

*The Social Partners  
Responsibility to Secure Equal  
Rights as „Owners of their  
Structures“ –  
The Case of Equal Pay.*

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***Equal Rights –  
a precondition for the welfare state and a well  
functioning democracy***

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The principle of equal treatment/opportunity applies to all areas of society...

Education, Work and Family-life  
and

Consequences of lack of gender equality

The question is: How are individuals secured their rights to equal treatment / equal pay regardless of sex?

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***Sources of law:  
Equality and non-discrimination***

**Human Rights Conventions**

- CEDAW and ILO

**National Law** (Norway: mrl./lkstl. § 21 and § 22/aml. § 13-1 og § 13-3)

**EU – Article 157 / EEA Article 69,**

- Equal Treatment, Directive 2006/54/EF
- Equal Treatment in goods and services, Directive 2004/113/EF

**Case law and public practice**

**Gender equality and equal pay is about legal rights. Politics is about choosing the best tools for ensuring the law.**

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## ***Lack of Equal Pay – a complex discussion***

Sex/gender – cross all discrimination grounds; ethnic background, disability, religion, etc.

Sex/gender – lifelong perspective, consequences stemming from stereotypical choice manifests years later...

Sex/gender – stereotypes, prejudices, «just how it is», lack of equality is hard to see

**A multitude of norms, stemming from historical patterns, traditions and stereotypes, form a web of intertwined reasons that together explain why there is unequal pay**

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*Each thread of the web needs to be identified*

Which of the threads are the responsibility of the social partners?

Which of the threads are a common responsibility to address?

Which threads are visible in the employment market, but were produced years ago in kindergartens and schools?

**Individual and Structural Protection against discrimination**

How can we address: the MICRO level  
the MACRO level

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## *The individual protection against discrimination*

### The Rule of Equal Pay:

- Definition of Pay
- Comparator within the entity
- Each of the elements: competence, effort, responsibility, work conditions, over all assessment

Valid reason for different pay: seniority, quality of the work, marketvalue

Shared burden of proof

Knowledge of other persons pay

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## *The individual protection against discrimination*

Do all pay negotiators, employers and employees representatives have sufficient knowledge of the law?

In Norway – 1) very few equal pay cases both to the Ombud and the Courts. 2) hard to document how the structural factors affect the individual complaint

A few complaints to the Ombud, where the social parties after completing the negotiations had a feeling that this outcome wasn't really fair compared to female dominated profession, can the Ombud/Courts upright poor negotiations?

Work-evaluation: important tool, still addressing the micro-level. If applied at a macro-level (national) it will threaten the bargaining system

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## ***Protection against discrimination on the structural level***

Of all the threads in the web explaining the pay gap, some factors have been identified:

1. Gender segregated **education sector**
2. Traditional **gender** patterns in families, **stereotypes**
3. The gender segregated **employment** market
4. **The public sector**, a tough pay negotiator
  - The Norwegian Equal Pay Commission recommended that the State granted 3 billion NOK (Euro 375 mill) to increase the salary levels in typical female dominated professions and low paid professions...would have stirred the collective pay negotiation power balance.....



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## ***Protection against discrimination on the structural level***

Of all the threads in the web explaining the pay gap:

1. Gender segregated **education sector** provides the gender segregated employment market:
  - Increased pay level in the public sector would lead to a more even gender balance in choice of education?
  - Research shows that gender stereotypes are being reproduced in kindergartens and schools.
  - Boys are at risk, 70% of all extra special education is aimed at boys and high school drop-out rate is higher for boys than girls. University level: 7 of 10 students are female. How will this affect future equal pay discussions?

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## ***Protection against discrimination on the structural level***

### **Education sector :**

- *How can the social partners contribute?*
  - Add focus and pressure on the authorities – gender equality issues must be addressed holistically
  - Organisations have to some degree addressed gender stereotypes in their own professions, education and work
  - Gender Equality knowledge locally? Both:
- The law: to be interpreted and used by non-lawyers
- The practical programs: Annual reports and Action-plans. Evaluation and reflection processes

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## ***Protection against discrimination on the structural level***

Threads in the web explaining the pay gap :

### **2. Traditional gender patterns in families:**

- Part-time work. How can the cost at the private level be made visible?

If it is a common family decision that one of the parties will work reduced for some time, could the couple sign off on their tax-return annually that they share the accrued pensionpoints for that year?

Women choose to be low-income retired?

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## *Protection against discrimination on the structural level*

- **Traditional gender patterns in families, cont.:**

- Maternity leave versus parental leave/fathers quota

The fathers right to an individual **paternity leave** of the parental leave is under pressure in Norway

- Recently been reduced from 14 to 10 weeks
- Proposal: Additional exceptions makes it more easy to transfer the leave from father to mother

A unanimous voice from the social partners, employers and employee's organizations – NO, this is a threat to equality, women will be even longer away from work and more substitute work/temporary work for employers to deal with...Men need their legal right to negotiate with the spouse and the employer

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## ***Protection against discrimination on the structural level***

- **Traditional gender patterns in families and in employment, cont.:**

Is the enterprise policy for enhancing women with small children`s careers addressing this as women with children issue (stressing the stereotypes)

or

is the enterprise policy in general adjusting for employees with care obligations, men and women? The latter case makes it normal for young ambitious employees to succeed while both caring for a job and ones family.

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## *Protection against discrimination on the structural level*

- **3. Traditional gender patterns in employment:**
  - Full- or part-time work culture?
  - Working-time regimes, shift- and rota-work
  - What is the base number of employees (Grubbemannung)
- The rota-time planners – do they evaluate the consequences in regard to the GEA?
- EU-Court : economic reasons are not in themselves valid reason to discriminate, for instance in the way you organize your work
- The good mother norm – are career women supported?

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# ***Gender Equality – What are we talking about?***

Law

Economics

Emotions

Values

Fortunately – equal treatment regardless of sex is  
a fundamental human right

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## ***CEDAW article 5***

States Parties shall take all appropriate measures:

a. to modify the social and cultural patterns of conduct of men and women, with a view to achieving the **elimination of prejudices** and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on **stereotyped roles for men and women;**

b. to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the *common responsibility of men and women in the upbringing and development of their children,*



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## *Who defines the stereotypes?*

- Politicians in the design of laws (holistic or counterproductive?)
- The social partners
- Parents
- The Education Sector
- Sports
- Religion
- Culture (norwegian/pakistanis/somalis)

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## *How to achieve equal pay?*

- Prohibition against discrimination (rules of law)
  - Working Environment Act
  - Gender Equality Act
- Rules of prohibition are not in themselves sufficient to secure equal pay:
  - Identification of the hindrances/challenges
  - Measures
  - Activity duty

Owners of the structures must be responsible.

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## ***1. Identification – Protection against discrimination on the structural level***

- The holistic approach

The interlink connection between education, work and retirement must be evaluated in an equal pay/equality perspective. Responsibility for the politicians, designing a strong legal system for equality measures, controls and sanctioning.

- Serviceproviders as insurance companies must ensure that their services do not lead to direct or indirect differential treatment because of gender. Directive 2004/113

The responsibility to identify the discriminating structures is «somebody`s responsibility»

Directive 2006/54 – Article 21 sociale dialogue

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## ***2. Activity-duty***

- An awareness is forced on the parties through a duty to report on equality issues (including equal pay) annual reports and documentation requirements

GEA section 12 – public authorities duty to actively work for gender equality

GEA section 14 – the social partners activity duty (within their organisation)

GEA section 23– Employers activity-duty, sec. 24 – Employers reporting duty

(but there is also a need to supply knowledge about gender equality issues. More funds to the Ombud, added pressure on the social parties)

- Dialogue-meetings about equality in the employment market, meetings between Ministers and the social partners (tri-partite cooperation)

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### ***3. Absolutely necessary***

- Effective surveillance/control
- Effective sanctioning, it has to be consequences when the law is disrespected;

But is the anti-discrimination laws being used enough?

ARD 2013-11, threshold of 14 hours work per week to be a member of the additional pension system,  
(case 170/84 Bilka)

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## ***Norways 8th report to the CEDAW (2012)***

- Committee: Norway overestimates the degree to which part-time employment is the result of women`s choice
- Structural patterns – gendered choices in a society perspective – provide direct consequences in the pension systems
- ME: the same complex weave of norms and gendered choices apply to the case of equal pay.

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## ***The individual is vulnerable in comparison to the mighty systems***

- The problem i «privatised», knew about low pay when you chose your education
- Complex systems: the social partners negotiate, rules on working time and average w.time and rota-rules
- Powerful systems, insurance systems and pension laws

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- Equal Pay is best secured through a tight co-operation between the legal protection against discrimination on an individual and structural level
  - Proactive responsibility for the owners of structures to actively address negative gender stereotyping is necessary to secure rule of law and equal pay.

Thank you for your attention!