

## **The legal system;**

- i. Equal Pay for Equal Work Regardless of Sex;**
- ii. Equal Pay for Jobs of Comparable Worth;**
- iii. Non-discrimination on the Basis of Race, Colour, Religion, Sex, or National Origin;**
- iv. Apprenticeship Programs, Retaliation, and Employment Advertising;**
- v. Boni Fide Occupational Qualification; Preferential Treatment; National Security**
- vi. Apprenticeship Programs, Retaliation, and Employment Advertising;** apprenticeship is a system for training a new generation of practitioners of a trade or profession with on-the-job training and often some accompanying study. Apprenticeships can also enable practitioners to gain a license to practice a regulated occupation.

### **Equal Work**

Equal pay for equal work is the concept of labour rights that individuals in same workplace be given equal pay. Equal pay relates to the full range of payments and benefits, including basic pay, non-salary payments, bonuses and allowances.

- Equal Pay Act cases often hinge on whether the plaintiff can show that she and the comparator perform substantially equal work. The two jobs do not have to be identical or carry the same job title; however, duties and tasks actually performed on the two jobs must overlap substantially. Given a core of common tasks, the analysis then focuses on the tasks that differentiate the jobs. At this point, the Equal Pay Act incorporates the logic of job evaluation. Job evaluation is a systematic process for rating jobs in terms of certain compensable factors. The requirements of jobs, rather than the performance of individuals, is at issue in job evaluation. Jobs that are rated higher are more demanding and valuable to employers and tend to be paid more.
- The Equal Pay Act cites four compensable factors to be used in determining whether jobs are substantially equal: skill, effort, responsibility, and working conditions. Skill refers to the level of ability, education, training, and experience needed to perform the jobs. Effort is the amount of physical and mental exertion required on the jobs.
- Responsibility refers to things such as accountability for outcomes, supervisory duties, and involvement in important decisions. Working conditions has a more restricted interpretation under the Equal Pay Act than it does in other areas of employment law. It refers to “hazards” (how

dangerous the job is in terms of physical hazards) and “surroundings” (e.g., elements such as fumes, outside work in cold weather). For jobs to be substantially equal, there must be significant commonality in duties; the jobs must require

- Substantially equal levels of skill, effort, and responsibility; and they must at least be similar in terms of working conditions.
- What if one or more potential comparators are earning a higher rate of pay and others are not? Courts have generally recognized prima facie cases of pay discrimination where some comparators of the opposite sex, but not all, earned a higher rate of pay than the plaintiff. In one such case, the court explained that:
  - Taken literally the “some males made the same or less” rule would force a court to hold that a female employee could not make out a prima facie case of wage discrimination where she was one of ten females paid half as much as nine males for “equal work,” so long as a tenth male was paid the same or less than the female workers. In such circumstances it seems as least highly likely that the employer is “discriminating between employees on the basis of sex,” but the employer would nevertheless be insulated from suit.
- **Equal Employment Opportunity; (EEO)** is the term used to describe laws, regulations, and processes related to fair treatment of employees.

**Antidiscrimination** law which has to do with:

Basing employment decisions on factors other than worker qualifications is illegal in Zambia. The cost of litigation penalties, and harm on the company's reputation can be substantial when violations occur.

**Discrimination** means treating people differently and not treated fairly because of characteristics they possess that have nothing to do with their ability to perform a particular job.

**Equal Employment opportunity** means that employment decisions must be made on the basis of job requirements and worker qualifications.

Equal employment opportunity laws prohibit specific types of discrimination in the workplace. EEO laws and executive orders are intended to eliminate employment discrimination.

- **Non-discrimination on the Basis of Race, Colour, Religion, Sex, or National Origin;**

The primary objective of antidiscrimination legislation is to ensure that individuals are given equal opportunity in the workplace. The employment act outlaws employment discrimination on the basis of race, colour, national origin, sex and religion in any aspect of employment from hiring to firing and everything in between. These traits are called protected characteristics and referred to as protected classes.

### **Noncompliance**

Noncompliance with antidiscrimination laws and executive orders can lead to negative consequences, including fines to the company and charges of discrimination that result in costly time-consuming legal battles.

- **Employment discrimination or unlawful discrimination:** unlawful discrimination occurs when those decisions are made based on protected characteristics, which are individual attributes such as race, age, sex, disability or religion that are protected under equal employment opportunity laws and characteristics.

**Protected class:** is a group of people with a common characteristic who are legally protected from employment discrimination on the basis of that characteristic. Protected classes are created by state laws. Protected classes include the following: race, colour, religion, national origin, sex, age, disability, veteran status, genetic information and citizenship.

- **Boni Fide Occupational Qualification; Preferential Treatment; National Security**

However, sometimes the nature of the job requires that you choose candidates for employment consideration on what is referred to as Bona Fide Occupational Qualification. A BFOQ exists in a narrow circumstance when a protected characteristic can legally be used to make an employment decision:

1. Requires a business necessity
2. Relationship to legitimate business goals
3. Essential to business survival

4. It is important to understand that employers can never use race or skin colour as a BFOQ.

One of the best ways to understand BFOQ exceptions is to look at examples where the courts have allowed what would otherwise be considered discriminatory practices. For instance mandatory retirement ages for public and mass transit drivers and pilots, churches can legally hire only members of the church and reject other religions, actors and models of particular protected classes for authenticity.

### **Discriminatory Practices**

Discriminatory practices can typically be grouped under one of four categories:

1. Disparate treatment: treating differently
2. Disparate impact: unintentional impact
3. Harassment: unwelcome treatment
4. Retaliation: reacting against employees for making a complaint of harassment.

The main enforcement bodies for equal employment opportunity in Zambia are the Ministry of Labour and Social Securities and industrial relations court.

The ministry of labour is mandated to lead in the formulation and implementation of national employment labour and social security policy. The ministry is also responsible in monitoring national productivity, occupational safety and health, and relations between employees and their employers.

While the industrial relations court has original and exclusive jurisdiction in all industrial relations matters, involving the inquiry into and making decisions in collective agreements and recognition agreements, and adjudicating upon any matter affecting the collective rights.