

Graduate Gender Pay Gap

A legal perspective

Peter Cullen
Leeanne Templer



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History

- **New Zealand law historically led the world promoting equality**
- **Current legislation supporting equal pay for equal work**
 - Human Rights Act 1993
 - Equal Pay Act 1972
 - Employment Relations Act 2000
 - New Zealand Bill of Rights Act 1990
 - State Sector Act 1998
 - Parental Leave and Employment Protection Act 1987



Graduate Gender Pay Gap



Source: Ministry of Women's Affairs - Analysis of Graduate Income Data 2002-2007 by Broad Field of Study



Principal Actions

- **The Principal Actions are:**
 - Discrimination
 - Disadvantage
 - Claims under the Equal Pay Act
- **The key statutes are:**
 - The Human Rights Act 1993, (HRA)
 - The Employment Relations Act 2000, (ERA)
 - The Equal Pay Act 1972, (EPA)



Discrimination

- **ERA**

- S 103 includes discrimination as a ground for a personal grievance
- S 104 discrimination has the same definition as “unlawful discrimination in employment” under the HRA
- S 105 provides that sex is one of the prohibited grounds of discrimination

- **HRA**

- S 21 sets out grounds for discrimination
- S 22(1)(b) an employee may complain that they have received less favourable terms of employment by reason of sex



Leading Cases (1)

- **Talleys Fisheries v Lewis**

- Ms Lewis & partner both applied for jobs
- He was offered a higher paid job, under the same collective contract
- The employee had to show
 - She was qualified for work of any description
 - Talleys offered her less favourable terms of employment and/or conditions of work than were made available to men of substantially the same capacities employed in substantially similar work
 - This differentiation occurred by reason of a prohibited ground of discrimination, in this case sex



Positive Aspects of the Decision

- **Objective test**
- **The court looked at the purpose of the statute, and held that the two positions were substantially similar**
- **The Court noted international conventions, holding that the Human Rights Act gives effect to our international obligations**
- **Courts may be prepared to accord Equal Pay legislation a “fair large and liberal interpretation” to give effect to our international obligations.**



Leading Cases (2)

- **Trilford v Car Haulaways**
 - Female plaintiff not considered for an advertised position because it was “more male orientated”
- **Easterbrook v Cycle and Carriage City Ltd**
 - Successful claim employer discriminated by employing another (male) employee in a position complainant knew nothing about until appointment
- **Proceedings Commissioner v Armourguard Security**
 - An employer refused to employ women as security guards.



Disadvantage

- s103(1)(b) ERA
 - allows an employee to bring a personal grievance if “the employee’s employment, or one or more conditions thereof, is or are affected to the employee’s disadvantage by some unjustifiable action by the employer.”



Leading Case

- **Flight Attendants and Related Services Assn Inc v Air New Zealand**
 - Female flight attendant claimed she should have received a seniority based promotion while on parental leave
 - Court did not allow the claim, but noted:
 - *the employee had, for instance, been only a very short time away from her work, the implied obligations of trust, confidence and fair dealing between employer and employee may have warranted ... a promotion*
 - Future cases in this area may succeed



Equal Pay Act

- Although the EPA's aim was to eliminate gender discrimination in remuneration, it has been interpreted narrowly by the Courts, as establishing the same rate of pay for male and female employees doing the **same** job



Leading Case

- **Clerical Workers v Farmers**
 - Arbitration Court adopted a narrow interpretation of the Act
- **Negative aspects of the decision**
 - The Court held the EPA required the elimination of pay differentials based on sex within the *same award*.
 - It did not establish equal pay for work of equal value
 - The “but for” test was used
 - The Court looked at the intention of the parties subjectively



Recent developments and international trends

- **New era**
- **Courts now interpreting Human Rights legislation more liberally**
- **Equal Pay Amendment Act & Bill of Rights Act**



The way forward

- **Funding and supporting cases**
- **Developing women's negotiation skills and bargaining capability**
- **Reform of law**
 - Establishing a basis of comparative worth for jobs
 - Extending the legislation to different work of equal value
 - Legislating for a positive duty on employers to ensure pay equity
 - Positive discrimination



Any Questions?

