



**Public Defender of Rights**  
OMBUDSMAN

# How to Build a Case on Equal Pay

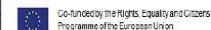
Equinet training



**Equinet Training Session**  
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HOW TO BUILD A CASE ON  
EQUAL PAY



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# Workshop 4

## Dialogue with the Respondent and Arguments to Justify Unequal Pay

# Gathering Information from the Respondent

1. What do you want to know from respondent?
2. Are employers obliged to provide you informations concerning equal pay upon your request?
3. When you should turn to respondent and disclose the name of the claimant?

# Job Evaluation

Using external resources...

1. Wage calculators
2. Pay audits and reviews
3. Job evaluation schemes

Please see Annex 2 of Handbook



# What to Ask a Respondent?

- **List of questions** – you might pose them the respondent
- **Aim:** obtain more information about claimant and comparator if possible

# Questions

- CLAIMANT'S WORK STATUS
- FORMAL DESCRIPTION OF CLAIMANT'S WORK
- THE JOB PROFILE IN PRACTICE
- LEAVE ARRANGEMENTS
- PERFORMANCE ASSESSMENT
- REMUNERATION
- SITUATION AT COMPANY LEVEL



# Arguments and Counter-Arguments



# PROFESSIONAL SKILLS AND VOCATIONAL TRAINING

- Skills and training need to have importance for given job/position.
- See **Wiener Gebietskrankenkasse** case (C-309/97)
- Career progression – is training accessible?
- Justification is not yet developed



# AVAILABILITY

2 ways:

1. women - caregiving related career breaks
2. bonuses paid to employees regarding their attendance at work



# THE TERMS OF EMPLOYMENT

- is often used in connection with 'work experience' or 'seniority'
- the length of job
- See **Cadman** case (C-17/05)
- Absence because of maternity leave
- Negative impact of part time employment on seniority



# FLEXIBILITY (WORKING LONGER HOURS)

- working longer hours is sometimes reborn as « better performance» - disparate impact on caregivers – mainly women
- employer must demonstrate particular value to the specific work of the employee
- See **Danfoss case (C-109/88)** – „adaptability“

# INDIVIDUAL BARGAINING POWER

- the result of the employees' individual salary requirements during the recruitment process
- successfully challenged in Austria, Malta and Czech Republic



# PERFORMANCE

- **Many EBs:** the argument about poor or good performance has proven difficult to challenge successfully
- **BUT!** the personal capacity or work performance may not lead to a higher salary right from the start of the employment relationship
- See **Brunnhofer** case (C-381/99)



# MARKET FORCES OR MARKET VALUES

- this argument is used quite frequently to explain a difference in pay
- higher salary at the time of recruitment can be justified (see Enderby case, C-127/92)
- principle of proportionality
- Attention! Market value – gender bias

# RESPONSIBILITIES AND VALUE OF THE WORK

- pay differences are explained by a difference in responsibilities
- the actual nature of the work is decisive (duties actually performed)
- See **Rummler** case (C-237/85)



# SALARIES ARE PAID ACCORDING TO COLLECTIVE AGREEMENTS

- Does it **automatically** mean that the salary are not discriminatory?
- Classification in the same job category – it is not sufficient to conclude that they do like work
- See **Brunnhofer** case (C-381/99)



# ABSENCE – CARING RESPONSIBILITIES

- Check respective national legal framework
- Principle: **maternity leave** – no adverse impact on elements of renumeration
- See **Lewen** case (C-333/97) and **Gillespie** (C-342/93)



# Time for Discussion Groups

