

Submission to LegCo

Equal Pay for Work of Equal Value

Background

The Equal Opportunities Commission (EOC) submitted its first report on “equal pay for work of equal value” (EPEV) to the Manpower Panel of the Legislative Council in May 2000. At that time, it was reported that the problem stemmed from the fact that men and women are often segregated into different types of jobs due to career choices based on socialization and the expectations of the job market. It was also reported that studies showed that male-dominated (75% or more male) jobs often pay better than female-dominated (75% or more female) jobs.

2. The basis of the need for implementation was traced back to the international treaties signed by the Government such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as the local legislative history during the passage of the Sex Discrimination Ordinance (SDO).

3. A Task Force was established in May 2000 to promote and recommend ways to progressively implement the principle of “equal pay for work of equal value”. The Task Force divided the implementation into three phases. The first

phase is to analyze pay and personnel data within the public sector and see if salary differentials exist, and if so, in what areas. Since the public sector pay is closely tied to that of the private sector, this will guide the work into the second phase, which is to look at companies with over 200 employees. The third phase is to go beyond this into the small and medium size enterprises.

Status Report

4. The EOC has obtained, with the assistance of the Home Affairs Bureau, a \$2 million capital grant for implementation of the project. Since the money is limited, the Task Force felt that it was important to concentrate and do a good job on the first phase of the project—looking into the public sector—to gain experience and understanding.

5. The Task Force has decided on the following objectives:

- To select two pilot projects and evaluate selected jobs to see if inequities exist, and if so, in what types of jobs.
- To build capacity and expertise.
- To raise public awareness.
- To put in place methods for the enforcement of equal pay for work of equal value.

6. The objectives would be achieved with the assistance of staff at the Commission, experienced international experts, and a local consultancy. The Task Force felt that initially input from international experts who have the relevant experience would be required. EOC staff would provide co-ordination and

administrative support. The EOC has done some preliminary analysis and will be discussing its initial observations with the international experts.

To select two pilot projects and evaluate selected jobs to see if inequities exist, and if so, in what types of jobs

7. The pilot projects will focus on jobs in the Government and the Hospital Authority. The Civil Service is the largest employer in Hong Kong with 185,868 employees—124,303 males and 61,565 females. The Hospital Authority hires the largest number of female employees—35,402—and another 15,873 males. (All figures are as of June 30, 2000).

To build capacity and expertise

8. The two international experts will assist the designated persons assigned to work with them at the Civil Service Bureau and the Hospital Authority in building capacity and expertise in the skills of evaluating for job worth. The experts and consultants will also conduct training workshops.

To raise awareness

9. The Task Force Convener and the EOC staff have been giving talks to human resource specialists and non-governmental organizations throughout last year. In addition to the talks, a conference will be convened in September/October featuring the two experts and a private industry expert (from the United Kingdom) on best practices in EPEV.

To put in place methods for the enforcement of EPEV

10. The United Nations Committee on Economic, Social and Cultural Rights, in their concluding observations, published 11 May 2001, recommended “the enactment of legislation on equal pay for work of equal value as provided for in the Covenant”. Without such legislation in place, enforcement of comparable value will be dependent on the following sections of the Sex Discrimination Ordinance:

Section 11. Discrimination against applicants and employees

- (1) It is unlawful for a person, in relation to employment by him at an establishment in Hong Kong, to discriminate against a woman—
 - (b) in the terms on which he offers her that employment;

- (2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Hong Kong, to discriminate against her—
 - (a) in the way he affords her access to ... any other benefits, ... or by refusing or deliberately omitting to afford her access to them;
 - (b) in the terms of employment he affords her; or
 - (c) by ... subjecting her to any other detriment.

Section 64. Functions and powers of Commission

- (1) The Commission shall—
 - (a) Work towards the elimination of discrimination;

- (b) Promote equality of opportunity between men and women generally;

11. While the Government, in two letters to the Legislative Council, expressed its views that the SDO would allow a woman to sue for unlawful discrimination if she could prove that a male colleague performing ‘work of equal or comparable value’ was being paid more than her without any non-discriminatory justification even though “the Ordinance makes no reference to the notion of equal pay for work of equal value, in determining whether say, a woman was discriminated against in terms of pay, the court would need to consider whether she was doing work of equal or comparable value to that of the man with whom she wished to be compared. Whether the UK Equal Pay Act would be followed in this respect would be for the court to decide (1996).” In 1999, the Government reaffirmed this position in another letter to the same Member by stating, “The SDO outlaws sex discrimination in all areas of employment, including terms of work, recruitment, promotion, staff transfers, or training. It is left to the Courts to determine whether, in a particular instance, the work taken by a female plaintiff is equal – or of comparable value to – that of a male colleague with whom she wishes to be compared.”

12. These letters to the Legislature indicate that the Government assumes that the SDO requires equal pay for work of equal value and that the courts need to determine the factual question of whether the work done by the female plaintiff is, indeed, of comparable value to the male colleague with whom she wishes to be compared. The Government’s assumptions, however, do not guarantee the agreement of the courts that the SDO is adequate in this respect and that no equal pay for equal value legislation is necessary. If such a complaint is filed, the courts

may adopt a narrow interpretation of Section 11 of the SDO and rule that it only covers equal pay for equal work.

13. The work for the first phase will be repeated for each of the other two phases—large companies and SMEs. In each of these phases, the consultant, working in conjunction with the appropriate international experts and EOC staff, will:

- Identify the predominantly female and male job classes.
- Perform sample analysis of the pay data using gender-neutral tools to compare these jobs and to identify problems, if any.
- Develop guidelines for employers and develop, in parallel, a model template.
- Report findings and provide training to employers and employees.

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Equal Opportunities Commission