



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

An Equal Pay Guide

A Resource for CTU Unions



October 2019

Introduction and Background

The role of the CTU Equal Pay Steering Group is to lead and co-ordinate CTU union activity on equal pay claims and equal pay campaigns. A small subgroup of the Steering Group met in April 2019 to share experiences, learning and pitfalls about the union experience of raising, taking and settling equal pay claims. The subgroup members suggested that a resource should be developed that would bring together the union experiences, suggestions and reflections. The intention was a document that would establish good practice in taking equal pay claims and be a resource available to give guidance to unions as well as collate lessons learnt from equal pay claims.

Thanks are due to Amy Ross, formerly working for the PSA, who wrote up most of this document and then shared it with the small CTU equal pay sub group. Much of the experience in the document comes directly from the Oranga Tamariki Social Workers Equal Pay Case and Settlement in which Amy was the lead union advocate. It is also informed by the Care and Support Worker case and settlement.

The resource examines various components of the equal pay process provides organisers who are new to the equal pay claim process with a more comprehensive picture of the steps in equal pay claims, bargaining and processes. This is a document that can be added to and will benefit from more examples and experiences as we progress achieving equal pay for women workers of Aotearoa New Zealand. Please do contact us and we would very much to include in this document more case studies and experience examples as this work progresses.

Ehara taku toa i te toa takitahi, engari he toa takitini

My strength is not that of a single warrior but that of many.

Sam Huggard

CTU Equal Pay Steering Group Chairperson

October 2019

Steps in Equal Pay Claims

1. Prior to raising a claim

It can be easy to focus all our thinking on how to raise and work through a pay equity claim. However, experience has now taught us that there are number of things to have well thought through prior to this point.

1.1. Member engagement.

Members need to be on board with a pay equity claim. This doesn't just mean the members who are likely to be impacted by the claim but those around them too. It is important that work is undertaken with members to ensure that they understand what it means to raise a pay equity claim and how it differs from standard collective bargaining that covers all groups. Taking some time to educate, energise and connect with the people who manage, supervise, work alongside or around the workers who will be covered by a pay equity claim is extremely useful to minimise misunderstanding, hurt or confusion at the other end. Pay equity is disruptive and this is well understood by many in the union movement. However, for many members it is a confronting

journey when they see others getting a pay rise or even receiving the kind of attention and recognition that a pay equity claim provides. Building solidarity is an important component to success.

1.2. Expectations

It is important that you do not launch with a hiss and a roar into your claim with all members expecting resolution and a huge increase in a short space of time. This can lead to frustration, disengagement and apathy if things take longer than expected or hit any difficulties. This can then turn into anti-union sentiment or a disbelief that pay equity will ever occur. Being as clear as possible with members about any agreed timeframes or expected processes up front can assist this. Communicating as often and in as much detail as possible though the process will help stay on top of this as well and turn member frustration into campaigning action directed at the employer and/or funder.

1.3. Identify your leaders

Make sure you have strong delegates and activists lined up who can be workplace leaders throughout the pay equity journey. It is not just the delegates that join the negotiations that need to provide expertise and leadership but also key delegates in workplaces. Delegates and members are integral to spread messages, mobilise support and ensure that new members who join part way through a claim process are bought up to speed. Develop a structure and a communication plan involving these people.

1.4. Have a plan

Have a plan internally about resourcing the pay equity process, including thinking about training delegates, staff resource and any campaign needs. The union should be ready to move as quickly as possible once employer agreement to engage is achieved. A reference group of organisers is a good idea.

1.5. Know your claimant work (but be prepared to learn throughout the process)

It is useful to have a really good idea of the work that you are claiming for. There may be one role or there may be multiple but understanding it is important. Delegates can provide subject matter expertise naturally, but it is useful for advocates to have a good overall knowledge. Talk to workers and read any material you can find in preparation. It is also important to recognise that even the delegates themselves may undervalue their work so even if they feel they are worth more, they may still undervalue or not articulate some of the skills they use every day. To support your case, there may be academic or policy work completed on the particular occupation you are dealing with. For instance the DHB Admin Clerical claim, the PSA had commissioned research on the historical and current undervaluation of those workers.

1.6. Challenge your own gender bias

This is something that is important for advocates to do, not only prior to a claim, but throughout a claim process. Constantly challenge your assumptions about what skills are hidden or considered inherent, think about your use of language and what this may mean. Some skills in female dominated work are not well articulated or easily named due to long standing gender bias so be prepared to work on finding names and descriptions for skills long ignored.

2. Raising a claim (out of court) Joint Working Group Principles 1-2.

There are two main ways that we can raise a claim utilising the Joint Working Group (JWG) Principles

2.1. Through collective bargaining.

This is particularly useful if dealing with one employer or multiple employers through a MECA. It also has the advantage of being able to capture any industrial strength held by members to bring the employer party to the table. It is achieved by tabling a claim to address the pay equity issues present in the organisation. Have a support paper prepared with a succinct summation of the undervaluation present (similar to presented in the formal letter in option 2)

- Ensure that the working group is time bound
- Get as much detail in agreed resolution as possible (resourcing, make up, time frames, scope)

2.2. Via a formal letter to employer/employers to initiate working group.

This can be particularly useful if wanting to get multiple different employers with different collectives to the table to resolve a claim for shared occupational group. This process also has extra weight in the State Sector as well due to SSC/CTU agreement. This process can be used in any sector however.

- Provide a succinct and clear summary of the undervaluation of the occupation/s.
- Propose the resolution process under the JWG working group principles
- Request a formal written response that is time bound. This ensures that if they refuse they must articulate why which can assist in lobbying, campaigning and other pressure the union may exert to generate engagement. It also confirms that the claim is 'arguable' as per the proposed equal pay amendment Bill currently before the house.

Hints:

- You can do both processes above in instances where it could add value to do so
- Don't agree to processes that are open ended as this could enable employers to delay work and progress indefinitely.
- Have a plan B for if employers refuse to engage or agree or become reluctant down the track. This may be court, or it may be campaigning or lobbying (or a mixture). If you are in collective bargaining you may consider utilising industrial action. The formal letter and any assessment work you will have done to date can also form part of a court cases if needed.

3. Establishing Terms of Reference

What is this?

It is an agreed document committing both parties to key element of process, timeframe, and measures of success. It is designed to provide a foundation block to how the parties work together, solve problems and provide a reminder of what the group should be aiming to achieve

Why is it useful?

Getting a Terms of Reference (ToR) document agreed up front can forestall many issues that can arise as work progresses and points of disagreement or debate are reached. Getting clear agreements about a range of key areas locked in before things get tough could be there difference between success and getting stalled.

Some key points

- Make sure you articulate the scope. If this is not possible due to the ill-defined nature of the work and/or the likelihood that multiple different roles will emerge at try to define wide parameters and agree that scope will be agreed by the process of agreed evidence gathering.

- The ToR can be a place to agree your methodology (i.e. SSC tool or other process). Don't let this get you stuck however if this proves difficult to agree. As long as you embed the JWG principles in the document this should assist in these debates as you progress.
- Make sure you think about problem solving and how you may deal with any impasse. It's useful to have some processes in place before this point is reached.
- Define success and what you are there to achieve. This can be a touchstone when things become complex and traditional patterns of thinking kick in. Use the JWG principles to help define this.
- Lock in timeframes as much as possible. Including an overarching commitment to progress as quickly as possible. This keeps things moving and ensures any delays are genuine rather than due to obstruction (or at least provides something to fall back on if we do get obstructed at any point). Think about trying to get a date locked in which if you pass any settlement will be back paid to. This can be a useful tool to stop employers delaying the process.

Hints:

- Don't overcomplicate the process in the ToR or make it too lengthy. This risks re-gendering the pay equity process and making it complex and time consuming to resolve pay equity issues. Keep it to a couple of pages and make it clear and precise.
- Don't agree to anything that references cost or being affordable as a measure of success. Establishing the equal pay rate is not about what is 'affordable' - it's about ascertaining the genuine rate for the skill responsibility and effort had the role or roles not been subject to gender bias. Human rights should not be compromised by what is deemed to be affordable.
- Hold the pen as much as possible. By shaping drafts as the union party, we also shape the narrative. Don't allow the employer to draft everything as you will always be on the back foot trying to get things in rather than the employer trying to get things out/amended.

4. Establishing information on your claimant group -Joint Working Group Principles 3-6.

What is this?

This is the part of the process where the working group work together to generate a comprehensive picture of the work of the claimant group in as much depth and rich detail as possible.

The aim is that all members of the group from the workers to the employer advocates all end up with an in-depth and broad knowledge of the work and challenge their own gendered ideas of the skills responsibility and effort required.

Why is it useful?

This process enhances everyone's knowledge of and respect for an occupation or occupations. In order to genuinely look at a role and how it is valued it must be understood. It also provides an important opportunity to bring work that is often overlooked or dismissed into the public eye to be recognised. For some female dominated occupations, it also provides an opportunity to more adequately define the work, which has been poorly defined and recognised due to undervaluation.

Key points

1) Use multiple information sources

You are likely to have a good idea of your originator group and the work they undertake as their union. You will also undertake interviews to establish information (as below). It is important however that you don't let this limit you and prevent wide

information sources if they exist strengthen your understanding. Look for extra input if possible. Sources (if applicable) such as professional bodies, registration bodies, university, career force or other curriculum, research papers, union research/surveys, journal or other articles can all provide additional information to evidence skill, responsibility and effort. Map this information in a way that makes sense to the group and is easy to refer to. There is no 'perfect' way to do this, it is really about the working group agreeing how to do this and applying it consistently throughout the process to claimant and comparator groups. It may also need to happen in different ways depending in whether the role/s are already defined or whether through the pay equity process they need to be defined more clearly.

2) Interviewing workers

This is a crucial part of the process as worker voice is paramount to genuinely understanding the work. The EJE questionnaire, adapted as needed has proven useful in several claims so far. This is a useful place to start from as it is flexible and designed to be gender neutral. However, the tool itself is not as critical as the interview questionnaire being a) specifically gender-neutral b) agreed by the union and is fit for purpose and c) that the interviewers are trained on how to interview workers so that the interviews happen in a consistent and useful way.

Hints:

- Don't let the employer tell you your sample size needs to be enormous to be valid. Data can be strong and informative from only a few workers in some instances and we don't want to bog the process down with endless interviews.
- It is important to remember and cater for the fact that women tend to undervalue their own work when being interviewed (while men often overvalue theirs)
- Ensure people understand why they are being interviewed and ensure they don't have any fear of repercussions.

5. Finding comparators- Joint Working Group Principles 7-9

What is this?

Once information is established for the claimant group make dominated group need to be identified who may have skills responsibilities and effort that are comparable.

Why is it useful?

It is likely that with a rich understanding of the claimants work you may have a strong idea of a comparator or comparator groups that are desirable to examine further. This process will be more effective, timely and more robust if comparators to investigate can be established using agreed criteria rather than a process where employers and union parties debate over their own ideas of appropriate comparators. And the union also gets an idea of the extent of the undervaluation to get members on board about how unfair that is.

Key points

Some criteria that have been used in other successful claims are:

- Same or similar entry criteria (i.e. level of qualification or other prerequisites such as drivers or machinery licence, registration)

- Same or similar ANZCO code
- Viable size of workforce (50+)
- Male dominated (with preference given to the groups closest to being the inverse of your claimant group i.e. if your claimant group is 75% female your preference the groups that are closest to 75% male dominated.)
- Covered by a collective agreement (this helps ease of access to remuneration information later)

No matter how many criteria that you agree, narrowing the field down will require some subjectivity and discussion. It is best that this is done as a team and with awareness of:

- Your own assumptions regarding whether this role is comparable. It is important we challenge our own assumptions and as much as possible are guided by established criteria. It is easy to think we 'know' another's work, but this often can reinforce stereotypes, bias and could lead to a useful comparator being missed.
- The employer wishing to discuss, consider or raise the pay of any potential comparator group on the table. Pay should not be how comparators are chosen, the focus needs to be on skill responsibility and effort
- We don't need to be right about a comparator group ending up being demonstrably comparable. If further analysis tells us that there is not a large degree of comparability with a chosen comparator group, this also provides a key point of reference and useful data for the pay equity process.

Hints:

- Watch for too much emphasis being placed on one set of criteria, such as ANZCO code or entry criteria. Often these things on their own or heavily weighted can reinforce gender bias. Use multiple criterion and ensure a rigorous discussion is held before ruling out any potential comparator group.
- Having several comparator groups is fine, don't feel that you need to narrow it to one. Just be aware group doesn't select too many and therefore make the process extremely resource intensive.

6. Gathering information on comparator groups-Joint working Group Principles 7-9

What is this?

This process is to ensure that the process to gather information and detail on the skills, responsibility and effort conducted for you claimant group is replicated for your comparator groups. The processes and tips described in the earlier section on establishing information on your claimant groups also apply here.

Why is this useful?

This process is often integral for breaking down assumptions about the different skills, responsibility and effort between your claimant and comparator groups. Mapping the information in the same way that you mapped your claimant group can assist in providing a clear and unbiased picture of the work done by each occupation.

Key Points

(See also establishing information on claimant group)

Getting access to comparator group workers can be tricky and sensitive. Involve their union up front if you can and make sure you provide clear information about what the process of being a

comparator means. The better that this is understood the higher quality information you will receive. The workers, their employer and sometimes their union will need clear information and assurances that the process will not impact on any wage negotiations they may be having or have in the future. They will also need to understand clearly what is going to happen with the information gathered. The parameters of this should be agreed before the process begins. Some key points to make to comparator groups are:

- i. This process is simply about understanding your work in greater detail
- ii. Comparability has not been established, this process is to ascertain to what degree the skills, responsibility and effort are comparable
- iii. Being comparable does not mean the work is the same or similar in nature it is a reflection of the level of skills.
- iv. The process is not about ranking the value or importance of different work but understanding it better
- v. This process will not impact on your own terms and conditions nor will the information we gather be made public in any way (or whatever your agreed parameters are).

Hints:

- Don't let employers try to control workers responses - for example having HR reps present at interviews. This can make workers anxious and feel that there may be repercussions to their answers.
- Have a plan for resistant employer groups, it may take a combined effort of union leadership and your claimants' chief executive or equivalent to contact their peers to get the access needed.
- Check to see if the male -dominated occupation has been assessed through another pay equity claim process and if yes then what work assessment tool was used, is it compatible? At this point in developing this paper, top level discussions are occurring as to where and by whom would comparator data and pay equity settlement information be held.

7. Assessing Comparability

What is this?

This is the point in the process where all of the information about your claimant group and your comparator groups is gathered and mapped. This information now needs to be examined to inform comparability. How this is done is critical and must not re-gender the process. There are a few options and tools available.

Why is it useful?

This part of the process is important in converting understanding of occupations into an evidence base regarding comparability. Even at the point of having established detailed information there may still be different ideas about comparability and potentially bias that still needs to be eliminated. A good process at this point will provide a strong platform for the remuneration discussions later.

Key Points

Using factor assessments:

Being able to apply points to each area of skill, responsibility effort and conditions of work is one way to get a good understanding of where each occupation is sitting. A well tested version of this is Equitable Job Evaluation tool (EJE). One of the benefits of EJE is that it can be adapted to the needs of the group if the factor descriptions don't quite work for what you are looking for. As long as your adaptations are applied consistently to every group, claimant and comparator this is a strength of this

system. If you use another system other than EJE for factor scoring it is extremely important that it meets a high standard regarding its ability to be gender neutral and ensure that hidden skills are not undervalued or ignored. Hay and Strategic pay methodologies, even when claiming to be gender neutral are not considered to meet this threshold. Any links to market data these companies have are also a risk as market data is inherently corrupted by gender bias.

Layering tools:

If you use factor assessments this does not mean that you can only use this. It can strengthen your understanding to use additional tools to understand and frame comparability. This ensures that the factor process is subject to cross examination and can help weed out further bias.

If you are not using factor assessments, then other tools are critical to map and understand comparability.

Hints:

- If you are doing factor assessment it is useful to get every member of the group to make an independent ranking prior to group discussion. This avoids group think. If there are big differences between the ratings, it is important the group discusses the rationale behind the thinking and reaches an agreement to progress
- Remuneration is not a factor at this point. Do not allow the employer to consider the remuneration of comparator groups in the comparability discussion. The focus must remain on skills, responsibility and effort
- Call out any gender bias creeping in at this point, particularly as it relates to physical skills and technical skills
- Remember that a male dominated occupation may be undervalued in and of itself
- Record discussion on factors or other methods of comparability in detail. Writing this up can be useful to refer back to if you get stuck on what the thinking was at any later point.

8. Settlement bargaining - Joint Working Group principles 12-16

What is this?

This is the final part of the pay equity process whereby you take all the information and evidence the group has agreed and bargain an appropriate pay outcome that establishes a genuine equal pay rate.

Why is it useful?

Because to ensure the delivery of pay equity we need to ensure that we use the evidence gathered to establish the rate that our members should have been paid had their work never been subject to gender undervaluation.

Key Points

Make sure that you have all the remuneration data possible for your claimant group and all your comparator groups. If possible don't just rely on the employer to provide you with this but source it yourself.

Useful data points:

- Average salary
- Median salary

- Salary mid-point
- Salary starting rate
- Salary top rate
- Superannuation
- Pay system (i.e. how you progress in pay and how long this takes)
- Security of work (guaranteed hours, precariousness of work, any unpaid time in a year)
- Other remuneration benefits- car, bonuses, extra leave, insurance

It is important that as a union group you do comprehensive analysis of all this remuneration information and think about the picture that it paints when overlaid with the data of comparability that you have established. You may have done some of this thinking at the initial stage of the claim. The pay systems and remuneration of your comparator groups may be very different so it can take a bit of work to map the logic of what is equal pay. It's not a science and will have an aspect of pure bargaining to it, but be well prepared to go into the bargaining stage with a strong idea of what you think are the parameters of a genuine equal pay rate.

The employer will do their own analysis, and this is a critical juncture to ensure they don't re-gender the process again by applying traditional thought processes to their analysis. Previous claims have seen employer data analysts try and reinterpret the work done by the working party and lower the rate through metrics that are not agreed. It is at this point that well documented and well mapped discussions and agreements can be reinforced to dismiss any of this kind of attempt.

There will no doubt be discussion at some point about the funding of the equal pay settlement. This conversation will be different in the private and public sectors. However, there are certain rules that hold true and we should promote as a movement:

- Affordability is not an excuse to avoid equal pay. Equal pay is a human right
- If it is to be a phased implementation process then we must have a mechanism to ensure the phasing does not lose the settlement value over time. Bill Rosenberg, CTU economist was agreed upon by the parties in the Care and Support Settlement to come up with a projected Labour Cost Index increase (which could be adjusted if it was more than that in real time)
- Any settlement agreement must recognise that the equal pay rate must be maintained, otherwise we will have to claim again in the future. The proposed Equal Pay Amendment Bill provides for maintenance of settlement over time but the unions are seeking tighter provisions.

Don't get pressured to agree to a rate that the members of your working group don't believe is genuinely equal pay. If you get stuck utilise your ToR and all the information the working group has gathered to re-emphasise the evidence-based nature of the rate you are requiring. Bring in facilitated help if required.

Hints:

- Think not just about the total rate for your comparator groups but their employment trajectory. Are they paid for training while your claimant group must pay themselves? Do your comparators move up through their pay system every year? How does this compare to your claimant group? What is the career pathway for your claimant group as opposed to your comparators?
- Mapping superannuation can be interesting as it can show how pay inequity impacts a working woman's whole life and through into retirement
- This part of the process can also be a useful time to negotiate other things necessary for the sustainability of our members' work, such as a career trajectory, a robust pay system that is

not performance based or other things that can solve future pay issues. Please see the Gender Pay Principles and gender pay gap action plans on the State Services Commission website. PSA have developed a clause for collective agreements which would operationalise the gender pay principles.

References and Resources

Recommendations of the Joint Working Group – Pay Equity Principles:

<https://ssc.govt.nz/assets/Legacy/resources/pay-equity-jwg-recommendations.pdf>

Equitable Job Evaluation: <https://www.employment.govt.nz/hours-and-wages/pay/pay-equity/equitable-job-evaluation/>

SSC - The Gender Pay Gap and Pay Equity

<https://ssc.govt.nz/our-work/the-gender-pay-gap-and-pay-equity/>

Contact Jo Taylor (jo.taylor@psa.org.nz) or Eileen Brown (eileenbrown@nzctu.org.nz) for:

- Kete for Equal Pay Champions – A Union Resource
- Essential Equal Pay Documents – a list compiled by the PSA.