

In the Know....



Asda: Save Money. Live Better?

Asda's mission statement 'Save Money, Live Better' has taken on a different meaning in the light of ongoing legal proceedings from a group of female employees who claim that Asda has breached equal pay laws.

The Argument

Over 9,500 female employees have begun a legal challenge over their rates of pay. They work in Asda stores, generally on the checkout or stacking shelves. The employees who work in Asda distribution centres (who are predominantly male) reportedly earn around £1 - £3 per hour more than the employees who work in store. The female employees contend that they should be paid at the same rate as the male employees and Asda's failure to ensure this is a breach of equal pay legislation because the only apparent reason, so their argument goes, for the differential is their gender. The Equality Act 2010 makes it unlawful to pay men and women different rates for doing the same job.

The Same Job

Clearly the male employees at the distribution centres are performing a different role to the female employees; the females work in store serving customers and the males work in the 'back of house' ensuring that stock is supplied to the stores on time.

However, this alone does not defeat the equal pay argument because it is possible for males and females to do different jobs but still be comparable workers in an equal pay argument.

Equality of pay must be achieved where roles fall into one of the following categories:

- **"Like work"** - the same or broadly similar work where any differences are not of practical importance;
- **"Work rated as equivalent"** - work which could be different in nature, but which has been rated under a job evaluation scheme as being of equal value.

- **"Work of equal value"** - different work but of equal value in terms of factors such as effort, skill and decision making.

The female claimants accept that the roles are different but that they fall into the category of "work of equal value" and therefore they should be paid the same as the men.

Recent developments

A preliminary hearing was recently heard in the Manchester Employment Tribunal that was critical to the claimants being able to progress with their claim. The Tribunal had to decide whether the female claimants were able to use the male distribution centre workers as a comparator; this is an important concept because in order to make out an equal pay claim, the claimants must be able to point to a real life person of the opposite sex who earns more than them. The Tribunal decided that the male distribution centre workers were an appropriate comparator, and therefore the claim may continue.

Asda's defence

Asda had already attempted to rebut the claim by saying that because the shops and distribution centres were in different locations with different pay arrangements, the pay rates were at their discretion. However, the Tribunal did not agree with this.

In order to successfully defend the claim, Asda will have to show that there is a material factor which explains the differences in pay between male and female colleagues that is not related to gender.

The content of this briefing is correct at the time of publishing.

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