

Pay equity claims

A step-by-step guide for employers

The Equal Pay Amendment Act 2020 has streamlined the process for unions and employees seeking to raise a pay equity claim with their employers.

What is a "pay equity" claim?

The principle of pay equity represents women and men receiving equal pay for jobs of similar skill and responsibility. Raising a pay equity claim enables women working in a historically or currently female-dominated and undervalued field to engage in a bargaining process with their employer. A typical example of such a work field is child care and education. This process ultimately ensures female workers' efforts are recognised to the same extent as males' efforts.

Under the new amendment, unions and employees may raise the same pay equity claim with multiple employers. Such a claim will most likely be raised by the employees' union. Alternatively, a claim can be raised against a single employer, though this is less likely if the relevant union is involved.

What to do following receipt of a claim

Step 1: Acknowledge receipt of claim and notify other unions

Employers have 5 working days to notify the claimant that the claim has been received. They must also notify any other union(s) their employees belong to which represent those who work in the same (or similar) field of work.

Step 2: Forming a multi-employer agreement

Where a union raises a claim with multiple employers, the employers must enter into a single multi-employer pay equity process agreement. The agreement must state who will represent the employers and how collective decisions will be made by the employers relating to the claim. If the employers cannot agree on these matters, any of them may apply to the Employment Relations Authority (the **Authority**) for a direction.

If the claim is raised with a single employer only, this step is not necessary.

Step 3: Deciding whether the claim is "arguable"

The employer(s) must make a decision as to whether the claim is "arguable" and must give notice of this decision to the claimant within 45 working days of the claim being made.

Section 13F of the Act outlines what deems a pay equity claim "arguable". In short, a claim is "arguable" if the claim relates to work that is or was "predominantly performed by female employees", and it is arguable that the work is currently undervalued or has historically been undervalued.

It is important to note that an employer deciding a pay equity claim is arguable does not mean that the employer in fact agrees that there is a pay equity issue, nor does it mean that there will be a pay equity claim settlement as a result of following the pay equity process.

Step 4A: If the employers decide the claim is "arguable"

The parties then proceed to the bargaining process. This requires the parties to consider whether current remuneration of the affected employee(s) differentiates on the basis of sex.

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If the parties agree that remuneration does differentiate on the basis of sex, they must propose a settlement agreement under which remuneration for female employees is brought in line with remuneration of their male counterparts. The proposed settlement may include additional terms and conditions of employment, though this is not mandatory under the Act.

Where a union is the claimant, the affected employees vote on whether to endorse the proposed settlement. If the majority of employees vote in favour, a pay equity outcome has been reached. Where the claim is brought by an individual employee, a pay equity outcome has been reached immediately after completion of the bargaining process.

If the bargaining process instead results in the parties agreeing there is no differentiation in remuneration on the basis of sex, a pay equity settlement has not taken place. However, this outcome is still a positive one, as the issue of pay equity has been addressed by the parties.

If the parties cannot agree on remuneration or the review process, either party can apply to the Authority for determination, though mediation will likely have to take place first.

Step 4B: If the employers decide the claim is *not* "arguable"

If the employers decide the claim is not arguable, they must give notice to the union, including reasons for their decision and the steps the union can take to challenge it. These steps are set out in the Act. The union may apply to the Authority for mediation and/or facilitation. If either method is successful in resolving the dispute, the parties can revert back to the bargaining process.

If neither method is successful in resolving the dispute, the union may apply to the Authority for a determination as to whether the pay equity claim is

arguable. If the Authority decides the claim is "arguable", the parties must enter into the bargaining process.

Want to know more?

If you have any questions about the Pay Equity claims, please contact our specialist [Employment](#) Team.