



What can be learnt from the Birmingham City Council equal pay case?

Employers must be able to show that any difference in pay is due to a material factor and not the sex of the worker, and the incoming Equality Act will make any pay gaps yet more transparent

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On 26 April 2010, in the case of *Barker and others v Birmingham City Council* (case ref ET 1305819/2006), more than 4,000 female workers employed by the council won their equal pay claim in an employment tribunal.

The women were employed in 49 different jobs, which included cleaners, cooks, care assistants and teaching assistants, and were on the same pay grade as men. They complained they were excluded from bonuses paid to men and that this could, in theory, lead to them being paid a quarter of what the men earned.

An employment tribunal ruled that the bonus payments were discriminatory since they rewarded men merely for turning up to work and doing their jobs properly.

The claimants are now entitled to compensation, which is reported as potentially being several hundreds of millions of pounds. However, if other female employees on the same terms come forward and lodge a claim, the figure could be much higher.

How equal pay works

The Equal Pay Act 1970 implies an “equality clause” into all contracts of employment. In order to avoid an equal pay claim, where women are employed to do “like work” (work that is broadly similar); work that is rated as equivalent; or work that is of equal value to work carried out by men (or vice versa), their employer must be able to show that any difference in pay is genuinely due to a material factor that is not due to the difference in sex of the employees concerned. This is an EU-wide principle.

The act covers wages and other elements of the employment contract, including holidays, pension rights, company perks and some kinds of bonuses.

Claims can generally be brought at any time during the employment to which the contract relates or, if the employment has ended, within six months from the last day of employment.

Employers' liability

Tribunals can make awards to cover pay discrepancies going back six years and there is no limit on the amount of compensation that can be awarded or to the number of claimants that can bring claims. To that extent, equal pay claims are the nearest thing we have in the UK to employee "class action" claims prevalent in the US.

New legislation

Most parts of the Equality Act 2010 are due to come into force this October. The act merges the various strands of UK discrimination law, including equal pay legislation, into one statute.

One of the act's aims is to provide for greater transparency on pay as a way of addressing the proven gender pay gap in the UK. The legislation encourages the voluntary disclosure of pay by employers – businesses with more than 250 employees in the UK, and public-sector organisations with more than 150 employees, will be urged to publish information annually about pay differentials between their male and female employees.

Avoiding claims

The act gives government the power to compel disclosure of the gender pay gap from 2013 onwards. It would be prudent for employers to carry out internal reviews of compensation data, career advancement and other employment decisions in order to prevent, or minimise, the risks associated with policies, procedures or practices that could be deemed to be discriminatory. Companies should also consider training on diversity issues, with the aim of educating the workforce to prevent allegations of discrimination arising.

There are several law firms that can assist with these audits and internal reviews, some with experience in handling similar legislation in the US, where there are more developed and sophisticated tactics associated with building an employer's defence in this area.

Further Info

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