



ENSURING EQUAL PAY ISN'T CUT BY THE CUTS

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Why the importance of ensuring EP is not cut by the cuts?

- Unison warn that majority of redundancies in local authorities will affect women
- Women who hold onto jobs following the cuts face losing tax credits and child benefits.



Equal Pay Mass Litigation

- Local government and NHS claims
- LG – former manual workers eg carers, caterers, domestics compare themselves with roadworkers, gardeners, refuse collectors
- Bonuses and attendance allowances



Evidence that bonus schemes are discriminatory:

- Bonus Technical Working Group
- Single Status
- Number of LA's still to implement Single Status eg Liverpool City Council

Progress of mass litigation:

- Slow due to tactics of Respondent Authorities
- Issues raised include Preston time points, grievance issues, common employment issues, LA re-organisations

Q. Has EP got lost in the detail? Do LA cuts present a further obstacle for Claimants?



Techniques adopted to combat the delays:

- Push for cases to be listed for MF Hearings
- Stay on top of Tribunal Orders
- Puts pressure on LA employers to consider settlement

Examples of good first instance decisions:

- Bury Council – link to bonuses and productivity lost and bonuses were a sham
- Birmingham – “productivity.. was, a fig leaf to conceal a desire to pay refuse workers more than basic pay .. A sham”
- Trafford – Council had adopted a head in the sand ostrich mentality to equal pay

Appeals and further delays:

- Bury – EAT findings: ET not to use the word sham but as link between productivity and bonus lost , bonus schemes could not be justified.
- Due to historical unjustified pay practices C's also entitled to pay protection – claim period extended by 2.5 years

- Sheffield Carers case – Supreme Ct in June 2011. 2 issues:
- Bonusability of womens jobs
- Whether, if a statistical imbalance (tainting by numbers), employer needs to show objective justification



Public Sector Equality Duty:

- A positive obligation on public authorities to eliminate discrimination and advance equality by requiring them to take equality considerations into account as integral part of decision making process
- Fawcett Society's application for judicial review
- Who is covered? All public bodies

Equality Act s.149


- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity and
- foster good relations

3 Aims



Specific Duties

- By 31 July 2011 - draw up and publish info to show they have complied with general duty
- By 6 April 2012 – prepare and publish equality objectives



Information to be published:

1. Effects that policies and practices have had on employees
2. Evidence of analysis to establish whether policies have furthered the aims
3. Info used in analysis
4. Details of engagement with people with an interest



Gender pay gap information

- No specific duty requiring public authority to produce gender pay gap information
- EHRC recommends that most effective way to eliminate discrimination is to carry out gender equal pay audit



Equality Objectives:

- Must be published by 6th April 2012 and at least every 4 years thereafter
- To set the objectives authority must take account of equality information and equality analysis of effects of their policies and practices.



EHRC has statutory power to enforce general and specific duties inc:


- Undertaking assessment
- Issuing compliance notices
- Entering into agreement to develop and implement an action plan


Or Judicial Review



Summary of ways of ensuring EP is not cut by the cuts:

- Rely on numerous Tribunal and Appellate findings
- Refer to the example of Bury Council re expensive litigation, signif cost to tax payer, but ultimately lose

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- Consider the public sector equality duties and how they can be used to :
 1. Make reduction of the gender pay gap an objective
 2. Publish sufficient info to show the gen duty has been complied with
 3. Put pressure on authorities to carry out regular EP audits
 4. Engage with interested groups

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- Review the Welsh experience where more positive requirements have been laid down
 - Be prepared to report to the EHRC and / or issue claims for judicial review where public authorities are not complying with duties.