

RÉPUBLIQUE FRANÇAISE

**LE DÉFENSEUR
DES DROITS**



Presentation of the guide

**“Equal pay between women and men for a
work of equal value,
Evaluation of jobs which are predominantly
occupied by women, to insure they are free
from gender bias”**

The origin of the Guide

- Meeting of the researchers in economics Rachel Silvera and Serverine Lemière with the High authority fighting against discrimination and for equality (HALDE becoming Defender of rights in 2011).
- Publication of their research report by the HALDE in 2010 :
“Comparing female dominated jobs with male dominated jobs, new directions to equal pay for men and women”
- The need for a practical guide for stakeholders dealing with equal pay
 - To clarify the legal concept of equal pay for a work of equal value,
 - To provide advices on job evaluation

Who is the Guide for ?

The guide is directed towards :

- Social partners who negotiate collective agreements and are engaged in the process of job classification,
- Evaluation managers,
- Workers,
- As well as actors involved in the reduction of the gender pay gap (lawyers, non governmental organisation, researchers...)

Composition of the working group coordinated by Lemière and Silvera

This guide reflects the work of a multidisciplinary group of experts (15) composed of :

- Researchers in economics and sociology
- All the employees Trades unions (CGT, CFDT, LO, CGC and CFTC), the representatives of the employers unions were invited but did not participate
- Lawyers
- Institutions (ANACT, organism specialized in working conditions, The Observatory of gender equality,
- Public administration (the General Labour Department of the Ministry of Labour, the service of Women's Rights etc).

The working group method

- The working group met on a monthly basis during three years.
- First year: Training of the members of the working group.
- Second year : Analysis of existing methods used in France for assessing the value of work and analysis of the classification systems in order to identify factors which can lead to gender bias.
- Last year : Collective drafting of the Guide.

The content of the Guide

The guide is composed of three parts:

- The first part : “understanding”
- The second part : “questioning”
- The third part : “moving to action”

The pay gap: traditional contributory factors

- **Professional segregation**
 - Women are confined in a restricted number of sectors and professions
 - Women are facing the glass ceiling
- Inequalities due to the high prevalence of part-time work among women
- The fact that women wages are still seen as a secondary wage
- The impact of maternity on careers and employment

The pay gap : the undervaluation of jobs traditionally occupied by women

Female dominated-jobs are undervalued because of :

- The huge influence of stereotypes
- The use of different criteria of evaluation...
- Unclear definition of functions, imprecise job descriptions, one title for various contents (ex: administrative assistant),
- Invisible and non-prescribed skills, skills that are poorly recognized and treated as non-technical

The principle of equal pay for a work of equal value

- European law and French law give answers to existing situations imposing to employers the obligation to make sure that women and men receive equal pay not only for the same work but also for a work of equal value".
- This approach intends to overcome the problem of occupational segregation and undervaluation of female dominated jobs. It allows the comparison between different jobs respectively occupied by women and men , even between radically different jobs.
- The effective implementation of this principle requires employers and social partners to undertake a process of job evaluation

The legal framework

- Article 157 of the Treaty (ex article 141)
- Article 4 of Directive 2006/54 of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) provides that:

“For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex».

Decisions of the Court of Justice

Principle of work of equal value is defined as follows :

- “In accordance with settled case-law of the Court of Justice, in order to assess whether workers are performing the same work or work of equal value, it should be determined whether, having regard to a range of factors including **the nature of the work and training and working conditions, those workers may be considered to be in a comparable situation**”. (Recital 9 of the recast directive)
- Defrenne, Royal Copenhagen, Enderby

Job classification:

- According to the case law of the Court of Justice a job classification system under Article 4 of the Directive must be :
formal, analytical, factor based and non discriminatory
- Case C-237/85, Gisela Rummler
- Case C 2001 Brunnhofer ...

The legal framework in France

- The Labour code provides that :

Article L. 3221-2: “The employer shall ensure that the principle of equality for men and female workers for equal work or a work of equal value is applied”

Article L.3221-4 : “Are deemed of equal value, jobs that require a comparable set of professional knowledge, skills resulting from experience, responsibilities and types of physical or nervous loads”.

- At a more collective level, the social partners signed in 2004 an inter professional collective agreement on equality between women and men which provides that social partners have to proceed to :
“a review of the classification system and the evaluation criteria used to define the different jobs in order to find and correct those that could generate gender discrimination and to take into account the range of skills implemented to carry out jobs”.

Cass. Soc 6 juillet 2010 TMS contact c/Mme B

The Court of cassation states that:

- the principle of equal pay for a work of equal value applies to women and men occupying different jobs (the job title is irrelevant)
- Job evaluation must be made on the basis of factors such as knowledge, skills, responsibilities, and physical and nervous loads

The Court considers that :

Ms B had the same level of qualification and responsibilities than those of her director colleagues. Her contribution to the finality of the Business in terms of human resources organization had the same value than the financial and commercial contributions of her male colleagues.

The job classification systems

The global methods:

- the ranking and classification methods compare jobs and classify them according to basic job requirements, without carrying out a detailed analysis of their content.
- A major disadvantage (no analysis of the requirements of the job reproduction of stereotypes)
- However, this method is still in place in certain sectors

The analytical methods: the point method

- In theory, these methods, which is frequently used today, make it possible to take in consideration all the requirements of all existing jobs in an enterprise and allow their evaluation and comparison, using common, precise and detailed criteria.
- An analytical method based on points and factors is currently recognized as the most appropriate job evaluation method.
- However, this method was not designed to meet the pay equity requirements.

The analysis of existing job classification systems using the point method

- The selection and assessment of evaluation factors could generate indirect discrimination if the criteria (problem solving, anticipation of problems, responsibility, finality, autonomy) are assessed in a restrictive way concerning the administrative/functional jobs /service job and if the criteria are not well defined (knowledge, relationships)
- The exclusion or omission of certain factors in particular those relating to physical and nervous loads
- The overvaluation and redundancy of factors giving higher value to predominantly male jobs (responsibility, finality, contribution)
- The various levels of factors and the weighting of factors to be taken into account
- The lack of transparency of the evaluation process
- The lack of progression of jobs in the classification system particularly in jobs predominantly occupied by women

Experiences in other countries

- The proactive Pay Equity Legislation in Quebec
- The Statutory Code of practice on equal pay in UK
- Plan for equal pay in Sweden
- The EVA method in Belgium
- Job evaluation method in Switzerland (ABAKABA)
- The Revaluing work to promote equality Project developed around the Restaurant and Beverages sector in Portugal

Recommendations

- Mobilization of all actors
- Common view point
- Evaluation committee
- Precise description of jobs,
- Definition of predominantly female jobs (60%),
- Analysis of the jobs,
- Addition of complementary criteria in order to ensure that women and men jobs are equally valued
- Weighting of the criteria
- Monitoring and claim procedures

Specific recommendations on the criteria

- **Concerning the “qualification”**
 - the diploma and training required need to be more precise,
 - The reference to the “professional experience” needs to be objectively measured.
- **Concerning the “complexity”**
 - The different forms of technicality need to be taken into account
 - The criterion of “problem solving” must be interpreted on a wider scale
 - The multidimensional nature of jobs must be taken into account
- **Concerning the “responsibility” criterion**
 - The functional responsibilities must be taken into account, as well as the supervision and coordination responsibilities of women’s jobs
- **Concerning the “organizational requirements” criterion**
 - Three types of requirements need to be taken into account: the physical, emotional and stringent time requirements

In conclusion

- **Job evaluation free from gender bias for a revaluation of women dominated job is complementary to other mechanisms used to reduce the pay gap between women and men**
- **Now, there is a need to increase the awareness of social partners in order to make possible the review of job classification systems**
- **The European Commission has an important role to play in stimulating the job evaluation process at European level**