

# Mind the Gender Pay Gap

This article is a follow-on of the article “Bridge the Disability Pay Gap” which appeared in Issue 18 of TFM Magazine. The article explored what the South African law says about equal pay and the latest changes introduced to the Income Differential Report – the EEA4 – which employers submit to the Department of Labour. The disability pay gap gets little attention, to the extent that organisations are not required to report on inequality in the remuneration packages for employees with disabilities. The objective of the EEA4 Form is to gather information which will identify any gaps in remuneration between the highest and the lowest-paid employees. At the same time, it aims to weigh up any remuneration inequalities at various occupational levels, broken down by race and gender. One has to explore to what extent South African organisations have progressed in bridging the gender pay gap.

The ‘gender pay gap’ is, in part, influenced by social norms. Essentially, it is the result of historic perceptions as to the roles men and women play in society and the economic value placed on work.

A recent study shows that the ‘gender pay gap’ has shrunk dramatically, especially among low paid workers, since the end of Apartheid; however, women at the top of the corporate ladder still face discrimination. In 1997, at the bottom end of the earnings spectrum, men earned 60% more than women. By 2014 this had diminished to 7%. The introduction of sectoral minimum pay legislation seemingly played a decisive role in this decline.

More educated women in senior positions initially benefited from employment equity legislation, and the ‘gender pay gap’ dropped sharply from 48% in 1993 to 18% in 2014. However, this trend is starting to reverse. The study reveals that women in senior jobs, often better educated than their male counterparts, continue to receive lower remuneration.

Women in the middle of the earnings spectrum have benefited least in the post-Apartheid era. At the median — the half-way point in the pay distribution spectrum — the ‘gender pay gap’ has hardly moved. Men still earn 23% to 35% more than women, and many of the occupations that fall into the median earning spectrum tend to be male-dominated.

## What do the courts say?

South Africa’s courts now deal with more cases around unfair discrimination, including those of ‘equal pay for equal work’, for which there is a provision in the employment equity legislation. It is clear that mere differences would not constitute unfair discrimination, and not all disputes are necessarily gender-based. An example of this is the case of Sun International Limited vs Commercial and Allied Workers Union. The CCMA and Labour Court considered the claim of a ‘Black’ Woman surveillance auditor who alleged that her remuneration should be at the same level as her male, white colleague who occupied the same position at Sun International.

Her remuneration was approximately 51% of her male colleague’s salary. Initially, the CCMA found in her favour. However, on review, the Labour Court found that, although the work was the same and the difference in remuneration was admitted, no unfair discrimination had occurred. The Court based its decision on the Department of Labour’s Code of Good Practice which provides that where a difference in remuneration exists, the difference may be justified and therefore deemed as fair.

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in Carol Paton in April 2019 reveals. South Africa’s ‘Gender Pay Gap’ Shrinks Dramatically [Online] Available at [www.businesslive.co.za](http://www.businesslive.co.za)

-Sunun international Ltd v SACCAWU obo Pamerate (Febr. 2019) case nr JR1501/17 Code of Good Practice on Equal Pay Government Gazette nr 448 June 2015

L. Donnelly August 2019 Why the gender pay gap persists [Online] Available at [www.mg.co.za](http://www.mg.co.za)

ILO Understanding the gender pay gap April 2019 ILO infographic [Online] Available at [www.ilo.org](http://www.ilo.org)

United Nations Global Compact and others 2020 Women’s Empowerment Principles Gender Gap Analysis Tool - [Online] Available on [www.weps-gapanalysis.org](http://www.weps-gapanalysis.org)

There are various factors for consideration that include seniority or length of service, qualifications, individual performance and the quantity or quality of work. In this case, the male colleague had more years of service and seniority, as well as a higher Private Security Industry Regulatory Authority (PSIRA) grade. The Court further referred to a so-called 'market forces defence'. This justification provided that when the male colleague was recruited, his existing salary was higher than that of the female employee. Accordingly, Sun International had to offer him a higher starting salary to incentivise him to accept the job. The combination of what the male colleague demanded and what the market justified is the rationale behind the gap in remuneration. The difference was not due to race or gender.

Case law illustrates that gender pay discrimination is not easy to prove due to valid rationalisation of such differences. It further demonstrates that two fundamental principles of remuneration, namely external and internal equity, can work against each other. Commercial businesses that operate within the realm of the economic tenets often have to recruit and appoint skills within a labour market where supply and demand determine the cost of the skill.

If such a skill is core to an organisation's business and the package is high, it would be improbable that an organisation would forego an appointment for the sake of a potential internal pay gap claim. In a balanced labour market where skills are readily available, and the cost of labour is standard, it would be easier to focus on pay equity and the pay gap. But as a country, we are not there yet.

The task of completing and submitting an EEA4 to the Department of Labour must not be taken lightly. Doing so may result in discriminatory pay practice, or it may have the potential to demotivate and disengage a workforce. Therefore, organisations must, while completing the EEA4 Form, reflect as to whether they want to comply with minimum requirements or instead actively invest in the process by developing a dynamic Remuneration Strategy. Opting for the latter would motivate an organisation's workforce and impress all stakeholders.

Food for thought: Why not, analyse the information captured in the EEA4 Form to develop a Remuneration Strategy to drive internal and external equity? Would this not enable an organisation to achieve its business objectives while working towards a more engaged workforce?

## Disclosure of the 'gender pay gap'

An EEA4 Form is a confidential form that employers submit to the Department of Labour. It is not open to public scrutiny. At the Jobs Summit held last October, Business Unity SA (Busa) undertook to encourage its members to voluntarily disclose the pay gap between the highest and lowest employees and to include the 'gender pay gap'.

Busa advised they would encourage voluntary disclosure with a view to making disclosure compulsory over the next 12 months. Some organisations have started to disclose information about their 'gender pay gap'. Such organisations are more often than not affiliated with the United Kingdom, which has regulations in place to measure this. Research reveals that women employed by Vodacom, Investec or Anglo American probably earn at least 15% less than their male counterparts.

The core reasons put forward are that those environments or roles are male-dominated, as well as the fact that there are more men than women with degrees in science, technology, engineering and mathematics. However, moving forward, these organisations have subsequently put remedial measures in place to address the issue. Corrective actions include recruiting more women, actively developing women talent and creating more family-friendly workplaces.

The results of the annual PwC Directors' Remuneration Report reveals across JSE listed companies that women at a senior level remain under-represented and are consistently paid less than their male counterparts. According to the report, the sectors with the starkest gaps are healthcare (28%), consumer discretionary (25.1%), technology (22.9%) and finance (21.8%).

Research exposes that the challenge is not only about pay discrepancies, but the 'glass ceiling effect' for women at the top of the pay distribution.

There are many reasons why gender inequity persists; one such reason is that jobs perceived to need 'women skills' like caring are often undervalued. Historic prejudice relates to how women are viewed in the social pecking order, especially when they choose to have children. Interestingly, there is a marked remuneration difference between mothers and non-mothers between the ages of 25 and 50, which is known as the 'motherhood pay gap'.

## What happens elsewhere in the world?

The 'gender pay gap' is not particular to the South African workforce. A few statistics from the International Labour Organisation (ILO) expose a global issue:

- > Globally, women earn approximately 77% of what men earn. At this rate, pay equity will only be realised in 2086.
- > The Global average 'gender pay gap' stands at 21.4%.
- > The age of women affects the pay gap they face.
- > The more female-dominated a sector is, the more significant the pay gap.

## A useful tool from the United Nations

The UN Women and the UN Global Compact actively support the business case for gender equality. A free gender gap analysis tool is available to support organisations that want to bring about change. It provides a confidential online platform known as the Women Empowerment Principles Gap Analysis Tool (WEPs Tool). The aim is to assist organisations in identifying their strengths, gaps and opportunities to improve their performance on gender equality. It is a learning platform; therefore, it does not serve as a reporting or certification tool. Employers may find this tool useful to assist in addressing the 'gender pay gap'.

In conclusion, organisations could embrace completing the arduous EEA4 Form and use it as part of their solution as well as a research tool to analyse their shortfalls, then strategise remedial action. The American Federation of Labor's motto says it all about the 'gender pay gap' – "A fair day's wage for a fair day's work".