

EMPLOYMENT
NEW ZEALAND

An Introduction to Pay Equity



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI



Manatū Wāhine
Ministry for Women

New Zealand Government

EMPLOYMENT NEW ZEALAND



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An Introduction to Pay Equity

Section 1: Introduction

1.1 Purpose

This is an introduction to the Equal Pay Act 1972 (the Act), as amended by the Equal Pay Amendment Act 2020. It is for any employers, employees, and unions who are involved in pay equity claims and has information on raising and responding to claims.

This resource explains the early stages of the claims process. More information on the work assessment, bargaining and settlement phases of the process will be published on the [Employment New Zealand](#) website.

The resource:

- › provides background to the Act
- › helps identify the processes for raising and responding to a pay equity claim or claims
- › provides links to additional resources for pay equity.

If you are an employee or a union, you can use the resource to:

- › get practical advice on the steps you need to follow to raise a claim
- › consider what is required for a claim to be arguable
- › get advice on what remedies can be taken if there is a dispute.

If you are an employer, you can use the resource to find out what to do if you receive a claim from an employee, or from a union with union members in your workplace.

1.2 What is pay equity?

Pay equity means women and men are paid the same for work that is different, but of equal value. Pay inequity is caused by systemic sex-based discrimination leading to the undervaluation of work that is predominantly performed, or mostly done, by women.

What is pay equity?

EQUAL PAY	PAY EQUITY	PAY PARITY
Equal pay means women and men are paid the same for doing the same work.	Pay equity means women and men are paid the same for work that is different, but of equal value.	Pay parity means the same pay for the same work across different employers, organisations and workplaces.

Employees or unions who consider work to be undervalued due to systemic sex-based discrimination can raise a pay equity claim using the process set out in the Act.

There are three claim types in the Act:

- › pay equity claims
- › equal pay claims
- › unlawful discrimination claims.

The Act provides a new process for pay equity claims, while leaving the processes for equal pay claims and unlawful discrimination claims as intact as possible.

What does the Act do?

The Act sets out a process for employees, unions and employers to resolve pay inequity issues where there has been systemic undervaluation of work due to sex-based discrimination. This is when female-dominated jobs are paid less because the work is done by women. It allows an employee or union to raise a pay equity claim directly with an employer. The Act will ensure that people who consider they have a pay equity issue can investigate the problem with employer(s) without having to make a claim in the court in the first instance.

Addressing pay equity is important in working to close the gender pay gap, and to ensure that the value of work is not impacted by sex-based discrimination.

The benefits of pay equity may go further than those directly benefiting from a pay equity settlement. The flow-on effects of pay equity can positively impact people's whānau and wider community.

An Introduction to Pay Equity

Section 2:

What does pay equity mean for employees and unions?

It can be difficult to know whether you have a pay equity issue.

If you consider that your work may have been undervalued because of systemic sex-based discrimination and that you have an arguable claim, you might consider raising a pay equity claim.

2.1 What is an arguable claim?

A pay equity claim is to be arguable to go to the work assessment stage of the pay equity process. A claim is arguable if:

- › the claim covers work that is now or has been predominantly performed by female employees who make up, or have made up, approximately 60 percent or more of the workforce
- › it is arguable that the work is currently undervalued or has historically been undervalued¹.

The work of an employee might be undervalued due to a number of factors, including²:

- › the origins and history of the work
- › any social, cultural or historical factors
- › if the work is considered to be women's work
- › if the type of work requires employees to use skills or qualities that have been associated with women and not needing payment.

Other issues that have led to undervaluing the work on the basis of sex can include:

- › a dominant source of funding
- › a lack of effective bargaining
- › occupation segregation, where mainly women work in a particular occupation
- › employers failing to properly assess the remuneration that employees should have received for the nature of the work, the levels of responsibility, work conditions, and degrees of effort
- › any other feature of the relevant market, industry, sector or occupation.

Under the Act, work is not limited to an occupation within a single employer when deciding whether a claim is arguable.

2.2 Raising a pay equity claim

An employee can raise and settle a claim with an employer on their own, but only unions can raise and settle claims for groups of employees. Unions can raise pay equity claims for union members covering employees who do the same or substantially similar work. Non-union members doing the same or substantially similar work can then be covered by the union claim after they're notified about it, unless they opt out.

A group of employees who are not unionised have the option to join a union or form a union to raise a collective pay equity claim.

The Employment Relations Act 2000 (sections 13-16) sets out the requirements for forming a union.

1 See sections 13F(1)(a) and (b) of the Act.

2 See section 13F(3) of the Act.

Raising an individual claim

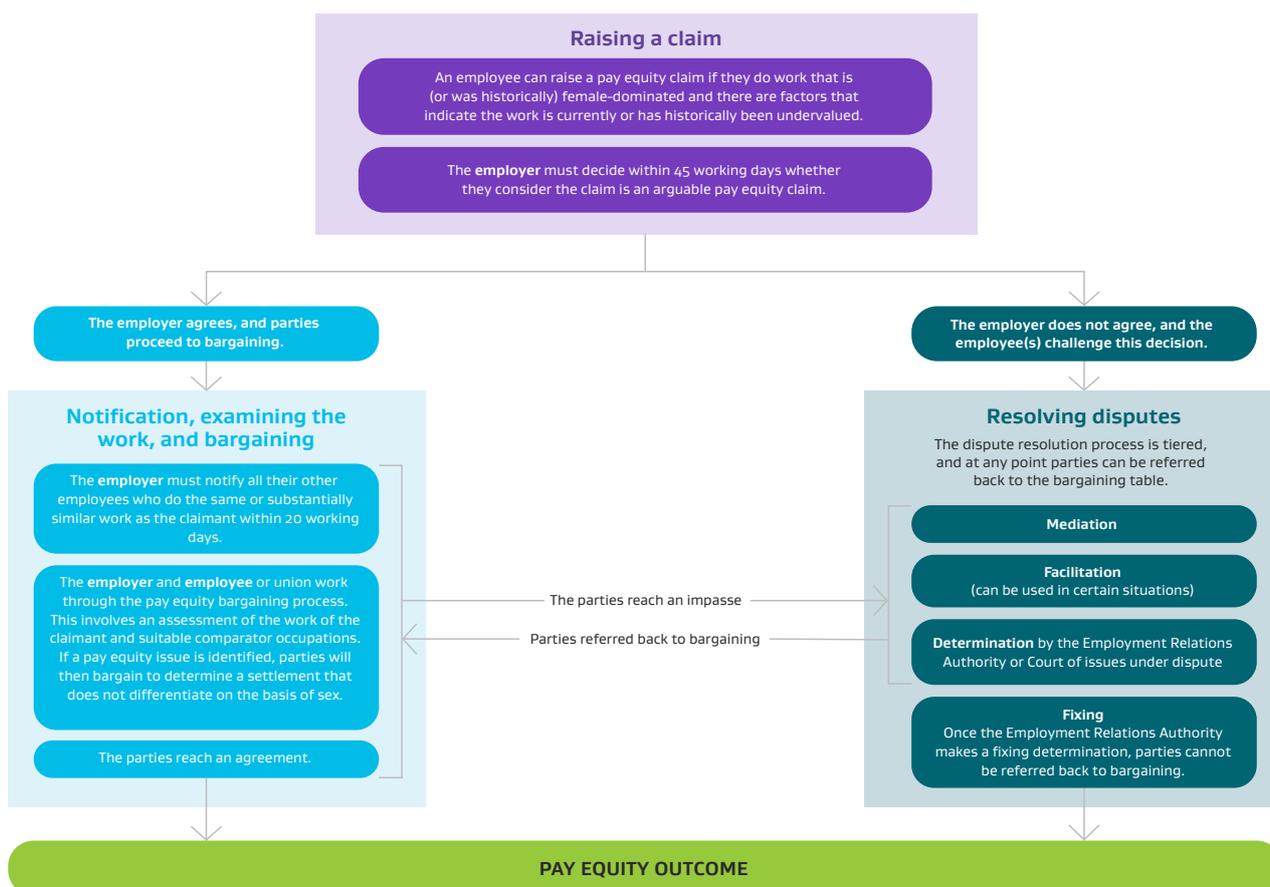
If you consider your claim is arguable, you must tell your employer in writing:

- › that the pay equity claim is made under the Equal Pay Act 1972
- › your name and address
- › the date of the claim
- › your occupation, position, and a brief description of the work you do
- › information showing that it is arguable there is a pay equity issue because the work you do is undervalued, as outlined in Section 2.1.

If you have someone to act on your behalf, you also need to give your employer your representative's name and contact address as part of your claim.

Individuals can't raise a claim if they have already settled a pay equity claim or are covered by a union-raised claim for the same or substantially similar work. If they opt out of the union claim, they can choose to raise an individual claim.

The process for pay equity claims raised by individual employees



A pay equity outcome includes a settlement with remuneration, any terms and conditions of employment and a pay equity review process. Alternatively, the outcome may be an agreement or determination that pay inequity does not exist.

If your claim is arguable, you and your employer will enter into the assessment process. Employers and employees need to work together and act in good faith to progress the work assessment. Part of this process will include jointly assessing the claimant's work and the work that has been identified as being potentially comparable.

Comparable work may involve work that is done by male comparators that is:

- › the same or substantially similar to the work related to the claim
- › different to the work related to the claim, but involving the same or substantially similar skills, experience, responsibilities, working conditions, or effort.

Comparable work can also involve any other female or male comparators that parties consider useful and relevant.

There will be more information on work assessment and finding comparable work that will be available on the [Employment New Zealand](#) website.

If the work assessment has been completed and a pay equity issue has been found, you will need to enter into bargaining with your employer.

New employees

If a union has raised a claim in your workplace which has already been settled, your employer must offer the benefit of the settlement to all new employees doing the same or substantially similar work who start after the settlement date. If the employee accepts the offer, the new employee can't raise their own pay equity claim.

If a claim raised by an individual employee has been settled in your workplace, a new employee can raise their own claim with that employer even if they have accepted the settlement offer.

Existing employees

If a union-raised claim is settled in your workplace, the settlement offer must be extended to employees who were not covered by the union claim. Employers can extend the settlement offer of an individual claim. This applies to any employees who do the same or substantially similar work.

You can't raise your own claim if you have already accepted a settlement offer from your employer.

Who might not be able to raise a pay equity claim?

You will not be able to raise a claim as an individual if you have:

- › raised or settled a pay equity claim for the same or substantially similar work
- › already accepted a pay equity settlement offer for the same or substantially similar work
- › accepted a settlement for a claim raised by a union, including if you start a new job where a union-raised claim has been settled.

Where you have already accepted a pay equity settlement, you also won't be able to make a complaint under the Human Rights Act 1993 or pursue a personal grievance under the Employment Relations Act 2000³ for the pay equity issue.

Unions raising a claim

Unions can represent and lead employees through the pay equity claims process, and bring together the views, analysis and experiences of employees when negotiating and settling

³ New employees are not barred from raising a claim if they accept the offer of an individual settlement.

pay equity claims. They do this by advocating, communicating and engaging with the employer.

A union can make a pay equity claim on behalf of members and which covers non-union members who are doing the same or substantially similar work. Non-union members can choose to opt out of a union-raised claim.

If a union considers a claim is arguable, the union must tell an employer in writing:

- › that the pay equity claim is made under the Equal Pay Act 1972
- › the union name and an address, or for each of the unions if more than one are acting jointly
- › the date of the claim
- › a brief description of the work performed by the employees to be covered by the union claim.

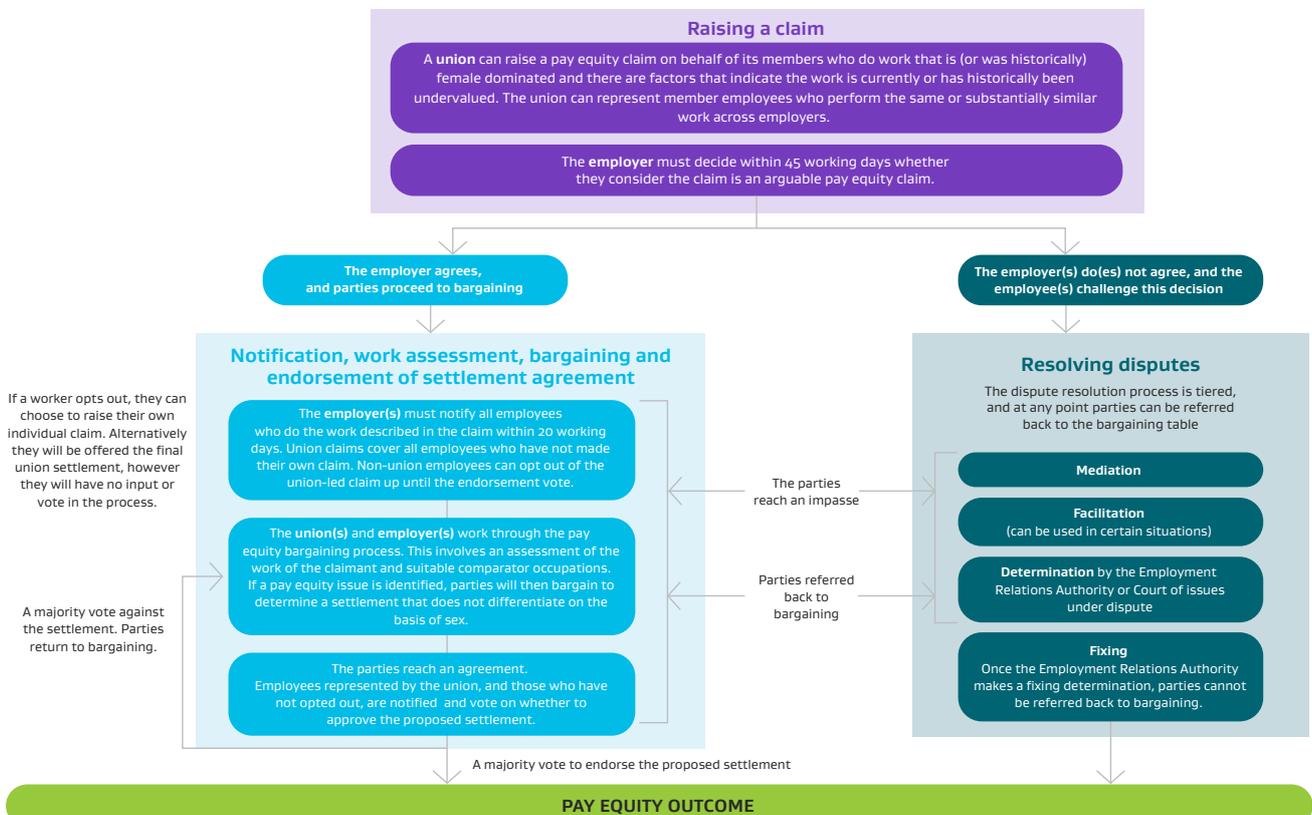
Where a claim is being raised with multiple employers, unions must also include a notice to each employer. The notice must state that each employer has an obligation to enter into a multi-employer pay equity process agreement with the other employers involved in the claim.

For a multi-employer claim, unions must also give a brief explanation of how the work done by the employees covered by the claim is considered to be the same or substantially similar.

2.3 What does it mean for employees when a union raises a claim?

If a union raises a pay equity claim that covers your area of work, you will be automatically

The process for pay equity claims raised by unions



A pay equity outcome includes a settlement with remuneration, any terms and conditions of employment and a pay equity review process.

Alternatively, the outcome may be an agreement or determination that pay inequity does not exist.

A settlement would apply to all employees represented by the union. The settlement will also be offered to employees who opted out of union bargaining or are not members of the union

covered by the claim once your employer notifies you, unless you opt out.

You can be covered by a union-raised pay equity claim when one of the following situations applies:

SITUATION 1:

A union raises a claim on behalf of all members doing your kind of work and you're a member of that union.

If you are a member of a union that raises a claim, you will automatically be part of the claim if you do the work that is the same as or substantially similar to the work set out in the claim. You will be covered from the date the claim is raised.

An employee who is a member of a union may not opt out of a claim raised by that union while remaining a member of the union.

However, they may wish to contact their union representative to discuss options available.

SITUATION 2:

A union raises a claim on behalf of its members doing the same or substantially similar work and you are not a member of that union.

Even if you are not a member of the union raising a pay equity claim, you might still be covered by the claim unless you have opted out. If you are covered by a claim like this you are known as an affected employee.

Affected employees

When a union has raised a pay equity claim for their members to cover all employees who perform the same or substantively similar work who work for the employer or group of employers, all other employees of the same employer(s) who do the same or substantively similar work are covered by the claim. They will be covered once they are notified by their employer that the claim is arguable unless they opt out. Go to Section 2.4 to find out more about opting out of a claim.



See **Appendix 1** for more information on the details that must be included in an employer's notice to affected employees.

Some employees will not be automatically covered by a union claim. This could apply if they have:

- › chosen to pursue their pay equity claim under another Act⁴
- › already raised or settled a pay equity claim for the same or substantially similar work as the union-raised claim
- › accepted an offer of a pay equity settlement for the same or substantially similar work covered by the union-raised claim.

SITUATION 3:

You join a workplace where there is a current pay equity claim

If you start a new job and find that your work is covered by a union-raised pay equity claim, you will be notified and automatically included in the claim unless you opt out.

Within 20 working days of you starting your new job, your employer must give you:

- › a notice about the claim (see Appendix 1)
- › information on what this means for you
- › details on how you can opt out.

2.4 How to opt out of a union claim

If you're not a union member and are covered by a claim, you can choose to stay part of the pay equity claim or opt out.

To opt out of a union claim, you must tell your employer in writing that you're opting out of the claim. If you opt out within 20 working days of receiving notice of the claim, you only need to tell your employer. After this date, you must tell both your employer and the union that you're opting out.

If you choose to opt out of the claim, you can do this any time before the date:

- › employees will vote on a proposed settlement
- › the union applies for the Employment Relations Authority (ERA) for determination.

If you don't opt out within 20 working days of receiving the notice of the claim, your employer must share your contact information with the union for representation purposes, but you can still opt out of the union claim after this time.

If you're a member of the union raising this claim, and want to opt out, speak to your union.

4 Employees can take only one of the following steps:

- › a pay equity claim under this Act
- › a complaint under the Human Rights Act 1993
- › a personal grievance under the Employment Relations Act 2000.

An Introduction to Pay Equity

Section 3:

What does pay equity mean for employers?

3.1 When could employers receive pay equity claims?

Pay equity claims may be raised with an employer when:

1. An individual employee raises a pay equity claim with their employer
2. A single union raises a pay equity claim with a single employer for their members to cover employees who do the same or substantially similar work
3. Multiple unions raise claims with one employer for their members to cover employees who do the same or substantially similar work.

This could take place for example in large workplaces where there is more than one union that represents members who do the same or substantially similar work.

Claims raised by more than one union for their members to cover employees who do the same or substantially similar work for the same employer must be consolidated, or joined together, before the claim is settled. This means an employer will engage with a single claims process instead of multiple separate union claims.

You must give notice to each union within five working days of the claim being raised that they must consolidate.

4. A single union raises claims for members to cover employees who do the same or substantially similar work across multiple employers.
5. Multiple unions raise claims with multiple employers for their members to cover employees who do the same or substantially similar work. Any union claims related to the same work with one or more employers must be consolidated, or joined together. Unions must have at least one member working for each employer and doing the same or substantially similar work covered by the claim.

Each employer who is part of a multi-employer pay equity claim raised by one or more unions must enter into a multi-employer pay equity process agreement with the other employers involved in the claim. Any employer can apply to the Employment Relations Authority (ERA) for direction if they can't agree on a process agreement. For more information, go to Section 3.4.

3.2 How to respond to a pay equity claim

If a pay equity claim is raised with an employer, employers need to know how to respond.

Within five working days of receiving the claim, you must:

- › acknowledge you have received the claim by giving a notice to the claimant
- › give a notice to every union who has members with the employer that do the same or substantially similar work covered by the claim.

These notices to unions must be:

- › written in plain language
- › attached to a copy of the pay equity claim.

If a claim is raised by an individual employee, the attached copy of the claim cannot include the employee's name, contact details, or other information that identifies the employee to the union without their permission.

You have up to **45 working days** between receiving the claim and communicating in writing to the claimants whether you agree the claim is arguable. When you have made a decision if a claim is arguable or not, you must tell the claimant in writing.

If you decide a claim is not arguable, you must give reasons for not accepting the claim. More reasons can be requested by the claimant. You must also tell the claimant that the decision can be referred to mediation, the ERA for facilitation if all the parties agree, or to the ERA for a determination if both of these processes are unsuccessful.

Timeframes to respond to a claim

Employers can extend the timeframe to decide if a claim is arguable, if they have reasonable grounds. In this case, you must notify the employee that you are extending the timeframe, set out the new date, and your reasons for extending the timeframe.

You cannot extend the timeframe by more than:

- › 20 working days for claims raised with a single employer
- › 80 working days for union claims raised with multiple employers, unless all parties agree to a longer extension.

When you have made a decision if a claim is arguable or not, you must tell the claimant in writing.

What happens if an employer doesn't respond to a claim by the required date?

If you do not give the employee notice that a claim is arguable within 45 working days or by an agreed extension date, you're deemed to **have accepted that the pay equity claim is arguable**. This means you must continue to the next stage of the pay equity process.

3.3 How do employers decide if a pay equity claim is arguable?

A pay equity claim will set out why the employee or union considers their claim is arguable.

A claim is arguable if:

- › it relates to work that is now or in the past was done mostly by female employees who made up approximately 60 percent or more of the workforce
- › it is arguable that the work is currently undervalued or has historically been undervalued.

Low threshold

The pay equity process sets a low threshold to raise a claim. The Act states that there is a low threshold to raising a claim¹. An employer must take a light touch approach when making a decision about whether a claim is arguable. If you decide a pay equity claim is arguable, it does not mean you agree that there is a pay equity issue or that there will be a pay equity settlement. An employer agreeing that a claim is arguable only means they will move to the next stage of the pay equity claim process.

Data that employers might consider to decide if a claim is arguable

To assess whether you think a pay equity claim is arguable, you could consider the percentage of women who do the work set out in the claim, and information that shows the work may have been undervalued because of factors listed in Section 2.1.

You may find it useful to consider occupational data from within your organisation, an employer or industry organisation, or more general labour market data from Statistics New Zealand.

3.4 Multi-employer pay equity claims

A **multi-employer pay equity claim** is raised by one or more unions for union members covering employees who perform the same or substantially similar work. In this case, the group of employers must make a joint decision about whether the pay equity claim is arguable.

Multi-employer process agreements

In a pay equity claim raised by a union with more than one employer, the employers involved must enter into a single **multi-employer pay equity process agreement**. Multi-employer process agreements apply to claims raised by one or more unions with two or more employers for union members and covers employees performing work that is the same or substantially similar.

Each employer who receives a multi-employer claim from a union must enter into a process agreement with the other employers to decide whether the claim is arguable and for the bargaining process.

The agreement must set out:

- › whether there will be one or more representatives for employers and who they are
- › how decisions for the claim will be made.

If the employers in a multi-employer claim decide the claim is arguable, or are deemed to have accepted it as arguable, they must individually give notice to affected employees in their workplace and enter a bargaining process together.

Any employer can apply to the ERA for direction if they can't agree on a multi-employer process agreement.

Opting out of a multi-employer pay equity claim if you're an employer

You can opt out of a multi-employer pay equity claim if you:

- › have genuine reasons based on reasonable grounds
- › let all others parties involved in the claim know about your decision.

If you opt out, the pay equity claim for your employees will need to be progressed as a separate claim.

3.5 What happens after an employer agrees a claim is arguable?

Once an employer agrees that a pay equity claim is arguable, the next step is to work out which employees are affected. You need to examine the workforce to find the employees who do the same or substantially similar work covered by the claim, and notify them that a pay equity claim has been raised for their work. Affected employees who are notified are covered by a union claim, unless they opt out. Affected employees who are notified of an individual claim are not covered by the claim, but they may choose to raise their own pay equity claim.

In a notice, you must provide information about the steps that affected employees may take to raise their own pay equity claim. See Appendix 1 for more information on the details that must be included in a notice to employees.

You must notify other employees performing the same or substantially similar work no later than 20 working days after your decision on whether the claim is arguable. You may extend the timeframe up to a further 25 working days if you have reasonable grounds.

After arguability has been agreed, the parties should enter into a bargaining agreement in good faith. The agreement sets out a process to conduct effective and efficient bargaining. This should happen as soon as possible at the start of pay equity bargaining.

What happens if an employer decides the claim is NOT arguable?

If you decide a claim is not arguable, you must tell the claimant in writing, set out the reasons for your decision, and explain the steps claimants can take to challenge the decision. The employee or union making the claim can decide whether to challenge the decision, and how they will do this.

An Introduction to Pay Equity

This publication is the first of several publications by the Ministry of Business, Innovation and Employment that are intended to provide support to parties to pay equity claims.

Section 4:

Appendices



4.1 Notices to employees affected by a pay equity claim

Notice for claims raised by an individual employee

If an employer decides a claim raised by an individual is arguable, the employer must give notice to each of the affected employees. This doesn't apply if there is already a claim in progress regarding this work.

Notice to the affected employees must include:

- › A statement that a pay equity claim has been raised for work that is the same as or substantially similar to their work
- › Details of the steps the employee can take to raise their own pay equity claim
- › A statement that:
 - If the employer settles the claim, the employer may offer the settlement offer to them
 - If the employee accepts this settlement offer, they will not be able to raise their own claim
 - If the employee declines the offer, they can still raise their own claim
- › The date the notice has been given.

Notice must be in writing, in plain language, be given as soon as possible, and not later than 20 working days after the date the employer decides the claim is arguable. The employer can request to extend their time limit by giving notice to the claimant that they need more time to notify the affected employees, if they have reasonable grounds to do this.

A notice extending the time limit must not extend the time more than 25 working days and must:

- › Be given as soon as they can and not later than 20 working days after the date they decide it's arguable
- › Specify the date employees will be notified
- › Set out the reasons for requiring the extension.

Notice for claims raised by one or more unions

If an employer decides a claim raised by one or more unions on behalf of one or more of the employees, employed by them, is arguable, the employer must give notice to each of the affected employees employed by them. This doesn't apply if another union raises another claim with the same employer or for the same or substantially similar work, where unions must consolidate their claims.

Notice to the affected employees must include:

- › A statement that a pay equity claim has been raised by one or more unions for work that is the same as or substantially similar to their work
- › A statement that the employee is covered by the claim even if they aren't a union member, unless:
 - Before receiving the notice, the employee had already raised or settled a pay equity claim with the employer or accepted an offer of benefit for this work
 - They can't raise a pay equity claim because they have resolved an issue before for unlawful discrimination or equal pay
 - The employee opts out in writing

- › A statement that if the employee doesn't opt out of the claim within 20 working days after the date of notice, the employer will give the employee's name and contact details to the unions
- › The end date that the employee must give notice to opt out to prevent their name and details being given to the unions
- › Advice about opting out, including:
 - How to opt out if the employee is not a member of the union or unions raising the claim
 - An employee who is a member of a union may not opt out of a claim raised by that union while remaining a member of the union. However, they may wish to contact their union representative to discuss options available.
- › A statement that employees who aren't union members are not required to pay fees to be covered by the claim or to have offer of settlement benefit paid to them. Unions can ask these employees for voluntary contributions
- › An explanation of the consequences of being covered by the claim if it is settled, including that:
 - The settlement will apply to the employee and may result in change to their terms and conditions of employment to ensure pay equity is reached. The existing terms and conditions of employment may not be reduced by pay equity settlement or determination
 - The employee can't raise their own pay equity claim for this work in the future
- › A statement that if the employee has raised a claim with their employer and it has not been settled, the employee may:
 - Withdraw the claim by giving employer written notice
 - Join the union-raised claim by giving notice in writing to the union
- › A statement that if the employee wants to raise their own pay equity claim, they must opt out of the union-raised claim before:
 - They file an application with ERA for a determination
 - The final date of voting on a proposed settlement
- › A statement that if employee opts out of a union-raised claim, they must be offered the settlement offer and:
 - If they accept it, they can't raise their own claim
 - If they decline, they can raise own claim
- › An explanation of steps an affected employee may take to raise their own pay equity claim
- › A recommendation that the employee seeks legal advice.

The notice also needs to:

- › State the date it is given
- › Be in writing and plain language
- › Be given as soon as possible and not later than 20 working days after employer decides claim is arguable.

The employer can request to extend their time limit by giving notice to the claimant that they need more time to notify the affected employees, if they have reasonable grounds to do this.

A notice extending the time limit must not extend the time more than 25 working days and must:

- › Be given as soon as they can and not later than 20 working days after the date they decide it's arguable
- › Specify the date employees will be notified
- › Set out the reasons for requiring the extension.

4.2 Glossary

There are terms and concepts used in this guide that are important in understanding the issue of pay equity and the claims process.

Affected employee

An affected employee does work that is the same as, or substantially similar to, the work done by another employee of the same employer, if a pay equity claim has been raised with the employer for that work (by an employee or by one or more unions).

Arguable

Arguable describes the basic threshold to enable a claim to move through to the assessment phase of the process.

A claim is arguable if:

- › the claim relates to work that is now or in the past was predominantly performed by female employees who made up approximately 60 percent or more of the workforce
- › it is arguable that the work is currently undervalued or has historically been undervalued.⁵

In deciding whether it is arguable that work has been or is now undervalued, any of the following factors can be considered⁶:

- › the origins or history of the work, including how wages have been set
- › whether the work is socially or culturally undervalued because it is associated with women
- › whether the work uses skills or qualities that have been associated with women with the view that this kind of work should be unpaid
- › whether there is sex-based undervaluation of the work, as a result of factors such as a dominant source of funding or a lack of effective bargaining
- › occupational segregation or occupational segmentation
- › parties failing to properly assess the pay that workers should have received for the nature of the work, the levels of responsibility, work conditions, and degrees of effort
- › any other feature of the relevant market, industry, sector or occupation.

Any other relevant factors can also be considered.

⁵ See sections 13F(1)(a) and (b) of the Act

⁶ See Section 13F(3) of the Act for further examples of factors

Claim process

Raising a pay equity claim and going through the process of a claim, such as deciding if a claim is arguable, assessing work, and if there is a pay equity issue, bargaining, and settling a claim.

Claimant

A claimant could be:

- › an individual employee (or their representative)
- › a union on behalf of its members for a claim covering employees who do same or substantively similar work
- › multiple unions, on behalf of their members, for a claim covering employees in relation to the same work or substantively similar work.

Collective bargaining

Collective bargaining is the process to create or renew a collective employment agreement between at least one registered union and at least one employer, with both parties acting in good faith.

Comparable work / Comparator

Comparable work is work that has been identified as suitable to assess against the work of the claimant.

Appropriate comparators may have any of the following features, and can be work done:

- › mostly by men, and is the same as, or substantially similar to, the claimant's work
- › mostly by men, and is different to the claimant's work, but involves the same or substantially similar levels of: skills and experience, responsibilities, working conditions, or degrees of effort
- › by any other comparators that the parties or the Employment Relations Authority (ERA) or court considers useful and relevant, including comparators who do work that has previously been the subject of a pay equity claim settlement.

Consolidation

In pay equity, consolidation is joining together more than one union-raised pay equity claim (either with one or more employers) into one claim.

Employment agreement / Collective employment agreement / Individual employment agreement

An employment agreement is a contract on terms and conditions of employment between an employer and employee, including remuneration. The agreement outlines what employees are expected to do and what they are entitled to. It also outlines the process to follow if there are disputes.

Collective employment agreements cover at least two employees who are union members, and are between at least one employer and at least one registered union. These agreements can cover many different employment arrangements, and outline employer obligations.

Equal pay

The Act states that equal pay “means a rate of remuneration for work in which there is no element of differentiation between male employees and female employees based on the sex of the employees”.

Gender

As defined socially and culturally, gender identifies differences in females and males. Gender assigns different roles, responsibilities, expectations, abilities and behaviours to each group.

Understandings and expressions of gender change over time and across different cultural contexts.

Gender pay gap

The gender pay gap shows the overall difference between women and men’s pay.

Factors that contribute to the gender pay gap are⁷:

- › the work women do: while there are some exceptions in New Zealand today, women are more likely to be found in a narrow range of occupations and at the bottom or middle of an organisation
- › the value put on women’s work: the skills and knowledge that employees contribute in female-dominated occupations may not be recognised or valued appropriately in comparison to other work
- › work arrangements and caring responsibilities: more women combine primary care giving with full- or part-time work, which tends to be more readily available in lower paid occupations and positions. This can limit employees’ access to better paying occupations and positions.

In 2020, the overall gender pay gap in New Zealand was 9.5 percent. This means men in New Zealand earned on average 12 percent more per hour than women. The gender pay gap is not consistent across ethnic groups in New Zealand, for example Māori and Pasifika women have lower rates of pay compared to New Zealand European women and men.

Good faith

Good faith means that the parties in an employment relationship should behave in an open and respectful way and work constructively together. Parties should not directly or indirectly do anything to mislead or deceive each other⁸.

Labour market

A labour market is the place where employees and employers interact with each other, where payment for work depends on the supply and demand of labour. In the labour market, employers compete to hire the best employees, while employees compete for the most satisfying work.

⁷ employment.govt.nz/hours-and-wages/pay/pay-equity/gender-pay-gap

⁸ The concept of “good faith” is outlined in Section 4 of the Employment Relations Act 2000 and Section 13C of the Act.

Opt out

Opting out of a claim means an employee chooses not to be part of a union pay equity claim that they would otherwise be covered for.

Employers can opt out of a multi-employer pay equity claim if they have genuine reasons based on reasonable grounds. If an employer opts out of a multi-employer claim, the pay equity claim for their employees will need to be progressed as a separate claim.

Pay equity

Pay equity is the same pay for different work of equal value. Pay equity means that work predominantly performed by females is not subject to systemic sex-based discrimination.

Pay equity claim

In law, a pay equity claim is when an employee or a union argues that an employer has breached Section 2AAC(b) of the Act.

In essence, a pay equity claim states that an employee or group of employees are doing work that is, or has been, undervalued due to systemic sex-based discrimination because it is mostly performed by women.

Remuneration

The Equal Pay Act 1972 defines remuneration as:

Remuneration, in relation to any employee, means the salary or wages actually and legally payable to that employee, and includes –

- › time and piece wages and overtime and bonus and other special payments
- › allowances, fees, commission, and every other emolument, whether in one sum or several sums, and whether paid in money or not.

Settlement

Settlement takes place when a pay equity issue is found, the claim progresses to the final stage and parties agree on how to correct the pay equity issue. There are other requirements needed in a settlement under the Act.

Women's work

Women's work is a phrase that is used to describe work that is mostly or only done by women, or work that is thought *should* be done by women.

Labeling certain kinds of work as women's work can result in patterns of discrimination that are hard to shift.

Work assessment / Job evaluation

To progress a pay equity claim, it is necessary to carry out an assessment of the work done by the claimants and comparators.

A work assessment is a process to understand the work in depth. The first step is to define what is being considered and ensure that any overlooked, hidden or undervalued skills, responsibilities and demands are uncovered and included in the assessment. Any assessment of work must be free of assumptions based on sex.

A job evaluation is a systematic analytical process to work out the value of the work compared to others, using factors such as:

- › skills and knowledge
- › responsibility
- › demands and effort
- › general working conditions⁹.

4.3 Related organisations

- › Ministry of Business, Innovation and Employment (employment.govt.nz)
- › Ministry for Women (women.govt.nz)
- › Te Kawa Mataaho Public Service Commission (the then State Services Commission) – (publicservice.govt.nz)
- › New Zealand Council of Trade Unions (union.org.nz)
- › Business New Zealand (businessnz.org.nz)
- › Employment Relations Authority (era.govt.nz)
- › MBIE Mediation Service (employment.govt.nz/resolving-problems/steps-to-resolve/mediation)
- › NZ Employers and Manufacturers Association (ema.co.nz)
- › Champions for Change (championsforchange.nz)
- › Global Women (globalwomen.org.nz)
- › OECD (oecd.org/gender)
- › Australian Workplace Gender Equality Agency (wgea.gov.au)
- › Register of unions (companiesoffice.govt.nz/all-registers/registered-unions)

9 See Section 13ZD of the Act for a full list of factors that need to be assessed in a work assessment.

4.4 Resources on Pay equity

Further Publications

- › *This publication is the first of several publications by the Ministry of Business, Innovation and Employment that are intended to provide support to parties to pay equity claims.*

New Zealand government resources

- › **What's My Gender Pay Gap?**
Ministry for Women
<https://women.govt.nz/gpg>
Explore gender pay gaps in New Zealand, broken down by several different factors including ethnicity, region, and age.
- › **Gender inequality and unpaid work**
Ministry for Women
https://women.govt.nz/sites/public_files/Gender%20inequality%20and%20unpaid%20work%20.pdf
A literature review outlining the disproportionate burden of unpaid work that falls to women, and what steps can be taken to address this.
- › **Parenthood and Labour Market Outcomes**
Isabelle Sin, Kabir Dasgupta and Gail Pacheco for Ministry for Women
https://women.govt.nz/sites/public_files/Parenthood%20%26%20Labour%20Market%20Outcomes.pdf
Considers the data on gender gaps in parenting and labour market participation, and the “motherhood penalty”.
- › **Empirical Evidence of the Gender Pay Gap**
Gail Pacheco, Chao Li and Bill Cochrane for Ministry for Women
https://women.govt.nz/sites/public_files/Empirical%20evidence%20of%20GPG%20in%20NZ%20-%20Mar2017_0.pdf
Statistical analyses of gender pay gap data, which found that up to 80% of the gender pay gap in New Zealand is “unexplained” by factors like differences in types of work and education, family responsibilities and age.
- › **The Gender Pay Gap and Pay Equity**
Te Kawa Mataaho/Public Service Commission
<https://www.publicservice.govt.nz/our-work/the-gender-pay-gap-and-pay-equity/>
This site provides information on work in the public service to close gender pay gaps and achieve pay equity, including guidance on measuring gender pay gaps, implementing flexible working, removing gender bias from recruitment processes, and many more.
- › **Care and Support Workers Pay Equity Settlement**
Ministry of Health
<https://www.health.govt.nz/new-zealand-health-system/pay-equity-settlements/care-and-support-workers-pay-equity-settlement/summary-pay-equity-settlement>
- › **Teacher Aide Pay equity settlement**
Ministry of Education
<https://www.education.govt.nz/school/people-and-employment/pay-equity/teacher-aide-pay-equity-claim/>
- › **Oranga Tamariki pay equity settlement**
Oranga Tamariki
<https://anzasw.nz/pay-equity/>

New Zealand non-government resources

- › **Taking Action: What you can do if you're discriminated against**
Community Law
<https://communitylaw.org.nz/community-law-manual/chapter-7-discrimination/taking-action/>
This guide explains your options if you consider you have been discriminated against and want to complain to the Human Rights Commission.
- › **Champions for Change NZ – What we do**
Champions for Change
<https://www.championsforchange.nz/what-we-do/>
- › **NZ Equal Pay History**
Coalition for Equal Value Equal Pay
<http://www.cevep.org.nz/history/index.html>
Although not updated in recent years, this resource explains the history of the equal pay movement in New Zealand.
- › **Equal Pay**
New Zealand Council of Trade Unions
<https://www.union.org.nz/category/equal-pay/>
An archive of resources prepared by the NZCTU on pay equity and equal pay.

International resources

- › **Equal Pay – An Introductory Guide**
International Labor Organisation
ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_216695.pdf
This document is designed to help readers make sense of ILO Convention 100 (The Equal Remuneration Convention).
- › **Pay Equity and Legal Risk Management**
Workplace Gender Equality Agency, Australia
<https://www.wgea.gov.au/sites/default/files/documents/Legal-framework-and-pay-equity.pdf>
This document provides information for organisations looking to close their gender pay gaps and ensure they are complying with relevant Australian legislation. Although the legislation is not relevant to New Zealand, this document may still be of interest to employers who want to proactively take steps to close any gender pay gaps in their organisation.
- › **Guide to gender pay equity**
Workplace Gender Equality Agency, Australia
<https://www.wgea.gov.au/topics/addressing-pay-equity/guide-to-gender-pay-equity>
A useful overview of causes of gender pay gaps, and what organisations can do to close gender pay gaps.
- › **Eight ways to understand your organisation's gender pay gap**
Gender Pay Gap Service, United Kingdom
<https://gender-pay-gap.service.gov.uk/guidance/eight-ways-to-understand-your-organisations-gender-pay-gap/overview>

