



Equal Pay

Scope, definitions and case law

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Outline

- Legal provisions
- Worker
- The concept of pay
- Direct discrimination in the field of pay
- Indirect discrimination in the field of pay
- Work of equal value
- Job classification schemes
- Burden of proof
- Some conclusions



Legal provisions

- Treaty on the functioning of the EU: Article 157
 - ex Art. 119 EEC; 141 EC
 - Economic and social aim, economic aim is secondary (C-50/96, *Schröder*)
 - Fundamental social right (149/77, *Defrenne III*)
 - Horizontal direct effect since 8 April 1976 (43/75 *Defrenne II*)



Legal provisions

Article 157 TFEU:

'1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement
- (b) that pay for work at time rates shall be the same for the same job.'



Legal provisions

- Recast Directive 2006/54/EC
- Article 4:

'For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.'

Article 157 TFEU primary source of law (69/80 *Worringham*)



Legal provisions

- Charter of Fundamental Rights and Freedoms of the EU
- Article 23:

'Equality between women and men must be ensured in all areas, including employment, work and pay.'



Worker

- Community meaning
- Certain period of time; services for and under the direction of another person; remuneration: 317/93 *Nolte* and 444/94 *Megner*



Concept of pay

- Broad concept (overtime supplements, special bonuses, travel facilities, occupational pensions etc.)
- Not: social security schemes (*Defrenne I*): Directive 79/7/EEC (not amended)
- Occupational pension schemes: C-262/88 *Barber*, 17 May 1990
- Pension scheme for civil servants: C-7/93 *Beune*



Direct sex discrimination

- Occupational pension schemes
 - *Barber*
 - C-366/99 *Griesmar* (service credit for female workers who have had children)
- Bonus
 - C-333/97 *Lewen* (Christmas bonus)



Indirect sex discrimination

- Important concept developed by Court of Justice in this field
- Part-time work
 - 170/84 *Bilka*
- Definition in the Recast Directive



Work of equal value

- A comparison is required, but not necessarily the same employer
- Single source (*C-320/00 Lawrence*; *C-256/01 Allonby*)
- Criteria:
 - The nature of the work is decisive, in addition other factors might play a role such as training requirements, responsibilities etc. (*129/79 Macarthy*; *C-400/93 Royal Copenhagen*; *C-309/97 Wiener Gebietskrankenkasse*)



Job classification schemes

- *237/85 Rummler*
- Muscular effort potentially indirect discriminatory
- ECJ: In order for a job classification system not to be discriminatory as a whole, it must, in so far as the nature of the tasks carried out in the undertaking permits, take into account criteria for which workers of each sex may show particular aptitude.





Burden of proof

- Article 19 Recast Directive
- C-381/99 *Brunnhofer*
- 109/88 *Danfoss* : pay system lacks transparency, burden of proof on employer



Some conclusions

- Very important role of the Court of Justice
 - Broad concept of pay
 - Concept of indirect (sex) discrimination
- Job classification schemes
 - Importance of exchange of good practices



WE NEED TO GET
AN EQUAL PAY
EXPERT IN...

(LET'S GET
A GIRL-IT'LL
BE CHEAPER!



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