

# Equal Pay for Equal Work and Work of Equal Value

Guide to Legal Provisions Governing Equal Pay  
and Non-Discriminatory Job Evaluation

FEDERAL MINISTRY OF  
HEALTH AND WOMEN



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# **Equal Pay for Equal Work and Work of Equal Value**

Guide to Legal Provisions Governing Equal Pay  
and Non-Discriminatory Job Evaluation

Edeltraud Ranftl



## FOREWORD

Ensuring equal income opportunities for women and men is a central concern to me, the Minister for Women's Concerns. As a result of the new challenges presenting themselves for economic and employment policies, the decisive influence of the potential of women has increasingly come to the fore. Nevertheless, different educational backgrounds and qualification trajectories, varying job classification and career patterns, as well as relatively wide gaps between the incomes of women and men, still persist.



Equal pay for work of equal value has been one of the first demands of the women's movement with policies aimed at assuring equal status of men and women. Although in recent years a positive trend has manifested itself, the wage gap phenomenon has persisted. This is all the more surprising as legislation both in the Member States and at EU level bans income discrimination on the grounds of gender.

The reasons for this discrimination are manifold: from the segregation of the labour market to the stereotyped selection of occupations by young women, the complex issues of in-company job evaluations and the persistent underrepresentation of women in managerial and leading positions in enterprises. The need to reconcile family obligations with jobs as well as career breaks due to care for family members still have an impact on income levels today.

It is one of the central concerns of the Austrian EU Presidency to continue to make every effort to close the income gap, to build on measures already taken and established findings, and to launch new initiatives. On the occasion of the conference "Closing the Gender Pay Gap" organised jointly with the European Commission, the guide to equal pay and non-discriminatory job evaluation which had been presented in 2004 was revised and is now available in an English version.

This guide is intended as an instrument for the enforcement of this right at company level through preparing the ground for gender-neutral job evaluation. In the meantime non-discriminatory job evaluation has become an instrument for human resources management in modern enterprises. Accordingly, it is the tasks and job requirements that are to be rated and not the person doing the job.

In the course of the research project "Non-discriminatory Job Evaluation and Work Organisation", the wage formation mechanisms applied by two Austrian companies were analysed as potential sources of discrimination and, subsequently, a suitable non-discriminatory job evaluation system was tested. The research report "Non-discriminatory Job Evaluation and Work Organisation" was published in spring 2004. With this guide, which is based on the findings of the research project, we want to provide information on the application of a non-discriminatory job evaluation system by both employees and employers. I hope that these ideas will allow you to apply the principle of equal pay for equal work and work of equal value in actual practice.

Yours sincerely

A handwritten signature in black ink that reads "Maria Rauch-Kallat". The signature is written in a cursive, flowing style.

Maria Rauch-Kallat  
Federal Minister for Health and Women



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### FAIR P(L)AY!

Andrea and Andreas worked in the same company. Both were graphic artists who had undergone the same training and both did the same job. But on the pay slip of Andreas there was approximately Euro 581 more every month. A singular case? Unfortunately not... Andrea filed a court action and won her case. In its ruling, the Supreme Court quoted as reason for its judgement "gender-based discrimination".<sup>1</sup>

Right from its beginning, the principle of "equal pay for men and women" formed an integral part of EU legislation. Originally the principle referred to equal pay but was later extended to include equal pay for work of equal value and transposed into the legislation of all Member States of the European Union.

Nevertheless, the wide income gap between men and women has persisted. A comparison of monthly or yearly incomes or hourly wages of men and women in employment demonstrates this gap. The reduction in the income differential between women and men constitutes a core element of the National Action Plan for Employment.

Equal pay for equal work appears to be a self-evident demand. But what does "equal pay for work of equal value" mean? A woman, who has to meet the same requirements at her workplace as a man, has the right to demand the same income. A non-discriminatory job evaluation can understandably compare and rate widely divergent occupations or professions - male and female accountants and car mechanics, police officers and nurses, etc.

The rating criteria currently applied by companies in practice in many cases no longer meet the requirements of new or changed work places.

It is the goal of this guide to provide information on major legal terms and the current legal basis, conditions, and instruments, and examples for the application of non-discriminatory job evaluations.

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<sup>1</sup> Ruling of the Supreme Court on May 20, 1998, ObA 350/97.

## FACTS AND FIGURES

It is not so much due to the deliberate intention of companies that the work of women is rated as having less value than that of men. Much rather, it can be ascribed to the unquestioned socially determined practice of rating and remunerating the work done by women as less valuable.

Despite the lower income levels of women as compared to those of men, gender discrimination is not frequently directly visible, primarily because women and men do different jobs. Income differences can be reinforced by discriminatory recruiting, selection and promotion practices, as well as by basic, further, and re-training measures. This can lead to a narrowing of the band width of available jobs for one gender; i.e. if preference is given to men in the recruitment for better paid jobs with bonuses.

The income gap between men and women in Austria has been gradually narrowed over recent decades, as is reflected by working-hour adjusted calculations. Whereas in the early 1980's the median income of women corresponded to 71.2% of that of men, the proportion had risen to 82.2% in 2002.

**Women – Median Income <sup>1)</sup> as a Percentage of Men's Median Income <sup>1)</sup>**  
(adjusted for working-time)

	1980	1990	1995	2000	2002
Gainfully employed <sup>2)</sup> , adjusted for working time <sup>3)</sup>	71.2	76.5	80.6	81.2	82.2

<sup>1)</sup> 50% earn more and 50% earn less

<sup>2)</sup> wage earners and salaried employees

<sup>3)</sup> Adjusted for average working hours

*Source: Association of Austrian Social Insurance Institution; Statistical Manual; Statistics Austria, Microcensus; WIFO-calculations*

*Bericht über die Soziale Lage 2003-2004, Federal Ministry of Social Security, Generations and Consumer Protection, Vienna 2004, p. 270*

As can be seen from the structural indicator, Austria is continuously approaching the EU average.

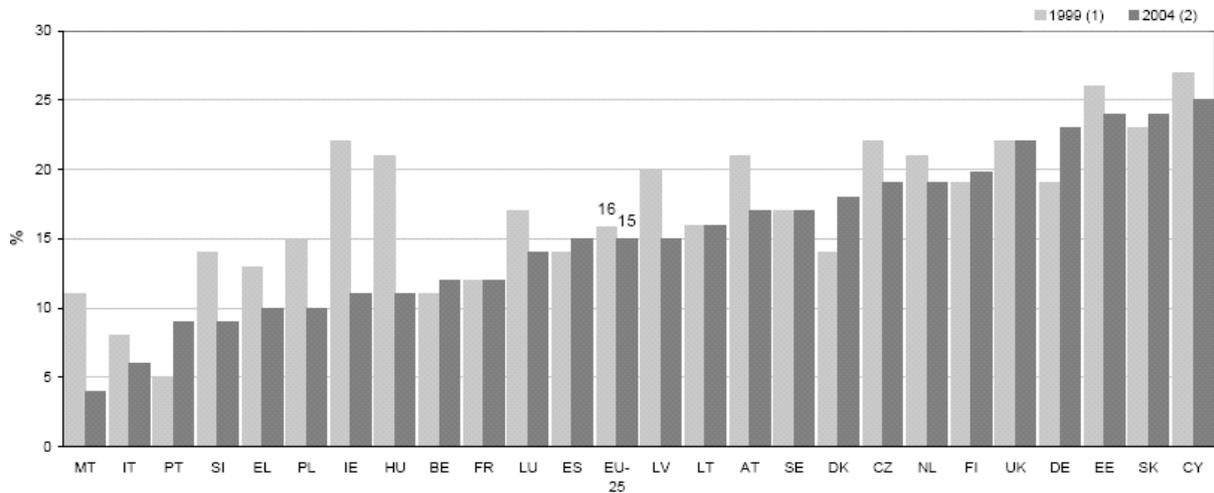
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## FACTS AND FIGURES

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### Pay gap between women and men in unadjusted form in EU Member States – 1999 and 2004

(Difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings)



Source: Eurostat. See: Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Equality between Women and Men - 2006.

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## Some Facts

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In gainful employment, the discrimination of women is most obvious with regard to income levels.<sup>2</sup>

- Women earn a lower average income than men with the same job profiles and in the same income category, even if their qualifications are the same as those of their male colleagues.
- Career breaks for family reasons: On average, working women earn significantly lower incomes after maternity leave periods than before. The income gap resulting from career breaks cannot even be compensated for within a period of 20 years in gainful employment.
- In the private sector, paid overtime or extra hours worked, as well as bonuses and perks, make up close to eleven per cent of the gross monthly income of men which compares with a mere four per cent of women's pay.
- In the upper income brackets, women are under- and men are overrepresented. Women cannot gain equal access with men to better paid jobs.<sup>3</sup>
- Jobs in which women predominate are less lucrative than those in the typically male domain.

The income gradient is also reflected by the social insurance system, unemployment benefits, and women's pensions.

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<sup>2</sup> Feldhoff, Kerstin (1998): Der Anspruch auf gleichen Lohn für gleiche Arbeit. Baden-Baden, p.38.

<sup>3</sup> Gregoritsch, Petra/Kalmár, Monika/Wagner-Pinter, Michael (2000): Einkommen von Frauen und Männern in unselbständiger Beschäftigung. Final report, published by the Federal Ministry of Economics and Labour, Vienna.

## LEGAL BASIS

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### Work of Equal Value - What Does this Mean?

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The terms “equal work” and “work of equal value” are not clearly defined either in national laws or European legislation; this is why the attempted definitions given in court rulings and literature have to be applied.<sup>4</sup>

**Equal work** is identical work or to a great extent the same work. No difference exists with regard to the type of activity, work processes, the work environment, and working materials.

**Work of equal value** refers to work that may seem different from outside. Work is of equal value if the same high demands are made upon work criteria<sup>5</sup>, such as

- Knowledge and skills
- Effort and stress
- Responsibility and
- Conditions prevailing in the working environment

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### What Is Pay?

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Pay is defined as the usual basic and minimum wages and salaries as well as all other types of remuneration paid directly or indirectly in cash or kind by the employer under employment contracts to the employee. (Article 141 of the Treaty establishing the European Community, previously Article 119).

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### What Is Pay Discrimination?

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Pay discrimination occurs if women and men who work for the same company or enterprise do not receive the same remuneration for equal work or work of equal value - or if they do not have equal access to certain components of the remuneration system, such as overtime pay, or perks.

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### Direct and Indirect Discrimination

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Pursuant to Sections Three and Four of the Equal Treatment Act no one may be indirectly or directly discriminated against in employment on the ground of her/his gender, especially by reference to her/his marital or family status.

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<sup>4</sup> See Feldhoff, Kerstin (1998): Der Anspruch auf gleichen Lohn für gleiche Arbeit. Baden-Baden, pages 26 and following.

<sup>5</sup> See Winter, Regine (1998): Gleiches Entgelt für gleichwertige Arbeit. Baden-Baden, pages 111 and 202 and following.

**Direct discrimination**<sup>6</sup> on the ground of gender occurs

**if** different arrangements are made for men and women.

To quote an example: a company voluntarily pays the premiums for additional health insurance for the dependents of male staff but fails to do so for the dependents of female staff.

**Indirect discrimination**<sup>7</sup> on the ground of gender exists

**if** men and women are subjected to unequal treatment because of seemingly gender-neutral rules, criteria, or procedures relating to

- Recruitment
- Remuneration
- Working conditions and working times
- Upskilling courses
- Training measures
- Termination of employment, and
- Social security

which may put members of one gender at a specific disadvantage. (see Directive amending the Equal Treatment Directive of 2002/73/EC).

**Such indirect discrimination exists only if** the unequal treatment is not justified by objective factors, which have nothing to do with discrimination on the grounds of gender. If in a company, the majority of women work part-time and men full-time, women are indirectly discriminated against if only full-time employees will later be entitled to receive company pensions.

Indirect discrimination may also result from tying certain benefits to marital or family status or linking these to the status of the head of the household or breadwinner. It is more difficult to identify indirect discrimination because it is hidden behind provisions or criteria couched in gender-neutral language.

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<sup>6</sup> Definitions pursuant the Equal Treatment Act, Section 5, paragraph one

<sup>7</sup> Definitions pursuant the Equal Treatment Act, Section 5, paragraph two

### Austrian Legislation

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The principle of equal treatment is enshrined in Article Seven of the Austrian Federal Constitution. Responsibility for the enforcement of the Equal Treatment Act, and the entire labour legislation, is vested in the Federal Ministry of Economics and Labour.

#### The Equal Treatment Act<sup>8</sup>

**Section Three** *Nobody may be directly or indirectly discriminated against in employment on the grounds of sex, especially with reference to marital or family status, and, in particular, with regard to*

1. *Recruitment*
2. *Pay formation*
3. *Granting fringe benefits which do not constitute a pay component*
4. *Basic and further training as well as retraining*
5. *Occupational or professional advancement, especially promotions*
6. *Other working conditions*
7. *Termination of employment*

**Section Four** *Nobody may be directly or indirectly discriminated against in employment on the grounds of sex, especially with reference to marital or family status, and, in particular, with regard to*

1. *Access to off-the-job vocational counselling, vocational or professional basic or advanced training or retraining*
2. *Membership in, or co-operation with, an employers' association or staff organisation or an organisation whose members belong to a certain vocational category, including reliance on the services of such organisation*
3. *Conditions for access to self-employment*

#### **Section Five**

**(1)** *Direct discrimination occurs if a person is subjected to a less favourable treatment than another person receives, has received, or would receive in a similar situation.*

**(2)** *Indirect discrimination occurs if seemingly neutral provisions, criteria or procedures put persons of one sex at a disadvantage, especially compared to persons of the other sex, unless such provisions, criteria or procedures are objectively justified on legal grounds and if the means employed for attaining this objective appear adequate and necessary.*

**(3)** *Discrimination also exists if one person instructs another one to discriminate against somebody.*

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<sup>8</sup> The Federal Act on Equal Treatment (Equal Treatment Act), Federal Law Gazette I, no. 66/2004, as amended

**Section Eleven** *Company-level job-classification arrangements and standards contained in collective legislation for the application of payment criteria must take into account the principle of equal pay for equal work or work that is assigned the same value and may not impose criteria for the evaluation of work done by women on the one hand, and work done by men on the other, which would constitute discrimination.*

### **Improvements Resulting from the Amendment to the Equal Treatment Act:**

- Extension of the scope of the Act to include persons having a status similar to wage-earners or salaried employees
- Definition of the terms of direct and indirect discrimination
- General elimination of the ceilings for damages (only in exceptional cases in accordance with EU legislation can such ceilings be imposed)
- Integration of the definition of the goal of “equal status of women and men”
- Minimum compensation for damages of three monthly wages or salaries in the event of discrimination in promotion
- Legal consequences of a violation of the principle of equal treatment: alongside compensation for material damage, immaterial damage is also recognised - i.e. compensation for prejudice to a person’s rights.

### **Institutions for Enforcing the Equal Treatment Act<sup>9</sup>**

#### ➤ **Ombud for Gender Equality in Employment**

Belongs to the National Equality Body which is an administrative unit of the Federal Ministry of Health and Women and has its main office in Vienna with several regional branches. The tasks of the Ombud are the provision of information on the Equal Treatment Act in the private sector, as well as the consultation and support of persons who feel discriminated against. The Ombud may request written statements from employers and conduct negotiations with these in order to reach agreements for the compliance with the provisions of the Equal Treatment Act. When job advertisements are not gender-neutral the Ombud may file an application for a penalty with the district administration authority.

- #### ➤ **The Equal Treatment Committee (Senate I)** in the Federal Ministry of Health and Women has its seat in Vienna and deals with all issues related to discrimination. It takes action ex officio or upon application. It investigates on a case-by-case basis if a violation of the equal treatment principle has occurred and draws up expert opinions on general issues related to the Equal Treatment Act. It may deal with such issues prior to or in parallel with court proceedings. Proceedings in which the Equal Treatment Committee is involved with its expert opinions are closed. Claims

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<sup>9</sup> For addresses see page 20

## LEGAL BASIS

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for compensation provided for under the Equal Treatment Act must be lodged with a court and cannot be awarded by the Equal Treatment Committee.

➤ **Labour and Social Tribunals**

are competent for settling claims arising under employment contracts.

### Community Law of the European Union

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At the level of the EU, and thus at the national level of all Member States, the legal framework for the principle of equal pay for equal work or work of equal value (which may appear unequal) is Article 141 of the Treaty establishing the European Community and Directive 75/117/EEC, abbreviated as the Remuneration or Equal Pay Directive. The jurisdiction of the European Court of Justice has resulted in a further clarification of this body of law. In the meantime, criteria have been defined which have to be met by collective agreements and remuneration schemes.

**The Treaty of Amsterdam of 1997, Article 141**  
*contains the provisions which imposes on the Member States the obligation to apply the principle of equal pay for equal work or work of equal value.*

**Council Directive 75/117/EEC**

*Definition of the principle of equal pay*

**Council Directive 76/207/EEC**

*Extension of the principle of equal treatment to general working conditions*

*amended by the*

**Directive of the European Parliament and the European Council 2002/73/EC**

**Council Directive 97/80/EC**

*Ban on indirect discrimination*

**Rulings of the European Court of Justice**

In accordance with these EU provisions, national legislation and regulations must comply with the principle of equal pay for men and women for equal work or work of equal value. Provisions of collective agreements, works agreements, or work contracts which violate this principle must not be applied and must be amended (see page 8, Section 11 of the Equal Treatment Act).

Accordingly, European legislation and European jurisdiction impose the following obligations on employers:<sup>10</sup>

- The employer must apply the same evaluation criteria to all staff.<sup>11</sup>
- Remuneration arrangements must be understandable and transparent. It must be possible to justify pay differentials.
- The criteria applied must take into account the nature and type of work.
- The criteria must be free from discriminatory elements.

The European Commission recommends, as the most important measures for attaining equal pay for both sexes:

- An audit of internal pay formation structures in order to identify discriminatory elements

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<sup>10</sup> The most important rulings of the European Court of Justice are: the case "Rummler" of July, 1, 1986 Case 237/85; "Danfoss" of October 17, 1989, Case 109/88; "Enderby" of October 27, 1993, Case C-127/92; "Barber" of May 17, 1990, Case C-262/88; "Royal Copenhagen" of May 31, 1995 Case C-400/93.

<sup>11</sup> Council Directive 75/117/EEC Article 1

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## LEGAL BASIS

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- The development and pursuit of an equal pay policy to insure that women and men will receive the same remuneration for equal work or work of equal value.

In cases of disputes in connection with remuneration or job classification a series of options are available at both the national and EU levels to enforce the right to equal pay.

### ▪ **The National Procedure**

Austrian courts have the obligation to ensure that all rights enshrined in Community legislation are respected. In cases of doubt, the courts may refer a case to the European Court of Justice in Luxembourg for the interpretation of the relevant EU provisions (preliminary ruling procedure).

### ▪ **Conduct of a Contract Violation Procedure**

If need be, individuals may address themselves to the European Commission in the event of an alleged violation of the principle of equal treatment. If the complaint is deemed justified, the Commission may contact the competent national bodies and request them to comply with Community law. If the Commission is not satisfied with the response of the national bodies, it may institute proceedings against the respective State for violation of the EC Treaty.

In addition, it is also possible to submit a petition to the European Parliament or to contact a member of the European Parliament who can then address an inquiry to the Commission or the Council.

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## International Conventions

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The equal status of the sexes is already defined in the Charter of the United Nations (UN 1945). In 1946, the Economic and Social Council set up the Commission on the Status of Women (CSW).

Since that time, the United Nations and the International Labour Organisation (ILO) have drafted a number of conventions dealing specifically with women's concerns. Examples are: The ILO Convention no. 100 of 1951, which focuses on equal pay for work of equal value for women and men, and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, which was ratified by nearly all UN Member States, including Austria. The Optional Protocol which forms part of the latter Convention and has provided for an individual complaints procedure, is also in force in Austria.

### JOB EVALUATION

In most cases, the value of work is considered as something self-evident and not called into question. But is it really more difficult to head a department with a staff of ten or to be entrusted with a children's group? Is the work of a nurse in a hospital of lesser value than that of a maintenance engineer? Job evaluation systems have therefore been developed for the assessment of the value of different types of work.

A distinction is made between two main categories: the summary job evaluation system and the analytical job evaluation system.

**The summary job evaluation system** is a procedure which assesses the value of a workplace as a whole. No independent evaluation of individual criteria or characteristics is made. A collective agreement may, for example, merely refer to an employee as a female shop assistant without specifying in detail the job profile or the skills needed for this type of work. Here the problem arises: in accordance with EU provisions, the evaluation criteria must be uniform and transparent and apply equally to women and men. Hence, a summary job evaluation is not sufficient in order to check whether uniformity and transparency are assured.

With the **analytical job evaluation system**, the work is broken down into individual criteria and/or characteristics which are then analysed. A weighting is assigned to each characteristic and subsequently the value of all individual work characteristics is added. The question arises: do these procedures actually take into account all the individual characteristics which make up the nature of a particular type of work? For example, are such requirements as empathy or communication skills contained in the evaluation system? Are the criteria which are applied non-discriminatory in nature? The science of work has developed non-discriminatory analytical evaluation systems with a view to ensuring that all job requirements are considered in the evaluation.

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### Non-Discriminatory Job Evaluation

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The following basic principles apply to non-discriminatory job evaluation:

- The **work** and the demands on the workplace are evaluated, not the individual doing the work.
- **Work contents** are assessed and not the job description or job title (such as chef or female auxiliary cook).
- A **break-down is made of the entire job contents** which are significant for a workplace.
- Taking into account **"invisible" job requirements** which have hardly been recognised and considered to date, especially those of typically female jobs.

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## JOB EVALUATION

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- Assuring **overarching comparability** of evaluations.

Ms. F. is a secretary and Mr. K. a wage-earner in the same enterprise. In order to be able to determine whether the two jobs are equivalent, they have to be compared. For this purpose, the types of tasks and the requirements of each job are analysed and the value of the work is determined on the basis of a uniform evaluation system.

Only after such an evaluation is it possible to decide whether the two types of work, although different, have the same value. If it is found that the job of the secretary has the same requirements as the job of the male worker, but earns less money, the employer must be able to justify this difference on objective grounds, otherwise gender discrimination exists in the company.

Indirect discrimination can also occur if full-time work is the prerequisite for the performance of certain tasks.

Such indirect discrimination may also result from the underrating of activities, requirements, strain and stress typical of women's jobs. These are, for example, jobs in which interactions with other human beings are in the foreground and which call for a high degree of attention to others, friendliness, self-control, and patience.

### Identification of indirect discrimination through job evaluation

- *Checking whether the job evaluation system is in itself discriminatory.*
- *Checking whether the application of certain procedures - i.e. the ranking of an activity or the assignment of staff to a remuneration category results in discrimination.*

The underrating of certain activities often leads to discriminatory wage formation. Non-discriminatory job evaluation offers a way out of this dilemma.

### The FABA System as an Example

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The FABA (FABA = Faire Bewertung der Arbeit = fair evaluation of work) was developed and tested in practice during the course of the Austrian research project "Non-discriminatory Job Evaluation and Work Organisation"<sup>12</sup> which involved an enterprise providing social services.

#### **Factors for Analysing and Evaluating Workplaces:**

##### **Knowledge, qualifications and skills**

- Knowledge – empirical knowledge and understanding of processes
- Intellectual skills such as problem-solving and decision-making capacity, analytical thinking
- Interpersonal and communication skills
- Physical skills, such as hand and eye co-ordination and precision

##### **Effort, stress and strain**

- Initiative and independence
- Physical demands and extent and continuity of stress
- Intellectual requirements, such as concentration, perseverance and creativity
- Emotional demands resulting from contact with customers and clients

##### **Responsibility**

- Responsibility for people, i.e. care for the social and economic well-being of customers or clients
- Responsibility for leading and co-ordinating staff
- Responsibility for finance
- Responsibility for tangible assets and information

##### **Conditions at the workplace and in its environment**

- Working conditions, i.e. risk of infection or injury, exposure to noise

In addition to the weighting of the individual job characteristics, the hierarchical ranking of characteristics is important and significant because the (wage) policy decision determining the ranking creates a hierarchy of workplaces and the remuneration paid for these.

A re-assessment of the value of jobs on the basis of the principle of equal pay for work of equal value is one approach to avoid discriminatory pay practices.

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<sup>12</sup> For more details, see Ranftl, Edeltraud/Meggeneder, Oskar/Gschwandtner, Ulrike/Buchinger, Birgit: Diskriminierungsfreie Arbeitsbewertung und Arbeitsorganisation, research report. Federal Ministry of Health and Women, Vienna 2004.

## INFORMATION ON PRACTICAL APPLICATION AT COMPANY LEVEL

The Chamber of Labour and the Chamber of Commerce, the statutory bodies representing the interests of the two sides of industry, as well as the Austrian Trade Union Federation and the Association of Industrialists, acting as voluntary stakeholder bodies, provide information, advice and legal assistance. The Ombuds for Gender Equality in Employment and Senate I of the Equal Treatment Committee<sup>13</sup> deserve special mention. Gender discrimination in pay schemes is unlawful and in the course of court proceedings, employers can be forced to explain and justify their remuneration practices in detail.

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### Sharing of the Burden of Proof and Presumption or Justification of Indirect Discrimination

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Under European and Austrian labour law, evidence of discrimination with regard to remuneration need not be furnished but the parties have to show the probable validity of their claim that discrimination has occurred or has not occurred.

If a plaintiff can show the probable validity that her/his work is of equal value to that of a colleague doing comparable work and the latter's work contract contains more favourable terms, the presumption of pay discrimination exists. The employer can refute his presumption by establishing good, reasonable, and suitable causes which have nothing to do with gender.

In order to clarify the question as to whether a seemingly gender-neutral arrangement constitutes indirect discrimination, the competent labour and social tribunals have to investigate the case, step by step. Indirect discrimination has occurred if the overwhelming majority of staff is affected by the seemingly gender-neutral arrangement. It has to be analysed whether in actual practice income discrimination has occurred due to assignment to a lower income category or through payment of a lower average income.

The employer must show probable cause that income differentials between comparable groups of men and women

- Are not due to the gender of the individual
- Are necessary in order to reach corporate or business goals
- In reality lead to the attainment of those goals
- That there is no less discriminatory way to reach those goals.

The complaint is rejected if, after weighing all circumstances, it is more than probable that another motive for unequal treatment existed as shown by the employer to the sat-

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<sup>13</sup> For addresses see page 19

isfaction of the court or that the other gender has indispensable prerequisites for the activity to be performed.

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### Two Case Studies<sup>14</sup>

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#### Re-appointment

After a man had held a certain position and left it, a woman was appointed to his job. The woman was paid less than her predecessor although she did the same work. The European Court of Justice ruled that she was entitled to the same income as her predecessor.<sup>15</sup>

#### Part-time Work

An enterprise employs both full-time and part-time staff. In accordance with their remuneration scheme, full-time workers were promoted to a higher pay category every two years, whereas part-time workers were promoted only every four years. The European Court of Justice<sup>16</sup> and the Austrian Constitutional Court ruled that less experience and lower efficiency of part-timers *per se* did not constitute grounds for paying disproportionately lower incomes to part-timers. Lower pay was justified only if different experiences called for an assignment of tasks which differed in terms of quantity and quality from those performed by other staff. If this was not the case, part-timers, in accordance with the ban on discrimination against part-time workers as defined in the Working Hours Act, were legally entitled, like full-time staff, to be promoted to a higher income category every two years.

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### What Violates the Principle of “Equal Pay for Equal Work or Work of Equal Value”?

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#### Different Pay Levels

Women and men who do the same work (or work of equal value) do not receive the same remuneration.

#### Different Types of Work

Women and men perform different types of activities but the value of work done by women is underrated.

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<sup>14</sup> from: Gleichbehandlung von Frauen und Männern im Arbeitsverhältnis. Frau in der Wirtschaft 1/01. Federal Chamber of Commerce.

<sup>15</sup> See ruling of the European Court of Justice, “Macarthys” case of March 27, 1980 Case 129/79.

<sup>16</sup> See ruling of the European Court of Justice “Nimz” case of February 7, 1991 Case C-184/89.

### **Different Types of Employment**

The employment relationships of women and men differ. The remuneration system gives preference to full-time work, without career breaks, which is typical of jobs in the male domain.

### **Different Premiums and Bonuses**

Apart from base pay, women and men do not have equal opportunities for receiving certain components of the remuneration system, such as overtime pay, premiums, bonuses, etc.

### **No Uniform Evaluation Criteria**

Companies do not have a uniform job evaluation system - uniform criteria to be applied to all staff in the evaluation of jobs are missing.

### **No Audit of the Evaluation System**

The job evaluation system applied has not been examined for its specific impact on the genders.

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## **A Benefit for Companies**

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For employees, it is important to be able to easily understand the entire remuneration system, which should be clear and simple. The components of the individual wage or income package should also be readily comprehensible.

The advantages of a transparent pay system for employers are obvious:

- Elimination of uncertainties
- Prevention of the impression of unfair treatment
- Reduction in the causes for individual legal action

Work evaluation constitutes an instrument of human resources management: a modern, success-oriented enterprise seeks to employ and retain competent staff. Clear-cut, fair and non-discriminatory evaluation and pay systems are an indication of good management practices and have a positive effect on the attainment of corporate goals.

Non-discriminatory work evaluation constitutes one of the most important cushions on which good management rests.

## USEFUL ADDRESSES

National Equality Body

Ombud for Gender Equality in Employment

A-1040 Vienna, Taubstummengasse 11

Tel.: 0800 20 61 19 and 01/532 02 44

Fax: 01/532 02 46

E-mail: [gaw@bmgf.gv.at](mailto:gaw@bmgf.gv.at)

Internet: <http://www.bmgf.gv.at>

Equal Treatment Commission (Senate I)

Federal Ministry of Health and Women

A-1030 Vienna, Radetzkystr. 2

Tel.: 01/71100-3409 or -3415

Fax: 01/71100-3418



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## Further References

- Publications of the Expert Conference held on October 18, 2001 in Vienna **Gleicher Lohn für gleichwertige Arbeit. Praktische Beispiele diskriminierungsfreier Arbeitsbewertung.**  
München and Mering 2002. Published by Edeltraud Ranftl, Birgit Buchinger, Ulrike Gschwandtner, Oskar Meggeneder. Rainer Hampp Publishing House.
- **Information on Austrian and European labour law** can be accessed via the home page of the Federal Ministry for Economics and Labour (BMWA) <http://www.bmwa.gv.at/EN/Topics/Labourlaw/default.htm> under the heading Labour Law, Occupational Safety and Health.
- **RIS (the legal information system of the Federal Chancellery):** <http://www.ris.bka.gv.at>
- **Internet address for rulings of the European Court of Justice:** <http://www.curia.eu.int>
- **Research reports on the labour market and equal treatment by the Ministry of Health and Women** (available in German):
  - o **Diskriminierungsfreie Arbeitsbewertung und Arbeitsorganisation.** Vienna 2004.
  - o **Beschäftigung und Einkommen von Frauen und Männern.** Vienna 2002.
  - o **Einkommen von Frauen und Männern in unselbständiger Beschäftigung.** Vienna 2000.
  - o **Managing E-Quality.** Training of managerial staff for equality-oriented management. Vienna 1998 (available in English).

These publications can be obtained free of charge, from the brochure service of the Ministry of Health and Women. Tel. no. +43 1 711 00/4700  
or e-mail: [broschuerenservice@bmgf.gv.at](mailto:broschuerenservice@bmgf.gv.at).





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