

Guide to Employers on Equal Pay between Men and Women under the Sex Discrimination Ordinance



Equal Opportunities Commission

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.

Enquiries	: 2511-8211
Fax	: 2511-8142
Email	: eoc@eoc.org.hk
Website	: www.eoc.org.hk

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
1. Purpose	2
2. Using this Guide	3
 Section I The Concept of Equal Pay	
1. Background	4
2. Your Obligations as an Employer under the Sex Discrimination Ordinance	5
3. Equal Pay for Equal Work	5
4. Equal Pay for Work of Equal Value	6
5. Work of Equal Value as Assessed by the Employer	8
6. The Principle of Consistent Criteria under Comparable Circumstances	9
7. Discrimination in Pay	10
 Section II Factors Affecting Equal Pay	
1. Determination of Equal Value	11
2. Determination of Individual Pay	16
 Section III Formulating an Equal Pay Policy	19
 Section IV Conducting an Equal Pay Self-Audit	21
 Section V Matters Which the Employees Might Wish to Know	
1. Ways to Enhance Your Employees' Understanding on Equal Pay	23
2. Handling Requests for Information	24
3. Dealing with Potential Equal Pay Disputes Internally	24
4. Your Commitment to Provide Equal Pay as a Good Employer	25
 Section VI An Equal Pay Complaint	26
 Message to Employers	31

INTRODUCTION

This Guide to Employers on Equal Pay between Men & Women is written by the Equal Opportunities Commission (EOC) as reference material for employers in Hong Kong, providing practical guidance on how to achieve ***equal pay between men and women*** in the workplace.

The EOC is a statutory body set up in 1996 to implement the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO). Under the SDO, it is unlawful to discriminate, ***on the ground of sex***, in the terms and conditions of employment. Employers should maintain the principle of equal pay for equal work (EPEW). That is, a female employee is entitled to equal pay when she is doing the same work as that of a man. The Government of Hong Kong SAR is also bound by a number of international human rights instruments to implement a related principle of equal pay for work of equal value (EPEV). Where women undertake work as demanding as that of their male colleagues, even though the work is different, they should receive equal pay. The Government takes the view that the Sex Discrimination Ordinance covers the principle of EPEV. It is to be noted that discrimination in pay is also prohibited on specific grounds in other existing anti-discrimination legislation.

The EOC has a mandate, amongst other things, to strengthen public understanding on the concept of equal pay, to provide clear guidelines to employers to address the issue of pay disparity between the two genders and to conduct investigation into alleged contraventions.

To achieve equal pay between men and women in a highly market driven environment such as Hong Kong, a systematic approach to pay determination is advisable, taking into consideration market forces and other factors affecting pay for individuals such as performance, competencies and seniority. A transparent pay system that remunerates employees in relation to the value of their work and contributions is more effective than making disorganized and discretionary pay decisions. The benefits of exercising equal pay extend beyond the elimination of pay disparity between men and women. Fair pay practices would have a positive impact on all workers, thus enhancing employee engagement. The risk and cost of litigation for an equal pay claim would also be reduced.

The information in this Guide 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.

1. Purpose of this Guide

This Guide aims at helping you to ensure that your pay practices are free of sex bias. With divergent pay practices amongst employers across different industries and business sectors in Hong Kong, a generic approach is taken when various topics are presented. ***This Guide is focused on the elimination of pay discrimination on the ground of sex. It is not meant to provide technical assistance in every detail on pay administration or to address every situation in the pay determination process.*** Should you require advice of a customized nature, there are many products and services available in the market such as pay survey reports and professional remuneration consultants that can provide specific expert assistance in addition to information contained in this Guide.

1.1 This Guide is issued by the Equal Opportunities Commission to:

- (a) enhance public understanding on the concept of equal pay for men and women performing equal work or work of equal value;
- (b) provide practical guidance to you to ensure that your pay practices are free of sex bias;
- (c) help you to improve communication with your employees on issues relating to equal pay.

1.2 Tools have been developed to assist you to implement the recommendations in this Guide. These tools are written as supplementary books and are readily available for you to adopt or adjust in accordance with your specific requirements as follows:

Book 1 An Illustration on Developing an Analytical Job Evaluation System Free of Sex Bias

Book 2 A Systematic Approach to Pay Determination Free of Sex Bias

Book 3 Equal Pay Self-Audit Kit: A Proactive Approach for Employers to Achieve Equal Pay

1.3 An Easy Read Guide capturing the key concepts of EPEV is also available as a quick reference.

2. Using this Guide

2.1 This Guide applies to employment as defined under the SDO.

2.2 This document is intended to be a reference for employers, providing practical guidance for the achievement of equal pay. The concept of equal pay applies to both men and women. To avoid repetition, any reference of sex discrimination to women in this Guide shall be read as applying equally to the treatment of men.

2.3 This Guide contains the following sections:

Section I The Concept of Equal Pay – Explains EPEW and EPEV and your obligations as an employer under the Sex Discrimination Ordinance.

Section II Factors Affecting Equal Pay – Outlines the process of assessing job values and considerations for the determination of individual pay.

Section III Formulating an Equal Pay Policy – Provides guidelines on the formulation of an equal pay policy.

Section IV Conducting an Equal Pay Self-Audit – Suggestion for a proactive approach to achieve equal pay by conducting a review of existing pay practices.

Section V Matters Which the Employees Might Wish to Know – Helps you to prepare for questions that your employees might ask about equal pay.

Section VI An Equal Pay Complaint – Explains the circumstances under which an equal pay complaint may be filed by an employee.

Section I The Concept of Equal Pay

Under the Sex Discrimination Ordinance (SDO), it is unlawful to discriminate, on the ground of sex, in the terms and conditions of employment. Sex discrimination includes not only a situation in which a woman is paid less than a man, on the ground of sex, for doing precisely the same job, but also for performing a different job with comparable value for the same employer. This section introduces the concept of Equal Pay for Equal Work (EPEW) and Equal Pay for Work of Equal Value (EPEV) and highlights the obligations of an employer on equal pay under the SDO.

1. Background

Historically in various parts of the world, women have received lower pay than men performing the same job. There are also traditionally some jobs which are done mainly by men and others by women as a result of gender-stereotype, career preference or less education provided to women in the past. Women's jobs used to be undervalued or paid lower than men's jobs despite similar work demands, resulting in pay inequity between the two genders.

This situation of inequality in pay between men and women has been redressed through equal pay legislation in countries such as the U.K., Canada and the U.S. and through sex discrimination legislation such as Australia. Equal pay between men and women is enforced not only for jobs that are the same but also for jobs that are different but considered the same, i.e. jobs that are considered to bear "equal value". The assessment of job values is commonly carried out through a job evaluation process by comparing factors such as skills, efforts, responsibilities and working conditions. As far as sex discrimination is concerned, differentiation of individual pay is permissible if it is based on reasons that are free of sex bias.

Although recent trends in pay system design are putting more emphasis on individual performance and competencies etc. instead of focusing on job contents alone, it is still important to uphold the basic principle of equality in pay between men and women and the establishment of equal value is the starting point for pay comparison. The information and recommendations contained in this Guide aim at providing flexibility instead of restrictive rules to enable you to make pay decisions that are free of sex bias in accordance with your business requirements.

2. Your Obligations as an Employer on Equal Pay under the SDO

Equal pay is governed under the Sex Discrimination Ordinance in Hong Kong, requiring that a woman should not be treated less favourably under comparable circumstances in the terms and conditions of employment than a man on the ground of her sex. Although no specific provision is written in the SDO, the objective to enforce pay equity between men and women is clear¹. As indicated under the SDO Code of Practice on Employment, the implementation of EPEW and EPEV by employers is already required². If a female employee is able to substantiate that she is receiving less pay than a male employee who is doing equal work or work of equal value in your organization and if you are unable to show that the difference in pay is due to some valid reasons other than the difference of sex, an inference of discrimination may be drawn on the pay disparity. In order to avoid complaints or litigation, it is highly recommended that you should establish structured pay systems that are free of sex bias and conduct a self-audit process to identify and eliminate any gender pay gaps. Fair practices in hiring, promotion and performance appraisal are also important to provide equal employment opportunities and achieve equal pay.

3. Equal Pay for Equal Work (EPEW)

A female employee is entitled to equal pay when she is doing the “same work” or “like work” as that of a man.

Example of Same Work:

Both Eddie and Olive are Sales Assistants. The responsibilities of their jobs are the same. They are performing the **same work**.



Key Responsibilities of Sales Assistant

To provide clerical and administrative support to the Sales Department, including:

- To compile sales data
- To update customer information
- To monitor product supply
- To maintain sales records

¹ See Sections 5 and 11 of the SDO.

² See paragraph 12 “Guidelines for terms and conditions of employment, benefits, facilities and services” of the SDO Code of Practice on Employment.

“Like work” means work which is of a broadly similar nature and where the differences in tasks performed are indiscernible and not of practical importance as far as the demands on the worker are concerned.

Example of Like Work:

Candy is a Promotion Assistant. The job nature and responsibilities of Candy are **similar** to Eddie and Olive. They are performing **like work**.



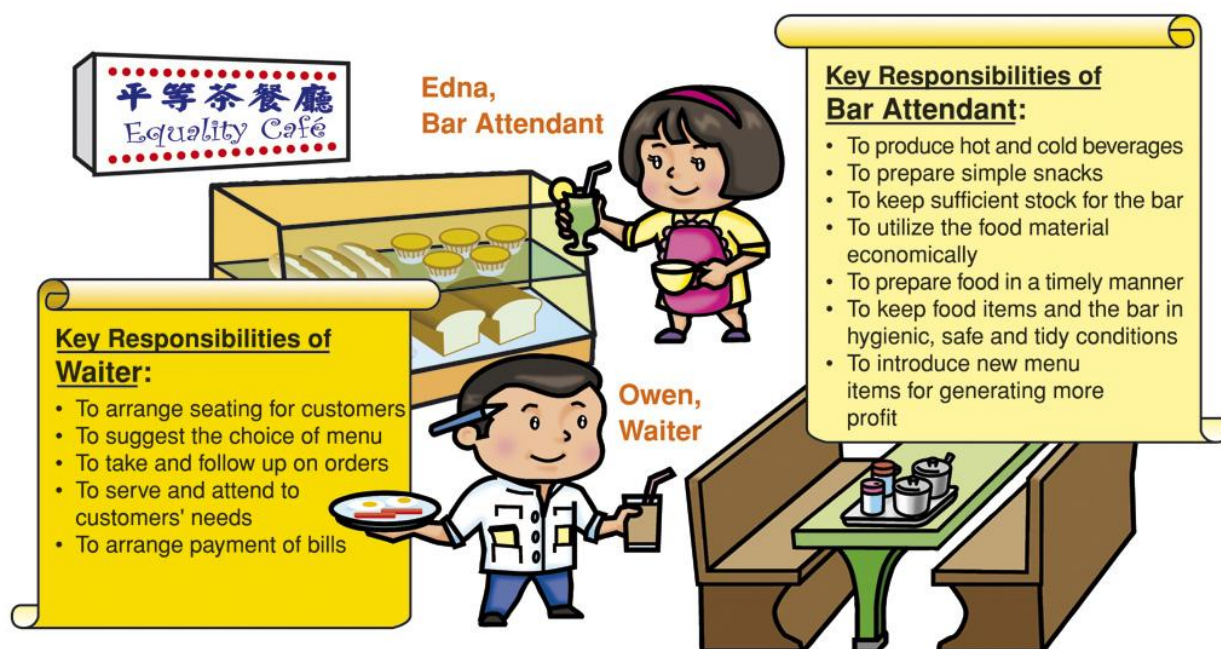
It is to be noted that different job titles, job descriptions or contractual obligations do not necessarily imply that the work is different. It is what the job holders actually do that matters. ***If a man and a woman are performing the “same work” or “like work” for the same employer, they should receive equal pay.***

4. Equal Pay for Work of Equal Value (EPEV)

Different jobs may be assessed to be equal in value by comparing job contents and demands on the workers through a job evaluation process. There are a variety of methodologies for job evaluation, broadly categorized as analytical and non-analytical job evaluation. Whatever alternative is used, the important point is that the methodology should be based on objective considerations and the process and outcome of the assessment should be free of sex bias. ***The principle of equal pay for work of equal value requires that consistent criteria be used in determining the terms and conditions of employment for the treatment of men and women performing work of equal value for the same employer.***

Example of Work of Equal Value:

Owen is a Waiter and Edna is a Bar Attendant, both working in the Equality Café. Their key responsibilities are shown below and are quite different.



The job contents and work demands of the two positions are compared as follows:

Waiter	Bar Attendant
To provide frontline services.	To prepare drinks and snacks.
Impact on revenue.	Control food cost.
Report to café manager.	Report to chef.
Work closely with kitchen staff to deliver orders.	Work closely with waiters to fill orders.
Project good service image.	Ensure high quality of food & beverage.
Long hours of standing/walking.	Long hours of standing, heat & odour.
Mental stress of handling difficult customers.	Mental stress for filling large volumes of orders in a short time frame.
Basic education.	Basic education.
Good memory, communication & organization skills.	Ability to produce food & drinks items on menu.

The two positions can be measured through a variety of job evaluation methods to find out if the two jobs are of equal value or not. Please refer to Section II of this Guide for more information on determination of equal value and the method adopted for measuring the job values for these two positions.

5. Work of Equal Value as Assessed by the Employer

It is the responsibility of the employer to assess job worth and to identify jobs of equal value. The worth of a job represents its value to the organization, taking into consideration the business nature, objectives and organization structure that are relevant for effective management and operation of the business.

5.1 Methodology – You may compare the value of work for different positions and identify work of equal value by adopting methods that are objective and free of sex bias such as:

- (a) Jobs are graded as equivalent through an analytical job evaluation system.
- (b) Jobs are compared and considered to be equivalent based on the demands on the worker such as skills, efforts, responsibilities and working conditions.
- (c) Jobs are slotted under the same grade or staff category based on a clearly defined grading structure.

5.2 Outcome – Regardless of the methodology used to assess jobs, the value of work is in effect measured by you as the employer, based on the values of the organization and indicated by the grading structure and relevant human resources policies that have been adopted. Employees performing work of equal value should be treated consistently in the terms and conditions of employment.

5.3 Reasonableness – In case of an equal pay complaint, work of equal value as assessed by the employer may be put to test. You should ensure the “reasonableness” of the methodology used for assessing jobs and the grading structure design. The more reasonable your grading structure is, the less likely you will face a claim for discrimination. In case of disputes, the evaluation method, tools for collecting data, and the assessment process will be subject to scrutiny in an investigation to determine if all elements are free of sex bias.

It is important to note that if you consider that two jobs are broadly the same and have put them into the same grade or under the same staff category, you must ensure equal pay for the two positions and must be able to justify that any pay differential for individuals is not for the difference of sex of the job holders.

6. The Principle of Consistent Criteria under Comparable Circumstances

In addition to the value of work, there are other factors affecting pay determination, such as seniority, individual performance, changing market pay levels, business results and evolving pay strategies. Therefore, equal pay is not achieved by considering absolute equal amounts of pay alone. ***The guiding principle is that men and women performing the same work or work of equal value should be subject to the same considerations and treated in the same manner under comparable circumstances.*** This entails establishing pay policies that are free of sex bias; applying the policies consistently in the pay administration process for male and female workers; and performing periodic checks to identify any gender pay gaps that cannot be explained by reasons other than sex. Proper records should be maintained to substantiate pay decisions.

Example of Consistent Criteria under Comparable Circumstances:

An organization pays a travel allowance as a benefit to all staff in executive grades. The allowance covers the cost of a return air ticket for the staff and his/her spouse (based on a destination used by the company to determine the amount). The spouse of a male or female staff is equally covered.

As a result of a compensation package review to cut costs, all new staff employed after the current fiscal year will only get a travel allowance for himself/herself. The benefit will not be extended to spouses. The benefit for existing staff will be grandfathered.

In this case, as the groups of staff employed before or after the start of the new fiscal year are respectively treated consistently ***under comparable circumstances*** (i.e. employed before or after the change in policy) and the difference in benefit between a new staff and an existing staff is not for the reason of sex, a new female staff cannot claim equal pay because an existing male staff is receiving the benefit covering his spouse.

7. Discrimination in Pay

You should be aware that under the SDO, it is unlawful to discriminate directly or indirectly, on the ground of sex, in the terms and conditions of employment. It is unlikely that a person is expressly treated less favourably in pay than another person on the ground of sex. More often, pay discrimination takes the form of indirect discrimination, with one sex being disadvantaged as compared with the other, resulting from some unwarranted conditions or requirements. Indirect discrimination involves applying the same treatment as between the sexes, but is in practice discriminatory in its effect. You should constantly check the pay for male and female staff performing work of equal value to ensure that staff of a particular sex have not been disadvantaged inadvertently.

Examples of Discrimination in Pay:

Using jobs in the catering industry as examples, the following demonstrates various kinds of pay discrimination that might happen in the workplace:

- (a) **Equal Pay for Equal Work** – If a female Kitchen Assistant is offered less entry salary than a male Kitchen Assistant, when both have the same background and are employed to perform the same duties and the employer cannot provide any satisfactory reason for the pay differential, it is likely that discrimination on the basis of equal pay for equal work can be established.
- (b) **Equal Pay for Work of Equal Value** – If a Kitchen Assistant working in the kitchen is graded the same as a Service Assistant working in the restaurant and a female Service Assistant is receiving less pay than a male Kitchen Assistant, although the two jobs are different, a case of discrimination on the basis of equal pay for work of equal value may be established if the employer is unable to explain the pay differential by factors that are non-discriminatory.
- (c) **Indirect Discrimination** – In a particular restaurant that is open 24 hours, Kitchen Assistants are paid higher salaries if at least 70% of their work is performed during night shifts. Shift work is not compensated according to the actual number of night shifts performed. Although the same treatment is applied to both male and female Kitchen Assistants, if it can be proved that few women are able to perform 70% of their work at night while they can perform some night shifts, an indirect discrimination case may be established if the 70% night shift requirement is not justifiable in the circumstances.

Section II Factors Affecting Equal Pay

There are two critical factors which would impact upon the achievement of equal pay in your organization:

- **Determination of Equal Value** – You should assess the value of work for jobs in your organization to identify positions that are regarded as being equal which command equal pay.
- **Determination of Individual Pay** – A systematic approach should be adopted for pay decisions to ensure consistent criteria are applied for the treatment of men and women performing work of equal value.

1. Determination of Equal Value

To ensure that there is pay equity between men and women, the first step that you should take is to put a “value” on jobs to identify which positions are considered to be equal. This does not have to be a complicated process and can be done through various means of job evaluation to establish relative values of jobs in your organization.

Analytical job evaluation is a process for assessing the key elements of jobs by analysing job contents to establish a ranking of jobs. It is a preferred approach as the value of work is determined by assessing objective job factors. In some overseas countries, analytical job evaluation is the only methodology accepted by the court to substantiate the assessment of work values.

You can purchase proprietary job evaluation systems in the market, develop your own or adopt simple methods such as job ranking or job classification if your organization is simple in structure. Proprietary systems enable external comparison of jobs and the effectiveness of the methodology has been tested by others using the system. Some are linked to pay surveys providing you with a source for updated market pay information. If you use a proprietary system, you should check that the design of the system is free of sex bias.

With the majority of employers in Hong Kong being small and medium sized enterprises, sophisticated analytical job evaluation may not be practicable for all organizations. Non-analytical methods of job evaluation may be used as long as they are free of sex bias and are based on objective considerations.

1.1 Non-analytical Job Evaluation

If your organization has a simple structure and you do not have the resources to set up an analytical job evaluation system, you might wish to consider other means of assessing job values. In particular, if you do not have job grades and pay is personalized on discretionary basis or the grading of jobs is not explicitly defined, it is strongly advised that a more systematic approach be taken to ensure that job values are established through objective means as a basis for pay determination. The following are some non-analytical job evaluation methods:

- (a) Job Ranking – Individual jobs are compared with each other as a whole to establish a hierarchy of positions. Elements of work are not separately assessed. As jobs are compared as a whole, objectivity might be affected by traditional views on particular jobs and might cause undervaluation of certain positions. If this approach is used, the rationale of the ranking must be clear and must not be related to the gender of the job holders. It is advisable to document the decision of the ranking of jobs with supporting facts.

In a small business such as the Equality Café where there are only five positions, jobs are compared as a whole by ranking positions according to the complexity of work performed, importance to the business, skills requirements and working conditions etc.



Jobs are compared as a whole to arrive at a hierarchy:

- 1. Café Manager**
- 2. Chef**
- 3. Bar Attendant / Waiter**
- 4. Dishwasher**

The positions of Waiter and Bar Attendant (refer to the example on page 7) are ranked to be of equal value although one is involved with direct customer service and the other with production of food and beverage. They are found to be equally important for the efficient operation of the café. Both require similar education and experience and can be trained within the same timeframe. The working conditions (hours of work and shifts etc.) are also the same.

- (b) Job Classification – Jobs can also be assessed and put into a number of pre-defined grades by comparing the whole job with the grade definitions. An example of job classification for a small-sized trading company is set out below.

Example on Job Classification:

A small-sized trading company with less than 20 employees considers that an organization structure with 4 levels is suitable for its operation. Staff are slotted into the 4 levels by comparing the whole job with a set of grade definitions which are based on some common work demands as follows:			
Job Level	Key Responsibilities	Minimum Qualifications	Reporting to
Grade 4 Managerial	<ul style="list-style-type: none"> ■ Overall responsibility for management of a function. ■ Accountable for revenue target and expense budget for unit. ■ Staff management for unit. 	Degree + 10 years	Owner
Grade 3 Supervisory	<ul style="list-style-type: none"> ■ Lead a team of staff in daily operation. ■ Monitor and assess performance of subordinates. ■ Achieve set target for team. 	Post-secondary + 8 years	Manager
Grade 2 Operation	<ul style="list-style-type: none"> ■ Perform daily operational tasks to achieve personal goals set by supervisor. 	Post-secondary + 3 years	Supervisor
Grade 1 Support	<ul style="list-style-type: none"> ■ Provide administrative and support services to senior members of staff. 	Secondary + 2 years	Supervisor

The above example may be over-simplified but illustrates the fact that the 4 levels are clearly defined and are applicable to all units responsible for different product lines. It is important when job classification is used to ensure that grade definitions are free of sex bias and are applied equally to both male and female employees.

- (c) Job Families – Jobs may also be put into “job families”. A job family may consist of jobs of a particular professional/career type or of a particular business function. Job families are established to provide clear career progression or because the organization needs to set up separate salary structures for these job families in order to have more flexibility to adjust to market pay movements. Pay equity issues would easily arise if the pay determination process is not properly managed. The key to pay equity when a job family structure is used is to ensure that the salary structures for respective job families are substantiated by objective facts or data that are free of sex bias.

1.2 Analytical Job Evaluation – There are three major steps for conducting an analytical job evaluation:

(a) Selection of Factors for Job Comparison

Analytical job evaluation measures work by comparing common job factors such as skills, efforts, responsibilities and working conditions that are found in the jobs being evaluated. These factors represent demands on the workers to deliver end results in different positions. Factors chosen for job comparison should represent genuine and common requirements over a broad range of jobs as relevant to your organization. Some commonly used job factors include qualifications, experience, problem-solving, decision-making, leadership, complexity of work, impact on end results, accountability for resources, working relationships, working conditions etc.

(b) Defining Factor Levels

Factor levels are established to measure the degree of importance of each job factor for individual jobs. The extent of differences between jobs for each job factor is measured against the definition for various factor levels.

Example on defining factor levels: Job Factor – Decision-making

(Definition of Decision-making: The extent of independent judgment required.)

Level 1	Level 2	Level 3	Level 4	Level 5
Follow procedures for actions to be taken.	Guided by procedures but may choose alternatives.	Independent judgment within authority and own job scope.	Considerable judgment on issues linking to/impacting on other areas.	Strategic/directional decisions with significant business impact.

(c) Scoring System

Analytical job evaluation is sometimes referred to as points rating scheme. To put a numerical value on a job, a scoring system is used. The total score of each job is compared against other jobs to arrive at a job hierarchy.

If you wish to adopt analytical job evaluation, please refer to the supplementary book to this Guide entitled “An Illustration on Developing an Analytical Job Evaluation System Free of Sex Bias” to discover how analytical job evaluation can be introduced for your organization in a “made simple” way. Examples, ready-to-use tools and practical tips on how to ensure that your evaluation system is free of sex bias are covered in the Book. As the information provided are not exhaustive, for complex business structures, it is advisable to seek professional assistance. You may consider proprietary job evaluation systems available in the market.

Points to note on determining work of equal value:

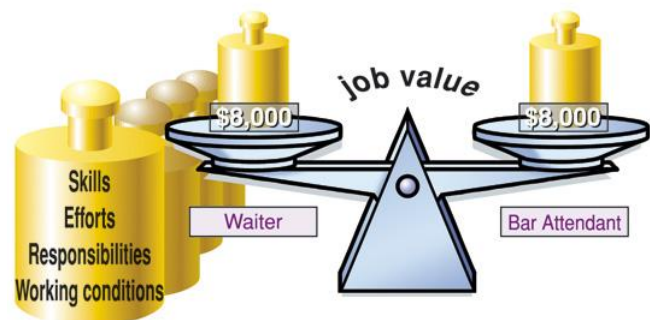
In view of a highly market driven environment of employment in Hong Kong, a more flexible approach on determining work of equal value is required. As an employer, you have the choice to assess the value of jobs using different methodologies as long as the systems and processes are objective and free of sex bias. This flexibility does not imply a less stringent requirement on equal pay compliance. On the contrary, the need for careful consideration when grading jobs and the development and implementation of pay policies and processes that are free of sex bias are expected. In case of an equal pay complaint, your pay systems and practices will be subject to scrutiny in the investigation process to ascertain that consistent criteria were applied to both men and women.

To avoid complaints on pay discrimination, you are strongly advised to review your approach on grading jobs and are encouraged to adopt analytical job evaluation if possible. Should other alternatives of job evaluation be chosen, you must pay particular attention to ensure that the criteria and process for assessing job values are free of sex bias. ***Furthermore, your obligations under the SDO will not be alleviated for not having any structures or policies in place.*** Complaints will be handled in accordance with individual circumstances and it would be more difficult for you to defend alleged acts of discrimination in the absence of an established pay determination process.

2. Determination of Individual Pay

Pay is affected by many factors. It is necessary for organizations to differentiate individual pay in order to attract, retain and motivate individuals. ***Individual pay may be set by the employer based on factors that are not related to the gender of the individual and following the principle of consistent criteria.*** It may seem to be difficult to implement equal pay and explain individual cases of pay differential when there are plenty of factors affecting individual pay. However, if clear policies are set and consistently applied and mechanisms are established for continuous monitoring, you should benefit from a systematic approach in your pay practice in terms of better retention, higher staff morale and more effective management of the pay determination process and staff costs.

- 2.1 Equal Pay for Work of Equal Value – Under the SDO, it is unlawful to discriminate against an employee on the ground of his/her sex by treating him/her less favourably in the terms and conditions of employment. Individual pay should be determined by referring to the established value of the job as a start. Consistent criteria should be applied to men and women performing work of equal value to ensure equality in pay. This may include applying the same salary range, same considerations for salary progression, same eligibility to benefits and allowances, same system for assessing performance and awarding performance-related pay and same bonus opportunity for short-term incentive schemes etc.



Work of Equal Value Warrants Equal Pay

- 2.2 Elements of Pay – 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.
- 2.3 Differentiation of Individual Pay – The following are some factors which might affect individual pay. You should formulate your pay strategy to pay in accordance with your pay philosophy and business requirements.

- (a) Market Forces – The labour market is driven by supply and demand and pay movements fluctuate according to economic and manpower situations. As pay structures of organizations or decisions of individual pay are linked to changing market pay levels, it is possible that pay determined at different points in time may be different for the same job or a job of equal value. If this is a factor affecting individual pay, information should be properly documented to substantiate the situation. Close monitoring of market pay movements should also be undertaken for appropriate actions to ensure equal pay. Some companies may choose not to set up a grading structure and to adopt market pricing to determine individual pay. This means that pay is primarily determined by market supply and demand and is personalized according to the going rate in the market. However, this does not lift the responsibility of the employer to ensure equal pay. If you use market pricing, the assessment of job values and substantiation of pay decisions such as collection of accurate and up to date market pay information is still necessary. You should be able to show that consistent criteria are applied to men and women even if individual pay is based on market pricing. This can be done through establishing pay principles and policies to guide the process of pay determination. To effectively manage individual pay, steps should also be taken to “correct” pay differentials after a period of time when market pay levels have changed. You should be mindful about the importance of maintaining internal relativity to provide equal pay amongst staff.
- (b) Seniority – For a jobholder with longer service length in grade, he/she should have more experience relevant to the organization. Progression along the salary range having joined the company earlier might also result in a higher pay position as compared to someone joining at a later stage. When seniority accounts for pay differential between individuals, the additional experience should be relevant to enhancing performance of the job. The principles and processes governing a seniority system should be clearly set out and must not be related to the gender of the job holders.
- (c) Anomaly Cases – There are specific cases such as downgrading of a position, acting appointments, training positions and incumbents not fully meeting job requirements but hired in view of shortage of manpower supply etc. that may cause individual pay differential. The policies governing the treatment of these cases must be clearly set out and applied consistently in all similar situations. Decisions on anomaly cases should also be properly approved and documented, with plans on how and when the cases are to be rectified.



Employers should not be influenced by gender stereotypes and the sex of job holders in the process of pay determination.

- 2.4 Transparency of Pay Policies – Information relating to the principles for determination of individual pay should be communicated to employees with sufficient details to be set out in relevant human resources policies for clear understanding by staff. The requirement is not limited to how pay is differentiated but also to ensure that the application of the policy is consistent, reasonable and free of sex bias. For example, if a seniority system is applied, is the pay differential between a male employee with longer service and a female employee with shorter service reasonable in terms of the amount of differential and the conditions as set out in the relevant pay policy?

A supplementary book to this Guide entitled “A Systematic Approach to Pay Determination Free of Sex Bias” is available to provide practical tips on how to ensure that your pay structures and pay administration processes are free of sex bias.

Section III Formulating an Equal Pay Policy

It is good employment practice to maintain open communication with staff, particularly to ensure that staff have clear understanding on issues relating to their career with the organization; and principles affecting their remuneration and well being. As a good and responsible employer, it is highly desirable to make a commitment on pay equity between men and women and to share information with staff on efforts to achieve equal pay. This can be done through setting out an equal pay policy to enhance understanding and support by staff.

1. Equal Pay Policy

An Equal Pay Policy should cover as much as possible the following:

- A statement of the organization's commitment to support the principle of equal pay between men and women.
- An outline of the policies and practices undertaken by the organization to ensure pay equity (preferably as a step further, not only between male and female but amongst all staff members).
- A commitment to carry out equal pay self-audits periodically and to take corrective actions if necessary.
- A commitment to provide resources to monitor equal pay practice in the organization.
- An account of actions taken and results obtained to validate compliance on equal pay under the Sex Discrimination Ordinance.
- The establishment of a mechanism to provide assistance to staff to address equal pay concerns.

2. Staff Communication

The Equal Pay Policy serves as an indication of the intention and commitment of a caring employer to put efforts into improving the conditions of employment. This can be supplemented by other staff communication activities such as briefing sessions to staff on equal pay and explanation on grading and salary structures etc. By taking proactive actions, you can alleviate disputes arising out of misunderstanding by staff, which might lead to complaints or even litigation. ***It is recommended that a formal mechanism be established to handle enquiries or complaints on equal pay issues internally.***

Sample Equal Pay Policy

- Equal pay between men and women is a legal right for employees under the Sex Discrimination Ordinance in Hong Kong.
- We are an equal opportunities employer and are committed to the principle of equal pay.
- We will take all actions necessary to eliminate any sex bias in our pay system.
- We are committed to exercising consistent treatment to all our employees based on established principles, policies and processes on pay determination.
- We will ensure transparency in our pay system. If information of a confidential nature cannot be released, we will ensure that pay principles and policies are understood by staff.
- We are committed to remunerating our employees according to the value of their work and will pay for performance to reward staff contributions.
- We are committed to ensure that pay differentials between individuals performing work of equal value are based on clearly established policies that are non-discriminatory.
- We have an analytical job evaluation system in place to ensure that jobs are assessed objectively. **OR** We have a structured system which is free of sex bias to grade jobs.
- We monitor our pay positions on an on-going basis. Pay will be determined according to the organization's ability to pay; and corporate and individual performance.
- We will conduct periodic checks to ensure equal pay practice and are committed to take remedial actions, if necessary.
- We will provide necessary resources to support the practice of equal pay.
- We have conducted pay analyses in (time) and have endeavoured to ensure that our pay practice is non-discriminatory.
- For enquiries and assistance on equal pay issues, staff can contact the Staff Relations Team directly.

Section IV Conducting an Equal Pay Self-Audit

The requirement to provide equal pay for men and women under the Sex Discrimination Ordinance is simple in concept in that it is unlawful to treat a person less favourably than another person of a different gender performing equal work or work of equal value, on the ground of sex, in the terms and conditions of employment. However, with the many factors affecting individual pay, the complexity of the pay determination process and dynamic market pay practice, compliance of equal pay requirements need to be carefully managed through establishing gender-neutral pay systems and ensuring consistent criteria are applied for the treatment of staff employed under comparable circumstances. Without analysing actual pay data, it is difficult to gauge the result and impact of pay decisions which are numerous and made at different times, based on various considerations. A structured review of pay systems and actual pay will help you to check if your pay practices are free of sex bias. This is done through an equal pay self-audit.

1. Benefits of a Self-Audit

The suggested self-audit is not a statutory requirement. It is to be carried out on a voluntary basis as a proactive approach to achieve equal pay in the workplace. The benefits are plenty:

- It helps you to identify pay inequities between men and women performing equal work or work of equal value, which might lead to allegations of sex discrimination if reasonable factors cannot be identified to explain the differential.
- It helps to pre-empt the filing of equal pay claims by employees and to correct equal pay problems at an early stage.
- It provides an opportunity for you to review existing policies and practices and to re-examine how your staff are paid.
- Relativity of jobs can be reviewed which is an important basis for pay determination.
- It provides a good basis for formulating or improving policies and practices.
- It identifies not only equal pay issues but also fair pay issues amongst staff of the same sex.
- It provides factual data for formulating action plans to close pay gaps.
- It exemplifies good employer practice to commit to the principle of equal pay and will have positive impact on staff morale.
- It provides a good opportunity to improve transparency of pay systems and communication with staff.

2. The Equal Pay Self-Audit Process

The proposed self-audit process involves the following steps:

- 2.1 Planning – To set objectives and identify scope of the self-audit; form a project team and develop a work plan; collect information required.
- 2.2 Checking of Actual Pay Practice – A review of the pay determination process to check if the design of pay systems and actual pay practices are non-discriminatory. Areas for improvement can be identified.
- 2.3 Identifying Equal Work and Work of Equal Value – A review on how jobs are assessed and graded to identify jobs of equal value for performing pay comparisons.
- 2.4 Conducting Pay Analyses – To review actual pay data to ascertain that pay differentials for male and female staff performing work of equal value are free of sex bias.
- 2.5 Formulating a Pay Equity Plan – To plan follow-up actions for correcting pay inequities identified in the self-audit, if any; and to set up a process for periodic self-audit to improve pay systems and practices.

Conducting a self-audit is an effective means to ensure equal pay proactively. Details and methodologies are covered in a supplementary book to this Guide entitled “Equal Pay Self-Audit Kit: A Proactive Approach for Employers to Achieve Equal Pay”. The Kit contains information on the self-audit process, checklists for pay practices, templates and a case study as an example for your easy reference. It is highly recommended that you should take advantage of the Kit to review your existing pay practice, to take remedial actions to correct pay inequities and make improvements to your pay systems.

Section V Matters Which the Employees Might Wish to Know

This section aims at helping you on communication with your employees on equal pay issues as follows:

- Enhance your employees' understanding on equal pay.
- Handling requests for information.
- Dealing with potential equal pay disputes internally.
- Show your commitment as a good employer to ensure equal pay.

1. Ways to Enhance Your Employees' Understanding on Equal Pay

To help your employees to understand equal pay and appreciate that they are fairly compensated for their contributions regardless of their gender, your pay policies should be free of sex bias and transparent. The availability of information and effective communication are also important for proper understanding of the complex issue of pay and can alleviate potential disputes. The following are some suggestions:

- 1.1 Conduct staff briefing sessions to explain your pay policies, highlighting important principles and practices.
- 1.2 Explain key elements of the concept of equal pay including:
 - (a) equal pay is about equality of pay between men and women performing work of comparable value;
 - (b) the difference between equal work and work of equal value;
 - (c) the system you are using to evaluate jobs and establish equal value;
 - (d) the principle of consistent criteria under comparable circumstances;
 - (e) to file a complaint, the complainant has to show that he/she is being treated less favourably in pay **by reason of his/her sex**; the comparator must therefore be someone of a different gender.
- 1.3 Prepare a list of frequently asked questions (FAQ) and establish channels for handling equal pay enquiries.
- 1.4 Train all personnel responsible for pay determination on equal pay matters.
- 1.5 Establish a grievance procedure and try to resolve equal pay issues internally. Some grievances may result from the lack of understanding or some hearsay situations.

If you are not adopting a systematic approach on pay determination, it is unlikely that staff would understand or be motivated by the way they are compensated. It is highly recommended that you begin with simplified versions of the suggestions in this Guide and the Supplementary Books to ensure equity and effectiveness in pay.

2. Handling Requests for Information

When employees have doubts on whether they are receiving equal pay, they might seek information of a confidential nature, involving personal data of their co-workers such as their pay package and performance review for comparison purpose. It may not be possible to obtain consent from individuals to disclose their personal information. Under such circumstances, you might try to answer detailed questions in general or relative terms to preserve data privacy. For example, you might provide the reasons for a pay differential relating to factors which are relevant to the performance of the job (such as qualifications and quantifiable output performance etc.) without releasing any specific personal information of other staff. You can refer to the Personal Data (Privacy) Ordinance for further information on protection of personal data.

3. Dealing with Potential Equal Pay Disputes Internally

As the subject of equal pay is complex in nature, it is much better to use your resources to improve your pay systems to pre-empt equal pay claims than having to put in a lot of efforts to defend allegations of pay discrimination or answer individual enquiries. However, to ensure good employee relations, you should maintain open communication and address individual concerns on pay equity. Enhancing your employees' understanding on equal pay (as suggested in paragraph 1 of this section) will minimise the number of equal pay complaints or enquiries.

3.1 Responsibility of the Staff in an Equal Pay Dispute

You can educate your employees that there are a number of facts to be established before they raise a specific enquiry on equal pay:

- (a) Who is the staff comparing his/her pay to (there should be a comparator of a different gender)?
- (b) Why does the staff think that he/she and the comparator are performing work of equal value?
- (c) What are the reasons to support his/her belief that he/she is not receiving equal pay?

- (d) Which element of pay is he/she being treated less favourably?
- (e) Why does the staff think that the pay differential is based on the ground of sex?

3.2 Your Responsibility to Review & Take Remedial Actions

Upon understanding the grounds of the complaint/enquiry, you should ascertain:

- (a) if the individual is actually receiving less pay than the comparator;
- (b) if the individual and the comparator are performing equal work or work of equal value;
- (c) the reason(s) for the individual to be receiving less pay than the comparator;
- (d) the length of time that the pay disparity has been in place.

If the pay differential can be explained by causal factors other than sex of the job holders, details should be provided and discussed with the staff member to ensure proper understanding.

If a genuine pay disparity is found to be unexplained by reasons other than sex, remedial actions should be taken to bring the pay of the complainant up to an equitable level.

4. Your Commitment to Provide Equal Pay as a Good Employer

A trusting relationship can be established between you and your employees if you show them your commitment to provide equal pay as a good employer. Here are a number of things that you can do:

- 4.1 Formulate an Equal Pay Policy to advise employees of your commitment to support the principle of equal pay between men and women.
- 4.2 Conduct an equal pay self-audit to review your existing pay policies and practices and identify potential pay disparities.
- 4.3 Plan remedial actions by establishing a Pay Equity Plan (Refer to Self-Audit Kit).
- 4.4 Establish a grievance procedure for handling equal pay complaints internally.

You can refer to other sections in this Guide and the Supplementary Books for general guidelines on the above.

Section VI An Equal Pay Complaint

As an employer, you probably would like to prevent the filing of an equal pay complaint by your employee, particularly out of misconception. This section aims at explaining the complaint procedure and facts to be considered in an investigation by the Commission. Needless to say, it is undesirable to be involved in a tedious process of responding to a complaint, not to mention the potential workload and costs relating to litigation. You are therefore strongly encouraged to adopt a transparent pay system and to resolve pay disputes internally, as far as possible.

1. Filing an Equal Pay Complaint

There are two channels to pursue an equal pay complaint. A person may lodge a complaint in writing to the Equal Opportunities Commission or directly bring civil proceedings against an act of discrimination. If a complaint is filed with the EOC, a process of assessment, investigation, conciliation or legal assistance will be determined by the EOC as appropriate. It is highly recommended that issues relating to equal pay should first be addressed internally through the grievance procedure of your organization.

2. The Complainant

A female employee can claim equal pay if she is receiving less pay than a male employee performing equal work or work of equal value for the same employer and her employer is unable to explain the pay differential by reasons other than sex. This section is written assuming a female employee to be the complainant. Since the SDO applies to both men and women, to avoid repetition, any reference of sex discrimination to women shall be read as applying equally to the treatment of men³.

3. Comparator

A female employee may lodge an equal pay complaint, using one or more male employees as her comparator(s). The employer cannot interfere with her choice. Consent from the comparator for being named is not required. The complainant needs to ascertain that the work performed by her and the comparator are of equal value and that she is receiving lower pay.

³ See Section 6 of the SDO.

4. Pay Package

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 and other fringe benefits.

5. Elements of Pay

The elements of pay in an equal pay claim may be considered collectively or separately, subject to individual circumstances, taking into consideration the principle of consistent criteria under comparable circumstances.

6. Time Limits

A complaint on equal pay may be lodged with the Equal Opportunities Commission within twelve months of the complained act of discrimination⁴. Proceedings may be brought under the District Court within twenty-four months of the act complained of⁵.

7. Complaint Procedure

The following are the steps involved in an equal pay complaint lodged with the Equal Opportunities Commission:

7.1 Lodging of a Complaint – The minimum information that the complainant is required to show are:

- (a) She is able to name a comparator of a different gender working for the same employer.
- (b) She is performing equal work or work of equal value with the comparator.
- (c) She is receiving less pay or is treated less favourably in the terms and conditions of employment than the comparator.

Example:

Edna, the Bar Attendant in Equality Café and Owen, the Waiter are performing work of equal value. They joined the Café on the same day with the same salary. Their performance are the same but Edna received a lower salary increase...

⁴ See Section 84 of the SDO.

⁵ See Section 86 of the SDO.



The complainant should be able to provide information to reasonably support her belief that the pay differential is related to the ground of her sex.

7.2 Review by the EOC – The EOC will assess whether there is sufficient information to trigger an investigation including:

- (a) Existence of less favourable treatment.
- (b) Supporting information or reason(s) for claiming that the complainant and comparator are performing jobs of equal value.
- (c) Complainant's reasons for believing sex discrimination.

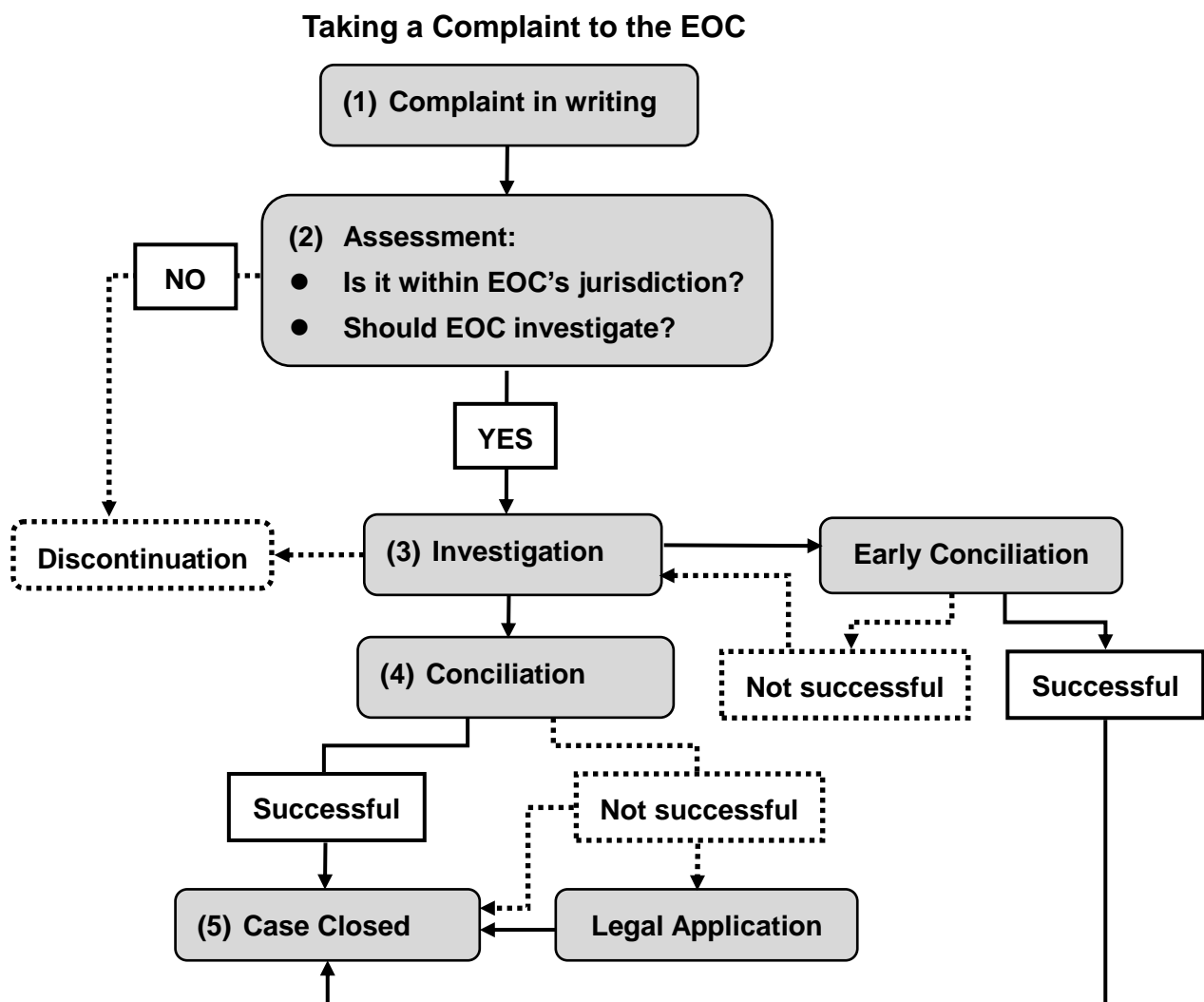
7.3 Response from the Employer – When sufficient information has been provided by a complainant, you are expected to provide information confirming whether the jobs being compared are the same or are of equal value; if there is a disparity in pay between the complainant and the comparator(s); and provide explanation on the pay differential. Should you fail to provide answers relating to an equal pay complaint, an inference of discrimination might be drawn. You should conduct the following to prepare for the answer:

- (a) Assessment of Equal Work or Equal Value – Compare the work done by the complainant and her comparator to establish whether or not they are equal or of equal value. Facts to be considered might include:
 - Job evaluation results if the jobs have been assessed under an analytical job evaluation system.
 - Comparison of demands on the worker with criteria that have been clearly set out.
 - Reasonableness of the grading structure design and clarity of established policies and processes.

- (b) Comparison of Pay Package – A comparison on all elements of pay and terms and conditions of employment of the complainant and her comparator(s).
- (c) Explanations for the Pay Differential – You should be able to explain any differential in the pay package, based on factors not related to sex, preferably supported by clearly defined pay policies and records of pay decisions made.

7.4 Investigation and Conciliation – Based on the sufficiency of supporting information provided by the complainant, the Commission would conduct investigation and endeavour to settle the complaints by way of conciliation as appropriate. On the contrary, the Commission would discontinue the investigation.

7.5 Legal Assistance – If a case is not settled, the complainant may consider to apply for legal assistance from the Commission. The Legal and Complaints Committee of the EOC will consider the case and decide whether to grant legal assistance. Alternatively, the complainant may consider to apply for legal aid from the Legal Aid Department or to take legal action on his/her own.



8. Protection against Victimisation

You should be aware that it is unlawful to treat a person less favourably than other persons in comparable circumstances because the person or a third person has done or intends to do, or is suspected to have done or to intend to do, the following:

- (a) filing an equal pay complaint against the discriminator or any other person under the SDO;
- (b) giving information or evidence in connection to an equal pay complaint against the discriminator or any other person under the SDO;
- (c) doing anything under or by reference to the SDO in relation to the discriminator or any other person;
- (d) alleging that the discriminator or any other person has committed an act which would amount to a contravention of the SDO.

MESSAGE TO EMPLOYERS

With an aim to promote the principle of Equal Pay for Equal Work (EPEW) and Equal Pay for Work of Equal Value (EPEV) and create a better understanding on discrimination and equality in pay by the general public, we hope that the information provided in this Guide would help you to recognize your obligations under the Sex Discrimination Ordinance (SDO) to ensure equal pay between men and women performing comparable work. We also hope that by following recommendations in this Guide and the practical tips and tools provided in the Supplementary Books, you will join other employers to fulfil your legal as well as social responsibility for treating men and women alike in employment.

This Guide has set out the fundamental requirements to help you to practise equal pay. The benefits of adopting the recommendations reach far beyond compliance of the SDO. It provides the opportunity for improving the effectiveness in managing your human capital and alleviating risks relating to potential claims. You are encouraged to take progressive steps to achieve equal pay by:

- assessing job values and identifying work of equal value by methods that are objective and free of sex bias;
- adopting a systematic approach to pay determination that is free of sex bias;
- conducting an equal pay self-audit to review your pay practice and close gaps of pay disparity found;
- communicating effectively with employees and enhancing their understanding on equal pay.

