economy this should occur. In promoting the application of equal remuneration, the State cannot be passive, and needs to take proactive measures.
- Key elements of ensuring and promoting the application of the principle of equal remuneration in accordance with the

Convention are the obligations to promote objective methods for the evaluation of jobs and to cooperate with workers' and employers' organizations.⁵⁶

- Countries that have ratified the Convention are required to provide reports to the ILO on the measures taken to give effect to the Convention and the results achieved.⁵⁷ These reports are examined by a group of independent experts, the Committee of Experts on the Application of Conventions and Recommendations. Some of the comments of the Committee of Experts are then discussed by the tripartite Committee on the Application of Standards during the annual International Labour Conference, and conclusions are adopted. During the Committee on the Application of Standards, a State may be called upon to provide a response to the issues raised by the Committee of Experts and the delegates to the Conference.

2. What is the role of employers' and workers' organizations?

The social partners, namely the employers' and workers' organizations, are crucial to achieving equal pay at the national level. According to Convention No. 100, the application of the equal pay principle must be achieved through social dialogue between the social partners and the Government.⁵⁸

Equal pay issues can be addressed in a range of ways, including through tripartite national consultation on international labour standards or by tripartite working groups on equality. The social partners also often have direct involvement in the national bodies responsible for setting minimum wages. In some countries tripartite task forces have specific equal pay mandates. The social partners as well as the Government should promote equal pay in collective bargaining and at the enterprise level. Job evaluation methods should be established or encouraged through agreement between governments and employers' and workers' organizations.

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Convention No. 100, Article 4

Workers' and employers' organizations both benefit from equal pay. For workers' organizations support for equal pay for their members is a fundamental demonstration that women and men are represented and valued equally. Equal pay affects many members and is an ideal issue on which to recruit and organize campaigns. For employers' organizations, again, equal pay has wide application. Employer support for equal pay can result in an enhanced image both nationally and internationally, better recruitment, higher productivity and worker satisfaction, and improved labour relations.⁵⁹

Minimum wages - The social partners often have a central role in setting minimum wages, and they can be pivotal in examining the functioning of the mechanism in view of the need to promote and ensure equal pay. Access to information on the impact of different minimum wage rates on men and women and on the value of jobs based on objective criteria is key to determining minimum wages that promote equal pay.

In [Sweden](#), observing that sectors with the lowest minimum wage had the largest proportion of female employees, the social partners agreed to increase the minimum wage through collective bargaining.⁶⁰

The Tripartite Commission on Equality of Opportunity and Treatment in Employment (CTIOTE) in [Uruguay](#) recommended the inclusion of an equality clause in the wage board rounds (tripartite sectoral bodies which fix the minimum wage for each occupational category). Under the terms of this clause, the parties agreed to promote Convention No. 100 and to include clauses aimed at implementing the principle of equal remuneration for work of equal value in any future agreements. The Government has stated that as a result of these measures, the number of collective agreements including this type of clause has tripled.⁶¹

Collective bargaining - For workers' and employers' organizations to bargain for equal pay, they must have access to relevant wage data, both need to understand the principle, and what the national law states about it. They can negotiate regarding what form of job evaluation will be undertaken, and at what level, and whether a pay equity committee will be established, and how it would function. They may also need to consider efficiency gains through streamlined job classification systems to offset any pay rises, and to guarantee that no worker will be paid less as a result of the job evaluation



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process. The timing, nature of training and expertise needed for the job evaluation process will also need to be bargained. Existing collective agreements also need to be analyzed to ensure they do not directly or indirectly result in wage discrimination.

Workplace audits - Voluntary or compulsory workplace equality or equal pay audits are becoming more and more prevalent. Such audits may assist in identifying the extent of unequal pay as part of the bargaining process. A joint approach involving workers' and employers' representatives has proven effective in many countries in developing and implementing pay audits.⁶²

Building alliances - Workers' and employers' organizations can gain in the pay equity area by building alliances and coalitions with groups in the wider community. Human rights, community-based, legal and economic development organizations are often valuable sources of support and information along with groups that represent women. Media contacts and community forums can also generate valuable support.

Mobilizing members - The organization and mobilization of trade union members around pay equity requires preparation and specific action. The leadership, in consultation with members and potential members, could map out an action plan that involves some or all of the following, depending on national circumstances:

- briefing of workplace delegates;
- writing and distributing written material for the membership;
- scheduling of membership meetings on the issue (at a time and place suitable for all workers, including part-time workers and those with family responsibilities);
- using appropriate communications technology such as the internet, television, radio, social networking, or mobile text messaging, depending on content and target;
- designing and displaying posters;
- developing appropriate media releases and undertaking media interviews;
- providing training to a core team on the concepts and methods associated with equal pay.

If this can be done in cooperation with employers, it will be even more effective. Also if it can be done with the support of other unions, including the central union federation or confederation, it is more likely to succeed.

Developing a pay equity strategy - Linking planning elements into a successful strategy can first involve looking at the experiences and resources of other organizations. Public Services International (PSI) for example, has helped many of its national affiliates conduct successful pay equity campaigns. The PSI website lists several case studies as well as resources that can be used in strategy development.⁶³

The targeting and timing of, and resources put to each part of the strategy must also be decided.

- *Targeting* involves ensuring that the right message is delivered to the right audience.
- *Timing* means a sequence of actions that can build on each other.
- *Resources* -- human, material and financial -- will need to support a sequenced targeting strategy.
- For example, a strategic sequence might involve -
 - (1) undertaking research on the national situation;
 - (2) raising membership awareness of the issue through workplace delegates meetings;
 - (3) requesting support from the national centre;
 - (4) arranging consultations on the issue with the Government and employers' organizations;
 - (5) seeking external support from rights organizations and communities;
 - (6) launching publicity campaigns;
 - (7) lodging claims with employers;
 - (8) holding negotiations with employers judged most likely to succeed;
 - (9) continuing negotiations with other employers; and
 - (10) filing of dispute notifications where negotiations have failed,

all while continuing to involve and communicate at each step with the membership.

3. How can cooperation between Government and the social partners be enhanced?

Cooperation between Government and workers' and employers' organizations to promote their active participation depends on the industrial relations system of each country. However several types of cooperation are available. These include –

- Discussing the application of Convention No. 100 in the context of national tripartite consultations, including any issues raised by the ILO supervisory bodies.
- Providing for consultation and participation of workers' and employers' organizations in the determination of minimum wage decisions.
- Encouraging workers' and employers' representatives to participate in the work of specialized national institutions charged with promoting equality.



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- Establishing tripartite working groups, task forces or steering committees to make recommendations to the Government on equal pay issues.
- Supporting equal pay initiatives of workers' and employers' organizations through technical, financial or other means.
- Making available training, tools and materials to workers and employers and their organizations.
- Ensuring that equal pay is addressed in public sector collective bargaining.
- Undertaking sectoral pay equity reviews.
- Giving workers' and employers' organizations standing to bring equal pay claims.
- Involving workers' and employers' organizations in monitoring and enforcement mechanisms.



EXAMPLES OF TRIPARTITE COOPERATION



In **Cyprus**, the Ministry of Labour and Social Insurance (MLSI), with inputs from the social partners, developed a project with concrete measures aimed at reducing the gender pay gap to be implemented during 2009–13. Some of the measures include the establishment of an effective inspection mechanism for the enforcement of equal pay legislation, the preparation of manuals and guides as tools for investigating cases of inequality in employment, training programmes for trade unions and employers' associations, measures for eliminating occupational and sectoral segregation, interventions promoting the reconciliation of work and family life, and measures for the elimination of gender stereotypes through the education system.

In **Japan**, the Government convened a study group on wage disparities between men and women, which included workers' and employers' representatives. Following the group's report, in 2003 the Government issued guidelines for eliminating wage disparities between men and women. The guidelines have recently been reviewed and revised through consultations between representatives of Government, workers and employers in the context of the Equal Employment Opportunity Subcommittee.⁶⁴

In **Jordan**, a National Steering Committee for Pay Equity (NSCPE) was launched in 2011, which is co-chaired by the Ministry of Labour and the National Commission for Women, and includes representatives of workers' and employers' organizations, as well as of civil society organizations. The mandate of the NSCPE is to promote cooperation among its members in implementing a pay equity national action plan and to coordinate activities aimed at achieving pay equity.

In the **Republic of Korea**, under the Equal Employment and Support for Work-Family Reconciliation Act, the Minister of Labour can appoint "honorary equal employment inspectors", upon the recommendation of both labour and management, to promote equal employment in the workplace.

In **Lithuania**, the Tripartite Council approved a "Methodology for the Assessment of Jobs and Positions" for use by enterprises and organizations. One of the objectives of the Methodology is to reduce the gender pay gap. An agreement between trade unions and employers' organizations on its application was signed in June 2005. The methodology was presented during tripartite meetings and has been published as a brochure and on the Council's web site.

The Minister of Social Affairs and Employment of the **Netherlands** established the study group “Equal pay works” with a mandate to promote the issue of pay equality publicly. The group included representatives of workers’ and employers’ organizations. Its report of February 2007 recommends ways to strengthen compliance with the legislation and to address pay inequalities through collective bargaining.

In **Portugal**, tripartite cooperation for pay equity in the catering sector has produced a new job evaluation method. The catering sector in Portugal is characterized by small enterprises, low earning levels, low productivity, plus high turn over and absenteeism, particularly among women workers. Because of low wages and working time patterns, the sector had difficulties in attracting young national staff. Growing numbers of young, mainly undocumented, migrant women workers are entering the sector. This tends to lower wages even further. This is a concern for trade unions, employers and Government⁶⁵ who came together under a European Commission-financed project to tackle these problems. With technical assistance from the ILO, a tripartite sectoral committee was set up to develop a job evaluation method (JEM) for the sector. After a two-year process, a JEM was adopted and endorsed by the member parties at their highest level. The JEM is expected to help wage bargaining establish more gender-neutral and transparent remuneration systems, and update the sectors’ 30-year old occupational classification system.



Endnotes

- ⁵² Vienna Convention on the Law of Treaties, 1969, Article 26.
- ⁵³ Article 19(5)(d) of the ILO Constitution.
- ⁵⁴ Article 2(1) of Convention No. 100.
- ⁵⁵ See the Equal Remuneration Recommendation, 1951 (No. 90), Para. 2(c).
- ⁵⁶ Convention No. 100, Articles 3 and 4.
- ⁵⁷ Article 22 of the ILO Constitution.
- ⁵⁸ Convention No. 100, Article 4; Equal Remuneration Recommendation, 1951 (No. 90), Paras 1, 2 and 4 refer to consultation with the social partners; Para. 3 provides that information is to be provided to the social partners; Para. 5 provides for agreement on job evaluation.
- ⁵⁹ See also Part I above.
- ⁶⁰ See ILO: *Equality at work: The continuing challenge*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 2011.
- ⁶¹ See Committee of Experts, Uruguay, observation, published 2010; direct request, 2012.
- ⁶² See *Giving globalization a human face*, op. cit., paras 723-724.
- ⁶³ <http://www.world-psi.org>
- ⁶⁴ See *Giving globalization a human face*, op. cit., para. 726.
- ⁶⁵ Namely the General Confederation of Portuguese Workers (CGTP-IN), the Portuguese Trade Union Federation of Agriculture, Food, Beverage, Hotels and Tourism (FESATH), the Association of Restaurants and Allied Trades of Portugal (ARESP), the General Directorate for Labour Inspection and the Committee for Equal Opportunities in Employment (CITE).



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Measures to promote and ensure equal remuneration

1. What strategy can be used to reach pay equity?

Convention No. 100 allows every country to promote and ensure equal remuneration in ways that best suit their national context. While there is flexibility in the means of application, the principle of equal remuneration must be respected and the measures taken should be effective. In this regard, the Convention identifies objective job evaluation and cooperation with the social partners as key elements of any strategy.

Based on the provisions of Convention No. 100 and experience of its application, a strategy to promote and ensure equal remuneration may include the following phases outlined in the box below. Note that in each phase it is critical to consult and engage with the social partners.

THREE MAIN PHASES TO EQUAL PAY

Phase one	Phase two	Phase three
Engage with the social partners	Engage with the social partners	Engage with the social partners
Promote awareness of the gender pay gap	Adopt and enforce legislation	Assess progress
Broaden knowledge of the equal pay – equal value principle	Promote objective job evaluation	Adapt measures as needed
Make equal pay a national policy objective		

(i) *Promoting awareness of the gender pay gap*

It is often thought that pay discrimination based on sex is a matter of the past. Such views are often due to the false belief that equal pay is achieved when different wage rates for men and women doing the same job have been abolished. In fact, a gender pay gap due to sex-based employment discrimination, including unequal pay for work of equal value, continues to exist. Raising awareness of the gender pay gap and its causes is therefore an important starting point to promoting equal pay. Possible action includes –

- Improving the availability of statistics on remuneration disaggregated by sex;
- Undertaking, encouraging and supporting research on the gender pay gap, including its causes and evolution;
- Making reducing the gender pay gap an explicit point for action to promote gender equality;
- Promoting pay surveys;
- Ensuring that information on the gender pay gap reaches the public, policy and decision-makers in politics, labour, the economy, government and civil society.

(ii) *Broadening knowledge of the equal pay - equal value principle*

The content, scope and implications of the equal pay principle must be widely understood if equal pay objectives are to be achieved. This ensures not only that appropriate laws and policies are put in place, but also their proper implementation. Specialized information and training on equal pay is essential for key target groups. These groups include labour and employment officials, those in equality or human rights bodies, judges, labour inspectors, human resource managers and consultants, workers and employers and their organizations, as well as women's organizations.

The Secretariat of State for Labour of the **Dominican Republic** implements ad hoc programmes for employers and workers to raise awareness of equal remuneration. These programmes include media campaigns, brochures, posters, and targeted workshops organized jointly by the Department for Gender Equity and the Directorate of Industrial Relations.

In **Finland**, the Ministry of Health and Social Affairs has issued detailed brochures explaining the meaning of the gender equality legislation, including the equal pay provisions.⁶⁶

In **Sweden**, the Office of the Equality Ombudsman published a brochure on pay surveys explaining the difference between equal work and work of equal value, and setting out the steps to be taken for pay surveys and analysis.⁶⁷

(iii) *Making equal pay a national policy objective*

Equal remuneration for men and women should be an explicit objective in relevant national policies and action plans. The principle can be included in poverty reduction strategies, national development plans, national gender action plans, decent work country programmes, UN Development Assistance Frameworks, and public procurement schemes.

In **Honduras**, the Gender Equality and Equity Plan foresees the establishment of machinery to guarantee compliance with Convention No. 100.

In the **Republic of Korea**, the Equal Employment and Support for Work-Family Reconciliation Act requires the Minister of Labour to establish a basic plan for equal employment which must include matters concerning equal remuneration for work of equal value.

In **Lithuania**, one of the main objectives of the third National Programme on Equal Opportunities for Women and Men (2010-14) is the reduction of the gender remuneration gap, with a particular focus on analyzing and addressing the causes of pay discrimination.

The **Norwegian** Minister of Children and Equality established an Equal Pay Commission, which in 2008 issued its report entitled “Gender and Pay: Facts, analyzes and measures to promote equal pay.”

Based on the Commission's recommendations and consultations with social partners, the Government prepared a White Paper on Equal Pay which was considered and approved by Parliament in April 2011. It sets policy directions in several areas, including transparency on wage levels and pay statistics and strengthening the rights of parents absent from work due to parental leave.

The Labour Policy of the Government of **Pakistan** provides that "Minimum and above-minimum wages will be paid on the basis of equal pay for equal work, and equal pay for work of equal value, as between men and women, in accordance with Pakistan's obligations under ILO Conventions 100 and 111 concerned with equality and non-discrimination, respectively."⁶⁸

In **Switzerland**, the Federal Act on Public Procurement provides that a contracting authority may only award a contract to a tenderer who guarantees equal pay for men and women and provides for a system of verification of compliance with this requirement.

(iv) *Adopting and enforcing appropriate legislation*

The adoption, implementation and enforcement of equal pay provisions or legislation that are in line with Convention No. 100 is a key means to promote and ensure pay equity.⁶⁹ However, in many countries, legislation does not yet set out the principle of equal pay fully. In some cases the legislation provides only for equal pay for equal work, but not for work of equal value. Other examples of non-compliance are different wage rates for men and women and unequal treatment in the payment of benefits or allowances. Further information on legislation is provided below.

(v) *Promoting objective job evaluation*

Some job evaluation methods are more effective than others in addressing gender bias and discrimination in remuneration, so it is important that governments and the social partners promote objective job evaluation methods free from gender bias. More information on objective job evaluation is set out in Part 5.

In **Belgium**, tools have been made available to enterprises and the social partners, including guidelines for establishing gender-neutral job classifications, a practical guide entitled “Analytical job classification: A basis for gender-neutral wage policy” and a “Non-sexist checklist for the evaluation and classification of jobs”.

In the **Netherlands**, the Ministry for Social Affairs published a gender-neutral job evaluation manual. The Commission on Equal Treatment produced a quick scan system aimed at rapidly assessing job evaluation systems and structures in organizations and ministries.

In **New Zealand**, the “equitable job evaluation tool” – a gender-neutral job evaluation system for use in pay investigations and for general use – has been specifically designed to facilitate better recognition and contribution of female-dominated occupations to performance of important areas of the state services. Standards New Zealand has also developed a voluntary “gender inclusive job evaluation standard”, a practical guide and reference point for ensuring that job evaluation and the remuneration process are carried out in a gender-inclusive way.

In **Switzerland**, the Federal Office for Gender Equality has made available an equal pay self-assessment tool for companies and it has a roster of equal pay experts that may be consulted by companies who wish to improve their job evaluation and pay policies following their self-assessment.

(vi) *Assessing progress*

Promoting and ensuring equal pay is a continuing process. The measures taken to achieve equal pay should therefore be reviewed regularly to assess whether they are still appropriate and effective. Action can be taken in the following areas:

- Collection and analysis of statistical data on remuneration to monitor the gender pay gap over time.
- Collection and analysis of information on the number, nature and outcome of legal proceedings involving disputes concerning equal pay.
- Review of collective agreements and minimum wages from a perspective of equal remuneration for work of equal value.
- Case studies, for example on the gender pay gap in specific sectors or for categories of workers, or on the impact of specific policy interventions.



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In **Croatia**, the National Policy for the Promotion of Gender Equality provides for the systematic collection of statistical data on cases of gender discrimination in employment and work, disaggregated by sex.

In **Germany**, the Federal Government submitted a comprehensive gender equality report to Parliament in 2011, which includes an analysis of the evolution of the gender pay gap.

In the **United Kingdom**, a review of the government action plan for narrowing the gender pay gap indicated that with a view to narrowing the gender pay gap, further action was needed to overcome gender stereotypes in the education system and to support families to balance work and family life. The Women and Work Commission made specific recommendations in 2009 for addressing these issues. The Equality and Human Rights Commission Triennial Review 2010 noted that “occupational concentration is consistently found to be one of the most powerful factors in explaining the gender pay gap”, with men concentrated in higher paying industries and women in the public sector, as well as considerable vertical segregation, with women being under-represented in “better-paying, higher status managerial and professional occupations”.⁷⁰

2. Why enact equal pay laws?

As with other fundamental rights, enshrining the principle of equal remuneration for men and women for work of equal value in national laws and regulations is essential to its fulfilment. Convention No. 100 refers to “national laws or regulations” as one means to apply the principle. Recommendation No. 90 says that “provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women workers for work of equal value.” Such legislation is important in establishing a clear right to equal pay and in setting out procedures and remedies so that the right can be effectively applied.

The Committee of Experts has noted that “It now appears to be accepted in most countries that the public authorities must take a more active part in the implementation of the principle; experience has shown that implementation remains only partial when it is sought solely through encouragement and general recommendations to the parties concerned, without precise methods and objectives being laid down for the purpose. Thus more and more governments have considered it necessary to undertake to ensure the strict application of the principle, generally by adopting legislation.”⁷¹

“Noting that many countries still retain legal provisions that are narrower than the principle laid down in the Convention, as they do not give expression to the concept of “work of equal value”, and that such provisions hinder progress in eradicating gender-based pay discrimination, the Committee again urges the governments of those countries to take the necessary steps to amend their legislation. Such legislation should not only provide for equal remuneration for equal, the same or similar work, but also address situations where men and women perform different work that is nevertheless of equal value.”⁷²

By enacting equal pay legislation and involving the social partners in the process, the Government can –

- ensure that men and women have a legal basis for asserting their right to equal pay with their employers and before competent authorities;
- give the authorities a framework to act against pay discrimination and to promote equal pay;

- establish parameters for collective bargaining and minimum-wage setting;
- encourage or require workplace action to promote equal pay.

3. What to include in laws?

The approach and nature of equal pay legislation can vary from country to country, depending on the policy choices made by the legislator in consultation with the social partners. However, the legislation should be in line with the principle of equal remuneration for men and women for work of equal value as defined in Convention No. 100 as well as other relevant instruments, such as the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Legal provisions on equal pay are most frequently included in -

- the Constitution;
- general labour and employment laws and regulations;
- specific equal pay legislation;
- gender equality, anti-discrimination or human rights legislation.

Where particular groups of workers (such as civil servants or migrant workers) are excluded from the general equal pay provisions or covered by specific laws or regulations, they should have the same right to equal pay as other workers.

Below is a list of matters to be considered when drafting equal pay provisions or legislation.

(i) ***Require equal remuneration for work of equal value***

General protection from direct and indirect discrimination based on sex in employment and occupation, including remuneration, is important, but does not reflect fully the principle of equal remuneration as defined in the Convention. Equal pay provisions should give men and women the right to receive equal remuneration for work of equal value. Giving full legislative expression to the Convention's principle is an effective means of ensuring that

men and women have this right, particularly when they perform different work which is nevertheless of equal value. Laws on equal remuneration should not restrict or prevent equal pay claims by men and women performing different jobs, tasks or occupations that involve work of equal value.

The Constitution of **Bolivia** states that “the State shall promote the integration of women into work and shall ensure that women receive the same remuneration as men for work of equal value, in both the public and private spheres.”

Under the Gender Equality Act of **Bosnia and Herzegovina** “failure to provide equal salary and other benefits for the same work or work of equal value” constitutes gender discrimination.

In **Ecuador**, the Constitution provides that “the State will promote the incorporation of women into the paid labour force under conditions of equal rights and opportunities, guaranteeing women equal remuneration for work of equal value.”

The Labour Code of **Togo** states that “Employers are to ensure equal remuneration for the same work or work of equal value for all workers, irrespective of their nationality, sex, age or status.”

In **Uganda**, the Employment Act provides that “every employer shall pay males and females equal remuneration for work of equal value”.



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(ii) *Provide guidance on “work of equal value”*

Some countries have gone a step further by explaining the concept of “work of equal value” in the law and providing guidance on how to establish whether work is of equal value. It can be done by setting out objective criteria for comparing work performed by women and men, such as skills, responsibility, effort and working conditions.

The **Canadian** Human Rights Act provides that in assessing the value of work “the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.” The Equal Wages Guidelines complement the equal pay provisions of the Act. The Guidelines set out definitions of the criteria for the assessment of the value of work, based on skill, effort, responsibility and working conditions, and set out requirements for the methods of assessing value. They also set out procedures for individual or group pay equity complaints. The Guidelines are regulations under the Act and thus legally binding.

In **Guyana**, the Prevention of Discrimination Act defines work of equal value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

The Discrimination Act of **Sweden** provides that “Work is to be regarded as of equal value with other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.”

(iii) *Define “remuneration” broadly*

When enshrining the principle of equal remuneration in the legislation, attention should be paid to ensuring that equality between men and women is required with respect to all aspects of remuneration.

Under the Employment Act of **Grenada**, every employer shall pay male and female employees equal remuneration for work of equal value, and “remuneration” is defined as “the wage and any additional benefits, allowance or emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee’s employment.”

In **Saudi Arabia**, pursuant to a Ministerial Order “any discrimination in wages shall be prohibited between male and female workers for work of equal value” and under the Labour Code, “wage” is defined to include the basic wage (defined as all that is given to the worker by virtue of a written or unwritten contract, regardless of the type of wage or its method of payment, in addition to periodic increments) plus all other allowances, and the definition sets out a range of illustrative allowances and benefits in an open list, including commission or percentage of profits, allowance for effort or risk, family allowance, and bonuses for efficiency.

(iv) *Promote objective job evaluation*

Gender bias and discrimination due to lack of or poor job evaluation is a cause of the gender pay gap. Legislation should give a role to objective job evaluation, and can also explicitly prohibit discriminatory job evaluation systems and procedures. Guidance can also be provided on what constitutes job evaluation free from gender bias.



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In **Angola**, the General Labour Act defines work of equal value as work determined to be equivalent through the application of objective job evaluation criteria.

In **Austria**, the Equal Treatment Act provides that job-grading systems at the enterprise level must respect the principle of equal remuneration for the same work or work of equal value.

In **Chad**, the Labour Code states that the different elements of remuneration shall be determined according to identical standards for men and women; job categories and classifications and the criteria for promotion shall be the same for workers of both sexes; and that methods for the evaluation of jobs must be based on objective and identical criteria relating to the nature of the work involved in the jobs.

In **Indonesia**, pursuant to a ministerial decision concerning the regulation of the structure and scale of wages, enterprises shall establish wage structures and wage scales on the basis of a job analysis, job description and job evaluation.

(v) *Wage-fixing mechanisms and collective agreements should respect the principle*

Wage-setting processes and collective agreement mechanisms can make a major contribution to eliminating gender pay gaps and discrimination, and promoting equal pay. Legal provisions explicitly stating that such mechanisms must ensure equal remuneration for men and women for work of equal value are not only a clear signal to those involved in the process, but also a legal basis to address unequal pay that already exists. Further, the laws may also encourage or require social partners to take measures to eliminate pay inequalities.

In **Cyprus**, the Equal Pay Act provides that collective agreements, individual contracts or internal company regulations contrary to the provisions of the Act must be repealed. It also states that the competent authority shall invite the social partners to examine existing collective agreements in order to amend provisions that are contrary to the law.

In **France**, the Labour Code requires collective bargaining on gender equality, including measures to eliminate pay differentials between men and women. Employers have to make information available to workers' representatives yearly on the jobs held by men and women and their respective remuneration.

In **Uganda**, pursuant to the Employment Act, "the Minister [of Labour] and the Labour Advisory Board shall, in performing their duties, seek to give effect to the principle of equal remuneration for male and female employees for work of equal value".

(vi) *Ensure effective remedies and sanctions*

Workers who think their right to equal pay has been violated should have access to remedies. These include the right to complain and to have the consequences of unequal pay reversed, including receiving appropriate compensation. Sanctions such as fines can deter continuing or future pay discrimination. Sanctions also allow authorities to address pay discrimination even where no complaints have been made. Where the burden of proof is on the complainant, it is more difficult to enforce equal remuneration through legal proceedings. Often the complainant may not have the information to prove pay discrimination. A number of countries have therefore introduced rules partially or wholly shifting the burden of proof to the employer.

It is also important to ensure that workers are protected from victimization when they lodge complaints or get involved as witnesses. Without such protection, some workers may be afraid of retaliation through dismissal or demotion, or of victimization by other workers.

According to the Directive of the [European](#) Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), “Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment [which includes equal remuneration for work of equal value under the Directive] has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”

In [Guyana](#), the Prevention of Discrimination Act sets out the right to equal remuneration for men and women for work of equal value, and provides that “the burden of proof to establish that equal remuneration has been paid shall rest on the employer”.

In [Kenya](#), the Employment Act provides that where discrimination is alleged, which includes cases concerning equal remuneration for men and women for work of equal value, “the employer shall bear the burden of proving that the discrimination did not take place as alleged”.

4. What workplace measures can promote equal pay?

While laws apply the equal pay principle, it is at the workplace where equal pay ultimately has to be achieved. Taking this reality into account, a number of countries have introduced proactive legislation that encourages or requires the employer to assess gender pay gaps and to eliminate violations of the principle of equal remuneration for work of equal value. Collaboration between management and labour is at the core of such workplace action.

In **Finland**, the Act on Equality between Men and Women provides that employers with more than 30 employees are to draw up an equality plan, in cooperation with workers' representatives. This plan must include an analysis of the jobs performed and pay received by men and women, set out measures to address gender-based pay differentials and review their impact.

In **South Africa** under the Employment Equity Act, employers are required to include income differential statements as part of employment equity reports, providing data on remuneration for each occupational category and level, disaggregated by sex and race. Where “disproportionate differentials” are reflected in the statements, employers are to take measures to progressively reduce the differentials, including through collective bargaining.

In **Sweden**, the Discrimination Act requires that every three years, employers survey and analyze provisions and practices regarding pay and other terms of employment, and pay differences between women and men performing work that is equal or of equal value. The employer is to draw up an action plan for equal pay, which is to indicate the pay adjustments and other measures that are needed to bring about equal pay for work that is regarded as equal or of equal value. Under the Act, where there are collective agreements in place, employers are to provide the employees' organizations with the information needed for them to be able to cooperate in the survey, analysis and drawing up of the equal pay action plan.

5. What can guidelines contribute?

The impact of equal pay legislation can be improved by making explanatory material available to those affected. This material helps make workers and employers aware of their rights and obligations and they help public officials and bodies responsible for monitoring and enforcement of equal pay provisions to detect and address unequal pay. In some countries, authorities have issued subsidiary legislation, codes of practice, guidelines, administrative instructions or explanatory leaflets on equal pay legislation. Such guidance may be addressed to workers and employers and their organizations, collective negotiators, and public bodies or officials involved in promoting, monitoring or enforcing the legislation. The material should of course be written so that it is accessible to its readers.

In **Estonia** guidelines have been published entitled “Gender equality in your company – the recipes for success” aimed at assisting the implementation of gender equality policies in enterprises, in particular regarding equal pay and job evaluation systems.

The **European Commission** has issued a Code of Practice on the implementation of equal pay for work of equal value for women and men, which focuses on the studying of pay structures. The Code is addressed to businesses, partners in wage negotiations and individuals.⁷³

In **Germany**, an equal pay self-assessment tool for enterprises has been developed, “Logib-D”, and guidelines entitled “Fair p(l)ay – Equal pay for women and men” have also been published.

The Equal Employment Opportunity (EEO) guidelines issued by the Ministry of Manpower and Transmigration in **Indonesia** were developed in collaboration with the social partners to help implement legal provisions applying Conventions Nos. 100 and 111. The guidelines explain the meaning of the principle of equal pay for men and women for work of equal value, provide guidance on how to determine the value of jobs and on how to identify discriminatory pay practices.



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Endnotes

- ⁶⁶ See for example *Towards fair pay: The equal pay programme*, Ministry of Social Affairs and Health, 2008 at http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-4805.pdf
- ⁶⁷ Equality Ombudsman, *Pay surveys – provisions and outcomes*, 2009.
- ⁶⁸ <http://www.ilo.org/dyn/travail/docs/995/Government%20of%20Pakistan%20Labour%20Policy%202010.pdf>
- ⁶⁹ The term “equal pay provisions or legislation” is used here for legal provisions that establish requirements that specifically relate to the right of men and women to receive equal remuneration for work of equal value.
- ⁷⁰ Equality and Human Rights Commission: *Triennial Review 2010: How fair is Britain? Equality, human rights and good relations in 2010*, chapter 11.
- ⁷¹ *Equal Remuneration*, General Survey, 1986, op.cit., para. 247
- ⁷² *Giving globalization a human face*, op. cit., para. 679.
- ⁷³ See Communication from the European Commission COM(96) 336 final, 17 July 1996.



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9



**Institutions and procedures
for monitoring and
enforcement**

1. What type of institutions should be established or strengthened?

In order to ensure and promote equal pay effectively it is crucial that the Government in consultation with the social partners puts in place appropriate institutions with responsibility for equal pay.

(i) *State administration*

In many countries, the responsibility to promote, monitor and enforce equal pay laws and regulations has been assigned to ministries responsible for employment and labour matters. In their reports on the application of Convention No. 100, many governments identify the labour inspection services as the national institution responsible for monitoring and enforcing equal pay provisions (see below). Where different parts of the administration are dealing with equality and equal pay, inter-ministerial working groups or other cooperation mechanisms need to be established.

(ii) *Human rights and equality institutions*

Equal pay for men and women is a matter of gender equality and human rights. National institutions dealing with equality or human rights are therefore well placed to promote equal pay. This is particularly so when the legislation that they administer includes equal pay provisions as in the **UK, Canada** and **Australia**. Such national institutions are usually in a better position to develop specialized capacity in this area than other public institutions due to their focus. Their mandates covering both promotion and protection enable them to address equal pay issues through various approaches, including research, advice and mediation.

These specialized institutions most frequently –

- Promote public-information and awareness-raising
- Provide advice to interested parties such as workers, employers and other institutions
- Investigate, mediate and decide complaints
- Prepare studies, surveys and practical tools

- Make recommendations to the Government concerning laws and policies
- Monitor the implementation of international treaties

(iii) *Courts and tribunals*

Courts, tribunals and other adjudication bodies can promote and protect the right of men and women to equal remuneration for work of equal value. They deliver justice to those whose rights have been violated, but also clarify what is and is not unequal pay. In addition to rendering enforceable decisions on individual or collective complaints, their body of decisions contributes to a better understanding and application of the legislation or agreements. The courts have been instrumental in many countries in ensuring that legislation and agreements are applied in accordance with the principle of equal remuneration as set out in Convention No. 100.

The Committee of Experts has noted that “In some countries, progress in the implementation of equal pay has been brought about more by judicial interpretation than legislative action. On the basis of broadly-stated or, in other cases, relatively restrictive constitutional or legal provisions, the courts in a number of jurisdictions have been responsible for developing concepts of “equal pay” and definitions of “remuneration” corresponding to those of the Convention [No. 100]”.⁷⁴



EQUAL PAY TRIBUNAL ESTABLISHED THROUGH COLLECTIVE AGREEMENT: DENMARK



In February 2010, the social partners in industry in Denmark agreed to a renewal of the collective agreement in the manufacturing sector. Soon after the agreement was concluded, other sectors such as transport, construction and the cleaning industry signed similar collective agreements. The agreement reflected the impact of the economic crisis and contained innovative elements, including the establishment of an equal pay tribunal, chaired by a labour court judge, to deal with all disputes related to equal pay. The main workers' and employers' organizations nominate the board members. The tribunal covers all sectors represented by those organizations, and not only manufacturing.

It is essential that any adjudication body addressing equal pay be accessible to all workers in terms of credibility, cost, procedures and location. All workers should be made aware of their rights and of available complaints procedures.

(iv) *Tripartite bodies*

National tripartite bodies and mechanisms for consultation have great potential for making equal pay a concern to be addressed by national law and policy, as well as for promoting practical measures in collective agreements and at the enterprise level. Discussing the application of Convention No. 100, including pending comments of the Committee of Experts, provides an entry point. In some countries, such as the **Netherlands** and **Japan**, special working groups on equal pay issues have been established.

In some cases, tripartite bodies are established to settle disputes concerning equality matters. The Equal Employment and Support for Work-Family Reconciliation Act of the **Republic of Korea** establishes a mechanism for the settlement of equality disputes through tripartite grievance-handling councils at the workplace level.

(v) *Need for expertise*

Whether the legislation concerning equal pay is administered and enforced by a state administration body, by the courts or by

specialized equality or human rights institutions, ensuring technical expertise among officials is important, particularly those involved in dispute prevention and resolution. Experience in many countries has shown that the creation of focal points, special units or specialized jurisdictions that can develop, share and maintain expertise in the area of equality and equal pay has been crucial.

In **Ireland** equal pay complaints may be brought before the Equality Tribunal under the Employment Equality Act. The Equality Officers conducting the investigations in such cases are trained on objective job evaluation.

The Male and Female Workers Equal Pay Act of **Israel** provides for the appointment of job evaluation experts on behalf of the Labour Court, upon the request of one of the parties, to express an opinion regarding whether the categories of work in dispute are of equal value.

2. What type of procedures for monitoring and enforcement?

Effective monitoring and enforcement of equal pay legislation can be achieved through a combination of procedures. These include –

- Dispute prevention and resolution, for both individual and collective cases. In progressively more formal order, this means (i) conciliation or mediation to help the parties reach agreement between themselves; (ii) arbitration, whereby a decision is made by an independent third party; and (iii) adjudication whereby a binding decision is made by a court of law or tribunal.
- Administrative proceedings such as those involving labour inspection, registration or extension of collective agreements and contract compliance. This means that there can be requirements to check compliance with the legislation as part of the proceedings.
- Minimum wage setting procedures, which can require pay equity compliance.
- Voluntary audits undertaken by employers to determine and report on their own compliance.

Another way of ensuring effective monitoring and enforcement of equal pay legislation is the involvement of independent equal pay specialists such as expert witnesses, mediators, resource people and trainers. Transparency is also critical.

It is also important to note that the absence of cases addressing equal pay does not necessarily imply a lack of unequal pay in practice. Rather, it may imply a lack of an appropriate legal framework for bringing complaints, a lack of awareness of rights and procedures or poor accessibility to complaints procedures.

3. What is the role for labour inspection?

Despite the fact that numerous countries report to the ILO that their labour inspection services are responsible for ensuring the application of the principle of equal remuneration, in most countries, labour inspection does not yet do much in practice in promoting and protecting the right to equal pay. However, the great potential of labour inspection in this area is often overlooked and therefore deserves special attention. As a fundamental feature of any country's system of labour administration, labour inspection is an indispensable part of national strategies concerning equal remuneration.⁷⁵

What is the advantage and potential of labour inspection to deal with equal pay?

- Legal provisions concerning remuneration and discrimination, including equal pay, usually fall within the mandate of the labour inspectorate.
- Labour inspectors have privileged access to the workplace and information concerning remuneration paid to men and women.
- Labour inspectors can act upon complaints or reports, and can also address equal pay issues in the context of routine inspections.
- Labour inspection services can promote compliance by raising awareness, including through employers' and workers' organizations, as well as by providing technical advice on equal pay at the enterprise level, for example in the context of company equality plans.

- Labour inspectors may impose sanctions, including fines, initiate court proceedings or assist or intervene in court cases brought by those claiming unequal pay.

Labour inspectors are most likely to make an effective contribution to promoting and ensuring equal pay if equal pay has been expressly identified as part of their duties, and if they have sufficient training and technical capacity on equal pay.

A number of measures can be taken to enable labour inspectorates and inspectors to promote and ensure equal pay –

- Recruiting both women and men inspectors.
- Providing specialized training of labour inspectors on equal pay, including objective job evaluation.
- Providing tools and methodologies to conduct equal pay inspections and to be able to give technical advice to workers and employers and their organizations.



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- Establishing specialized units or focal points on equal pay within the labour inspectorate.
- Increasing the participation of workers' representatives in the inspection process.
- Collecting statistical information on the number, nature and outcome of equal pay cases addressed.
- Including a specific section on gender equality, including equal pay, in inspection visit checklists as well as in annual inspection reports.
- Ensuring close cooperation of labour inspection services with specialized institutions responsible for equality or human rights.



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EXAMPLES OF MEASURES USED TO HELP LABOUR INSPECTORS ON EQUAL PAY



In **Belgium**, the labour inspectorate designates inspectors specializing in discrimination and has developed specific training on the subject jointly with the national equality body, the Centre for Equal Opportunity and Fight against Racism.

The Ministry of Labour in the **Czech Republic** issued a procedural instruction to labour inspectors on equal opportunities for men and women. The document provides practical guidance on how to conduct gender equality inspections. An additional document provides guidance on how to evaluate jobs with a view to establishing whether equal remuneration is being paid for work of equal value.

The labour inspectorate in **El Salvador** has established a specialized unit on gender and non-discrimination.

In **Kenya**, labour inspectors use a particular inspection form for tackling discrimination in the workplace, which includes questions relating to equal pay for men and women.

In **Morocco**, the Guide for inspections, prepared by the Ministry of Employment and Vocational Training in collaboration with the ILO, specifically refers to discrimination in remuneration between men and women performing work of equal value as one of the issues to be addressed when inspecting conditions of work and remuneration.

In **Spain**, since the promulgation of the Equality Act, an inspection intervention plan has been developed, which includes training, a checklist and inspection visits aimed at verifying cases of wage discrimination.

The ILO has developed a training module on gender equality for labour inspectors which raises awareness of the principle of equal remuneration for women and men for work of equal value and facilitates labour inspection action to tackle unequal pay (see Appendix 1).

4. What statistics are needed?

An analysis of the position and pay of men and women in all job categories within and between the various sectors is required to address fully the pay gap between men and women. A first step towards the appropriate compilation of wage data for the purpose of analyzing the pay gap and its evolution is the need in many countries to include wages in existing methodologies for household

and labour force surveys and to ensure that wage information collection through establishment surveys is disaggregated by sex. National statistical offices and institutions responsible for the collection of labour market and employment data and related surveys are key actors for improving the availability of appropriate statistical information on wages.

In a general observation concerning Convention No. 100,⁷⁶ the Committee of Experts specified the type of statistical information to evaluate the application of the principle of equal remuneration. It asked Governments to provide the fullest possible statistical information, disaggregated by sex, in their reports, with regard to the following:

- i) the distribution of men and women in the public sector, the federal and/or state civil service, and in the private sector by earnings levels and hours of work (defined as hours actually worked or hours paid for), classified by: (1) branch of economic activity; (2) occupation or occupational group or level of education/qualification; (3) seniority; (4) age group; (5) number of hours actually worked or paid for; and, where relevant, by (6) size of enterprise and (7) geographical area and
- ii) statistical data on the composition of earnings (indicating the nature of earnings, such as basic, ordinary or minimum wage or salary, premium pay for overtime and shift differentials, allowances, bonuses and gratuities, and remuneration for time not worked) and hours of work (defined as hours actually worked or paid for), classified according to the same variables as the distribution of employees (subparagraphs (1) to (7) of paragraph (i) above).

Where feasible, statistics on average earnings should be compiled according to hours actually worked or paid, with an indication of the concept of hours of work used. Where earnings data are compiled on a different basis (e.g. earnings per week or per month), the statistics on the average number of hours of work should refer to the same time period.

For example, EUROSTAT publishes statistical information on the gender pay gap in **EU countries**.⁷⁷ The gap is defined as the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. The figures count all paid employees aged 16-64 who are at work at least 15 hours per week.



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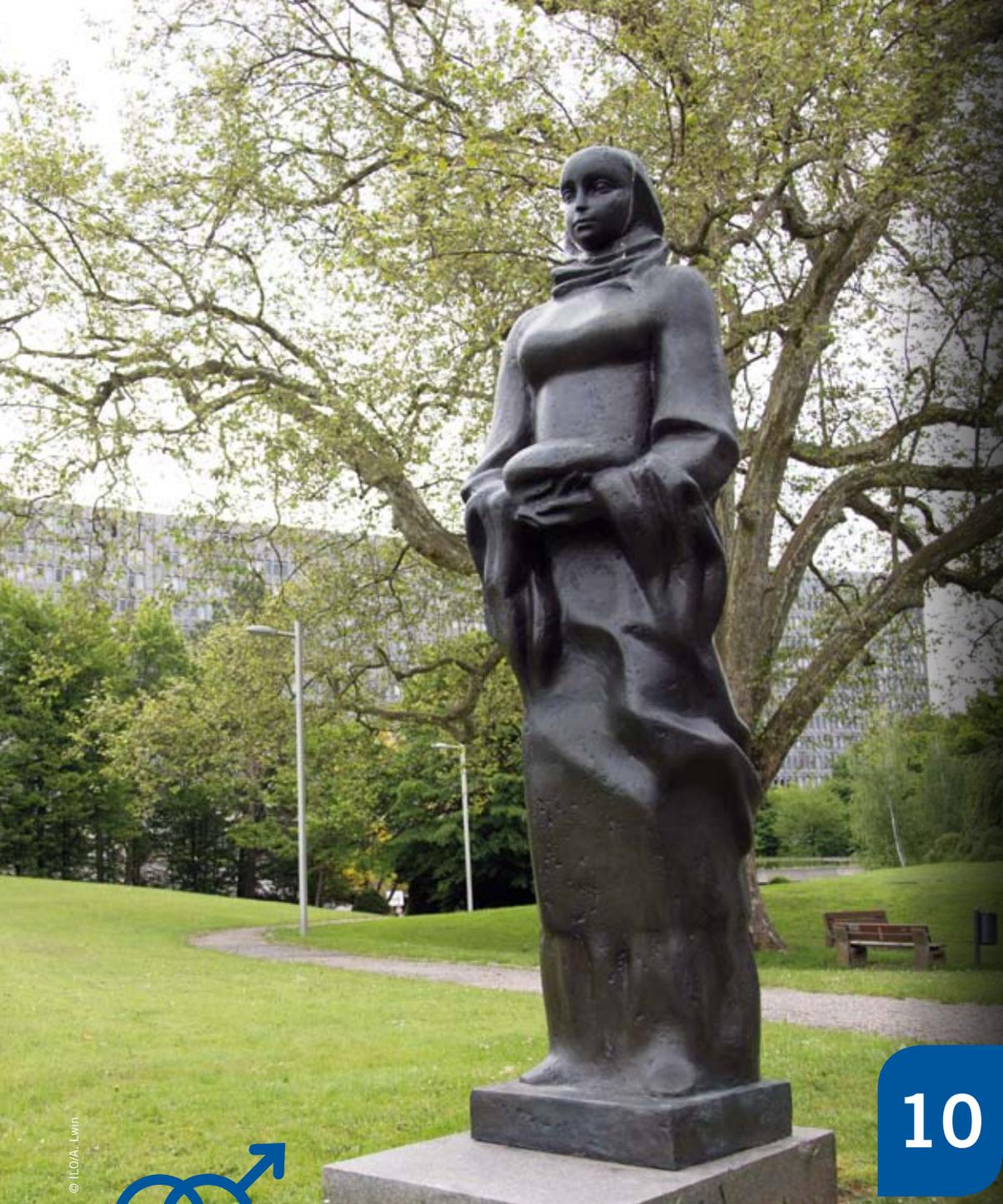
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⁷⁴ *Equal Remuneration*, General Survey, 1986, op. cit., para. 119.

⁷⁵ International Labour Conference, 100th Session, June 2011, Resolution concerning labour administration and labour inspection, para. 22(10) of the conclusions.

⁷⁶ Committee of Experts, general observation on Convention No. 100, published 1999.

⁷⁷ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Gender_pay_gap_statistics



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How can the ILO help?

10

Equal remuneration for men and women for work of equal value, as a fundamental right and a founding principle of the ILO, is a core component of ILO work. While achieving pay equity remains a challenge, the many examples highlighted in this Guide show that progress can be made, and that the principle can be applied in a variety of ways according to each national context.

The Government, and employers' and workers' organizations each have a key role in the implementation of Convention No. 100, and in making pay equity a reality. The ILO has an obligation to assist governments, employers' and workers' organizations in promoting the realization of fundamental rights.⁷⁸

The ILO can assist governments and the social partners to promote equal pay and achieve pay equity in a number of ways, including –

- Providing representatives of employers' and workers' organizations and governments with a better understanding of the concept of equal pay through promotional and training materials, workshops and sharing of good practices;
- Helping to design and implement technical cooperation projects on equal pay;
- Providing advice and assistance on labour law reform and national equality policies as a framework for equal pay;
- Providing or helping design training for government officials, workers' and employers' representatives, and those responsible for monitoring and enforcement, on pay equity, including job evaluation methods;
- Assisting in the establishment or strengthening of specialized agencies to address equality and equal pay;
- Giving technical support to government officials for the purpose of ratification of Convention No. 100;
- Sharing the ILO's international experience on the implementation of Convention No. 100;
- Helping the Government in meeting its reporting requirements under Convention No. 100.

Appendix 1: Selected ILO sources of further information

Reports

Giving globalization a human face, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (Part 1B), International Labour Conference, 101th Session, Geneva, 2012.

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A new era of social justice, Report of the Director-General, Report I(A), International Labour Conference, 100th Session, Geneva, 2011.

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Gender equality at the heart of decent work, Report VI, International Labour Conference, 98th Session, Geneva, 2009.

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Publications

Hayter, S. and Weinberg, B., “Mind the gap: Collective bargaining and wage inequality”, in S. Hayter (ed.): *The role of collective bargaining in the global economy: Negotiating for social justice*, ILO, Geneva, 2011, pp. 136-186.

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International labour migration: A rights-based approach, ILO, Geneva, 2010.

Work, income and gender equality in East Asia: Action guide, ILO, Bangkok, 2008.

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Tools

A Manual for Gender Audit Facilitators: The ILO Participatory Gender Audit Methodology, 2nd edition, ILO, Geneva, 2012.

ILO Curriculum on “Building modern and effective labour inspection systems”, *Module 13: Labour inspection and gender equality*, ILO, Geneva, 2011.

Equality and non-discrimination at work in China: Training manual, ILO, Beijing, 2010.

Promoting equity: Gender-neutral job evaluation for equal pay: A step-by-step guide, ILO, Geneva, 2008.

Migrant Workers' Rights: A Handbook, ILO, Jakarta, 2007.

ABC of women workers' rights and gender equality, 2nd edition, ILO, Geneva, 2007.

Olney, S., Goodson E., Maloba-Caines, K., O'Neill, F., *Gender equality: A guide to collective bargaining*, ILO, Geneva, 2002.

Websites

ILO website: www.ilo.org

NORMLEX on-line data base on international labour standards and their supervision: www.ilo.org/normlex

Appendix 2: List of selected relevant ILO Conventions and Recommendations

(All of these are available on the NORMLEX database featured on the ILO website)

Conventions

- Labour Inspection Convention, 1947 (No. 81)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100) (see Appendix 3)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Wage Fixing Convention, 1970 (No. 131)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- Collective Bargaining Convention, 1981 (No. 154)
- Workers with Family Responsibilities Convention, 1981 (No. 156)
- Labour Statistics Convention, 1985 (No. 160)
- Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- Part-Time Work Convention, 1994 (No. 175)
- Maternity Protection Convention, 2000 (No. 183)
- Maritime Labour Convention, 2006 (MLC)
- Domestic Workers Convention, 2011 (No. 189)

Recommendations

- Labour Inspection Recommendation, 1947 (No. 81)
- Migration for Employment Recommendation (Revised), 1949 (No. 86)
- Equal Remuneration Recommendation, 1951 (No. 90) (see Appendix 3)
- Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)
- Minimum Wage Fixing Recommendation, 1970 (No. 135)
- Migrant Workers Recommendation, 1975 (No. 151)
- Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152)
- Collective Bargaining Recommendation, 1981 (No. 163)
- Workers with Family Responsibilities Recommendation, 1981 (No. 165)
- Labour Statistics Recommendation, 1985 (No. 170)
- Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187)
- Domestic Workers Recommendation, 2011 (No. 201)

Appendix 3: Text of the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951

Convention No. 100

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

Article 1

For the purpose of this Convention--

(a) the term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in 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 workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so

far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of--

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

[Article 5 to 14 include the final clauses which are of a procedural nature and are not reproduced here]

Recommendation No. 90

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation, supplementing the Equal Remuneration Convention, 1951,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Recommendation, which may be cited as the Equal Remuneration Recommendation, 1951:

Whereas the Equal Remuneration Convention, 1951, lays down certain general principles concerning equal remuneration for men and women workers for work of equal value;

Whereas the Convention provides that the application of the principle of equal remuneration for men and women workers for work of equal value shall be promoted or ensured by means appropriate to the methods in operation for determining rates of remuneration in the countries concerned;

Whereas it is desirable to indicate certain procedures for the progressive application of the principles laid down in the Convention;

Whereas it is at the same time desirable that all Members should, in applying these principles, have regard to methods of application which have been found satisfactory in certain countries;

The Conference recommends that each Member should, subject to the provisions of Article 2 of the Convention, apply the following provisions and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

1. Appropriate action should be taken, after consultation with the workers' organisations concerned or, where such organisations do not exist, with the workers concerned--
 - (a) to ensure the application of the principle of equal remuneration for men and women workers for work of equal value to all employees of central government departments or agencies; and
 - (b) to encourage the application of the principle to employees of State, provincial or local government departments or agencies, where these have jurisdiction over rates of remuneration.
2. Appropriate action should be taken, after consultation with the employers' and workers' organisations concerned, to ensure, as rapidly as practicable, the application of the principle of equal remuneration for men and women workers for work of equal value in all occupations, other than those mentioned in Paragraph 1, in which rates of remuneration are subject to statutory regulation or public control, particularly as regards--
 - (a) the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority;
 - (b) industries and undertakings operated under public ownership or control; and
 - (c) where appropriate, work executed under the terms of public contracts.
3. (1) Where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women workers for work of equal value.
 - (2) The competent public authority should take all necessary and appropriate measures to ensure that employers and workers are fully informed as to such legal requirements and, where appropriate, advised on their application.
4. When, after consultation with the organisations of workers and employers concerned, where such exist, it is not deemed feasible to implement immediately the principle of equal remuneration

for men and women workers for work of equal value, in respect of employment covered by Paragraph 1, 2 or 3, appropriate provision should be made or caused to be made, as soon as possible, for its progressive application, by such measures as--

(a) decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value;

(b) where a system of increments is in force, providing equal increments for men and women workers performing work of equal value.

5. Where appropriate for the purpose of facilitating the determination of rates or remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

6. In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers by such measures as--

(a) ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training and for placement;

(b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training and for placement;

(c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex; and

(d) promoting equality of men and women workers as regards access to occupations and posts without prejudice to the provisions

of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

7. Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

8. Such investigations as may be desirable to promote the application of the principle should be undertaken.

Endnotes

⁷⁸ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, op. cit., Article 3.

Ensuring that the work done by women and men is valued fairly and ending pay discrimination is essential to achieving gender equality. However, pay inequality continues to persist and gender pay gaps in some instances have stagnated or even increased. As unequal remuneration is a subtle chronic problem, it is difficult to overcome without a clear understanding of the principle of equal remuneration for men and women for work of equal value. This Guide clarifies the concepts underlying this principle, which is at the heart of the ILO's Equal Remuneration Convention, 1951 (No. 100) and offers insights on how it can be applied in practice.

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ISBN 978-92-2-126932-8



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