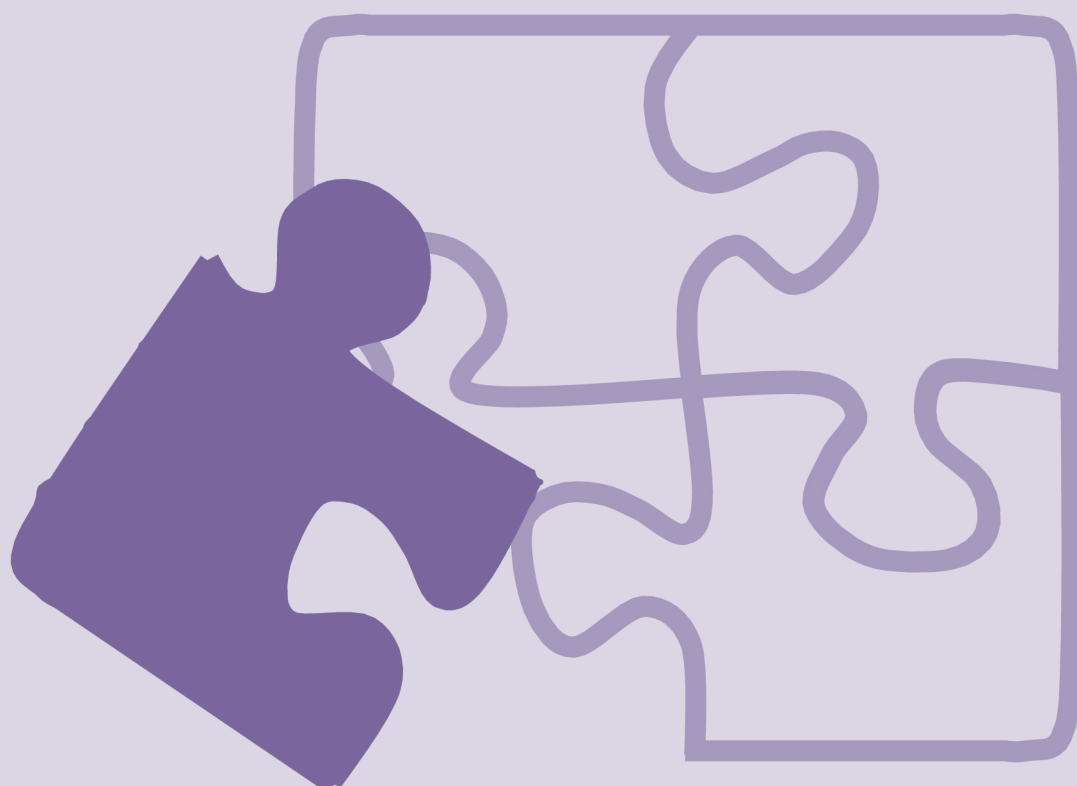




A Systematic Approach to Pay Determination Free of Sex Bias



The Equal Opportunities Commission has developed a set of guidebooks to strengthen public understanding on the concepts of Equal Pay for Equal Work (EPEW) and Equal Pay for Work of Equal Value (EPEV), for the purpose of eliminating pay discrimination on the ground of gender. These guidebooks are:

- | | |
|-----------------------------|--|
| Main Guide | Guide to Employers on Equal Pay between Men & Women under the Sex Discrimination Ordinance |
| Supplementary Book 1 | An Illustration on Developing an Analytical Job Evaluation System Free of Sex Bias |
| Supplementary Book 2 | A Systematic Approach to Pay Determination Free of Sex Bias |
| Supplementary Book 3 | Equal Pay Self-Audit Kit: A Proactive Approach for Employers to Achieve Equal Pay |

An Easy Read Guide is also available as a quick reference for all users including employers of small business and employees in general.

The publications are available at the EOC website. Should you require clarifications on these publications or obtain the hard copies, please contact the Equal Opportunities Commission.

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A SYSTEMATIC APPROACH TO PAY DETERMINATION

FREE OF SEX BIAS

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
Part 1 What Affects Equal Pay in the Pay Determination Process	2
Part 2 Grading Structure Design	4
■ FAQ on Grading Structure Design	8
Part 3 Establishing Salary Structures	11
■ FAQ on Salary Structures	13
Part 4 Practical Tips on Pay Administration Processes that are Free of Sex Bias	
■ Entry Salary	16
■ Pay Progression	20
■ Salary Review	22
■ Promotion Increase	24
■ Work-related Allowances	26
■ Cash Allowances	26
■ Variable Pay	27
■ Personalized Pay	28
■ Retirement Benefits	29
■ Other Fringe Benefits	29
■ Hours of Work/Part-time Work/Anomalies	29
Summary	31

INTRODUCTION

This is a supplementary book to the “Guide to Employers on Equal Pay between Men & Women under the Sex Discrimination Ordinance” which recommends to the employer to adopt a systematic approach for effective and equitable pay administration.

Effective reward management practices involve the formulation and implementation of pay policies that compensate staff in accordance with their contributions and the value of their jobs to the organization. Equitable pay can be achieved through objective assessment of job values, applying consistent criteria in making pay decisions and establishing reasonable relativity in pay between individuals that is based on gender neutral considerations. Subjective or discretionary pay decisions, though not necessarily gender biased, would have adverse impact on the organization for the attraction, retention and motivation of talents required. Fair pay practices, on the other hand, will support the elimination of pay discrimination and strengthen trust in the employer-employee relationship.

In this book, potential equal pay problems in the pay determination process are highlighted and practical tips are provided to assist you on pay practices that are free of sex bias. It is assumed that readers using this book should have some experience or general understanding in pay administration in order to appreciate the rationale and implications. There are four parts in this book:

- Part 1 What Affects Equal Pay in the Pay Determination Process
- Part 2 Grading Structure Design
 - Frequently Asked Questions on Grading Structure Design
- Part 3 Establishing Salary Structures
 - Frequently Asked Questions on Salary Structures
- Part 4 Practical Tips on Pay Administration Processes that are Free of Sex Bias

The concept of equal pay applies to both men and women. To avoid repetition, any reference of sex discrimination to women in this book shall be read as applying equally to the treatment of men.

The information in this supplementary book is the property of the Equal Opportunities Commission and is prepared for general reference by employers. Whilst every effort has been made to provide relevant information on the subject, only the courts can give authoritative interpretations and application of the law.

Part 1 What Affects Equal Pay in the Pay Determination Process

There are a number of critical factors that you should be aware of to achieve equal pay in the workplace:

- You should understand **what equal pay covers**.
- You should identify jobs of equal value through objective means that are free of sex bias and preferably establish a **grading structure** that is transparent to staff. It is better to have a simple structure than none.
- You should establish clear policies and guidelines for the determination of individual pay such as the setting up of a **salary structure** as internal reference.
- You should apply consistent criteria in your **pay administration** process for male and female staff performing equal work or work of equal value.

1.1 What Equal Pay Covers

Equal pay covers all elements of pay, whether in cash or in kind, which the worker receives directly or indirectly in respect of employment, encompassing but not limited to basic pay, bonuses, overtime rates and allowances, performance related pay, retirement schemes, company cars, travel allowance and other fringe benefits. Different organizations have different combinations of pay components. Some organizations might take a 'Total Cash' approach when determining the cash components of pay for individuals. Others might take a 'Total Remuneration' approach when all elements of pay are considered including cash and the cost for providing benefits. ***It is important to note that the requirement to provide equal pay applies to all terms and conditions of employment, in addition to basic pay or cash components of pay alone.***

1.2 How is Pay Compared for Compliance on Equal Pay

Pay elements may be compared as a whole or separately by item, depending on individual circumstances. Whatever approach is taken for determining individual pay and comparing pay packages amongst staff, the important equal pay principle is that ***male and female staff performing equal work or work of equal value should be treated in the same manner under comparable circumstances, in accordance with established pay principles and policies which should be free of sex bias.*** It is advisable for you to define clearly the make-up of your pay packages and you should be able to substantiate that your pay decisions are not gender biased. Whether pay elements should be assessed as a whole or separately depends on the reasonableness of the overall pay structure. Only the courts can give authoritative interpretations and application of the law under individual circumstances.

1.3 Consistent Criteria under Comparable Circumstances

In reality, terms and conditions of employment may change over time, as driven by changing business environment, sometimes resulting in 'grand-fathering' of old terms and reduction in new terms. At other times, old terms may be changed to align with new standards. Apart from the consideration of contractual obligations, you should bear in mind all the time that differentiation of individual pay package must not be for reason of the gender of the individual. Consistent criteria in pay generally means applying the same terms and conditions of employment for both male and female staff performing equal work or work of equal value under comparable circumstances. This includes but is not limited to applying the same salary range and same conditions for salary progression within the range; having the same eligibility to allowances and benefits; same system for assessing performance and awarding performance-related pay; and same bonus opportunities for short-term incentive schemes etc. Pay differentials should be based on reasons other than sex, to be substantiated by clearly defined policies and facts.

1.4 Internal Relativity

Mechanisms to constantly compare the internal relativity of pay amongst employees performing equal work or work of equal value should be established to ensure that pay differentials for individuals can be explained by reasons that are free of sex bias. A tool for internal relativity check is provided in the supplementary book entitled "Equal Pay Self-Audit Kit: A Proactive Approach for Employers to Achieve Equal Pay".

Part 2 Grading Structure Design

The principle of Equal Pay for Work of Equal Value (EPEV) aims at the achievement of pay equity between men and women performing work of equal value. It is therefore necessary to assess the value of work in order to identify positions considered to be equivalent by the employer to provide equal pay. The methodologies for assessing job values are set out in the “Guide to Employers on Equal Pay between Men & Women under the Sex Discrimination Ordinance”. A supplementary book entitled “An Illustration on Developing an Analytical Job Evaluation System Free of Sex Bias” is also available to assist employers in the determination of job values. Regardless of the methodologies used for the assessment of job values, similar jobs are normally grouped into a grade and a series of grades will form a hierarchy of jobs within an organization, creating a grading structure.

2.1 The Relationship between Grading Structure & Equal Pay

The grading structure is used as a basis for pay determination. Pay is established relative to the respective job grades (job sizes). Market practice on grading structure is divergent, simply because the organization designs of corporations vary according to the business nature, size and operational requirements of individual organizations. ***In the context of equal pay, the way that jobs are assessed and placed into grades will have implications as work of equal value commands equal pay. It is important that you are clear about what jobs are regarded as being equal and why. It is also crucial that any pay differentials for individuals performing work of equal value should be free of sex bias.*** You should recognize the implications of your grading structure design on equal pay. These are set out for your reference in this section. However, this book does not serve to provide technical knowledge on how to establish a grading structure. It aims at helping you to understand equal pay issues throughout the process of pay determination.

2.2 The Implications of Grading Structure on Equal Pay

While the number of grades and the grading structure design are decisions of individual organizations, ***all jobs that are put into the same grade/under the same staff category by the employer are normally considered to be of equal value, unless otherwise determined and clearly communicated to staff.*** It is therefore important that your grading structure is transparent and understood by staff in order to pre-empt any misunderstanding as jobs of equal value command equal pay.

2.3 Potential Equal Pay Issues Relating to the Grading Structure Design

- (a) **Grade Boundaries** – There is a cut-off point between two grades where jobs are separated into a higher and a lower ranking, thus attracting a different pay package. The cut-off point is called the grade boundary. In the context of equal pay, the position of the boundaries between grades must be carefully considered to ensure that it is free of sex bias.

When Using Analytical Job Evaluation – The following is an illustration on how grade boundaries that are free of sex bias are to be determined if analytical job evaluation is used:

Illustration:

If you use analytical job evaluation to assess job values and jobs are graded according to the evaluation scores, you need to consider carefully where the grade boundaries are set to ensure that male and female dominated jobs (the majority of incumbents of a position are of the same gender) of similar job size are not arbitrarily separated into two grades, causing potential equal pay problems.

For example, if a male dominated job scores 200 points and a female dominated job scores 195 points and the grade boundary is set to break at 199 for the lower grade, this might cause equal pay concerns.

Evaluation results should be reviewed to ensure that a minor difference in points should not put male dominated jobs into a higher grade than female dominated jobs when all major elements of work are comparable. It may not be desirable to set boundaries at fixed points without observing where the natural break for a series of jobs is.

When looking for a natural break, you might consider the nature of work, working relationships, reporting relationships, career progression etc. to decide if it is more appropriate to put a position in the upper or lower grade under consideration.

When Using Other Methods to Slot Jobs into Grades – The grade definitions should be free of sex bias and requirements to progress to a higher grade should not be set in such a way that the proportion of women meeting those requirements is considerably less than that of men.

The implication here is that grade boundaries should be set where equal career and reward opportunities are provided to both male and female members of staff.

- (b) **Grade Widths** – Different organizations have different requirements on the number of grades or even the number of grading structures they should have. The size of the organization and its management philosophy would impact upon whether there should be a lot of grades, (for example, to create career ladders); or whether it should be a flat organization with few layers, (for example, to improve efficiency and span of control). The number of grades would impact upon the “width” of each grade.

Illustration:

If there were 10 grades in an organization with a maximum job score of 1000 points, the range of points for each grade when distributed evenly would be approximately 100 points.

If there were only 5 grades, then the range of points would become 200 points. This means that jobs being placed into the same grade in the latter case are “broadly similar” as compared to the first case. The corresponding range of relevant market pay rates would also be wider, resulting in larger pay differentials for individuals within the grade.

There is also the consideration of whether all grades should be of consistent widths. The answer is dependent on individual situations. If grades have varying widths in an organization, the rationale for adopting varying widths should be reasonable and clear. It is essential that policies be clearly set on career and pay progression for each grade.

The implication here is that regardless whether the grades have narrow or broad widths, all jobs within the same grade are considered to bear equal value to the organization. Consistent criteria should be applied for the treatment of male and female staff when determining individual pay rates within the same grade.

- (c) **Broad Band Structure** – If jobs are slotted into narrow grades, they are likely to be highly similar demanding similar pay in the market. However, if jobs are categorized into broad bands, they are “broadly similar” with varying levels of pay in the market. On the one hand, organizations with a broad band structure need to pay market rates to attract and retain the talents they need. On the other hand, they need to maintain pay equity internally within each band. It is more difficult to manage equal pay for work of equal value in a broad band structure.

The implication here is that when broad bands are used, the principles for pay determination must be clear and transparent to staff. Pay differential between individuals must be justified by reasons that are free of sex bias.

- (d) **Job Family Structure** – Some organizations would set up different pay scales for different job families. The purpose is to provide clear career progression and to be able to align the pay levels of individual job families with market movements separately. This may be perceived by staff as being divisive and may cause concerns on the principle of equal pay. For example, engineers (traditionally male dominated jobs) may be paid higher than human resources professionals (traditionally female dominated jobs) even though positions in each job family may score similar points in a job evaluation exercise.

The implication here is that if “fluctuating market pay rates” is a key element for pay determination, mechanisms should be in place to validate and review changing market situations and corrective actions taken where necessary.

FREQUENTLY ASKED QUESTIONS ON GRADING STRUCTURE DESIGN:

- 1. If we use analytical job evaluation and scores have already been identified for jobs, how do we decide when two jobs are of equal value?**

Two jobs are considered to be of equal value if:

- (a) the two jobs score exactly the same points; or
- (b) the scores of the two jobs both fall within the range of scores for the same grade as established by the employer, which should be reasonable and based on business requirements and may be subject to challenge in court in case of disputes.

- 2. If two jobs with a substantial difference in job evaluation scores are placed into the same grade, are they still considered as being equal?**

Yes. It is the responsibility of the employer when designing the grading structure to ensure reasonableness on the width of the grade, which should both serve strategic requirements of the organization and enable career and pay progression of staff. The employer should be aware that it is more difficult to manage equal pay when broad bands are used for grading jobs.

- 3. How would we know if the grade boundaries of our grading structure are non-discriminatory?**

Check if you can distinguish the difference immediately between jobs that are close to the lowest points in the higher grade and the highest points in the lower grade. Check if these two jobs are male and female dominated positions. If the two jobs are indistinguishable with only a very small difference in points and are separated into two grades, a review on the grading decision should be made. It is useful to build into an evaluation system that the evaluation panel should have the authority to make discretionary judgement on jobs closely placed around grade boundaries. The panel should be aware of equal pay implications and ensure that decisions are free of sex bias.

- 4. We do not conduct job evaluation in our organization. The grading structure has been in place for a long time and positions have historically been placed into various grades. How do we ensure that our grading structure is free of sex bias and how do we determine if jobs are of equal value?**

You need to review your grading structure.

- (a) You can introduce analytical job evaluation and assess job values based on job factors that are free of sex bias to validate your grading structure.
- (b) You can analyse the relativity of jobs in various grades by setting clear grade definitions that are free of sex bias and update the grading of jobs accordingly.
- (c) Jobs are considered to be of equal value when you place them into the same grade.

- 5. We do not have a grading structure. Staff are hired to fill positions with various titles. We have a rough idea in our minds on the ranking of our staff. How can we comply with equal pay requirements?**

You are encouraged to put a structure in place, even if it is a simple one; or you have to justify how individuals are paid in your organization when there is an equal pay complaint. Refer to the methodologies presented in the “Guide to Employers on Equal Pay between Men & Women under the Sex Discrimination Ordinance” and the supplementary books to establish a structured approach to assess job values and determine individual pay. This should also help you to enhance staff satisfaction and manage staff cost effectively.

- 6. Our company is small and we do not have time to set up grades and pay policies. Is this against the law?**

The establishment of grading and pay structures is not a statutory requirement. However, if you do not have any system in place and an employee is able to show that he or she is being paid less than a colleague of a different gender doing work of equal value (as supported by facts such as similar titles, duties and job requirements), then you would have to prove either that the two jobs are

not the same (or not with equal value) or that the reason for the pay differential is not related to the gender of the jobholders. If you do not have any policy in place, it would be more difficult to defend the situation.

7. We adopt a broadband structure in our company. Jobs with distinguishable differences in work demands are put into the same band to facilitate lateral development and to reward competencies of individuals. Pay for individuals within a band may vary extensively. With the equal pay requirement, how can we ensure that we are not in breach of the Sex Discrimination Ordinance (SDO)?

There are a number of things that you should do:

- (a) Set out clearly the purpose and principles relating to the adoption of a broadband structure.
- (b) Set out clearly the criteria for pay progression within a band, e.g. guidelines for determining entry salary, salary review, conditions under which salaries may be adjusted, the mechanism to reward competencies etc. These criteria should provide equal opportunities and should be consistently applied to both male and female employees.
- (c) Set out clearly the policy for pay progression across bands, including promotion increment and ensure that you provide equal promotion opportunities to both male and female staff.
- (d) You may choose to establish sub-grades within the band to better control staff cost with clear guidelines relating to pay differentiation for individuals. However, this is in effect converting back to narrow grades to a certain extent.
- (e) Check if there are pay differentials between male and female staff within a band that cannot be explained by existing pay policies. If so, remedial actions are necessary. Conducting an equal pay self-audit will help you to identify such pay gaps.

Part 3 Establishing Salary Structures

The recommendations in this section are based on the assumption that a pay structure is in place. If you do not have a pay structure, it is strongly recommended that reference pay levels be set up for paying jobs at various levels in the organization, in alignment with the grading structure or market pay levels. ***The key to equal pay is to apply consistent criteria for the treatment of male and female staff performing work of equal value. A salary structure would provide a systematic basis for reference and greatly enhance the effectiveness of pay administration.*** Salary structures should be updated periodically to align with market pay movements.

A salary structure is established to provide a reference for making pay decisions. It is linked to the grading of positions, reflecting the going pay rates at various job levels in the market. A salary structure is defined by the minimum and maximum rates of pay by using pay ranges or pay points or alternatively spot pay rates. Apart from the salary structure, other pay policies are developed to provide guiding principles for pay administration and other terms and conditions of employment. ***Whatever structure is used, the key to non-discriminatory pay practice is that a systematic approach is taken to implement policies that are free of sex bias.*** It is not the purpose of this book to provide technical assistance to establish salary structures. Rather, the key elements to setting pay are outlined below with emphases on issues relating to equal pay.

3.1 Preferred Pay Position

A preferred pay position represents the willingness of an organization to pay at various job levels. Market pay practice is divergent and a wide range of pay exists in the market for a particular position or a particular job level. The first step for setting up a salary structure is for the organization to identify market pay rates (through pay surveys and reports) and decide on a preferred pay position, i.e. the level of which pay is established in relation to the market, e.g. at median (middle of the range), the 25th percentile (75% of jobs pay better, 25% of jobs pay less) or the 75th percentile (25% of jobs pay better, 75% of jobs pay less) etc. ***The important point here is that the same preferred pay position, as a policy and reference point, should apply consistently to all jobs/level of jobs to ensure that there is no discrimination on a particular job or groups of jobs, unless the difference is justified by genuine business needs and is not for the reason of sex.*** For example, a higher preferred pay position should not be set for jobs that are dominated by a particular gender. If an organization decides to pay at market median, then the market median figure for each job level is used as the starting point for the salary structure, usually referred to as the mid-point of a pay range. However, if an organization decides to set a higher preferred pay position for jobs in the junior grades to enhance the quality of life for staff in the lower income group and this policy is applied equally to male and female staff, the reason for the differentiation is not on the ground of sex.

3.2 Pay Ranges

Pay ranges are commonly used by organizations in the market. A pay range is defined by the minimum and maximum rates of pay in each grade in respect of the jobs being placed in the grade. These are determined as plus and minus of a certain percentage from the mid-point. In principle, all jobs in the same grade should be within the same pay range and the same conditions to progress within the range or across to a higher grade upon promotion would apply to all jobholders. The nature of a pay range denotes that individual pay does vary despite staff in the same grade are considered to be performing jobs of equal value. The broader the grade, the wider the pay range and the larger the pay differential will be observed. ***The important point to note is that jobs of equal value should be put under the same pay range and the same guiding principles should apply to every staff on pay determination and progression. Pay differential between individuals should be justified by reasons other than sex of the jobholders.***

3.3 Other Pay Structures

For companies that do not use pay ranges, a pay spine (or pay points) might apply. Similar to pay ranges, the same pay points should apply to jobs of equal value, unless justified by reasons other than sex, such as differentiation based on varying pay levels for different job families in the market. Some companies may use personalized pay by setting individual pay rates according to going market rates. Whatever pay structure is used to determine pay, the approach and supporting facts must be free of sex bias.

3.4 Transparency & Systematic Approach

In order to minimize the chances of an equal pay complaint, pay policies should be transparent to staff to an extent that enables them to understand the principles and methods for pay determination. For companies without any grading or salary structure, it is highly recommended that a systematic approach be adopted for the determination of pay. Pay decisions should be properly documented in all circumstances.

FREQUENTLY ASKED QUESTIONS ON SALARY STRUCTURES:

- 1. We have a pay range for each grade and actual individual pay may vary from the minimum to the maximum. This can be a 50% difference. Since staff in the same grade are considered to be performing work of equal value, are we in breach of equal pay requirements with such a big difference in individual pay?**

The purpose of a pay range is to allow pay progression for individuals to reward for seniority, performance and competencies improvements etc. It is also reasonable to compensate individuals with more relevant experience better than those still learning on-the-job. The criteria for pay progression within a salary range should be spelt out clearly. This may include the range of entry salary and considerations for determining the offer, the annual salary review mechanism, treatment of anomaly cases such as those falling above or below the pay range for particular reasons etc. If pay differential for individuals can be explained by reasonable factors other than sex, then you are not in breach of the SDO. The validity of the defence is to be determined by the court in the case of litigation.

- 2. We grade our jobs according to job families and each job family would have its own pay structure, making reference to market pay for the same profession. Our jobs are also evaluated with points. Since market pay for different functions do vary, there can be situations where the pay range for jobs with the same score in a different family are different. Would this be against equal pay requirements?**

From the equal pay perspective, you should be careful that the job families with pay differentials are not male or female dominated jobs. You may have a problem if the job family with higher pay is dominated by staff of one sex and the job family with lower pay is dominated by staff of a different sex. A holistic view, however, is to be taken. If you can prove that the pay differentiation is not on the ground of sex and that the situation may reverse to the benefit of employees of the other sex when market data changes, then this may not cause a problem. Conducting periodic equal pay self-audits will help you to monitor the situation and take remedial actions if necessary.

- 3. We do not have any pay range. We just pay whatever is needed by referring to what the candidate was earning and how other staff are paid internally. Pay is 'personalized'. We do not have any market data. Pay information is collected by talking to people in the trade and candidates. Do we have an equal pay problem?**

You can easily end up having a problem without a systematic approach to pay determination, unless you can provide reasonable explanations on how pay is personalized and that pay differentials are not related to the gender of the jobholders. It is suggested that:

- (a) You check the pay level of staff performing the same job and see if pay differentials identified are explained by legitimate reason(s) not related to the gender of the jobholders.
- (b) You set up a simple grading structure and ensure that staff performing work of equal value receive consistent treatment in pay.
- (c) You collect market information on pay by participating in pay level surveys or purchasing reports available in the market, as a reference for pay decisions.
- (d) You take a more systematic approach on pay determination by setting and documenting internal guidelines on pay administration.

- 4. We have overlapping pay ranges. A staff in a lower grade may be paid higher than a staff in a higher grade. Is this an equal pay issue?**

It is common practice to have overlapping pay ranges to reward staff with extensive experience and outstanding performance in a grade but do not have the opportunity to progress further in the hierarchy. Care must be taken to ensure that both male and female staff are treated equally on pay progression, especially in a situation where a female member of staff is promoted to a higher grade with lower pay than a male staff in a lower grade. Policies on pay progression and promotion increase should be clearly set out.

5. We compare the cash components of pay for our staff by looking at the total cash paid to individuals. This may result in different treatment in some elements of pay, such as different housing allowance for staff in the same grade but hired at different times. Is this an equal pay problem?

This depends on a number of things:

- (a) Do you have clear pay policies setting out the principles, conditions and administration process in detail? Are these policies non-discriminatory in principle and in effect?
- (b) Are the pay policies transparent and understood by staff?
- (c) Are the pay policies implemented consistently, treating male and female staff equally?
- (d) “Different treatment” is a concern, if the justification is not clearly free of sex bias. Are you able to satisfy that these “different treatments” are necessary and reasonable?
- (e) Are staff members treated consistently under the same circumstances?
- (f) If total cash is the basis for pay comparison, are the reasons and mechanism to differentiate separate components clearly spelt out? Are you able to explain total cash differentials between individual staff for reasons other than sex?
- (g) Other than the reasons, are the amount of pay differentials reasonable and commensurate with the reasons for differentiation?

Part 4 Practical Tips on Pay Administration Processes that are Free of Sex Bias

Practical tips contained in this section may or may not be applicable for specific situations in your organization. ***These are presented as illustrations/alternatives for your consideration.***

4.1 Entry Salary

The determination of entry salary has a long-term impact on pay equity. Pay differential for individuals arising from different starting salary has a compound effect as all future salary adjustments would be based on the initial package. If not managed properly, it gives rise to the perception of pay inequity by staff. For example, two employees with the same performance results and same length of service might have widening pay gaps throughout the years because of different starting salaries, if no remedial actions are taken. In any case, it might take some time for alignment to be made.

The reasons for offering different starting salaries are plenty and often justified, such as fluctuating market pay levels, supply and demand for particular talents, different competency levels and marketability of individuals etc. In reality, entry salary may be affected by how well the candidate is able to negotiate and the urgency to fill a position. All these, if not managed properly, would easily give rise to equal pay problems. It is recommended that clear guidelines should be established for making offers on entry salary.

Different organizations might set different policies on entry salary, in accordance with their individual business environment and pay strategy. ***The key consideration is to provide the parameter for consistent treatment of men and women when offers are made.***

Practical tips on establishing guidelines for entry salary:

(Illustrations for reference only. Organizations should develop guidelines that are appropriate for their own situations.)

- Identify genuine minimum job requirements to establish a standard for this key element of work demand.
- Determine minimum starting salary for each grade for meeting minimum job requirements (normally at minimum of pay range).
- Set out conditions for offering a premium above minimum and determine the range of premium allowed, e.g. from minimum to first quartile (lower 25% of pay range) or minimum to mid-point (lower half of pay range).
- Set out the standard percentage increase to be offered over previous salary in the last job and the conditions under which deviation from this percentage may be exercised, e.g. to respect internal relativity.
- Determine the conditions and extent of flexibility allowed for matching expected package, e.g. no other suitable candidate identified, amount not to exceed the premium allowed etc.
- Set out the conditions under which flexibility is required to deal with market supply and demand, e.g. a sudden hike in pay for a particular profession in the market. Establish an action plan for aligning pay levels when market conditions change.
- Set out the conditions under which below minimum salary may be offered, such as candidate not meeting minimum requirements, vast difference between previous salary and range minimum, fast track promotions etc. At the same time, set out the conditions for catch-up increments in the future for pay alignment.
- Perform internal relativity check when making offers, pay attention to pay gaps between male and female jobholders.
- All personnel involved in pay decisions should be familiar with the guidelines for determining individual pay and equal pay requirements.

- Obtain and document updated information on market pay levels.
- Document decisions on entry salary.
- Build mechanisms into other pay processes such as pay progression and performance pay to align individual salaries within a reasonable time frame to achieve equitable pay.
- Check entry salaries for men and women performing equal work or work of equal value periodically to identify if there is any pay disparity.
- Guidelines should be set for increment after probation, if any, to ensure that the same criteria are applied to staff of both genders.

Example on determination of entry salary:

The following is an example on how entry salary is determined in accordance with guidelines set. You can establish guidelines that are appropriate for your organization.

Assumptions:

1. Salary range – minimum \$16,000 mid-point \$20,000 maximum \$24,000
2. Minimum starting salary – \$16,000 (for meeting full requirements)
3. Cap for starting salary – mid-point salary of \$20,000
4. Reference standard increase to last salary – 10%
5. Minimum job requirement specifies 3 years of relevant experience

Offers are to be made to 3 individuals performing work of equal value (different positions):

Candidate A – close to 4 years experience.	Last salary \$18,500.
Candidate B – 3 years relevant experience.	Last salary \$17,000.
Candidate C – 2 years relevant experience.	Last salary \$14,000.
Existing staff M – 4 years relevant experience.	Salary \$20,500.
Existing staff F – 3 years relevant experience.	Salary \$19,000.

Recommended offers after checking internal relativity:

Candidate A – \$20,000 (\$18,500 plus 10%, capped at mid-point)

Candidate B – \$18,700 (\$17,000 plus 10%)

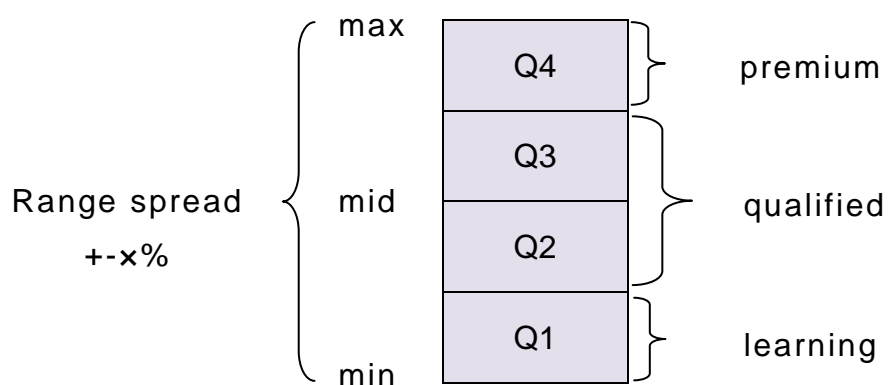
Candidate C – \$15,400 (\$14,000 plus 10%, 3.75% below minimum)

Points to note:

- When guidelines are set, it is easier to make salary recommendations that ensure consistent treatment, instead of picking random numbers.
- It is not always possible to match dollar by dollar. Minor differentials are expected given diverse variations of circumstances. For example, the absence of performance record for new staff to be compared with existing staff. The important point is to check relativity and assess if any differential found is reasonable.
- Follow up action to align anomaly cases is necessary, e.g. salary for C should be reviewed when requirements are fully met.

4.2 Pay Progression

Pay progression within a pay range takes place when an individual is rewarded for the accumulation of relevant experience, improved competencies, performance on the job, and sometimes for additional responsibilities that do not warrant a re-grading of the position. It is advisable for you to set out the principles, policies and processes for pay progression clearly, reflecting your organization's philosophy of reward management. This should include guidelines on the conditions for and rate of progression. As a general reference, the salary for incumbents still learning to acquire full competency may be in the first quartile of the range and for those fully qualified may be in the second and third quartile while the premium zone is reserved for high performers who do not have immediate opportunities for progression to a higher grade. An example on pay progression is shown in the diagram below:



- (a) **Cap at Range Maximum** – Pay ranges should reflect market pay levels and the employer's willingness to pay at various job levels. There is normally a cap at the range maximum for a particular job level and no employee can progress beyond this cap. Should individuals be allowed to progress beyond the range maximum in a rare case, the rationale and relevant guidelines should be set out clearly. Care should be taken to ensure that this would not constitute discrimination in pay, e.g. all staff with pay above maximum of the range belong to the same gender and no other reasonable explanation is found.
- (b) **Bars for Progression** – If conditions are set requiring that certain criteria be met before a staff could progress beyond a certain point in pay, these conditions must be free of sex bias, such as attainment of certain qualifications or passing a job-related test that are equally applicable to both male and female staff. Any bar that would put staff of a particular gender into a disadvantaged position might be discriminatory.
- (c) **Progression within a Broad Band** – You must be very careful when setting pay progression policy for a broadband structure as jobs of broadly similar nature are grouped into the same band. This means that the range of relevant market pay in a

broad band would be wider than that of a narrow grade, contributing to wider pay differentials for staff within a broad band. Equal pay issues might easily arise. It would also take longer for an individual to progress from the minimum to the maximum of the range. The main purpose of a broadband structure is to reward improvement in individual competencies and to provide more flexibility in pay determination for lateral staff development. There are less promotion steps and staff would have higher expectation on pay progression related to individual contributions. It is important to set out clearly the conditions under which pay progression is managed.

Practical tips on pay progression if you use a broad band structure:

- Establish an objective performance management system to assess individual contributions.
- Identify competency requirements that are free of sex bias and try to minimize subjectivity in assessing competencies, e.g. adopt a “360 approach” for competency assessment with input from superiors, peers and subordinates.
- Set out clearly the conditions for pay progression for additional responsibilities within a band, e.g. extended geographical responsibilities, satisfactory completion of special assignments etc.
- Immediate pay progression for lateral staff development may not be necessary until the development activity has been satisfactorily completed with a higher level of competencies achieved.
- If there are both narrow grades and broad bands in your salary structure, review if the guidelines for entry salary should differ or should be the same in view of a wider pay range usually connected with a broad band.
- Analyse the overlap between bands to ensure healthy progression upon promotion.

4.3 Salary Review

Pay progression may occur through salary adjustments such as an across the board cost of living increase, merit increase, catch-up increment etc. Most employers adopt some form of pay for performance nowadays. It is common practice to award performance pay through the annual salary review process. The critical success factor for effective performance pay is a fair and well managed performance management system, setting clear performance goals and measures, with continuous monitoring and an objective and positive feedback process. Pay differential for individuals as a result of a difference in performance is permissible. However, it is important to ensure that the process of performance assessment and award of performance pay are free of sex bias.

Equal pay issues may easily arise from common practice such as forced distribution of performance ratings and exercising management discretion in the salary increase recommendation process. If there is genuine need to establish relative performance between staff through a forced distribution, care must be taken to ensure that staff of a particular gender would not become disadvantaged in the process. For example, there is a common tendency that performance of senior staff are rated higher than junior members as their contributions are considered to be more important to the organization. If senior positions are male dominated, there is a reason to be concerned as it would impact upon the distribution of performance pay. Forced distribution of performance ratings by grade might address the issue of skewed ratings across grades. However, attention should also be paid on forced distribution within a grade which should be implemented through a fair process that is based on substantiated facts and results.

Practical tips for managing performance pay:

- Set clear performance goals and measures at the beginning of a performance cycle and communicate clearly with the employee.
- If competencies are measured, make sure that competency requirements are clearly defined and are equally applicable to both male and female staff.
- Ensure that female workers are fairly treated in performance appraisal and salary increase despite absence from duty due to maternity leave.
- Factors for determining the rate of salary increase should be clearly set.
- Recommended percentage increase for different levels of performance should be applied consistently.
- When a forced distribution of performance ratings is applied, identify the reasons if the ratings of staff of a particular gender are consistently forced to a lower rank. An analysis on the performance distribution of male and female workers should be carried out to gauge the situation.
- If factors other than the individual performance ratings are considered, these should be spelt out clearly. For example, the existing salary position of individuals might affect the rate of increase - when two staff are rated the same in performance, the one with lower pay may be awarded a slightly higher increase with an aim to gradually close existing pay gaps.
- Guidelines should be provided for special catch-up increment, if any, in the salary review process.
- If measures have been incorporated in the salary review process to achieve fair and equitable pay, the need for management discretion should be minimal. When management discretion is exercised, the decisions and reasons should be documented and must not be related to the gender of the individuals involved.
- It is dangerous to 'rob Peter to pay Paul' in recommending salary increase, particularly when it is robbing a woman to pay a man or vice versa. If extra funding is required for special catch-up adjustments, it is better to set aside a budget separately.

4.4 Promotion Increase

Similar to entry salary, guidelines for promotion increase should be set to ensure consistent criteria is applied for the award of promotion increase for men and women. The critical issue to consider is that a standard percentage increase would ensure equal treatment to all staff in terms of the promotion but might upset internal relativity. For example, a staff with a high salary position in the lower grade might earn more than a staff already in the higher grade upon promotion. This might also be a potential equal pay issue if the two jobholders are of a different gender. To achieve fair and equitable pay, it is important that all pay determination policies and processes should be aligned for a holistic and systematic approach on pay administration, in order that any imbalances occurring from time to time may be corrected quickly.

Practical tips on establishing guidelines for promotion increase:

- Set a standard percentage increase for promotion as a starting point of reference.
- Always conduct internal relativity check amongst staff performing work of equal value when determining promotion increase.
- Set the conditions and a permissible range for adjustment to the standard percentage increase, e.g. to respect internal relativity or to include an element of catch-up increment to close gaps.
- Set a minimum percentage increase for motivation purpose, if considered appropriate, even if the pay for the incumbent is already at a relatively high level.
- Set guidelines to limit the promotion increase, if appropriate, e.g. the incumbent's pay is above other staff already in the higher grade.
- If a total cash approach is taken, ensure the components of pay are spelt out clearly and applied consistently.
- Consider the impact of your promotion increase policy on basic salary, which will impact upon retirement benefits and other pay elements based on basic salary.
- Apart from cash components of pay, variations to other terms and conditions of employment should be consistently applied.
- You may need to set guidelines for fast track promotions to ensure smooth pay progression and containment of staff cost.

Example on determination of promotion increase:

The following is a simple example on how promotion increase is determined in accordance with guidelines set. You should set your own standards for the guidelines.

Assumptions:

1. A standard promotion increase of 10% of basic salary has been set.
2. The standard increase may be adjusted to respect internal relativity but a minimum percentage increase of 5% of basic salary will be awarded for motivation purpose.
3. If the salary after the promotion increase is below the range minimum, special adjustments will be considered at 6-month intervals, subject to satisfactory performance. The special adjustments will be capped at 10% per year.

Three staff (P1, P2 & P3) are promoted to manager grade. An internal relativity check is performed with existing staff performing work of equal value to determine the promotion increase. Minimum of the pay range for the manager position is \$24,000. Qualifications of all individuals are assumed to be the same. The existing pay packages for individuals are shown below.

Staff	Basic Salary	Housing Allowance	Total Cash	Total experience	Service in Post
1	\$33,000	\$5,000	\$38,000	8.5 years	3 years
2	\$30,000	\$5,000	\$35,000	7 years	1 years
3	\$28,000	\$5,000	\$33,000	6 years	2 months
P1	\$26,000	\$3,000	\$29,000	6 years	N/A
P2	\$23,000	\$3,000	\$26,000	5 years	N/A
P3	\$21,000	\$3,000	\$24,000	4 years	N/A

The recommended promotion increase and rationale are shown below:

Recommended Promotion Increase	Rationale/Notes
P1 Basic Salary \$27,800, Housing \$5,000	6.9% increase (compared with Staff #3 promoted 2 months earlier with same total experience).
P2 Basic Salary \$25,300, Housing \$5,000	10% increase. No relativity issue.
P3 Basic Salary \$23,100, Housing \$5,000	\$21,000 + 10% Salary to be reviewed in 6 months to pull to range minimum.

You should align your guidelines for promotion increase with the guidelines for entry salary to ensure a reasonable approach of pay determination for all new appointments to a grade.

4.5 Work-related Allowances

Work-related allowances are provided upon meeting the criteria set for performing specific duties and may include overtime pay, shift allowance, meal allowance, attendance pay etc. The eligibility and rates of allowance should be equally applied to both male and female staff. It is to be noted that even if the eligibility for the allowance is the same, the requirements for the duties should not put staff of a particular gender at a disadvantage and prohibit them from being eligible for these allowances.

4.6 Cash Allowances

Cash allowances may be provided as a component of pay in addition to basic salary. These may be guaranteed cash with fixed amounts, subsidies or reimbursements to cover certain costs and are different from work-related allowances that are based on specific duties performed. Examples are housing, travel subsidy to remote work locations, leave passage and utilities allowance for quarters etc.

Practical tips on the provision of cash allowances:

- The purpose for providing the cash allowance, eligibility and rates of the allowance should be spelt out clearly. These should apply equally to staff of both genders performing equal work or work of equal value, employed under the same circumstances.
- If the cash allowance is linked to basic salary and is expressed as a percentage of basic salary, the percentage should be applied consistently. However, there is a compounding effect on equal pay implications if disparity in the basic salary already exists.

4.7 Variable Pay

Variable pay is used as a compensation component and a flexible means to link reward directly with performance and very often with corporate financial results. The form of variable pay differs from one organization to another and may include sales commission, discretionary bonus and short-term incentive schemes etc. Some employers adopt a structured approach to award variable pay while others may hand out bonuses simply on discretionary basis. If variable pay is awarded without a structured scheme, it may not be as effective in driving performance improvement as employees do not have a clear line of sight between performance and reward. It would also likely give rise to equal pay issues. Even if bonuses are provided based on the discretion of employers, clear guidelines should be established for staff to understand the circumstances under which bonuses might be paid and the basis for determining individual bonuses. For example, this can be as simple as the commitment to pay one month's basic salary to all staff if the organization achieves a certain financial target or as comprehensive as setting detailed performance goals at corporate, team and individual levels to determine payout for individuals.

Practical tips on managing variable pay:

- Performance measures should be set to provide standards to be achieved to trigger bonus payout.
- Bonus opportunities should be clearly defined for each category of staff. For example, sales personnel may have a different pay component than staff in other functions and therefore a different set of bonus opportunities. Consistent criteria should be applied to staff in the same category.
- A structured approach for determining individual bonus payments is recommended. Staff should be able to understand how bonus payments are calculated although they may not be in possession of all the figures required to perform the actual calculation themselves.
- Pay attention to different bonus opportunities for male and female dominated jobs of equal value and actual bonuses distributed to male and female staff. Ensure differences are not gender-related.

4.8 Personalized Pay

If you need to pay all or part of your staff according to going market rates, information on market pay data, the reference pay level for individual positions, the process of checking internal relativity and all records relating to the pay decision should be maintained to substantiate the rationale of the pay decision. A consistent approach should apply to positions of equal work value. Equal pay problems might easily arise if guidelines for the determination of individual pay are not spelt out clearly.

Practical tips for adopting personalized pay:

- Set out the grade/category of staff of which personalized pay is adopted and the reason for doing so. For example, it may be necessary to personalize pay for top management staff when pay for competencies, exposure and specific experience are more critical considerations for the appointment, reflecting different pay rates for the same job level (e.g. paying up to 75th percentile instead of mid-point).
- To ensure compliance with equal pay principles, organizations should still assess the value of work for these positions such that a linkage to relevant market pay information is established.
- A structured approach is recommended even when there is a need to personalize pay for certain positions.
- Criteria should be set for determination of individual pay. For example, setting a range from the identified market pay level (such as + and – a certain percentage from market mid-point) and the considerations for deciding the actual pay. These considerations must be free of sex bias and applied consistently to staff of both genders.
- Internal relativity should always be checked to ensure that differentiation of individual pay by adopting a personalized approach is reasonable. It is important to bear in mind the principle of consistent criteria.
- Pay determination should be substantiated by facts and documented in relation to the criteria set.

4.9 Retirement Benefits

Equal pay also covers retirement benefits provided to staff. If there is only one retirement scheme in your organization, the eligibility and benefits provision should be the same for male and female staff performing work of equal value. If you have more than one retirement scheme, the reasons for operating more than one scheme must be clear. For example, the closure of one scheme and the introduction of another for staff joining after a certain date as a result of change of policy that is applicable to all affected staff. Staff performing work of equal value and recruited under the same circumstances should not be put into different schemes unless there is a genuine need to differentiate or as a result of their own option. For example, a fixed term contract staff not being able to enjoy benefits under a normal retirement scheme because of a vesting scale may be paid gratuity instead. There are also conditions for expatriate staff that necessitates arrangements other than a normal retirement scheme for other members of staff. The scheme rules for a retirement scheme should be reviewed to ensure that staff of both genders are treated equally in terms of eligibility and benefits provision.

4.10 Other Fringe Benefits

Equal pay is applicable to all terms and conditions of employment for staff performing equal work or work of equal value. This may include the provision of company car, mortgage subsidies, club membership, professional membership, medical coverage, life/disability insurance, annual leave, business travel, leave passage, training & education sponsorship, children's education allowance, long-term incentive scheme and flexible benefits program etc. Clearly set policies to govern the provision of these benefits will ensure consistent criteria for the treatment of men and women. Attention should also be drawn to the administration of benefits programs. Issues as simple as who should use the old car in the pool need to be carefully managed and can best be dealt with when clear guidelines are set.

4.11 Hours of Work

There may be different conditioned hours of work for various categories of staff as required by the nature of work, e.g. office staff might work different hours than operation staff on rosters. There may be a practice for time off in lieu (TOIL) for additional hours of duties performed as specified in a company policy. The point to note is that male and female workers in the same staff category performing work of equal value should be treated equally in terms of the arrangement of working hours.

4.12 Part-time Work

If there are business reasons that you need to fill vacancies by part-time employment, you should ensure that the compensation is reasonably comparable with permanent staff performing equal work or work of equal value such as applying the same rate of pay but pro-rating actual pay in accordance with actual work performed. You should not put staff of a particular gender into part-time positions with an intention to pay them at a lower rate than permanent staff of a different gender or to avoid providing them with benefits provided to permanent staff hired under comparable circumstances. You should also be mindful that women's access to permanent positions are not unreasonably denied.

4.13 Anomalies

Circumstances might arise when an individual is paid at a higher level than the normal rate of pay for the job. This usually occurs when a position is downgraded with a change in job content or as a result of changes in the grading/salary structure. It is common practice to freeze the package of the individual until an alignment is achieved through salary movements. Under such situations, it is advisable that you should formulate a plan to gradually bring the pay level of anomaly cases back in line or assign additional responsibilities to put the position into a higher grade. Anomalies would almost certainly create an equal pay issue and must be addressed within a reasonable time frame.

SUMMARY

Key elements of a systematic approach to pay determination are summarized below for your easy reference:

- (a) An analytical job evaluation system will ensure that job values are assessed objectively. Job factors selected for measuring job worth should be free of sex bias. Job evaluation results should be properly documented.
- (b) If alternatives other than analytical job evaluation are adopted to rank jobs, grade definitions should be free of sex bias and clearly set out.
- (c) A grading system that is free of sex bias will ensure that jobs performed by male and female staff are equally valued. Jobs identified to be of equal value command equal pay.
- (d) Work of equal value as indicated by the grading structure adopted should be clearly communicated to staff.
- (e) Pay policies should be developed and made transparent to staff. Guidelines for pay administration should be consistently applied to employees of both genders.
- (f) Pay decisions are to be properly documented. It is recommended that records should be kept for at least 24 months.
- (g) Checking mechanisms should be in place to ensure that policies are implemented in practice. Any deviation should be explained, approved and documented properly.
- (h) An equal pay self-audit should be carried out periodically. An “Equal Pay Self-Audit Kit: A Proactive Approach for Employers to Achieve Equal Pay” is available as a supplementary book to the “Guide to Employers on Equal Pay Between Men & Women under the Sex Discrimination Ordinance”.

