

# Pay surveys - provisions and outcomes



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# Pay surveys – provisions and outcomes

This publication describes the background to current Swedish legislation on equal pay surveys and what the rules mean. It also summarises what has emerged from the scrutiny and supervision of this legislation. On 1 January 2009, a new, comprehensive Discrimination Act entered into force. The provisions on pay surveys contained in the old Equal Opportunities Act have been incorporated into the new law, with certain changes. Compliance with the Discrimination Act is supervised by the Equality Ombudsman.

## A Swedish model

In Sweden it is the social partners – trade unions and employer organisations – who are responsible for wage formation. Pay and general terms and conditions of employment are regulated by collective agreements between the partners. In Sweden, pay is traditionally set in free negotiations without state inference. Minimum pay levels are established in collective agreements and are not regulated by law.

Under the Swedish model, the social partners negotiate the terms and conditions that are to apply in the labour market. There are over 100 contracting parties in the Swedish labour market – 60 unions and 50 employer organisations – and they negotiate some 600 collective agreements. Bargaining takes place at various levels, the most important being the national level, at which nationwide collective agreements are negotiated for whole sectors. If the partners cannot agree, they usually have the option of taking industrial action.

Should a dispute develop over how a collective agreement is to be interpreted and the matter cannot be settled at the negotiating table, a partner can institute legal proceedings.

Wage formation in Sweden has changed radically over the past twenty years. From national negotiations that set pay all the way down to the individual employee, to agreements that only set minimum pay levels for different areas or contain no guarantees whatsoever. Instead, pay is set by means of personal talks between employees and their immediate superiors.

When the provisions on equal pay surveys were introduced into the Equal Opportunities Act in 1994, it was widely seen as a departure from the Swedish pay bargaining model. The reason given for this new approach was that non-objective differences in pay between women and men are unjustifiable.

The responsibility for ensuring equal pay for work regarded as equal or of equal value lay with the country's legislators. A ban on pay discrimination – albeit with limited scope – had already been incorporated into the first Equal Opportunities Act introduced in 1980.

In 2001, both the ban on pay discrimination and the provisions on equal pay surveys were made more stringent and explicit. The law now gave specific instructions on how pay differentials were to be surveyed and analysed, and required employers to draw up action plans to remedy those that could not be justified. One of the sources of inspiration for the wording of the new rules was the Canadian equal pay legislation introduced in the province of Ontario. The guidance provided by European court rulings on how work and pay could be

compared when determining what constituted equal work or work of equal value also had a considerable influence. The provisions that applied after 2001 have been transferred to the new Discrimination Act, although with certain limitations.

Swedish legislation on pay surveys has influenced the country's collective agreements. Today, most employees are covered by agreements prescribing that pay is to be set on an objective basis and incorporating principles concerning equal treatment and equal pay. They also include prohibitions against discrimination. Often, these agreements contain provisions stipulating that local pay reviews are to be preceded by pay surveys and analyses of one kind or another. The aim of these rules is to achieve equal pay between women and men. (National Mediation Office: Collective Bargaining and Wage Formation in 2008.)

## Pay differentials

Pay survey provisions have been introduced into the Discrimination Act in view of the fact that non-objective, unjustifiable pay differentials between the sexes (gender pay gaps) still exist. (Pay differential is defined as the average difference in hourly pay for women and men throughout the labour market, and is expressed in terms of women's pay as a percentage of men's.)

Until the early 1960s, collective agreements in Sweden allowed employers to pay women and men differently for the same work. At this time Sweden ratified ILO Convention 100 on Equal Remuneration, which prohibited such a practice. This had a favourable effect

on pay, and gender gaps rapidly began to narrow up until the early 1980s, only to widen again somewhat towards the end of the decade. Since then, the pay gap has remained surprisingly stable, at 16–18 per cent.

The most recent figures show that the difference in pay between women and men in Sweden is 16 per cent. In other words, women's pay averages 84 per cent of men's pay. If gender differences in terms of occupation, qualifications, age, working hours and workplace are taken into account, the gap narrows to 6,6 per cent. (National Mediation Office: Collective Bargaining and Wage Formation in 2009)

Sweden has one of the most gender-segregated labour markets in the world. Only 10 per cent of women and men work in occupations with a gender balance (40-60 per cent of each sex). The single most important explanation of this is that women and men work in different occupations. Jobs dominated by women are systematically under-valued. On average, women are better educated than men, but men enjoy a higher financial return on their education.

The remaining pay differential of 6,6 per cent cannot be explained with the aid of the information currently available in Sweden's official statistics on wages and salaries. The possibility that it could be a manifestation of unjustified differences in pay and direct discrimination as defined in the Discrimination Act cannot be ruled out.

One positive development in recent years, however, is a slight narrowing of gender pay gaps (latest measurable period, 2005–2008).



## Pay survey provisions

Differences in pay between women and men began to be successfully reduced during the latter half of the 20th century, then stagnated for a while before starting to increase once again towards the end of the 1980s.

On 1 July 1994, therefore, a provision was introduced into the Equal Opportunities Act requiring employers with ten or more employees to survey pay differentials between women and men performing different kinds of work, and also for different employee categories.

On 1 January 2001, the wording was made more stringent and explicit. Under this amendment, all employers were required to survey and analyse their provisions and practices regarding pay and other terms and conditions of employment. They also had to survey and analyse differences in pay between women and men performing work regarded as equal or of equal value. A definition of the term 'work of equal value' and a more specific explanation of how the process was to be implemented were both incorporated into the law. Employers with at least ten employees were also required to draw up an action plan for equal pay. This work was to be carried out in cooperation with the employees and their organisations. Pay surveys had to encompass all employees in the company or organisation concerned.

On 1 January 2009, the Equal Opportunities Act was replaced by an all-inclusive Discrimination Act. For the purpose of detecting, remedying and preventing unjustified differences in pay and other terms and conditions of employment between women and men, employers are now required to undertake a pay survey

and analysis every three years. The obligation to draw up a written action plan for equal pay only applies to employers with 25 employees or more. Action plans now have to be updated at least every three years.

The more limited scope of these provisions reflects the Government's desire to reduce administrative costs for private companies. A number of employer organisations at national level have complained that work on the pay survey provisions has been complicated and time-consuming.

Further details of the pay survey provisions, which are to be found in Chapter 3, Sections 2, 10, 11 and 12 of the Discrimination Act:

### Pay provisions

Employers are to survey and analyse pay criteria and other terms and conditions of employment for their employees to determine whether they are gender-neutral and apply equally to women and men. All pay provisions that may be regarded as remuneration for work are to be scrutinised from a gender equality perspective. This may include such aspects as the wording of a collective agreement, fringe benefits, or criteria for assessing an employee's performance. Such reviews then serve as a basis for further analysis of differences in pay for equal work and work of equal value.

### Equal work

Employers are to survey and analyse pay differentials between women and men performing equal work to determine whether these are objectively based and have no connection with gender. Equal work is defined as jobs

involving the same or virtually the same tasks.

Analyses must explain the pay gap in its entirety – it is not enough to present a number of conceivable explanations. If individual pay setting is practised at the workplace, it is usually necessary to go down to the individual level to determine whether there is any justifiable reason for a difference in pay. The analysis is accompanied by a survey of wage spread and wage growth for women and men performing equal work.

### Work of equal value

Employers are to survey and analyse pay differentials between work dominated by women and work of equal value not dominated by women, to determine whether these are objectively based and have no connection with gender. Work of equal value is defined as jobs that considered together impose equivalent demands on the employee in terms of knowledge and skill, responsibility, effort and working conditions.

At this stage, an analysis can be carried out at group level to determine whether any structural undervaluation is present that might be associated with work duties typically performed by women, either now or in the past. Pay differentials are analysed within each 'equal value' group between those performing (lower-paid) female-dominated work and those performing (high-paid) work not dominated by women. Differences in wage spread and wage growth between these two categories are also to be studied. Should any female-dominated work be valued more highly than other work that is not dominated by women, yet commands lower pay, the pay differential must be explained.

## Action plan

The action plan is to include a report on the results obtained in the survey and analysis. Unjustifiable differences in pay between women and men performing what is regarded as equal work or work of equal value must be remedied as soon as possible and within three years at the latest. The action plan is to include a cost estimate for implementing any pay adjustments that may be required, and a timetable specifying when such adjustments are to be made. Other measures taken in pursuit of equal pay are also to be specified in the plan.

## Cooperation

Employers' equal pay analyses are to be carried out in collaboration with the employees, usually represented by their union organisations. To ensure that they are able to collaborate properly, unions are entitled to have access to whatever information they need for their work on pay surveys. The requirements in the Discrimination Act concerning pay surveys, analyses and action plans have entailed a partially new role for both unions and employers, since the task of analysing gender equality and equal pay does not involve bargaining or a collective agreement. Instead, it involves detecting, remedying and preventing unjustified differences in pay or other terms and conditions of employment.

Sweden's legislators have chosen to place considerable responsibility on the social partners in this matter. If cooperation between them fails, however, it is the employer who must assume ultimate responsibility. Where no union organisations are present, employers are required to cooperate with other employee representatives.

## Pay survey and analysis – step by step

1. Survey and analyse what pay provisions and other terms and conditions of employment apply.
2. Decide which jobs should be regarded as equal.
3. Analyse differences in pay, wage spread and wage growth for women and men performing work regarded as equal.
4. Define on what grounds different jobs are regarded as being of equal value and group them together.
5. For each group of jobs of equal value, analyse differences in pay, wage spread and wage growth. It is particularly important to compare female-dominated jobs against jobs that are not or are not usually dominated by women.
6. Decide what pay adjustments are required. Draw up a cost estimate for this.
7. Decide a timetable for the pay adjustments.
8. Examine whether other types of measures may be warranted.
9. Draw up an action plan for equal pay.

## Implementing pay surveys

As of 1 January 2009, the Equality Ombudsman is responsible for supervising the provisions on pay surveys now incorporated into the Discrimination Act. Previously, when the provisions were part of the Equal Opportunities Act, this was the task of the Equal Opportunities Ombudsman (JämO).

Guidance and advice, development and supervision are important aspects and are all integral to work in this area. This approach could be said to reflect the supervisory

authority's primary task, which is to persuade employers to comply with the legal provisions voluntarily. Enhancing their knowledge and understanding of what pay surveys involve and their commitment to work in this area, therefore, is vital if the desired results are to be achieved in pursuit of equal pay.

During the first few years after the introduction of the more stringent provisions in 2001, much effort was devoted to informing and training employers and developing material and methods that would make it easier for them to comply with the law. Advisory material and tools were available at the website and could also be ordered in printed form.

In the course of its duties, the authority has learnt what problems hamper implementation and has built up a firmer basis on which to develop its methods of scrutiny and its support for local parties. Its studies have shown that there is a clear link between on the one hand the extent to which the employer is familiar with pay surveys and is willing to undertake them and, on the other, the employer's ability to make decisions on pay adjustments.

Official reviews or studies tend to attract considerable media attention, and this has added to the pressure on employers to comply with the law and has also led to the detection and remedy of further unjustified pay differentials.

Should an employer refuse to survey pay in accordance with the Discrimination Act, or should case-law be needed to determine how the provisions should be interpreted in some respect, the Ombudsman can apply to a special committee for a default fine order. This

option has seldom been exploited, one of the reasons being that cases coming before the committee have tended to take a very long time to settle. The 'threat' of being reported to the committee, however, has been effective in persuading recalcitrant employers to initiate pay surveys.

Over the period 2001–2008, several thousand pay surveys from employers have been scrutinised. Together, they have involved more than a quarter of all employees in the Swedish labour market.

In 2003 and 2005, the Ombudsman reported to the Government on the results yielded by the tougher rules from 2001. The agency was granted additional funding by the Government in 2006 to enable it to intensify its efforts to support and scrutinise employers' work on pay surveys. This prompted its most ambitious study to date, encompassing almost 600 employers. The results are briefly described below.

- 60 per cent of employers had introduced pay adjustments or other measures in order to achieve equal pay for women and men performing work regarded as equal or of equal value.
- 44 per cent had identified unjustified pay differentials that were to be remedied. Pay adjustments totalled at least SEK 72 million (approximately 7 million euros).
- The pay adjustments concerned at least 5 800 employees, of which about 90 per cent were women. This means an average monthly pay rise of just over SEK 1 000 (100 euros) per person.

- A third of the employers had taken steps other than pay adjustments to achieve equal pay. These included professional development for staff members, training for pay-setting managers, recruitment measures to install more women in senior positions, a brake on wage growth for men who by comparison with female colleagues had received a higher wage than their current position justified, e.g. because they had previously held managerial posts.

## Experience and conclusions

The pay survey provisions are a valuable instrument for achieving equal pay at individual workplaces. They have been a success, and have resulted in pay adjustments both for individuals and for groups in female-dominated occupations. The latest report shows that half of the employers targeted had detected unjustified pay differentials.

Preventive work in pursuit of equal pay has proved more effective than both dispute negotiations and legal proceedings. A significantly greater number of women have been awarded higher pay as a result of their employers' pay surveys than as a result of pay discrimination complaints or court proceedings.

The more stringent rules introduced in 2001 led the social partners to concentrate more on clearly defined pay criteria. The pay analysis method prescribed by law has served to support and supplement national agreements which state that pay must be individual, differentiated, based on the job's degree of difficulty and the individual's skills, and decided locally.



Employers also emphasize a number of advantages deriving from their work with pay surveys. They state for instance that they are better able to apply their pay criteria, that they have acquired a better basis for individual pay-setting, that the pay survey process has led to greater awareness and discussion of gender equality in the organisation, and that it has also given them a chance to collaborate with the unions. Employers who accept the need for equal pay and whose pay-setting is transparent are considered serious, credible and attractive, which adds further value.

The pay survey process also helps draw attention to other gender equality measures needed to remedy the kinds of pay differentials between women and men that are a result of the different conditions governing their working lives. Such measures may include making it easier for both women and men to reconcile children and jobs, providing training and introducing recruitment measures to promote a better gender balance in all positions in the organisation.

Industry-specific advisory material compiled jointly by national parties to facilitate work on the issue among local parties is an extremely useful aid in the task of enhancing knowledge and awareness.

A number of union organisations have undertaken their own scrutinies and investigations. This more informal type of 'supervision' is one of the reasons why considerably more attention is focused on the rules and regulations nowadays.

The fears expressed about the pay survey provisions – to the effect that they constituted a threat to the Swedish

collective bargaining model – have not been realised. Rather, experience shows that the pay surveys required by the Discrimination Act rhyme well with the wording in collective agreements concerning the need for objectivity when setting local and individual pay.

Achievement of equal pay is an endeavour that must be constantly pursued and that must proceed on several planes simultaneously. Legislation and collective agreements may be viewed as interdependent, drawing on one another for assistance in pursuit of the goal of equal pay for women and men performing equal work or work of equal value.

As the supervisory authority, the Equality Ombudsman is concerned with

- encouraging employers in their efforts to achieve equal pay by detecting, remedying and preventing unjustified pay differentials based on gender,
- activating employer and union organisations in the fight for equal pay,
- developing the authority's methods of scrutiny
- focusing media attention on issues relating to differences in pay between women and men.

The Discrimination Act represents a practical tool for achieving equal pay at workplace level. To boost compliance with the provisions, the social partners have a responsibility to incorporate into their bargaining the application of the pay survey provisions at workplace level and to negotiate collective agreements on how such work is to proceed locally. Contractual provisions can supplement and reinforce the efforts required of the local partners under the Discrimination Act.

Employee and employer organisations at national level also have a responsibility to support their local partners in the pay survey process by providing training, taking other knowledge-enhancing measures and offering industry-specific guidance.

Sweden's employee organisations with their high level of unionisation (75 per cent of the country's wage-earners belong to a union) are a key actor in the fight to achieve equal pay, and they have a responsibility to negotiate collective agreements that close the gender pay gap.

Besides ongoing pay surveys at workplaces, other steps need to be taken at industry, sectoral and national level if the average pay gap between women and men is to be reduced. According to the National Mediation Institute, clauses in union agreements specifying priority for groups dominated by women would cause pay differentials between women and men in the contractual area concerned to level out. The coordination of efforts by different unions to prioritise female-dominated industries could help close the pay gap between women and men in a range of industries.

At national level, a purposeful, long-term effort is required. Far-reaching cooperation between the social partners is needed across sectoral lines during the bargaining process, along with broad agreement that contractual areas dominated by women should be given priority so as to achieve enduring results. In addition, general policy measures are needed to strengthen paying capacity among public employers. (National Mediation Institute, *Collective Bargaining and Wage Formation in 2008*.)

The Equality Ombudsman, DO,  
works for the equal rights of all people and  
against discrimination on grounds of sex,  
transgender identity or expression,  
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disability, sexual orientation or age.

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