

Employment Court Considers What Equal Pay Means

The Human Rights Act prohibits discrimination in employment on a wide range of grounds. For example you cannot refuse to hire someone, or pay them less, or make them redundant, by reason of any of the prohibited grounds.

Those prohibited grounds are:

- Sex (including pregnancy)
- Marital status
- Religious or ethical belief
- Colour or race
- Ethnic or national origins
- Disability (including illness), whether physical, intellectual, psychiatric or psychological
- Age (over 15)
- Political opinion
- Employment status (e.g. not having a job currently)
- Family status (e.g. having children)
- Sexual orientation

There are a few exceptions, for example an employee who is not a New Zealand citizen must be lawfully entitled to work in New Zealand, and an employee with a disability still needs to be able to carry out the work safely, without an unreasonable risk of harm.

The Equal Pay Act is less well known than the Human Rights Act. This provides that men and women are entitled to equal pay for equal work.

The work of caregivers in the residential aged care sector is predominantly performed by female employees. Under the Equal Pay Act they are entitled to be paid the same as "male employees with the same, or substantially similar, skills, responsibility, and service performing the work under the same, or substantially similar, conditions and with the same, or substantially similar, degrees of effort".

In *Service and Food Workers Union v Terranova Homes and Care Ltd* the Employment Court recently considered what this means. The employer rest home pointed out that their male carers were paid the same as their female carers. But the Court decided that the comparison to be made is not limited to the same work, or even to work in the same industry or sector, if a wider comparison is necessary to identify any historic undervaluation of the work based on gender discrimination. In other words, if the work is paid poorly because it is seen as "women's work", then to compare the rates paid to males and females for that work simply perpetuates the pre-existing gender discrimination.

The parties will return to the Employment Court later to argue over which work and which sectors are not affected by having been viewed as "women's work" but are similar enough to be compared with caregiving in the residential aged care sector.

This case has the potential to significantly increase the wage rates for this type of work. That in turn would be likely to lead to higher prices for rest home care, unless government subsidies are increased. There are also implications for wages in other sectors where work is performed predominantly by women.