

Equal Pay for Work of Equal Value;
EU Legal Framework and ECJ Case
Law

Michael Malone

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“Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.”

Article 157

Article 157 may be directly relied on before the national courts

- ***Defrenne –v-Sabena [Case 43/74]***
- ***Macarthys Limited –v- Smith [Case 129/79]***

“For the purpose of this Article, “pay” means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer....”

Paragraph 2 of Article 157

Direct discrimination is “where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation”.

Article 2 of Directive 2006/54/EC

Indirect discrimination is “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.”

Article 2 of Directive 2006/54/EC

Less favourable treatment of part-time workers can be indirect discrimination unless objectively justified:

Bilka-Kaufhaus GmbH v Weber Von Hartz [Case 170/84]

Claims can be brought against a body other than the employer, where the difference in pay can be attributed to a single source:

Lawrence v Regent Office Care Limited [Case C-320/00]

If there is a total lack of transparency and disparate impact on women, then it is for the employer to show the absence of discrimination

Danfoss case 109/88

Job Evaluation – a scheme can be relied on by a claimant, where the jobs have been given the same rating, and it can also be a defence for an employer, if the jobs have been given a different rating.

In job evaluation, a particular factor may tend to favour employees of one gender, so long as this is objectively justified and the overall selection of criteria is also objectively justified:

Rummler v Dato-Druck G.m.b.H. [Case 237/85]

Equal value claims may be brought against an employer even though there is no job evaluation scheme covering the relevant jobs:

Commission of the European Community v United Kingdom of Great Britain and Northern Ireland [case 61/81]

Where the pay for jobs mainly done by men is higher than the pay for jobs of equal value done mainly by women, the fact that the pay has been agreed through separate bargaining structures is not a sufficient defence:

Enderby v Frenchay Health Authority and Secretary of State for Health [case No. C-127/92]

A market forces defence can succeed, provided that the higher pay for the comparator is a proportionate means of achieving a legitimate aim

Enderby v Frenchay Health Authority and Secretary of State for Health [case No. C-127/92]

Main factual issues in equal value cases:

- Is there a valid job evaluation scheme?
- Are the jobs of equal value?
- Is the difference in pay objectively justified?