Understand equal pay for work of equal value

Use this advice to eliminate unfair conditions of employment discrimination.

By Dr Mark Bussin and Elmien Smit

Work of equal value includes work that is the same, substantially the same or of the same value as other work, as contemplated in regulation four of the Regulations to the revised Equal Pay for Work of Equal Value section in the Employment Equity Act, section sixsix. This does not mean a flat rate of pay for a job. Work of equal value is explained as the same work as another employee; if work is identical; if work is interchangeable; if work is substantially the same or sufficiently similar to be reasonably considered as similar or if work is of the same value of another employee in a different job.

With the amendments to section 6 of the Employment Equity Act promulgated on 1 August 2014, it requires that all organisations have a job grading system in place or a robust method of explaining why certain categories of staff earn certain amounts. This applies to all businesses. The Equal Pay for Work of Equal Value is just a framework in terms of the distribution of pay of each company. It originated from gender equality which is a global issue. Many other countries already have Equal Pay for Work of Equal Value law in place. Broadly speaking, organisations must be able to justify the difference in pay.

Scenario

Let’s look at a scenario to understand this better: you have an employee who has been with the company for many years. He started in a junior position and is now a Senior Operator and one of your best.

One of his colleagues leaves and there is a vacancy for the same position but on a different shift. After interviewing different candidates, the team makes their choice. Their favoured candidate is offered and accepts the position of the operator at a much lower rate of pay than the Senior Operator.

• The HR Manager signs off on it because the candidate is in the final year of study towards a diploma. She has not completed her studies and therefore should not get the same rate of pay.
• The Operations Manager signs off because the lower rate of pay will help him keep the labour costs of his line down;
• The Section Supervisor signs off on it because he knows that it will take years of experience before the candidate will be able to run the section properly; and
• The Employee Equity representative signs off on it because the candidate is a new hire and does not have the length of service of the Service Operator.

Which one is right? None of them! Amendments to the EE Act specify that the lack of appropriate qualifications, inadequate experience and length of service are no longer grounds for differences in pay. The act of hiring the candidate at a different rate of pay is automatically unfair discrimination and the organisation is liable for a fine starting at R1,500,000. The amendment states: “A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value is unfair discrimination.”

To put this differently – differences in rates of pay are unfair unless the organisation can show that work being done is substantially different. The only way to show that jobs are different is with a detailed job description/job profile. Once properly compiled and graded, this then forms the basis for wage and salary structuring.

How to implement

• First establish if work is of equal value, and then ask if there is a difference in conditions of employment including remuneration. If there is a difference, ask if this is unfair discrimination (because you can differentiate ... provided that it is FAIR);
• There has to be a methodology to show the levels of responsibility, the skills and qualifications for a role. This is referred to as job grading;
• Grading enables you to show the relative value or worth of one role against another, within your organisation;
• Grading takes into account the:
  → complexity;
  → responsibility demanded by the work (people, finance and material);
  → skills, qualifications and prior learning required to perform the job;
  → physical, mental and emotional effort required to do the job;
  → the conditions, if relevant, under which the work is performed;
• Based on the grading of the role, you can develop pay practices per role (this is the foundation for Equal Pay for Work of Equal Value); and
• These pay practices are applied objectively to the role, and subjectively to the person, based on valid criteria.

Here are frequently asked questions that may assist with the communication of this concept:

Conclusion

It is highly recommended that organisations should have a remuneration policy in place and evidence of a process being followed to show that there is Equal Pay for Work of Equal Value. This implies that the process is wider than just a job grade. There must be continuous and transparent ways to eliminate unfair conditions of employment discrimination and what will be fair discrimination should be defined and how it will be applied. As long as organisations are able to justify differences in pay based on a fair criterion then organisations should not be held liable.

Dr Mark Bussin is the Executive Chairperson at 21st Century Pay Solutions Group, www.21century.co.za, a Professor at University of Johannesburg, Professor Extraordinary at North West University, Commissioner in the Presidency as a member of the Independent Commission for the Remuneration of Public Office Bearers, Chairperson and member of various boards and remuneration committees, and immediate past President and EXCO member of South African Reward Association. Elmien Smit is a Junior Consultant at 21st Century Pay Solutions Group, www.21century.co.za.