



## **Compensation to female customer consultant in equal pay case**

24 September 2009, the Danish Supreme Court ruled in a case regarding equal pay. A female customer consultant (the "Employee") was awarded DKK 674,637 in compensation to be paid by the former employer (the "Employer"). Compared to her male colleagues, the Employee's salary had been substantially lower for a period of years, and the Supreme Court found that it unproved that the lower salary was reasoned on grounds of fact.

### **The case in brief**

The Employee had worked for the Employer as a customer consultant for several years. The Employee discovered that her salary was lower than the salary of her male colleagues. The male colleagues had the same position as the Employee, and she had the same education and had more seniority than the men.

The Employer claimed that the male employees' higher salary was justified by the one employee's former employment as municipal engineer giving him substantial knowledge of relevant sales products, and the other employee's former employment as director giving him substantial network of contacts.

The Claimant brought the case before the Court in Roskilde and before the High Court of Eastern Denmark, but she lost both cases. However, Supreme Court found for the Employee.

### **The legal foundation**

Pursuant to Section 1(1) of consolidating Act no. 899 of 9 May 2008 on equal pay to men and women ("the Equal Pay Act"), no salary-related discrimination between sexes may take place. This applies to direct discrimination as well as indirect.

The value of the work must be evaluated from an overall assessment of relevant qualifications and other relevant factors, cf. Section 1(3) of the Equal Pay Act.

Section 2(1) of the Equal Pay Act further states that an employee whose salary contrary to Section 2(1) the Equal Pay Act is lower than others is entitled to the difference.

Section 6(2) further states that is a person, who considers him/herself aggrieved, proves factual reasons for assuming that direct or indirect discrimination has taken place, it rests upon the opponent to prove that the equal treatment principle has not been violated.

### **The Court's statement**

The burden of proof is normally shared in equal pay cases. This means that the employer must prove that the equal pay principle has not been violated, if the employee has proved factual reasons for assuming that discrimination has taken place. Since the Employee in this case had proved such reasons, the Supreme Court imposed the burden on the Employer. The burden of proof was further aggravated since the Employer had no written guidelines or the like documenting the principles that the determination of salary was based on.



The Supreme Court did not find that the Employer was able to prove factual reasons for the difference in salary. Despite the Employer's statement concerning the two male colleagues' specialised knowledge, the Supreme Court did not find it to have been proved that the equal treatment principle in Section 1 of the Equal Treatment Act was complied with, since the male colleagues' specialised knowledge had no practical relevance for their work as customer consultants.

Supreme Court therefore found in favour of the Employee, and the Employee was therefore entitled to corrective payment so that her salary would correspond to that of her male colleagues.

### **Consequences of the Supreme Court ruling**

Pursuant to Section 1(3) of the Equal Treatment Act, the value of the work shall be evaluated from an overall assessment of relevant qualifications and other relevant factors. According to the ruling, these relevant qualifications and factors shall be reasoned on the practical workday and they shall be provable.

We would recommend that a company draws up written guidelines for the determination of salary, so that salary levels are objectively and factually reasoned. Thereby, cases with strict burdens of proof against former employees who feel aggrieved because of differences in salaries.

*If you have questions regarding the above or require additional information about the Equal Treatment Act, please contact attorney Dan Moalem ([dmo@mwblaw.dk](mailto:dmo@mwblaw.dk)) or junior associate Pinar Gökçen ([pgo@mwblaw.dk](mailto:pgo@mwblaw.dk)).*

The above does not constitute legal counseling and Moalem Weitemeyer Bendtsen does not warrant the accuracy of the information. With the above text, Moalem Weitemeyer Bendtsen has not assumed responsibility of any kind as a consequence of a reader's use of the above as a basis of decisions or considerations.