In certain occupations where the work is, or was, predominantly performed by women, wages have often been kept lower than occupations where the work has been performed predominantly by men. Today’s “going market rate” for employing people in traditionally female dominated occupations may not be a fair or equal rate, but a suppressed wage due to historical and or current pay discrimination.

The Equal Pay Act allows individual employees and unions to raise a pay equity claim directly with an employer using a framework that is similar to New Zealand’s existing bargaining framework. This approach will lower the bar for workers and unions to raise a pay equity claim, and utilise a collaborative process familiar to workers, unions and businesses.

Under the Act, employees, employers and unions will negotiate in good faith, with access to mediation and resolution services if they are unable to agree.

The government will work with unions, business and women’s groups to produce a range of tools and resources to support both claimants and respondents to pay equity claims.

A new framework for pay equity in New Zealand

The new amended Equal Pay Act 1972 provides a practical and accessible process to raise and resolve claims of systemic sex-based pay undervaluation in female-dominated occupations.

Pay equity vs equal pay

Pay equity is about women and men receiving the same pay for doing jobs that are different, but of equal value (that is, jobs that require similar degrees of skills, responsibility and effort).

Equal pay is about men and women getting the same pay for doing the same job. The process for making equal pay claims is largely unaffected by the new Act.
An employee can raise a pay equity claim if they do work that is (or was historically) female-dominated and there are factors that indicate the work is currently or has historically been undervalued.

The employer must decide within 45 working days whether they consider the claim is an arguable pay equity claim.

The employer agrees, and parties proceed to bargaining.

The employer must notify all their other employees who do the same or substantially similar work as the claimant within 20 working days.

The employer and employee or union work through the pay equity bargaining process. This involves an assessment of the work of the claimant and suitable comparator occupations. If a pay equity issue is identified, parties will then bargain to determine a settlement that does not differentiate on the basis of sex.

The parties reach an agreement.

The employer does not agree, and the employee(s) challenge this decision.

Resolving disputes

The dispute resolution process is tiered, and at any point parties can be referred back to the bargaining table.

Mediation

Facilitation (can be used in certain situations)

Determination by the Employment Relations Authority or Court of issues under dispute

Fixing

Once the Employment Relations Authority makes a fixing determination, parties cannot be referred back to bargaining.

PAY EQUITY OUTCOME

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.
The process for pay equity claims raised by unions

**Raising a claim**

A union can raise a pay equity claim on behalf of its members who do work that is (or was historically) female dominated and there are factors that indicate the work is currently or has historically been undervalued. The union can represent member employees who perform the same or substantially similar work across employers.

The employer must decide within 45 working days whether they consider the claim is an arguable pay equity claim.

**Notification, work assessment, bargaining and endorsement of settlement agreement**

The employer(s) must notify all employees who do the work described in the claim within 20 working days. Union claims cover all employees who have not made their own claim. Non-union employees can opt out of the union-led claim up until the endorsement vote.

The union(s) and employer(s) work through the pay equity bargaining process. This involves an assessment of the work of the claimant and suitable comparator occupations. If a pay equity issue is identified, parties will then bargain to determine a settlement that does not differentiate on the basis of sex.

**Resolving disputes**

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- **Mediation**
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**PAY EQUITY OUTCOME**

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.
Components of the new pay equity framework

Raising a pay equity claim
An employee or unions can raise a claim they consider is arguable and employers will need to decide if they accept the claim is arguable.
A claim is arguable if it relates to work that is or was predominantly performed by female employees and the work is currently or historically undervalued.
Employees, unions and employers may consider a number of other factors when deciding if the work has been currently or historically undervalued, such as;
› the origins and history of the work
› any social, cultural or historical factors
› the characterisation of the work as women’s work

Comparators serve as a basis for negotiation. A range of comparators can be used during negotiations.

Multi-employer bargaining
Unions can raise a pay equity claim with multiple employers which must be consolidated. If an employer believes they have genuine reasons based on reasonable grounds for not being part of the multi-employer process, they need to provide those reasons in writing to the union. If the union and the employer don’t agree, they can use the dispute resolution process.
If you opt out, the pay equity claim for your employees will need to be progressed as a separate claim.

Multi-union claims
In some instances, two unions or more may cover workers within one employer. The unions can raise a claim together. If a union has already raised a claim, and a second union wants to raise a claim for the same work with the same employer, this must be consolidated. Claims can be consolidated at any stage in the process until the first claim is settled. If the unions can’t agree, they can use the dispute resolution process.

The dispute resolution process
The dispute resolution process for pay equity bargaining is similar to that for other employment relations matters.
The Employment Mediation Service can assist in pay equity bargaining. Their support includes assisting parties to unravel difficult issues and develop options and steering parties back into negotiations.
When a matter has not been resolved through mediation or other processes, any party to a claim may apply for a determination by the Employment Relations Authority.

Addressing claims for back pay
The Act recognises that pay equity is an issue stemming from structural discrimination, and the issue of pay inequity cannot be attributed to the actions of a single employer. A balanced approach is therefore required.
If parties wish, they will be able to discuss back pay as part of their pay equity bargaining or apply to the Employment Relations Authority for a determination for back pay.


Disclaimer
The information in this pamphlet has no statutory or regulatory effect and is of a guidance nature only.
Users of this booklet should not substitute this guidance for legal advice.