

Pay Equality Bill

A Bill to make provision for equality through the removal and prevention of discrimination in rates of pay of males and females in paid employment to promote observance in New Zealand of the principles underlying International Labour Convention 100 on Equal Remuneration and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

1. Short Title

This Act may be cited as the Pay Equality Act.

2. Objects

The objects of the Act are -

- (1) To provide for the inclusion in all employment agreements, individual and collective, of an equality clause;
- (2) To identify equal work and provide for equal pay for equal work and work of equal value;
- (3) To provide for the right to be free from the discrimination of inequality of pay.

3. Interpretation

In this Act, unless the context otherwise requires, -

“Agreement” means -

- (a) a contract of employment;
- (b) an individual employment agreement entered into by one employer and one employee who is not bound by a collective agreement;
- (c) a collective agreement as defined in the Employment Relations Act

“Authority” means the Employment Relations Authority constituted under the Employment Relations Act 2000

“Court” means the Employment Court constituted under the Employment Relations Act

“Employee” includes a person who has entered into or works under a contract of employment or apprenticeship with an employer

“Employer” includes a person employing any employee or employees

“Labour Inspector” means an employee of the department designated under section 223 of the Employment Relations Act to be a Labour Inspector

“Pay” includes the salary or wages actually paid and legally payable and includes bonus and other special payments, allowances, fees, commissions, and any other benefits or privileges whether paid in money or not

“Union” means a union registered under Part 4 of the Employment Relations Act

“Work of Equal Value Unit” means a unit established within the Department of Labour with persons qualified and experienced in the Gender-Inclusive Job Evaluation Standard (P8007/2006)

4. Application of the Act

The Act will apply to both the public and the private sectors.

5. Equal Work

- (1) For the purposes of this Act, A's work is equal to that of B if it is-
 - (a) like B's work,
 - (b) rated as equivalent to B's work,
 - (c) of equal value to B's work.
- (2) A's work is like B's work if-
 - (a) A's work and B's work are the same or broadly similar; and



- (b) Such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) A's work is rated as equivalent to B's work if a job evaluation study-
 - (a) gives an equal value to A's job and B's job in terms of the demands made on an employee, or
 - (b) would give an equal value to A's job and B's job if the evaluation did not include values different for men from those set for women.
- (4) A's work is of equal value to B's work if it is-
 - (a) neither like B's work nor rated as equivalent to B's work, but
 - (b) nevertheless equal to B's work in terms of the demands made on A by reference to the Gender-Inclusive Job Evaluation Standard (P8007/2006).

6. Equality Clause

- (1) Every employment agreement, individual and collective, shall be deemed to include an equality clause.
- (2) An equality clause is a provision that provides for equal work as defined in section 5 and has the following effect-
 - (a) if a term of A's agreement is less favourable to A than a corresponding term of B's agreement, A's term is modified so as to have the same effect as the term in B's agreement;
 - (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

7. Defence of Material Factor

- (1) The equality clause in A's terms has no effect in relation to a difference between A's term and B's terms if it is shown that the difference is because of a material factor, reliance on which-
 - (a) does not invoke treating A less favourably because of A's sex than B is treated, and
 - (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
- (2) A material factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.
- (3) For the purpose of subsection (1), the long-term objective of reducing inequality between men and women's work is always to be regarded as a legitimate aim.
- (4) A material factor includes evidence that a Job Evaluation Scheme that is consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2006) has been undertaken and implemented by the employer.

8. Obligation to Provide Information

- (1) Every employer must at all times keep a record showing that all employees are paid in accordance with the equality clause.
- (2) Every employer must record any differences in the remuneration of male and female employees.
- (3) Any clause in any individual or collective agreement that prevents or restricts the disclosure of information relating to remuneration is unenforceable against the individual who wishes to disclose the information in the course of establishing discrimination in the rates of pay on the grounds of sex inequality.

- (4) A Labour Inspector (or person authorised by a Labour Inspector to do so) may serve on an employer a demand notice, if an employee makes a complaint to the Labour Inspector or the Labour Inspector believes on reasonable grounds, that an employee has not received pay or other money payable by the employer under the Pay Equality Act.
- (5) Before issuing the demand notice the procedure laid down in section 224 of the Employment Relations Act must be followed.
- (6) A Labour Inspector may commence an action in the name and on behalf of an employee to recover any money payable under the Pay Equality Act.

9. Assessment of Whether Work is of Equal Value

- (1) This section applies to proceedings before the Authority on a complaint relating to a breach of an equality clause.
- (2) Any party to an employment agreement, individual or collective, may lay a complaint for breach of the equality clause.
- (3) Where a question arises in the proceedings as to whether A's work is equivalent to B's work or A's work is of equal value to B's work, the Authority may, before determining the question, require the Department of Labour (Work of Equal Value Unit) to prepare a job evaluation study that is consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2006) on the question.
- (4) If the determination of the complaint requires a comparator occupational group to be identified, the Authority will require the Department of Labour (Work of Equal Value Unit) to identify an appropriate comparator group and prepare a job evaluation study consistent with the Gender-Inclusive Evaluation Standard (P8007/2006). The comparator occupational group(s) may be identified within the enterprise itself, or from another enterprise or the same or another

industry. The comparator groups are to have same or comparable job evaluation points as determined in accordance with the Gender-Inclusive Job Evaluation Standard (P8007/2006).

- (5) If the Authority requires the preparation of a study, it must not determine the question unless it has received the job evaluation study.
- (6) On receipt of the job evaluation study the Authority will make it available to the parties and after receiving submissions from the parties will determine the matter.

10. Inclusion of Equality Clause in Collective Agreement

- (1) A collective agreement has no effect unless it contains an equality clause.
- (2) The form and nature of the equality clause may be negotiated through the collective bargaining process in accordance with the provisions of the Employment Relations Act.
- (3) In the event of dispute over the form and nature of the equality clause the matter will be referred to the Department of Labour (Work of Equal Value Unit) for a job evaluation study consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2006).
- (4) The job evaluation study will be referred to the parties but if agreement cannot be reached the matter may be referred by one or both of the parties to the Authority for a determination that will be binding.

11. Jurisdiction

- (1) The Authority has jurisdiction to determine a complaint relating to or arising out of a breach of the equality clause.
- (2) Where an employee would be entitled to make a complaint under the Human Rights Act 1993, the employee may choose to pursue a complaint under the Pay Equality Act or the Human Rights Act but not both.

- (3) The Authority has jurisdiction to determine an application for a declaration as to the rights of an employee or employees or employer or employers in relation to a dispute about the effect of an equality clause.
- (4) The Authority may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the proceedings or on its own motion, state a case for the opinion of the Employment Court on any question of law arising in any proceedings before the Tribunal.
- (5) The Employment Court shall hear and determine any question submitted to it under this section, and shall remit the case with its opinion to the Authority.

12. Remedies

- (1) If the Authority is satisfied on the balance of probabilities that the defendant has committed a breach of the equality clause, the Authority may grant 1 or more of the following remedies:
 - (a) a declaration that the defendant has committed a breach of the equality clause;
 - (b) an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order;
 - (c) an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant;
 - (d) an order that the defendant undertake any specified training or programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of this Act.
- (2) Any order made under this section of the Act may be filed in any District Court, and shall be then enforceable in the same manner as an order made or judgment given by the District Court.

13. Offences

- (1) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$5000 who, either alone or in combination with any other person or group or body of persons, does any act with the intention of defeating any provision of the Act.
- (2) Every person commits an offence who, wilfully obstructs or hinders any Inspector in the performance of the functions under section 8 of this Act.

14. Codes of Practice

- (1) The Authority may issue codes of practice-
 - (a) that ensure or facilitate compliance with a provision of the Act;
 - (b) that ensure or facilitate the provision of an equality clause in a collective agreement.
- (2) The Department of Labour shall issue a code of practice that is consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2007) for the identification of appropriate comparator occupational groups to facilitate the determination of complaint(s) relating to work of equal value.
- (3) The Human Rights Commission shall establish procedures for the advocacy and promotion of pay equality by education and publicity and the dissemination of information.

15. Department of Labour

The Act is to be administered by the Department of Labour.

