EQUAL PAY AUDIT Q&A

WHAT IS AN EQUAL PAY AUDIT?
UNISON supports equal pay for work of equal value and respect for the individual differences that make up modern workforces. An equal pay audit is a tool to ensure that everyone is afforded equal opportunity and is treated with equal value.

Specifically, an equal pay audit is an examination of pay data to determine if all employees are being paid fairly or whether some groups are being treated more favourably than others. After taking account of variables like job role, part-time status and length of service, a comparison is then made between the pay packages belonging to employees from different groups.

Equal pay audits are used by trade unions to demand that no group be disadvantaged due to a protected characteristic. Employers also use equal pay audits to routinely prove that their workplace is free from pay discrimination.

NHS organisations are encouraged to use the Equal Pay Audit Toolkit that was designed on behalf of the NHS Staff Council, by trade unions and NHS Employers. It can be found here: [http://www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/EqualityAct/NHSEqualPayToolkit/Pages/TheNHSEqualPayToolkit.aspx](http://www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/EqualityAct/NHSEqualPayToolkit/Pages/TheNHSEqualPayToolkit.aspx)

WHO PERFORMS AN EQUAL PAY AUDIT?
It is recommended that an equal pay audit be a joint endeavour between the employer and staff side organisations, with ownership sitting with the joint staff forum. Those involved in the process will need a clear understanding of equal pay principles and relevant legislation.

Involvement is recommended from the following people:
- A human resources manager
- Someone with appropriate knowledge of equality and diversity and the appropriate legislation
- A data analyst (with knowledge of and access to both iView and the Electronic Staff Record system)
- A staff side representative
- A payroll manager

Only a trained person should perform an organisation's official equal pay audit. In small or medium sized organisations it can be tempting for employers to assign the task to an untrained manager, but this is discouraged by UNISON. Providing training for auditors is considered best practice. Furthermore, smart employers know that even an innocent mistake on an equal pay audit can
open them up to claims of unfair treatment, costing significantly more time and money than any training would have.

HOW OFTEN SHOULD AN EQUAL PAY AUDIT BE PERFORMED?
Annually, at a minimum. Organisations should make sure that enough time and resources are devoted to make this a regular process.

ARE EQUAL PAY AUDITS A LEGAL REQUIREMENT?
No. Equal pay audits are not a legal requirement. However it will be very difficult for employers to comply with their responsibilities under the 2010 Equality Act’s public sector duties without undertaking one.

Public sector employers and organisations in the public and voluntary sectors who provide public functions are subject to the gender equality duty in regard to those functions. This means they are required to work to eliminate discrimination in employment and in some cases even have a specific responsibility in relation to reducing the gender pay gap.


Many public sector employers will be, or already are assessed against markers in the Equality Delivery System (EDS). The EDS is an optional nine-step process that helps employers produce the evidence they need to demonstrate compliance with equality duties. Outcome 3.2 in the EDS is devoted to ensuring equal pay. Without performing an equal pay audit, it will be remarkably difficult to prove that an organisation is completing this requirement. More information on the EDS can be found here: [http://www.eastmidlands.nhs.uk/about-us/inclusion/eds/?locale=en](http://www.eastmidlands.nhs.uk/about-us/inclusion/eds/?locale=en)

DOES THIS APPLY ONLY TO ENGLAND?
Yes and no. Employers in England and bodies with non-devolved functions in Scotland and Wales are all subject to the public sector equality duties under the Equality Act 2010. Scotland and Wales have their own public sector equality duties. Several pieces of legislation in Northern Ireland, including the Equal Pay Act (NI) 1970 as amended by the Sex Discrimination (NI) Order 1976 and further Regulations in 1984 and 2004, give protection for equal pay.

In short, although each country has a different set of regulations, public sector employers in all countries are required to pay their employees without discrimination – and the easiest and most foolproof way to establish this is with an equal pay audit.

The toolkit designed by NHS Employers is designed to work with an English system, although is easily adaptable for use by those in the other countries. UNISON recommends that employers in Wales, Scotland and Northern Ireland use this toolkit.
WHY DOES THE EQUAL PAY AUDIT ASK FOR SENSITIVE INFORMATION?
The equal pay audit asks for sensitive information because these are the variables needed to determine if one group is being treated more favourably than another. For example, it would be impossible to determine if Atheists were being treated worse than Buddhists if no one knew who was an Atheist and who was a Buddhist.

There may be some circumstances however in which employees are only asked for certain types of sensitive information. You may be asked for your sexual orientation but not for your gender, which might seem suspicious. This is likely because the staff records that NHS employers are legally required to keep (under Agenda for Change) already know your gender, age and ethnic background. So in an effort to avoid duplication you may not be asked these again.

If however you suspect that anything unsavoury is being done with your data, take your concerns to your local UNISON representative or raise them with the region.

What types of information an organisation should collect is going to depend on the situation and circumstances of that employer. For example, if an organisation is very small or does not have a workplace culture that is friendly to lesbian, gay, bisexual or transgender workers, it could be quite harmful to personal privacy to try to monitor sexual orientation and gender identity. Additionally, due to that negative workplace culture some employees may choose not to divulge this information, causing the data to be inaccurate. Your organisation will need to be able to justify which types of information it collects and which it does not.

For further guidance see UNISON’s factsheet on Workforce monitoring for sexual orientation and gender identity, available here: [http://www.unison.org.uk/out/docs_list_wpr.asp](http://www.unison.org.uk/out/docs_list_wpr.asp). Additional information on monitoring protected characteristics within the workforce and other guidance on equality within the workplace, see UNISON’s Equality webpage, here: [http://www.unison.org.uk/equality](http://www.unison.org.uk/equality).

WHY ARE THERE MULTIPLE EQUAL PAY TOOLKITS WITH DIFFERENT NUMBERS OF STEPS?
UNISON recommends that NHS organisations use the NHS Employers’ toolkit, which has three steps. This toolkit was designed in partnership between trade unions and NHS Employers, and is tailored to the NHS.

The Equality and Human Rights Campaign (EHRC) developed a five-step toolkit for performing equal pay audits. The first two steps ask the auditors to gather information and analyse data that NHS employers are legally required to collect under Agenda for Change. Because there is already a national pay structure and a job evaluation scheme in place, the first two steps of the EHRC’s process are unnecessary for NHS employers. It is recommended that you use the NHS Employers’ three step version.
WHAT IF THERE IS A GENERALLY LOW LEVEL OF AWARENESS ABOUT EQUAL PAY AUDITS IN MY WORKPLACE?

Put equal pay audits on the agenda of your next UNISON branch meeting and joint staff forum meeting. Make sure everyone knows that there is little knowledge or enthusiasm within your workplace and that that needs to change. Send emails, post notices on your union notice board and talk with members and non-members about this very important issue.

Some members may be sceptical about why they’re being asked for personal information. Do your best to reassure them that this information is crucial to making sure there is no pay discrimination at your workplace, and that their information will be handled privately and with care.

WHAT IF THE EMPLOYEE DATA COLLECTED UNDER AGENDA FOR CHANGE IS UNSATISFACTORY?

Remind your employer that it is their legal duty to keep this data. If the data is corrupt, missing or otherwise unsatisfactory, they are breaking the law and need to repair the database before the equal pay audit goes forward.

HOW IMPORTANT TO THIS PROCESS IS A JOB EVALUATION SCHEME?

A robust job evaluation scheme is key to successful and accurate equal pay audits, both from the perspective of workers and employers. It will aid in creating a framework for comparing and contrasting the ‘value’ of jobs with different responsibilities, and without it an equal pay audit will take much, much longer to complete.

Other benefits of a robust job evaluation scheme include:

- For both employers and workers, job evaluation schemes can provide evidence in equal pay claims.
- Workers also benefit from job evaluations in terms of their own personal development, progression and satisfaction in their roles.


If your workplace does not have a satisfactory job evaluation scheme, make sure this is put on the agenda for the next joint staff forum and raised at the next branch meeting.

WHAT SHOULD THE BRANCH DO IF THERE IS A DIFFERENCE IN PAY?

As a general rule, a pay gap of 5% or more, or 3% or more if there is a history of favouring one sex, will need exploration and explanation.
Explanation will be needed if the investigation reveals either:

- Differences of 5% or more between the average basic pay or average total earnings of employee groups with different characteristics, such as men and women
- Patterns of basic pay difference of 3% or more (for example, women consistently earning less than men for equal work at all or most levels in the organisation)

Any pay gap however, even if less than 5% or 3%, may still be open to legal challenge.

If it is discovered that employees from protected groups are being paid differently, the burden of proof is on the employer to prove the difference is not linked to discrimination. Some differences in pay will be justifiable, others won’t be.

Differences in pay may be justifiable due to job role and responsibilities, market factors, performance, length of service, hours worked, or starting pay, pay protection and progression. It is never justifiable on the grounds of a protected characteristic, such as gender or ethnicity.

Whether a pay gap is justifiable will be dependent on a number of individual circumstances specific to each organisation, as well as on equal pay case law. In almost all cases this won’t be an easy question to answer. If there is any doubt, seek legal advice.

If the pay gap is found to be discriminatory, your organisation is legally required to fix the situation. Simply discovering or acknowledging the problem is not a solution. The organisation needs to put an action plan in place to remedy the pay discrimination. This action plan should be progressed through the joint staff forum and should make use of staff-side representation. Make sure that the branch is consulted on this action plan.

WHERE CAN I FIND MORE INFORMATION ON EQUAL PAY AUDITS?

Both the Equality and Human Rights Campaign (EHRC) and NHS Employers’ have compiled helpful and easy to follow toolkits and relevant information. UNISON recommends using the NHS Employers toolkit, which can be found here: http://www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/EqualityAct/NHSEqualPayToolkit/Pages/TheNHSEqualPayToolkit.aspx

The EHRC Equal Pay website can be found here: http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/tools-equal-pay/

You can also visit UNISON's webpage on equal pay, here: http://www.unison.org.uk/equalpay/

BRANCH CHECK-LIST

- Get your UNISON branch talking about Equal Pay Audits and their benefits.
- Talk to non-members and management as well to make sure as many people are on board as possible and there are high levels of awareness.
- Have discussions also about establishing or strengthening the job evaluation scheme.
• Make sure the data collected is accurate and safety kept.
• Get management on board with the idea of regular equal pay audits – at least once per year, if not more frequently.
• Encourage your employer to make use of the NHS Employers’ equal pay audit toolkit, which can be found here: [http://www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/EqualityAct/NHSEqualPayToolkit/Pages/TheNHSEqualPayToolkit.aspx](http://www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/EqualityAct/NHSEqualPayToolkit/Pages/TheNHSEqualPayToolkit.aspx)
• After an Equal Pay Audit is performed, make sure the data is closely examined to determine whether any discriminatory practices are in place.
• If pay discrimination is found, make sure a robust action plan is put in place to fully remedy the problems and potentially compensate workers who were disadvantaged.