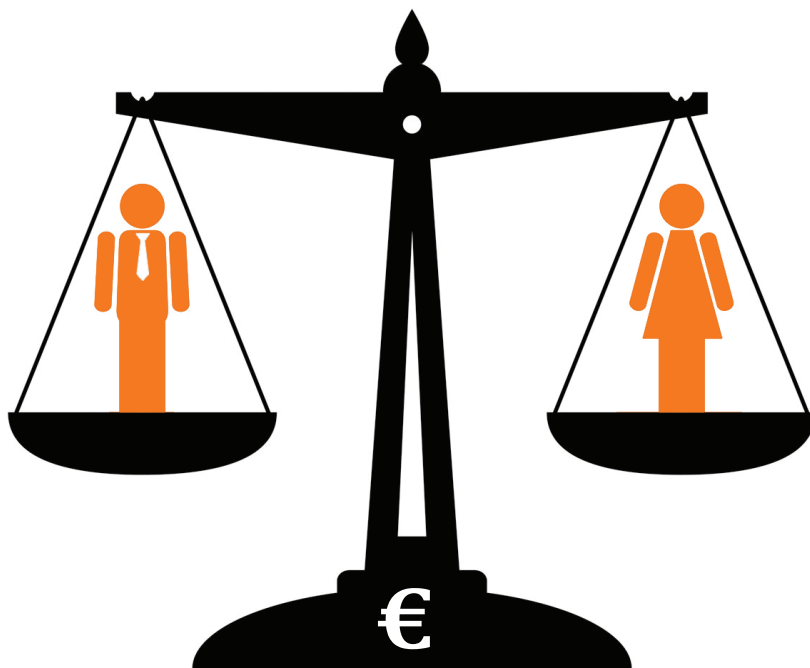


# Equal pay for equal work or work of equal value



## Implementation Guide

Mag. Andreja Poje, Metka Roksanđić

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**Mag. Andreja Poje**  
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Ljubljana, november 2013

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## FOREWORD

Implementation of the principle of equal pay for equal work or work of the same value should become the key goal and commitment of all stakeholders in Slovenian society. In Slovenia, employees are guaranteed the right to equal pay by law, irrespective of gender, but the key problem we are facing is the implementation of this principle in practice. According to the statistics, women lag behind men in terms of income both at the national level and at the level of industries and occupations. Research has shown that gender-based pay differences become even more pronounced (in favour of men) in the workplace and are greatest when comparing women and men with equal qualifications and experience. Access to individual data on salaries for the same job is limited due to the confidentiality of data. Employees can therefore compare each other's salaries only on an individual, mutually-voluntary basis. On the other hand, fulfilment of the equal pay for equal work or work of the same value principle is left to the employer.

In view of established pay differences that are nearing the European average at the level of jobs, this is an issue to which more attention should be paid. It is imperative that measures be taken that will facilitate the narrowing of the gender pay gap. Equal treatment of women and men contributes to the optimisation of human resources, increased productivity and competitiveness. The narrowing of the gender pay gap improves economic performance as a whole. The knowledge and skills women contribute are necessary for the economic and social development of society and should be reflected also in women's salaries and their position in the labour market.

As a socially responsible organisation, the Association of Free Trade Unions of Slovenia (Zveza svobodnih sindikatov Slovenije – ZSSS) embarked on the project *The Gender Pay Gap – from Knowledge to Practice* in order to determine whether gender-based differences in salaries for the same job exist. The result of the project is the study “Equal Pay for Equal Work and the Gender Pay Gap” and the implementation guide to facilitate the implementation of this principle in practice.

Dear workers, dear employers, partners and other stakeholders, we call upon you to make a personal commitment to encourage the implementation, in practice, of the principle of equal pay for equal work and work of the same value irrespective of gender. In the developed world, where we see Slovenia as well, there is increasing interest in the implementation of this principle in practice. It is time we too made a step forward, stopped closing our eyes to the truth and admitted that pay differences between women and men for equal work or work of equal value exist!

**Mag. Andreja Poje**

**Executive secretary for economics and equal opportunities**



With the support of the European Commission

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# INTRODUCTION

Salaries are of extreme importance from the social, economic and motivational point of view. For most employees, they represent the primary source of income and in turn significantly affect both the standard of living and the dignity with which we live our lives. All EU Member States are facing the problem of pay discrimination against women. Slovenia is no exception, despite the generally held belief that there are no salary differences between men and women. With salaries significantly defining pensions it is not surprising that in Slovenia, the risk of poverty for women over 60 years of age is 24.1% and only 12.3% for men of equal age.

Equal pay for equal work or work of equal value for women and men is a widely accepted principle both in the European Union and in Slovenia, and represents a key fundamental value. Nevertheless, the gender pay gap or the official EU indicator for measurement of income inequality by gender demonstrates that on average, women in EU-27 earn some 16% less than men. Comparison of a day's worth of equal work reveals a similar picture, showing that women must work 15 months to earn what men make in 12 months.

Stakeholders playing key roles in introducing positive changes in this field seem to lack awareness of the fact that smaller gender differences in income promote social justice, optimisation of human resources, increased productivity and motivation of employees. Also understated is the fact that there should not, in the first place, be any differences in salaries for equal work or work of equal value.

In Slovenia, we hear all too often that there are no gender differences in salaries because the law does not allow them and that such allegations are misleading. Nevertheless, official statistics show that salary gaps between men and women do occur at the national level. According to the data for 2012, women's salaries lagged behind men's by 5.1%, with women earning on average EUR 84 less per month than men. Data for the observed year reveals that the difference increases significantly when salaries are compared by industry and occupation. The biggest differences in salaries in 2012 were in the health- and social care industries, where



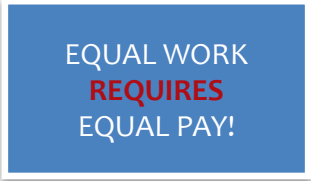
women earned 26.5% less than men employed in the same industry. These are followed by the finance and insurance industries, where women's salaries lagged behind men's by 24.9%.

Article 133 of the Employment Relationship Act requires employers to remunerate their employees equally for equal work or work of equal value, regardless of gender. However, owing to the complexity of the concept, lack of instruments for its implementation and limited access to the relevant data, Slovenia has not yet seen any litigation associated with equal pay for equal work or work of equal value regardless of gender under Article 133 of said act.

The purpose of the Guide is to provide basic information on the principle of equal pay for equal work or work of equal value regardless of gender, to implement this principle in both European Union and Slovenian legislation, to present the data on the existence of the gender pay gap and show the key findings of the research, presented in more detail in the survey entitled "Equal Pay for Equal Work and the Gender Pay Gap" on the factors that drive the gender pay gap in the workplace. In addition, the Guide aims to offer possible measures for reducing the pay gap and introduces measures that could be taken in case of violations of Article 133 of the Employment Relationship Act.

## 1. EQUAL PAY FOR EQUAL WORK

Andrea and Andreas worked at the same company. Both were graphic artists who had undergone the same training and both performed the same job. However, Andreas's monthly salary was about EUR 591 higher than Andrea's. Andrea filed a court action and won her case. In its decision, the Supreme Court of Austria cited "gender-based discrimination"<sup>1</sup> as the reason for its ruling.



<sup>1</sup> A. Kurtz, S. Grabner, A. Schulmeister, (2006). 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, Vienna. BMGF. (<http://www.bka.gv.at/DocView.axd?CobId=20830>)

Wendy took up the post of warehouse manager four months after her predecessor, a man, had left the company. She received a weekly salary of 50 pounds per week. Her predecessor had received 60 pounds per week for the same job. Wendy initiated a court action and the European Court of Justice ruled<sup>2</sup> that the equal pay principle is not confined to the period when men and women are contemporaneously doing equal work for the same employer, but also to the period when a woman received less pay than a man who had been employed prior to the woman's period of employment and had performed equal work for the employer.

## 1.1. Equal pay for equal work

The principle of equal pay for women and men is an integral part of EU legislation. It was later extended to include the principle of equal pay for work of equal value and transposed into the legislation of EU Member States.

The implementation of the principle of equal pay for equal work or work of equal value requires a gender-neutral job evaluation system.

**Equal work** means work that is (Equality Commission for Northern Ireland, 2013)<sup>3</sup>:

- the same or broadly similar (like work),
- different, but which is rated under the same job evaluation scheme as equivalent (work rated as equivalent),
- different, but of equal value in terms of demands such as effort, skill and decision-making (work of equal value).

## 1.2. Enako plačilo za delo enake vrednosti

**Work of equal value** is defined as work in those jobs that are regarded as equivalent, imposing the same requirements on employees in terms

<sup>2</sup> Decision of the European Court of Justice of 27 March 1980, No. 129/79. ([http://www.svz.gov.si/si/delovna\\_podrocja/projekt\\_prevajanje\\_in\\_redakcija\\_sodb\\_sodisca\\_evropskih\\_skupnosti\\_in\\_sodisca\\_prve\\_stopnje/zgodovinska\\_sodna\\_praksa\\_v\\_slovenscini/leta\\_1970\\_1979/](http://www.svz.gov.si/si/delovna_podrocja/projekt_prevajanje_in_redakcija_sodb_sodisca_evropskih_skupnosti_in_sodisca_prve_stopnje/zgodovinska_sodna_praksa_v_slovenscini/leta_1970_1979/))

<sup>3</sup> Equality Commission for Northern Ireland (2013). Code of Practice on Equal Pay. ([http://www.equalityni.org/archive/pdf/Equal\\_Pay\\_Report-June2013.pdf](http://www.equalityni.org/archive/pdf/Equal_Pay_Report-June2013.pdf))

of knowledge, skills, responsibilities, effort and working conditions (Includegender.org, 2013)<sup>4</sup>. While jobs may appear very different as first sight, an analysis of requirements and other conditions demonstrates that they are of equal value.

Lower pay for equal work or work of equal value for women as compared to men and vice versa applies in the comparison of pay received by a woman and by a man working for the same employer. 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 salary system (e.g. overtime pay, performance pay and similar).

In line with case law<sup>5</sup>, the European Court of Justice introduced a new element broader than the same establishment or same service for the comparison of work of equal value – that of single source.

A woman who meets the same job requirements as her male counterpart has the right to equal pay.

The Court specified that “the applicability of that provision (wording of Article 141(1) EC) is not limited to situations in which men and women work for the same employer”. The principle of equal pay for men and women therefore implies that remuneration for equal work or work of equal value need not necessarily be paid by one and the same employer, but must originate from a single source, to which any differences identified in pay conditions can be attributed. In the absence of a single source there would be no body which would be responsible for any inequality and which could restore equal treatment (European Commission, 2004)<sup>6</sup>. Therefore, under certain conditions pay discrimination between men and women exists even when they are not working for the same employer.

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<sup>4</sup> Includegender.org. (2013). Wage Pilot Analysis. (<http://jamstall.nu/en/how/wage-pilot-analysis/>)

<sup>5</sup> Judgement of the Court of 17 September 2002. A. G. Lawrence in *drugi proti Regent Office Care Ltd, Commercial Catering Group in Mitie Secure Services Ltd.*, C-320/00, Recueil 2002, p. I-07325; and Allonby, C-256/01.

<sup>6</sup> European Commission (2004). Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. COM (2004) 279 final 2004/0084 (COD)

Non-discriminatory job evaluation understandably compares and rates different occupations and tasks performed by men and women in the same establishment as well as in different industries.

## 2. LEGAL BASIS

### 2.1. EU legislation

The legal framework for the principle of equal pay for equal work or work of equal value both at the EU and at the national levels of all EU Member States is Article 157 of the Treaty on the Functioning of the European Union<sup>7</sup>, Article 23 of the Charter of Fundamental Rights of the European Union and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

The European Court of Justice ensures that the law is observed in the interpretation and application of the treaties in the European Union. It interprets the provisions of European regulations and adopts decisions with regard to appeals by individuals and questions raised by national courts.

Application of the principle of equal pay for equal work or work of the same value for men and women is the obligation of all EU Member States. In accordance with European provisions, the national legislation must comply with the principle of equal pay for equal work or work of equal value.

**Equal pay for equal work** is defined by Article 157<sup>8</sup> of the Treaty on the Functioning of the European Union (TFEU, 2012). This article defines pay as the usual 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.

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<sup>7</sup> Former Article 119 of the EEC Treaty of 1957, then Article 141 of the EC Treaty.

<sup>8</sup> 157. Article 157 of the Treaty on the Functioning of the European Union (TFEU, OJ EU C 326 of 26 October 2012; and former Article 119 of the EEC Treaty of 1957, then Article 141 of the EC Treaty.

Pay therefore means:

- basic salary,
- performance-based pay,
- other pay components (e.g. benefits, allowances and similar),
- other extra payments (e.g. holiday allowance, severance pay, long service awards, additional pension insurance and similar),
- fringe benefits (e.g. company car for private use, company apartment, mobile phone and similar).

A ruling handed down by the European Court of Justice determined that each pay component must observe the principle of pay equity. Therefore, it is not possible to exchange one benefit for another. Even if total remuneration is equal but there are differences between pay elements, this could represent discrimination based on gender.

EU legislation and case law impose additional requirements on employers<sup>9</sup>:

- employers must apply the same evaluation criteria to all employees,
- remuneration arrangements must be understandable and transparent and pay differences must be justified,
- the criteria applied must take into account the nature and type of work,
- the criteria must be free of discriminatory elements.

## 2.2. Slovenian legislation

Although the constitution of the Republic of Slovenia<sup>10</sup> from 1991 does not specifically define the right to equal pay, Article 14 defines equal human rights and fundamental freedoms irrespective of gender and equality before the law.

The new Employment Relationship Act from 2013<sup>11</sup> did not introduce any changes as to the provision of Article 133 (equal remuneration of

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<sup>9</sup> The most important rulings of the European Court of Justice: the case Rummler, Danfoss, Enderby, Barber, Royal Copenhagen

<sup>10</sup> Official Gazette of the RS 33/1991 of 28 December 1991.

<sup>11</sup> Official Gazette of the RS 21/2013 of 13 March 2013.

women and men), but made slight changes to Article 6 that prohibits discrimination and retaliation. Article 6 now comprises the following:

- in item 1, the obligation of the employer to ensure equal treatment for both applicants seeking employment and his employees irrespective of gender and other circumstances, whereby the employer is obliged to observe this act and regulations governing the application of the principle of equal treatment and equal opportunities for women and men;
- item 2, amended so as to impose an obligation on the employer to ensure equal treatment in respect of personal circumstances referred to in item 1 of this article for applicants and employees, especially in “... promotion, pay and other remuneration from the employment relationship, ...”.

These changes reflect the Equal Opportunities of Women and Men Act<sup>12</sup> adopted in 2002 and 2007, and the Implementation of the Principal of Equal Treatment Act<sup>13</sup>.

### ***2.2.1. Direct and indirect discrimination***

Pursuant to the provision of Article 6 of the Employment Relationship Act no one may be directly or indirectly discriminated against when seeking employment, during employment or in respect of termination of employment on the grounds of their gender or any other circumstances.

**Direct discrimination**<sup>15</sup> exists where, owing to a certain personal circumstance a person was, is or could be treated less favourably than another person in identical or similar situations. Less favourable treatment or workers associated with pregnancy or parental leave is considered discrimination.

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<sup>12</sup> Official Gazette of the RS 59/2002 of 5 July 2002.

<sup>13</sup> Official Gazette of the RS 61/2007 of 10 July 2007.

<sup>14</sup> Official Gazette of the RS 21/2013 of 13 March 2013.

<sup>15</sup> Article 6 of the Employment Relationship Act, Article 5 of the Equal Opportunities of Women and Men Act.

**Indirect discrimination**<sup>16</sup> on the grounds of a personal circumstance exists where, owing to a seemingly neutral regulation, criterion or practice a person with a certain personal circumstance was, is or could be put in a less favourable position than other person in identical or similar situations and conditions, unless such regulation, criterion or practice is justified by a legitimate objective and if the means employed to achieve this objective are appropriate and necessary.

## *2.2.2. Implementation in practice*

The right to equal pay for women and men for workers in Slovenia is therefore guaranteed by law. The obligation to enforce this right lies with the employer.

The provision of Article 133 of the Employment Relationship Act<sup>17</sup> stipulates that provisions of an employment contract, collective agreement and/or employer's general act that are contrary to this article are regarded as invalid. A worker may, upon violation of the right to equal pay for equal work or work of equal value, seek legal protection without his/her employment being terminated as a result (Article 90), or may claim unequal treatment on the grounds of gender (Article 6). The provision of Article 133 in itself contains no penal sanctions.

In order to enforce the provision of Article 133 of the Employment Relationship Act, which imposes on the employer the obligation to ensure equal pay for equal work or work of equal value for women and men, workers have the possibility to initiate litigation either by claiming only a violation of Article 133 or in relation to gender-based discrimination (Article 6). This type of dispute infers a pecuniary claim; direct legal protection is possible.

As regards equal pay for equal work there is the decision of the Higher Labour and Social Court passed in 2012<sup>18</sup>. In this decision the Court

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<sup>16</sup> Article 6 of the Employment Relationship Act, Article 5 of the Equal Opportunities of Women and Men Act.

<sup>17</sup> Official Gazette of the RS 21/2013 of 13 March 2013.

<sup>18</sup> HLSC, decision Pdp 591/2012.

ruled that the employer had discriminated against the employee by paying him a lower salary than to his colleagues for the same work. In this respect it is significant that a worker is entitled to be paid for the work he/she is actually doing, irrespective of the position to which he/she is formally allocated or for which he/she has concluded an employment contract. This court decision may facilitate enforcement of equal pay for equal work compared to colleagues, but may also be applied to determine whether lower rates are paid to women as opposed to men doing the same job.

### 3. MEASURING GENDER PAY INEQUALITY

The **gender pay gap**<sup>19</sup> is an official indicator that demonstrates the difference between men's pay and women's pay and refers to the relative difference in average gross hourly earnings of women and men. In the EU, the

**Unadjusted gender pay gap** is defined as the difference between average gross hourly earnings of male and female employees, as a percentage of male gross earnings.

gender pay gap is referred to as the **unadjusted gender pay gap** (without correcting for national differences in individual measurable characteristics of employed women and men that might explain some of the pay difference) that gives a general picture of gender inequality in the labour market.

#### 3.1. Gender pay inequality: EU

According to the Statistical Office of the European Communities (Eurostat)<sup>20</sup> the pay gap in EU-27 in 2011 averaged 16.2%, which means that average hourly earnings of women were 16.2% lower than men's.

On average, women in EU-27 earn 16.2% less per hour than men.

<sup>19</sup> EUROSTAT (2013). Glossary: Gender pay gap. ([http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Glossary:Gender\\_pay\\_gap\\_\(GPG\)](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Gender_pay_gap_(GPG)))

<sup>20</sup> Eurostat portal: [http://epp.eurostat.ec.europa.eu/portal/page/portal/labour\\_market/earnings/database](http://epp.eurostat.ec.europa.eu/portal/page/portal/labour_market/earnings/database)



There are considerable differences between gender pay gaps in EU Member States. The lowest gender pay gap in 2011 was recorded in Slovenia (2.3%). The only three other EU Member States with gender pay gaps below 10% in that year were Poland (4.5%), Italy (5.8%) and Luxemburg (8.7%). Gender pay differences larger than 20% were recorded in six EU Member States (Great Britain, Slovakia, the Czech Republic, Germany, Austria and Estonia).

### **3.2. Gender pay inequality: Slovenia**

Pay differences between men and women in Slovenia exist regardless of the generally held belief that they do not. Most people believe that gender equality as provisioned by law is exercised also in practice and that the same applies in the exercise of the right to equal pay for equal work or work of equal value. Even more pervasive is the opinion that there are no pay differences between men and women doing the same job. Similarly, gender pay differences are most frequently justified with horizontal (gender concentration in certain occupations and industries) or vertical (employment of women in lower-valued jobs with poorer working conditions and similar) segregation, higher absence rates in women due to maternity and care leave, which reduces their opportunities for promotion and similar. Even companies claim that classification of tasks and duties, job descriptions and determination of tariff groups and salary grades is gender neutral, that employees can advance in accordance with pre-set criteria and that remuneration is tied to the job and not to the gender of the person doing this job.

Different methodologies used in the monitoring of the gender pay gap and different statistical research have produced different results when it comes to determining the level at which women's salaries in Slovenia lag behind men's. Said surveys confirm the existence of the gender pay gap, with the results showing that the gap had been narrowing until it reached its lowest value at the beginning of the crisis and has been widening since. One of the significant findings has been that the gender pay gap did not narrow owing to any specific measures or carefully planned activities, but that it occurred on account of the financial and economic

downturn when women fared better than men in terms of employment and when extra payments to men (bonuses, incentive payments and similar) were lower, as well as due to different employment levels of women and men in different industries.

The last survey<sup>21</sup> exploring gender pay inequality in Slovenia from 1993 to 2007 found increased gender differences in this period in addition to different grounds for gender pay inequality. In the period 1993 to 1997 men earned on average and at the job level some 15% more than women; this difference increased in the period 2003-2007 with men's earnings exceeding women's by an average of 23%. The last result is very similar to the situation in Western Europe and the USA. However, in the period 2003-2007 men in Slovenia earned 18% more than women doing the same job for the same employer. It should be noted that the difference between men's and women's salaries for the same job in Western Europe and the USA is significantly lower, with women earning between 2 and 3% less.

Another important consideration is the researchers' finding that "a large part of the pay differential exists at the job level, with men and women receiving different salaries for the same work in the same organisation, which applies to all periods under examination, regardless of whether education and experience factors are considered or not". In addition, the study showed that in Slovenia job classification (occupational segregation) is not the main factor in the gender pay inequality equation.

The analysis conducted in the project<sup>22</sup> yielded similar results, demonstrating that gender differences in salaries at the job level exist. Moreover, the determination of basic pay and classification into a relevant salary grade within the tariff group turned out to play a significant role in the occurrence of gender differences in salaries. The results indicated differences between hourly rates for regular work (for work hours actu-

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<sup>21</sup> M. A. Penner, A. Kanjuo Mrčela, N. Bandelj, T. Peterson, (2012). Neenakost po spolu v Sloveniji od 1993 do 2007: razlike v plačah v perspektivi ekonomske sociologije (Gender inequality in Slovenia, 1993-2007: An economic sociology perspective on job-level pay differences) Teorija in praksa. Ljubljana 2012 (6), pp. 854-877.

<sup>22</sup> A. Poje, M. Roksandić, (2013). Enako plačilo za enako delo in plačna vrzel med spoloma (Equal pay for equal work and the gender pay gap). ZSSS. Ljubljana.

ally done, without allowances for annual and sick leave, holiday allowance, extra payments for working conditions, performance pay and years of service) in the classification into the same tariff group and the same salary grade. Differences therefore occur already in the base salary and increase with total earnings, because according to the Slovenian salary scheme additional payments are calculated as a percentage of base salary (e.g. in the trade sector 100% of base salary for Sunday work) and as a result, additional payments and in turn also the total salary are lower for a lower base salary.

In our survey of salaries paid we find that differences occur also in view of performance pay and promotions. This is partly due to incentive schemes that reward job attendance. Certain company collective agreements or employer's acts also specify attendance pay, both in service and in industry sectors. This has led to direct discrimination of women who have higher rates of family-related absences from work (care for children and aging parents) and are therefore not entitled to this part of the salary; in addition, they have fewer opportunities for advancement into a higher salary grade and in turn for promotion. Some companies also have a clause stipulating that in the event of illness a worker is entitled to his/her first performance pay no sooner than in six-months time, regardless of the results he/she has achieved. Such cases demonstrated direct discrimination also on the grounds of sick leave.

## **4. WHERE GENDER-BASED PAY DIFFERENCES OCCUR IN SLOVENIA AND POSSIBLE SOLUTIONS**

### **4.1. Example 1: Undervaluation of women's work**

Statistics and studies demonstrate that there are gender pay differences that are neither acceptable nor allowed.

Activities and jobs typically performed by women are evaluated as less demanding and are in turn valued less and paid less. When similar work

is done by men the status changes – work is attributed a higher status and higher pay.

**SOLUTION:** Company collective agreements and general acts of the employer must be such as to provide for a gender-neutral job evaluation.

#### **4.2. Example 2: Classification of women into lower salary grades within the tariff group for equally demanding work**

Pay differences in hourly rates for women and men for work actually done in the same salary grade and tariff groups, under the same working conditions and for the same employer exist.

The study conducted under the project<sup>23</sup> indicates that differences occur in the salary paid for the regular work hours actually performed, excluding allowances for annual and sick leave and holiday allowance. Owing to the Slovenian salary scheme the differences become even greater in terms of salaries paid because additional payments for working conditions, years of service and performance are calculated as a percentage of payments for regular work.

**SOLUTION:** The worker who discovers that he/she receives lower pay for equal work may act according to the procedure described in item 5.

#### **4.3. Example 3: Gender-based pay differences increase with the transition into a higher tariff group and with higher education**

The study carried out under the project also showed that pay differences between women and men increase with ascension into higher tariff groups, and in turn with higher education and a higher level of job complexity, not only at the national level, but also within the observed companies.

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<sup>23</sup> A. Poje, M. Roksandić, (2013). Enako plačilo za enako delo in plačna vrzel med spoloma (Equal pay for equal work and the gender pay gap). ZSSS. Ljubljana.

Other surveys have shown that companies do not give much thought to gender equality and take no systematic action to tackle this problem.

**SOLUTION:** Company collective agreements and employer's general acts must be changed so as to include the principles of non-discrimination. Similarly, accurate criteria for advancement across tariff groups must be formed so as to facilitate gender neutrality.

#### 4.4. Example 4: Men are more often awarded incentives

Differences occur also on account of incentives and/or fringe benefits. According to the results of analyses<sup>24</sup> men receive on average 47% higher incentives and/or fringe benefits than women.

**SOLUTION:** Company collective agreements and employer's general acts must set clear rewards criteria that will facilitate gender neutrality.

#### 4.5. Example 5: Discrimination on the grounds of family-related sick leave

With measures taken in order to reduce absenteeism, more and more companies tend to adopt general acts and, what is even more unusual, company collective agreements (in cooperation with social partners) that contain provisions prescribing negative incentives for workers in the event of sickness absence. As a result, they are not entitled to receive incentives for a long period, even when their absence due to sickness was short. Female workers and/or mothers have higher absentee rates due to child- and family-related care, which is reflected in the salaries paid. Such provisions within company collective agreements and general acts are unacceptable and represent negative discrimination.

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<sup>23</sup> V. Kozmik Vodušek (2001). Evropska Unija – izziv, priložnost ali alternativa tudi za ženske? Položaj žensk v Evropski uniji in primerjava s Slovenijo (The European Union – Challenge, Opportunity or Alternative for Women Also? Position of Women in the EU and comparison with Slovenia). Mirovni inštitut. Ljubljana.

**SOLUTION:** Social partners at the company level in the adoption of company collective agreements or works councils when giving consent to general acts must oppose such provisions.  
Inform labour inspection.

## 5. MEASURES TO BE TAKEN IN EXAMPLES 1 TO 5

The worker who discovers she (or he) has been receiving lower pay for equal work may:

- a) ***If she is a union member***, inform the union. The union will represent her in subsequent legal proceedings and shall conduct all steps described below for non-union members.
- b) ***If she is not a union member, there are two options:***

1. Request that the employer eliminate irregularities.

If the employer fails to respond within eight days, she may file a court action within subsequent 30 days (the same procedure applies for the worker who authorised the union when the employer failed to eliminate irregularities). In this case the worker's claim consists of the following: it is determined that by paying the worker a lower salary the employer has violated the rules of non-discrimination. This may be followed by the pecuniary part of the claim – the employer is obliged to pay the difference in the salary for the past and the same salary as received by the compared worker for the future.

The burden of proof as to the amount of damage suffered lies with the injured worker. In terms of discrimination, the burden of proof lies with the employer who is obliged to prove that the worker has not been discriminated against.

2. The action is brought directly to court without prior notification of the employer, requesting the difference in salary to be paid for past salaries and the same salary as that of her colleague to be paid in the future. The only claim made in this respect is that of discrimination. Action for the payment of pay difference may only be filed if the worker is aware of the amount of the difference. In this case

the claim consists of the following: the employer is obliged to pay the difference in salary in the amount of EUR \_\_\_ for each month and to eliminate irregularities. Subsequently, it is on the employer to prove that the worker has not been discriminated against and that justifiable reasons exist for these differences.







