

Are you an employer at risk of Equal Pay Claims, or are you an employee who could be entitled to make one? The following brief guide will help you decide.

Sex Equality Clause

An individual (“Person X”) employed under a contract to do work, is entitled to contractual terms that are as favourable as those of a comparator (“Person Y”) of a different sex in the same employment, if they are employed to do equal work. This is achieved through a “sex equality clause”.

The contractual terms could concern basic pay, hours of work, access to pension schemes, entitlement to annual leave, overtime rates, performance related benefits, and non-monetary terms, among others. The sex equality clause applies to each individual term of a contract.

The Equality Act 2010 implies into a contract of employment a **sex equality clause**, which operates to replace Person X’s less favourable terms with the equivalent more favourable terms in Person Y’s contract, if such a clause does not already exist. The sex equality clause operates where:

1. a term in Person X’s contract of employment is less favourable to Person X than a term of similar kind in Person Y’s contract of employment,
2. Person X is a different sex to Person Y, and
3. Person X is employed on work of an **equal value** to Person Y.

“**Equal value**” means any of the following

Like work

- Work is the same or of a broadly similar nature
- No important differences in the tasks performed
- Focus on the work performed

Work rated as equivalent

- In an objective job evaluation study, capable of being implied impartially, which both parties accept as valid

Work of an equal value

- Work is **not** like or equivalent to that undertaken by Person Y
- Work is of an equal value to the work done by Person Y in terms of skill, decisions, effort, etc
- Evaluation does not consider factors which discriminate because of sex

A contractual term may be less favourable:

- **directly**, for example Person X is paid less than Person Y specifically because Person X is a woman and Person Y is a man; or
- **indirectly**, where a beneficial contractual term depends on a condition or requirement being fulfilled which in reality is more difficult for one sex to comply with.

Note: there is also a “**maternity equality clause**”, which gives a woman a pro rata entitlement to any bonuses and an equal right to pay rises which would have otherwise been denied during maternity leave.

Comparator

The comparator needs to be:

- an actual (not hypothetical) person,
- of a different sex to the Claimant,
- employed (currently or previously) by the same employer or associated employers, either at the same establishment or at different establishments with common terms.

The comparator does not need to consent to the Claim being made.



The Material Factor Defence

An employer can pay Person Y more than Person X, or give Person Y other more favourable terms, if they can prove that the terms are different due to a material factor which is not directly or indirectly sex discriminatory.

For example, past performance, seniority, geographical reasons, and mistake.

In some cases, it is also necessary to show that the factor is objectively justified as being a “proportionate means of achieving a particular aim”.

Key Considerations

- You can bring an Employment Tribunal Claim for Equal Pay:
 - a. at any time during your employment; or
 - b. in a standard case, within 6 months from the last day of employment.
- Equal Pay Claims can be brought by men and women (they are not reserved to women).
- Equal Pay Claims are **not** the same as Sex Discrimination Claims. If the inequality involves non-contractual payments, a Sex Discrimination Claim is the appropriate action.

How Can Lyndaes Help?

We can help you:



Assess your situation, identify potential Claims, and plan your next steps.



Communicate with your employer or employee and Acas.



Pursue your Claims, or defend you from your employee's Claims, in the Employment Tribunal and Court.



If appropriate, enforce your remedies.

So if you think you might have an Equal Pay Claim, or if you have been faced with one, contact our Employment team.



If you have any questions or require advice please contact:

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