

# Equal pay litigation in Latvia 3/41/23



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Directive 2023/970 on equal pay came into force in June 2023. The courts have been hearing equal pay disputes for a long time, yet the number of such lawsuits is likely to grow as more information becomes available under the directive. This article looks at equal pay litigation in Latvia and objective grounds for pay gaps.

The directive requires an employer to inform its workers of the company's pay policy and justify the level of pay set for a particular worker compared with other workers employed by the company in the relevant category. It's common practice for employers to keep pay levels confidential, yet the directive will ban this practice.

If pay is unequal, the date of notification will in fact mark a three-year period during which the worker has the right to take the employer to court, seeking not only damages but also interest on arrears and moral damages.

The Court of Justice of the European Union has built extensive case law on this matter, stating that the national courts have competence to establish whether jobs being compared should be considered equivalent.<sup>1</sup> Thus, Latvian case law has a significant role to play in settling equal pay disputes.

A lawsuit would be based on the employer's obligation to provide equal pay for men and women doing equal or equivalent work under section 60 of the Latvian Employment Act. The claim could also invoke section 7 (equal treatment) and section 29 (prohibition of discrimination). A claim of this nature involves a reverse burden of proof, meaning the employer is required to demonstrate that the pay has been set objectively and there is no breach of equal pay.

With not much case law available on this matter because equal pay disputes rarely land in court, the primary decision to examine is the Supreme Court Civil Division's ruling SKC-792/2017. To settle an equal pay dispute, the court will undertake the following assessments:

1. Assessing the true level of the worker's qualification by analysing their professional qualifications, including job description, education and experience.
2. Evaluating the actual performance of work – verifying the substance and nature of work and the circumstances in which it was carried out (e.g. responsibility, skills, and mental and physical abilities necessary for the work). This step is required because job descriptions do not always describe job duties accurately and exhaustively, and workers often carry out wider duties than specified in their employment documents. The case law states that work is comparable in essence, and therefore not only workers doing the particular work but also more experienced colleagues and former employees may be subject to an assessment.<sup>2</sup>
3. Based on the above, the court will assess whether the claimant carried out the same or equivalent work as comparable workers and whether the pay is adequate for the claimant's qualifications and nature of work.

The employer must provide objective grounds for the court to dismiss the worker's claim. Only conditions that are indirectly discriminatory could be warranted.<sup>3</sup> Each situation may have a different basis, but

generally objectivity<sup>4</sup> could be demonstrated, for example, by the following considerations:

- Professional skills/ special qualifications – unequal pay is permissible only if this condition is essential to carry out the job duties or for the particular job.
- Performance – an objective, transparent and detailed assessment of performance may be the basis for a pay gap.
- Market conditions at the time of recruitment may be a justification, but the principle of proportionality means that the pay gap should gradually close over time if equal or equivalent work is being done.
- Job duties and economic value – it's necessary to undertake a careful assessment of the job and make a case that includes an opinion on its economic value and justification of the pay gap.

In addition, the employer could use some other arguments to support the pay level depending on the situation. We need to bear in mind that Latvian case law is expected to evolve as the courts hear more equal pay disputes due to more information becoming available to workers under the directive. Closer to 2026, this will certainly be supported by insights from guidelines drawn up by government agencies.

Although the directive is to be passed into national law by 7 June 2026, conscientious employers have already started to mitigate their legal and financial risks. This makes sense because damages sought in court may be very large, given the number of workers and their length of service.

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<sup>1</sup> Commentary on the Employment Act, 2020, page 170

<sup>2</sup> 14.02.2007. Supreme Court Civil Division's ruling SKC-67/2007

<sup>3</sup> For example, requiring a worker to be capable of using physical strength would be an instance of indirect discrimination. Direct discrimination would be found if the role were offered to men only (gender discrimination).

<sup>4</sup> Equal Pay! EQUINET manual "Preparing a case for equal pay"