

## **Equal pay for equal work – are you prepared to defend your pay practices?**

Possibly one of the most noteworthy additions to the amended Employment Equity Act is the introduction of the right to '*equal pay for work of equal value*', which has been added as a sub clause to Section 6. The amendments are effective 1 August 2014 which means that it is against the law to discriminate unfairly between the remuneration and working conditions of employees doing the same work or work of equal value.

But it is not as simple as that, failure to apply this principle will only amount to unfair discrimination if the reason for distinguishing between the higher paid and the lower paid employee is shown to be one of the grounds referred to in terms of section 6 of the Employment Equity Act - namely race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

**Even if the discrimination or the difference in salary can be shown to be based on one of the above unfair reasons for discrimination, the first requirement would be to establish whether the difference in pay does amount to discrimination.**

Pay equality therefore means that people who are exactly alike in every material aspect should not earn differently based on discriminatory or prohibited factors. Obvious examples of legitimate pay differences are those based on skill, individual performance, length of service, competencies, seniority, accountability and a number of other factors such as flexible work arrangements.

The Act requires that you analyse pay by using an accepted methodology or system that can determine the *size of your job* and the *shape of your pay curve*, and that can 'methodologically' or 'statistically' determine whether or not the differences in pay are capable of rational explanation where the notion of 'not less favourable' will apply. The intention of the legislation is to do away with any prohibitive conditions.

Pay equality cannot be achieved overnight. The cost could potentially sink an employer. Like employment equity, pay equity is a target to be achieved over a period of time and the prescribed reporting should reflect the progress made by employers with regards to achieving certain goals.

The criteria as gazetted for comment in February 2014 define equal pay for work of equal value as follows:

1. *Eliminating unfair discrimination*
  - (1) *An employer must, in order to eliminate unfair discrimination, take steps to eliminate differences in terms and conditions of employment, including remuneration, of employees who perform work of equal value if those are directly or indirectly based on a listed ground or any arbitrary ground that is prohibited by section 6(1) of the Act.*
  - (2) *Without limiting sub regulation 1, an employer must ensure that employees are not paid different for work of equal value based on race, gender or disability.*

The legislation further outlines the *meaning* of work of equal value as well as the *methodology* in assessing whether work is of equal value and *factors justifying differentiation in remuneration and terms and conditions of employment*.



The Act is good news for REMeasure® (job evaluation tool) and REMchannel® (salary benchmarking tool) subscribers in that it states that in addition to the criteria specified ‘*any other factor indicating the value of the work may be taken into account in evaluating work, if the employer shows that the factor is relevant to assessing the value of the work*’.

But the Act at the same time requires you as an employer to ensure accuracy in your reporting as the Department of Labour (DoL) is now insisting that your EE Plans have a lot more, very specific details on what your EE endeavours will entail. And to make matters worse for employers, the penalties for non-compliance have increased significantly since the inception of the Act.

The classification used by the DoL has been updated and published in the gazetted draft of February 2014, to include REMeasure® in the job classification table prescribed by the DoL. You will notice in this document that REMeasure® is a point’s classification system and as such it meets the criteria for Employment Equity reporting purposes.

REMeasure®, currently used by PwC for job evaluation consulting assignments and subscription clients, is an accurate and defensible job evaluation tool for determining that jobs are of equal value.

The most salient features of the system, and as required by the Act, include:

- Breaks jobs down into a balanced set of factors, measuring input, process and output factors.
- Weights factors appropriately dependent on job level.
- Allocates points which can be reviewed and compared across jobs.
- Keeps an audit trail of all questions answered, so is highly defensible.
- Correlates to all major JE systems, including Paterson. The system is Paterson based and points correlate directly to Paterson grades.
- JE Points can be used to extract survey data from REMchannel®.

In claims relating to ‘equal pay for work of equal value’ on arbitrary ground, the onus is on the employer to prove that any pay differentiation is fair based on factors as outlined in the gazette draft. So how can you be certain that REMeasure® will be a ‘defendable’ tool to justify the pay differences of a specific position when challenged by the DoL?

To illustrate how you can use REMeasure® to achieve this objective we have used the tool to evaluate the positions of two HR Managers employed by the same international employer but they are being paid different salaries. Being a points system, REMeasure® is able to defend the reason for the differentiation in grades and therefore differentials in terms of pay.

Job Title	HR Manager in West Africa region (1)	Points Score	HR Manager in South Africa region (2)	Points Score
Input factors (Qualifications, skills and experience)	BA Industrial Psychology degree 5-8 years' experience	42	BA Industrial Psychology degree 5-8 years' experience	42
Process factors (Problem solving and communication)	Strategic planning, knowledge of legislation etc. required; high level presentations and interaction with senior management inside and outside of organisation	45.6	Strategic planning, knowledge of legislation etc. required; high level presentations and interaction with senior management inside and outside of organisation	45.6
Output factors (Financial Impact and Influence)	Manages an operational budget of 5 million** annually.	104.4	Manages an operational budget of 20 million** annually.	118.80
TOTAL REMeasure® POINTS		192	**Size of budget being managed is the primary reason for difference in REMeasure® points	206
<b>Paterson Grade</b>		<b>D5</b>		<b>E1</b>

The Act demands that the reasoning for pay differentials will need to be clearly and consistently documented and applied. REMeasure® will provide you with a comprehensive report on the evaluation. The example report has been summarized for purposes of this article.

Note that the above example only illustrates how the REMeasure® job evaluation tool can assist in defending your pay policies. There are of course many other HR practices that you will need to review. This may be the ideal opportunity to reconsider your remuneration practices and ensure they are aligned with the amendments of the Employment Equity Act.

We are able to assist with the following and a number of other related actions to ensure you are compliant to the proposed legislation:

- ✓ Write or validate your compensation philosophy and/or Job Evaluation policy
- ✓ Write or validate your profiles to ensure they are compliant with amendments of the Act
- ✓ Conduct skills audits of competencies required for equal value jobs
- ✓ Design or review pay scales for your organisation with checks and balances to comply with legislation
- ✓ Accurately measure and evaluate any position from cleaner to top executive level
- ✓ Benchmark jobs and the associated pay against that of other employers
- ✓ Design and conduct in-house workshops customized to meet your requirements

### Contact details:

#### Job Evaluation (REMeasure® Job Evaluation tool)

Minda Botha – [minda.botha@za.pwc.com](mailto:minda.botha@za.pwc.com)

#### Consulting Solutions (Job Descriptions, Pay Scale Development, Compensation Philosophy)

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#### Benchmarking (Benchmarking, REMchannel® salary survey tool)

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