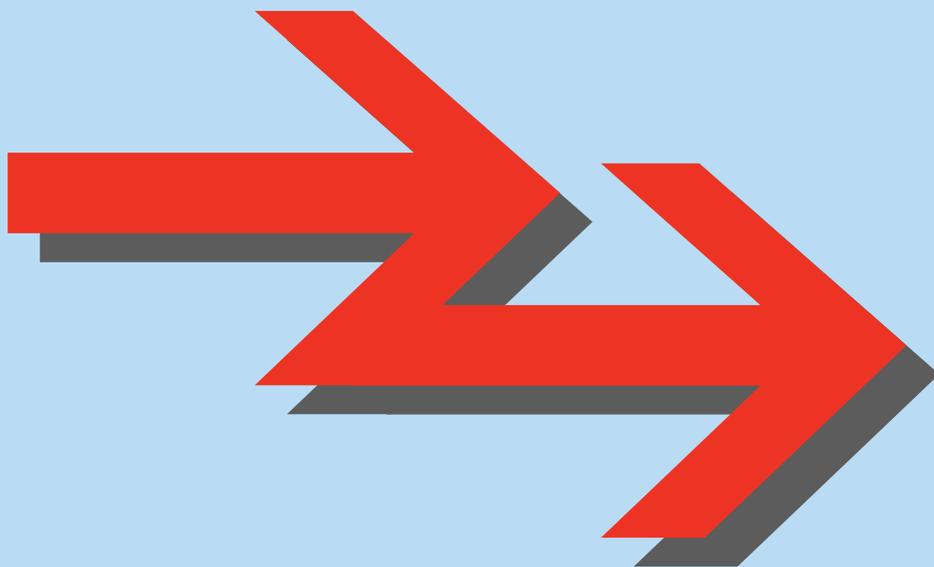


# **SURVEY, ANALYSIS AND ACTION**

## **PLAN FOR EQUAL PAY**

An in-depth analysis on effects of the regulations of 2001  
November 2005



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## **Introduction**

Swedish Equal Pay legislation is unique in a European perspective from at least two aspects. No other countries have experiences with pro-active legislation in order to rectify unwarranted differentials in pay between women and men. Only Finland has adopted similar legislation as of 1 June 2005. In Denmark a bill on gender based wage statistics is under discussion. Secondly, reports show that equal pay litigation in most EU countries has a poor record. This has been even more obvious in relation to the concept of equal pay for work of equal value. The following report shows that Swedish legislation in the last two years marks a break through. A great number of employees, mainly women, are being affected by corrections in pay as a result of workplace pay analyses concerning work of equal value.

Since 1994, Swedish law has required private and public employers with at least ten employees to conduct annual wage surveys. The rules were amended in 2001. In 2003, JämO submitted their first report to the government on examinations and experience of the stricter rules from 2001. This report to the government follows the outline and structure of the previous report in many ways, and should thus be seen as an in-depth study of several of the issues that were given attention two years ago. The ambition of this report is to give a more detailed picture of the function of the regulations and the problems that arise when the regulations are applied. The 2003 report is available in an English version, see the following link: <http://www.jamobud.se/en/thepayequitygui.asp>

### **Swedish legislation**

Section 10 of the Equal Opportunities Act concerns wage surveys and analysis, and states that the purpose is to identify, rectify and prevent unwarranted differentials in pay and other terms of employment between women and men. Swedish legislation distinguishes itself in a number of ways in an international comparison. For example, pay differentials that are identifiable but cannot be explained, either on an individual level or a group level, shall be calculated and rectified as soon as possible but at the latest within three years (Section 11). In this connection, it is interesting to note that pressure can be used by ordering fines if gender equality plans or wage surveys do not comply with the law (Sections 34 and 35). Since wage surveys must be carried out every year, JämO has made it practice to no longer grant an extension of more than approximately six months. Since 2001, the trade union organisations on central or branch level may also apply to order fines. This change in the law was seen as an opportunity to vitalise the participation of local trade unions in wage survey work.

This English text is a summary of a report to the government made in November 2005. The original Swedish text includes more detailed information on assessment made by JämO as well as a comprehensive section with appendices.

JämO is a government agency with nearly 30 employees. JämO works to monitor the compliance of the Equal Opportunities Act (at the workplace), the Prohibition of Discrimination Act (outside the workplace) and legislation on equal treatment of students at universities and institutes of higher education.

## A summary of JämO's conclusions

- The change in legislation in 2001 has implied that only now do the regulations that were introduced in 1994 function as the lawmaker had intended. Above all, the full impact of the stricter regulations has been seen during the last two years.
- The regulations have begun to find their place in "the Swedish model". Misgivings that the labour court would have a vital effect on wage formation have not been justified. Wage corrections as a result of disputes have not had any impact. The fact that employers were obligated to provide information about their work with wage surveys was an important controversial issue. Employers feared that this information would be used as evidence or as a basis for legal proceedings. This has not been the case.
- The regulations on wage surveys act as an instrument to obtain equal pay within the realm of a single employer. These regulations have been successful in the sense that many groups of those in female-dominated work as well as individuals have had their pay adjusted. The regulations are also designed to promote equal pay in Sweden through pro-active measures, rather than through litigation and legal proceedings.
- On the local level there is still considerable uncertainty about how the law should be applied. JämO has found there is a great need for information and consultation work concerning the regulations on wage surveys, especially regarding information adapted to particular industries.
- The law states that employers and representatives for employees shall cooperate to work for equal pay, but how this is to be achieved is not entirely clear. The requirement for collaboration between the parties often collides with the traditional conflict-based system for wage negotiations.
- It is still not certain how many of the most central concepts in the work for equal pay should be understood. For example, what is the significance of *an analysis of regulations and practice* from a gender perspective? How should the concepts *equal work and work of equal value* be understood? How is a *typical analysis of pay differentials* done within the individual areas of agreement? What does it mean to refer to *the market as a factual reason* for pay differentials? How should *an action plan for equal pay* be designed?
- JämO welcomes an initial development where the central parties agree on the design of material that is adapted to particular industries to facilitate wage surveys and analysis for local parties. The National Mediation Office has a positive role in underlining this need in their contacts with the parties of the labour market before wage negotiations. Wage negotiations in 2004 illustrated a break in the trend when JämO particularly wanted to expose the collaboration agreement between the Association of Swedish Engineering Industries, The Swedish Metal Workers Union, Sif (Sweden's leading white-collar union) and the Swedish Association of Graduate Engineers.
- There is a clear connection between knowledge of how gender-related pay differentials occur, and the ability to identify and correct them. Collaboration between local parties and beyond agreement borders also demand a new type of thinking in relation to their usual roles. A flexible collaboration requires that all parties are on the same level of knowledge.

- Since 2001, a central trade union organisation can, after consent from JämO, apply for fining procedures when an employer does not follow the regulations on active measures. This opportunity has been used on a very limited scale. However, the trade unions have conducted their own examinations and surveys to a considerably greater degree. This lighter form of "supervision" has sharply contributed to directing attention to the regulations much more today than several years ago.
- The report discusses a change in the law which would give JämO the possibility to determine fining procedures. This change in the law would probably improve the efficiency of the authority's supervisory work. The regulations on collaboration would benefit if these were clarified.

# **1. Compliance to regulations, comments on current debate**

## **1.1 Compliance to equal pay regulations of the survey**

More than ten years have now passed since the proposal for pay differential surveys was carried out. To find out how gender equality regulations function in practice, JämO requested Statistics Sweden<sup>1</sup> to conduct a questionnaire survey among the Swedish employers in the spring of 2005. Some 6 000 employers within central government, municipalities, county councils, (government authorities) and industry (enterprises) were asked to participate; slightly less than 3 000 replied.

The basic question was if the enterprises had a current plan for gender equality. Questions on wage survey work were posed to the 34 per cent who replied they had a current gender equality plan, or about 1 000.

Within the larger authorities (at least 200 employees), most were more active than within the smaller (10-49 employees) and medium-sized ones(50-199 employees). The surveys and analyses of pay differentials between female-dominated and non-female-dominated work which is seen to be of equal value, was carried out to a larger degree at the large authorities than at the smaller and medium-sized ones. Greater unwarranted pay differentials were also found more often at the large authorities. The smaller authorities were lagging behind in several areas, for instance concerning the appointment of a collaboration group for survey and analysis, and in analysing how pay criteria, fringe benefits and other employment terms were used from a gender perspective. It was also less usual that the smaller authorities used JämO's advisory material for surveys and analysis.

Enterprises followed the same pattern regarding work for equal pay: the larger employers were more active in most respects. Greater unwarranted pay differentials were also found more often at the larger enterprises. However, there were no statistically significant differences between the different sizes of enterprises regarding measures to make pay adjustments. Nevertheless, the larger enterprises were more active in using JämO's advisory material than the smaller and middle-size enterprises.

Statistics Sweden presents the results for each category, i.e. type of employer and size class, but not for results on an aggregated level. It is estimated that 55-60 per cent of the authorities had appointed a collaboration group, as opposed to 30-35 per cent of the enterprises. About 50 per cent of the authorities had discovered unwarranted pay differentials, as opposed to 15-20 per cent of the enterprises. 80-85 per cent of the authorities and 70-75 per cent of the enterprises had created an action plan for equal pay.

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<sup>1</sup> Statistics Sweden is a central government authority for official statistics and other government statistics, and in this capacity also has the responsibility for coordinating and supporting the Swedish system for official statistics.

## 1.2 The most common objections to regulations of the pay survey

Statistics Sweden's report shows that many employers still do not follow the regulations on wage surveys. No systematic studies have been conducted to try to answer why this is so. However, there may be reasons to remind about the overall objections that occurred in connection with the regulations of 2001, and which JämO reported on in 2003.

The argumentation could then be summarised in four points:

- The Equal Opportunity Act is dependent upon a centralised wage formation model and recommends a step back to old systems.
- The parties' responsibilities for wage formation would be inhibited and legislation would involve governmental intervention in the negotiation system.
- Wage negotiations among the parties would be significantly more difficult and it would be expensive to evaluate work, complicating the local wage formation.
- The regulations would involve an invasion of privacy, and would probably infringe with Article 8 in the Council of Europe's Convention (right for protection of private and family lives), as well as contradictory towards Article 11 of the same legislation concerning the protection of negative freedom of association (i.e. an individual's right to stand outside of trade unions).<sup>2</sup>

Following the change in legislation in 2001, criticism on these points has died down. However, JämO can see that there are other problems with the application of the regulations. Chapter 3 of this report discusses why local and central parties have problems in applying the various parts of the regulations of legislation. However, there are still questions about the existence of wage surveys, which are more fundamental or ideological in character:

- *Unwarranted pay differentials are not a problem.* In June, the Swedish Agency for Government Employers and the Confederation of Swedish Enterprise each presented a report with similar conclusions: Within the member enterprises/the government sector, gender is of no concern regarding pay.<sup>3</sup> The reasons for pay differentials are more likely due to occupation, age and education. The focus of the debate should be moved from the small unexplainable pay differentials to how development can be promoted where women to a greater extent have positions and duties with a higher degree of difficulty.

Within government, unexplainable pay differentials are said to be 1.5 per cent. However, there is a lack of basic conditions to use available statistics to establish if this 1.5 per cent can be explained on factual grounds at a local level, or if some part of this 1.5 per cent comprises unwarranted pay differentials.<sup>4</sup> The Confederation of Swedish Employers uses the same

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<sup>2</sup> The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms

<sup>3</sup> Development of wage differentials between government-employed women and men 2000-2004, The Swedish Agency of Government Employers 2005-06-14, Reg. no. 0505-0400-15 and Lika eller inte - om män och kvinnor i lönestatistiken, Andersson, Erisson, The Confederation of Swedish Enterprise, June 2005.

<sup>4</sup> Press release from the Swedish Agency for Government Employers, 2005-06-28.

reasoning in the report *Lika eller inte - om män och kvinnor i lönestatistiken* (Equal or not - on men and women in wage statistics) The survey among member enterprises shows pay differentials between men and women at 4.8 per cent (6.5 per cent for white-collar workers and 2.2 for blue-collar workers).

According to these investigations, the value of wage survey regulations in the Equal Opportunity Act could be summed up idiomatically as "much ado about nothing".

- *The pay gap remains.* Sometimes, the efficiency of the Equal Opportunity Act in general and wage surveys in particular have been questioned, since the pay gap between women and men has been unchanged for over 20 years. Furthermore, the logic of this reasoning also leads to questions about the efficiency of JämO's supervisory activities.
- *Bureaucracy increases.* Other objections that JämO has been met with ask if anyone has tried to add the costs for the country's employers when they are forced to be subjected to all the meetings and paperwork that the legislation involves. Where does this money come from when the margins for wages are already narrow?

In light of the objections and reasoning such as the above, there is reason to make a number of fundamental remarks:

- *Sweden has a number of obligations through international commitments.* It is above all EC Law that provides certain frameworks that Swedish legislators must comply with. Among other things, this means that there must be an authority that takes on the tasks that correspond to those which JämO has. This authority shall not only offer help "before the damage has been done", i.e. handle reports on sex discrimination. In addition, EC Law requires that member states maintain an pro-active profile to encourage employers to promote equal treatment in a planned and systematic way. Among other things, this involves a dialogue with the parties of the labour market, supervision of practice at workplaces and collective agreements, following research, good practice, etc. The design of wage survey regulations is largely based on the European Commission's guidelines on equal pay from 1996.<sup>5</sup>
- *Wage survey regulations are backed by broad political support.* The 1994 proposition containing requirements for annual wage surveys for all employers with at least ten employees based on the concept *equal work and work of equal value* was presented by the Liberal and Conservative parties, which were then in power. All parties in Parliament except one supported the reinforcement of regulations in 2001.
- Today's decentralised and individualised wage formation has led to writings in *central collective agreements* that usually *place at least as rigorous demands as the Equal Opportunity Act on setting of wages based on objective/factual grounds*. In many cases the requirement for factual setting of wages includes more than just a comparison of women and men. Accordingly, the Equal Opportunity Act does not involve any additional duties than those which have been stipulated in collective agreements. A detailed report of this development can be found in the 2004 Annual Report from the National Mediation Office.

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<sup>5</sup> Guidelines for application of equal pay for equal work for women and men in working life. See COM (94) 6 final for more details.

- Concerning the debate on pay differentials, clarification of two basic pairs of concepts is necessary: *explainable and unexplainable* pay differentials, and *factual and unwarranted* pay differentials.

*Explainable* pay differentials, which play a central role in the reports of the Confederation of Swedish Enterprise and the Swedish Agency for Government Employees, are differences that can be attributed to occupation, age, working hours, education and sector. The difference that remains when these factors are deducted are often listed as *unexplainable* pay differentials. This pair of concepts is usually linked with wage statistics on an aggregated level or what is known as a macro level. However, the concepts cannot be used to measure the existence of wage discrimination or unwarranted pay differentials in the meaning of the Equal Opportunity Act.

The Equal Opportunities Act only looks at comparisons within the activities of a single employer, i.e. on a micro level. An average value based on statistical information at several hundred or thousand employers does not provide any information on the degree to which pay for an employer or group of employers can be said to be factual or unwarranted. Thus, the official wage statistics cannot answer the question if there is reason to adjust wages in the meaning of the Equal Opportunities Act. In addition, the occupational classification used in the national wage statistics is not compatible with the concept of gender legislation's *equal work* and *work of equal value*.

*Factual and unwarranted* pay differentials are a pair of concepts that are used in wage surveys and analysis. Wage setting that is *factual* indicates that pay for all employees is set based on the same norm, and that this norm is neither directly nor indirectly beneficial to either of the sexes. Clear criteria must be available for wage setting, and the formally agreed criteria must be applied in a consistent and systematic way. The analysis is only done within the framework for the activities of a single employer. Thus, the concept *unwarranted* pay differentials cannot be used to adjust pay among various enterprises or industries.

Since pay always reflects evaluations, a factually motivated pay differential cannot be combined with the notion that the legislation guarantees that pay will be set on objective grounds that are free from evaluation. On the contrary, history reveals that the grounds for what is seen as *factual* can vary over time. For example, different pay for women performing equal work was a generally accepted norm up into the 1960s. The Equal Opportunities Act can rather be described as a tool to guarantee a structured and transparent subjectivity for setting of pay, i.e. the applied evaluations are evident and understandable for all employees.

- Furthermore, *the Equal Opportunities Act invites action, even if some pay differentials are explainable*, for example when it is certain that women and men have different positions within an organisation. The Equal Opportunities Act also implies that the existing evaluations and norms are in fact questioned and changed.

That certain pay differentials can be explained in an overall perspective can just as well mean that an employer should take measures according to several sections in the Equal Opportunities Act. Through recruitment, training and competence development, an employer should actively promote an even distribution of women and men, both horizontally and vertically (Sections 7-9). It may also be so that the employer has not adapted the working conditions sufficiently (Section 4) or that the measures to facilitate the combination between employment and parenthood could be improved (Section 5).

Thus, the structure that a wage survey reveals can be seen as a receipt of the shortfalls or merits in relation to all the commitments that employers must meet according to the Equal Opportunities Act.

## 2. JämO's supervision of compliance to the law

Consultancy, development and supervision are three integrated components that characterise JämO's positive action agenda for gender equality. These working methods can be seen as a consequence of the fact that JämO's primary task is to persuade employers to voluntarily comply with the regulations of the law. The following supervisory activities exemplify various working methods used by JämO. In the examination of 10 municipalities and 40 industrial employers, JämO combined traditional supervision with dialogue in reference groups together with central labour market parties and researchers on working life. In the examination of the Global Compact enterprises, JämO collaborated with the Discrimination Ombudsman. The results of examinations of single employers are described in the sections on county councils and the Swedish National Audit Office.

### 2.1 A summary of results from 900 examined surveys

Since 2001 JämO has examined about 900 wage surveys. During the first year and a half after the change in legislation, JämO concentrated their resources on education and information. In the autumn of 2002, JämO began the largest individual examination project that focused on slightly more than 500 private employers (see Section 2.2). Only 4 per cent of the employers reported that wage adjustments had been carried out. In parallel with consultancy and examinations, JämO has gradually developed information material that is available on its website. Since 2004, JämO has tightened routines in connection with wage surveys.

JämO has tried to quantify the wage adjustments that have been carried out, but it has been nearly impossible to arrive at exact figures. The level of precision in employers' action plans for equal pay is extremely varied. Sometimes reference is made to the number of individuals and sometimes only a certain group is referred to. In nearly half of the plans that say that salary adjustments will be carried out, information is lacking on cost calculations. The methods of calculating costs vary. They can be given in the form of gross pay costs for the employer, or in the form of pay increases for the individual employee.

Among the 900 examined wage surveys, it is evident that adjustments have been done by at least 100 employers. Of these employers, 56 per cent were in the private sector and 43 per cent in the government sector. 41 per cent of the workplaces were female-dominated, 37 per cent male-dominated and 19 per cent mixed. In three per cent of the cases, the distribution of the sexes could not be established due to lack of information.

It has been possible to see that at least 1 000 employees have received pay adjustments in connection with an analysis of *equal work*. Concerning *work of equal value*, about 160 groups which included over 9 000 employees were affected. Once again, the reliability of the figures is very low since the number of employees in 33 of these groups could not be established. Above all, women's pay has been adjusted, but even in 10 cases of *equal work*, men's pay was adjusted. It is also more common that men are affected by pay adjustments when they are a part of a female-dominated group whose pay has been found to be too low. Other measures found in action plans are investments in skills development, "freezing" of pay for certain groups, promoting gender balance when advertising and various forms of affirmative action programmes when recruiting new staff. Management training on issues of gender equality also occurs.

JämO has found that nearly half of all the enterprises that have carried out pay adjustments were among those who were examined in 2004. Increased knowledge on the local level combined with the more stringent routines from JämO's side is a probable explanation. One recent examination has shown that knowledge and commitment from the sides of the parties has played a significant role in the probability of realising pay adjustments. In what is known as the "50 employers campaign" (see Section 2.3), the central employer- and employee union representatives showed significant commitment. Among the 10 municipalities and 40 industrial employers, pay adjustments were made in 16 of 39 industrial enterprises and in 8 of 10 municipalities. At the industrial enterprises, it was more common for individual employees to receive pay adjustments concerning *equal work*. Within the municipalities it was most common that adjustments were made for groups upon analysis of *work of equal value*. At most, pay adjustments that are supported by the Equal Opportunities Act generally do not amount to more than one per cent of gross wages.

## **2.2 Examination of 10 municipalities and 40 industrial employers, autumn/winter 2004**

In September 2004, JämO began examining wage surveys of 10 municipalities and 40 employers within industry in what is known as the "50 employers campaign". The examination was to be seen as a part of JämO's normal supervisory work, but would also include a follow-up of certain employers from the "500 employers campaign" that was done two years ago. In addition, the examination project was to stimulate a discussion about industry-specific solutions while at the same time convey interesting ideas from one agreement area to another. For this reason, JämO invited central employer- and union representatives together with two working life researchers to three reference groups during the ongoing examination.

The purpose of the reference groups was to:

- jointly discuss and gain increased understanding of JämO's assessment grounds upon supervisory activities,
- facilitate finding local solutions to arising problems for the involved parties,
- discuss potential solutions for a functioning interaction between legislation and collective agreements to improve the compliance to the principle of equal pay for equal work and work of equal value, and that
- JämO obtains increased knowledge of the terms for wage survey work from the perspective of employers and trade unions.

In spring of 2004, a new collective agreement was signed within the engineering industry which among other things implied that the central parties would appoint working groups to facilitate the local work to remove unwarranted pay differentials between women and men. The Association of Swedish Engineering Industries' agreement with the Swedish Metal Workers Union, Sif and the Swedish Association of Graduate Engineers gave a joint working group the task to:

- create written guidelines
- particularly shed light upon any lag in pay levels due to parenthood, and if this was the case to work for a clarification that pay differentials due to parental leave shall not occur
- arrange seminars during the agreement period to spread knowledge on wage surveys and create an arena for discussions on the subject.

The municipality sector had new wage negotiations ahead of them during winter of 2004 and spring of 2005, and JämO then thought that experience from an initial cooperation within industry could be of interest to the parties within the municipality sector.

This close cooperation with the concerned employee and employer organisations probably contributed to the fact that 40 to 50 matters could be concluded before the end of the year. In five cases it was assessed that JämO's telephone advisory service and written viewpoints were not enough for the employer to voluntarily live up to the regulations of the law. At that point, JämO invited the local employer- and union representatives to clarify what action was needed to be taken. Legal advisors from the employers participated in some of the consultation procedures and thus were able to get an inside picture of the problems involved with wage surveys.

All the matters except one were completed within nine months. JämO had applied to the Equal Opportunities Commission for fining procedures for one employer. The main reason for this was disagreement concerning the time frame for wage surveys. The initiation of a legal procedure most likely contributed to the fact that even this matter could be completed after about one year after the examination was started.

JämO will conduct a follow-up examination at eight of the concerned employers within one to two years, to check certain points that the authority had remarked about in its final letter.

The examination was concluded with a well-attended seminar where employers who had been objects for JämO's examination, local union representatives, the reference groups and certain journalists were invited to discuss the project and its results.

The need for pay adjustments was found in 24 of 49 employers (one employer was excluded from the examination because the enterprise had closed down). Pay adjustments were made in 8 out of 10 municipalities, and 16 of 39 examined industrial enterprises.

The experience from this examination comprises one of the most important references to the discussions in this report about the details and problems with the application of the regulations.

### ***2.3 Surveys at Global Compact enterprises, 2004***

In 2004, JämO and DO (Ombudsman against ethnic discrimination) conducted a joint examination of enterprises which had joined the Global Compact<sup>6</sup> network and selected five enterprises among the 25 that were then members.

Enterprises that join the Global Compact/Global responsibility pledge to remove all forms of discrimination based on "race, skin colour, sex, religion, political views, national origin or social background in relation to recruitment and working conditions.

To begin with, none of the examined enterprises could present a complete action plan for equal pay. One enterprise informed they were changing over to a new pay statistics system. A couple of the enterprises had an incomplete analysis of pay differentials and one had misunderstood the requirement to compare female-dominated work with non-female

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<sup>6</sup> For more information, see <http://www.un.org/Depts/ptd/global.htm>

dominated work, and only compared male-dominated work. One enterprise did not include all the employees in the wage surveys and analysis, and some of them did not have a cost calculation in their action plan for equal pay.

After advice and changes with four of the enterprises, the examinations could be concluded. In 2006 JämO will do a follow-up examination of wage surveys at one of the enterprises.

Some of the examined enterprises covered a large geographical area with activities in many regions. In the beginning they had considerable problems to make an overall comparison and analysis of pay differentials, both concerning equal work and work of equal value. The lack of a common occupational nomenclature, definitions of work of equal value and clarity about pay criteria made the comparisons more difficult.

## ***2.4 Surveys in county councils, 2001 - 2005***

Since 2001 JämO has examined gender equality analyses of pay from nine county councils. All the county councils except one had been reported to JämO for shortfalls in the work for equal pay. In some cases the examinations even touched on other regulations according to Section 13 of the Equal Opportunities Act.

All of the county councils had taken a long time to conduct a gender analysis of pay. There are several reasons: county councils are employers with many employees; they have gone from a tariff pay system to an individualised one; they have wanted to look over their whole pay policy and structure in connection with a gender equality analysis of pay; they have not had any common evaluation method for work of equal value, and therefore they have often begun evaluations with a pilot project that they have had to revise and review.

Jönköping County Council was quickest in presenting a gender equality analysis of pay, even if they had to supplement it with some improvements. The examination took a total of one year to complete.

The examination of Uppsala County Council began in 2003, but was not completed until the beginning of 2005, and then after JämO had requested fining procedures at the Equal Opportunities Commission. The county council was ordered to survey and analyse pay differentials concerning firstly female and male senior physicians and secondly female-dominated work compared to other work of equal value. JämO was then able to withdraw its demand when the county council set aside SEK 36 million to raise low pay within female-dominated jobs. In addition, pay for the group of senior physicians would be adjusted within two years.

## ***2.5 Swedish National Audit Office, autumn 2004 - autumn 2005***

JämO's request to examine wage surveys in September 2004 had been preceded by training directed towards the authority three months earlier. However, twice in autumn the Swedish National Audit Office asked for an extension to submit the requested document. In December 2004 JämO then further offered specific consultancy. After seven months JämO drew the line. In April 2005 JämO had used all its available resources to voluntarily persuade the employer

to follow the legal requirement of annual wage surveys. The Equal Opportunities Commission was then in the position to decide on a request for fining procedures.

The development of the matter reflects the problems JämO has observed on a number of occasions, namely that an examination of regulations and practice for the setting of wages often reveals more extensive shortfalls than only problems to live up to the requirements of the Equal Opportunities Act. Consequently, a survey given to employees at the Swedish National Audit Office in spring of 2004 showed that only 9 per cent of the employees felt that staff policy was characterised by an overall perspective and consistency. In autumn of 2004, both of the trade unions at the Swedish National Audit Office had submitted a written criticism to JämO of the collaboration processes and obscurity of the application of pay-setting criteria.

Gradually, the employer was able to see that work with wage surveys was the beginning of a more comprehensive process. It became obvious that specific standpoints on local pay policy had to be amended and clarified. The apparent positive changes concerning the collaboration forms with the trade unions were a positive side effect regarding JämO's examination. A joint set of objectives were formulated: Pay setting would be based on a well established pay policy, a well-known negotiation process, with clear and accepted pay criteria for all those at the Swedish National Audit Office. The work was begun with the following description from the Swedish National Audit Office: "a quality assurance for individual setting of pay and a better guarantee that women's and men's work content, skills and results are assessed as of equal value."

Later on in September 2005 when JämO withdrew their request for fining procedures, the Swedish National Audit Office had made considerable progress in the work with wage surveys and analysis. JämO will return with a new examination in 2006.

The analysis showed that the Swedish National Audit Office needed to make pay adjustments for five groups. Another nine groups would be "under surveillance" in the coming pay revision.

### **3. Comments and analysis**

#### **3.1 Collaboration**

The starting point for work with wage surveys is that employers and employees shall collaborate for active measures for gender equality in working life (Section 2 of the Equal Opportunities Act). The Equal Opportunities Act does not specify how this collaboration is to be done. However, in preparatory legal work there is a reference to the Codetermination Act: "Those forms of employee influence that are already present at the workplace ought to be suitable to use for gender pay equity".<sup>7</sup>

The change in legislation in 2001 meant that collaboration in pay issues was given a specific position in relation to other matters that are handled in a gender equality plan. Concerning pay issues, trade unions that have signed collective agreements have a particular right to information (Section 12 of the Equal Opportunities Act). The following is stated in the legal preparatory work: "If individual pay is applied, it is usually necessary to work on an individual level to find out if there is any factual reason for pay differences, regardless of sex. The entire pay differential must be able to be explained."<sup>8</sup> In order for a trade union to meaningfully participate in the work, it must thus have access to relevant information about pay or other conditions that concern an individual employee. However, these rights are combined with certain rules of confidentiality and damages.

#### **Possibilities for unions to take action**

JämO has noted that union representatives often ask what applies when a wage survey takes too much time or in those cases when collaboration is reduced to information, i.e. that the employer presents a ready-made solution.

Since the Equal Opportunities Act does not give further instructions on how collaboration shall be done, the parties themselves must define the forms of the local collaboration process. A suitable first step could be to call for negotiations with the employer in order to agree on the framework for wage survey work. Questions that need answering include:

- which persons shall be included in the wage survey and analysis work
- time frame for the various phases of wage survey and analysis work
- approximate number of collaboration meetings
- how results, i.e. the action plan for equal pay, shall relate to the ordinary pay adjustments that are the result of traditional negotiations in the form of individual pay discussions or with the separate trade unions.

An increased formalisation, above all in the form of local agreements, should facilitate the interaction between annual wage surveys and annual pay reviews/negotiations. Some of the central agreements have written direct requests for such action.

If an employer does not follow the regulations for wage surveys, the central trade unions can, after permission from JämO use pressure, i.e. as a last resort apply for fining procedures with

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<sup>7</sup> Prop. 1999/2000:143, p 82

<sup>8</sup> Prop. 1999/2000:143, p 74.

the Equal Opportunities Commission (Section 35 of the Equal Opportunity Act). Since the change in legislation in 2001, trade unions have turned to the Equal Opportunities Commission in two cases and JämO in eleven cases. The question of collaboration on its own can of course not be reason for fining procedures (Section 2 of the Equal Opportunities Act). However, a trade union can argue that an employer has not given the union representative in the collaboration group the necessary information for the collaboration to be conducted in a meaningful way (Section 12 of the Equal Opportunities Act). In one case a trade union has turned to the Equal Opportunities Commission for that reason. The application to the commission was taken back three months later when the local differences had been solved.

## **Various reasons for uncertainty on collaboration for wage surveys**

*Pay issues in two different systems require different roles.* Pay and employment terms are considered traditionally and mainly as questions of agreements and negotiations. Pay issues thereby belong to a *self-regulatory system* with independent parties who by tradition react sceptically towards all forms of legal regulations or government intervention. This also means that a *conflict perspective* is the basis for each pay negotiation and that the size of pay is ultimately the result of the current relative strength among the parties. Misgivings that the Equal Opportunities Act and JämO would threaten the collective agreement system have not been justified, but still there is a general scepticism towards pay issues being treated within a legal framework.

However, the regulations of the Equal Opportunities Act are based on a *collaboration perspective*. The regulations for wage surveys start with the conception that the local parties act in the same interest, namely that pay shall be set on factual grounds regardless of sex. Employers and employees are expected to share the same values, i.e. to safeguard human rights from a perspective of equal treatment. This form of *self-examination* regarding pay issues shall be expressed in a separate action plan and not be mixed up with pay adjustments that are the result of the traditional negotiation system.

The intention with annual wage surveys from the lawmaker's side has not been to open up new arena for the trade unions to profile their own interests or change the relative strength among the parties (in the self-regulatory system). Thus, the participants in the local collaboration group should avoid thinking in terms of special union interests. A wage survey shall accordingly include all employees regardless of their union membership, and for this reason non-union member employees shall not be excluded. Furthermore it is not necessary, or even practical to have representatives from all the trade unions, especially with regard to the municipalities where employees are organised in some 15-20 different unions.

The role of employer representatives at wage surveys can appear new and unusual, but it is very similar to the role of a safety representative. It is the issue and the knowledge about the issue that motivates the assignment. Whether an individual employer pays membership fees to a particular trade union is in this respect not a relevant question.

*Requirement for analysis and need for knowledge.* Another reason for uncertainty in the collaboration process is when the local parties only see pay as a negotiation issue. There is a considerable demand for the ability to analyse pay regulations or a pay structure. As a result, it is a knowledge issue to know what one is looking for, which the example from the section on regulations and practice illustrates. A closely related question is whether there is a will and

readiness to critically examine the pay setting that two parties were previously in agreement about.

*Is it possible to unite collaboration with self-supervision?* In practice, Section 35 of the Equal Opportunities Act places a great deal of responsibility on unions to conduct "self-supervision" without needing the assistance of JämO. Despite this fact, union representatives on both the local and central level have expressed it could be advantageous to let JämO handle "pressure mechanisms" when problems arise in local wage survey work. There is an uncertainty of the special procedure that the Equal Opportunities Act prescribes in the form of fining procedures instead of "agreements and litigation". Concern has also been expressed that the local collaboration climate would be affected negatively if a central trade union was to apply for fining procedures.

*Unclearly about representatives.* Another question is who or which of the employees' representatives in a collaboration group are actually the representatives. The Equal Opportunities Act does not specifically have regulations similar to those in Chapter 6 of the Working Environment Act, which describes collaboration between employer and employee. There it is clearly stated how selection of employer representatives should be done, and that the safety representative shall not represent its own members but rather the task covers all employees.

The legal preparatory work of the Equal Opportunities Act emphasises the potential for the trade unions that would like to take a significant responsibility for gender equality issues. The right to take legal action at the commission is thus a motivating factor, in that it will be more difficult for the trade union to justify its own passiveness by saying that the employer does not take initiative.<sup>9</sup>

*Wage surveys as a threat to the system of collective agreements.* In some workplaces, collaboration is difficult because the employees' representatives can feel that a work evaluation project and/or wage analysis goes beyond agreement borders and is a threat to their own pay system and thereby even against their own collective agreement. In general, JämO has noted a greater interest from the side of the employers than from the employees regarding how to find uniform ways of pay setting for all employees. In some cases the employers have also seen the Equal Opportunities Act as a chance to speed up desired relative pay changes among employees. In the above-mentioned "50 campaign", JämO observed that it was not entirely unusual for unions to decline participation in the collaboration process. In some cases, the reason for this was the feeling of a conflict between the collective agreement and the risk that wage surveys would cause relative changes in the pay structure. The employers' representatives can in turn find that requirements for actual collaboration as troublesome, since the analysis runs the risk of exposing negligence of transferring central principles in the collective agreement to a clear and concise pay policy. In such cases, wage surveys and analysis can be used to question the parties' own interpretation of the collective agreement.

## **The need to change ingrained roles**

To collaborate in wage survey issues, the parties need to depart from their ingrained roles as negotiators and conduct wage surveys beyond the borders of collective agreements. In this area, the rules of the Equal Opportunities Act are synchronised with the labour market in general; the structure of collective agreements and classifications in different areas (blue-

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<sup>9</sup> Prop. 1999/2000:143, p 93.

collar and white-collar workers) are undergoing change. The partnership called The Swedish Unions within Industry has expressed the situation in *Proposal for agreement policy platform prior to the wage negotiations in 2004*:

Working duties and working tools are becoming more alike and more and more we see solutions to working organisations where persons from the various "personnel collectives" temporarily or permanently work together. Old boundaries are being erased. This trend also has its consequences concerning wage negotiations. The older classifications and boundaries are found to be unfair and cause problems concerning development of working duties and the working organisation. (...)From a union perspective, it is important to contribute to erasing out-of-date borders and argue the principle that all employees who work under the same or similar conditions should have the same employment terms in their contracts.

## **JämO's conclusions**

JämO's activities are based on a perspective from a human rights aspect. The principles for equal pay and the perspective of the individual of the Equal Opportunities Act are formed on this basis. In collaboration, the local parties thus have a responsibility towards all employees to identify, rectify and prevent unwarranted pay differentials between women and men. This implies that the employers' representatives in a collaboration group do not primarily represent their members; the assignment is defined by the purpose of the Equal Opportunities Act. This means that the setting of pay based on factual grounds shall be guaranteed for both employees who are in a union and those who are not, as well as for all employees regardless of employment form. Therefore, Section 12 which regulates the right to *the necessary information* is not limited to the union representative's own members. JämO sees a need to expose the new roles that the parties have to take and discuss these roles in a broader context.<sup>10</sup>

### **3.2 Concept of employer and limit at ten employees**

According to Section 3 of the Equal Opportunities Act, all employers shall conduct goal-oriented gender equality work which includes all areas stated in Sections 4-10. In accordance with Section 10 the employer shall annually survey and analyse regulations and practice on pay and other employment terms, as well as pay differentials between women and men who do work that is regarded as *equal or of equal value*.

These regulations apply to all employers regardless of the number of employees. However, employers with less than ten employees are not included in Section 11 which states that a specific action plan for equal pay shall be created. The requirement of a written gender equality plan thus only applies to employers with at least ten employees.

The group of employers/enterprises with 1-9 employees comprises about 180 000, and the number of employees within these enterprises is about 500 000. In the group 10-49 employees, the number of enterprises is 28 700, and the number of employees is about 560 000. The total number of employers that are bound by the requirement for written documentation is a little over 35 000. The number of private employers with at least 10 employees is just under 34 000, and the number of employees is slightly over 2 million. The

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<sup>10</sup>For further information, see the article on collaboration and wage surveys - a legal development. Susanne Fransson and Eberhard Stüber, *Arbetsmarknad & Arbetsliv* 3/04.

number of government employers is about 1 600, and these have slightly more than 1 million employees.<sup>11</sup>

Size of enterprise with employees	Employer				Employees	
	number	per cent	of which private	of which government	number	per cent
1–9 no written requirement	183 488	-	182 970	518	500 032	-
10–19	18 149	52	17 882	267	242 747	7
20 – 49	10 562	30	10 175	387	314 712	10
50–199	4 644	13	4 263	381	421 721	13
200–	1 737	5	1 182	555	2 284 089	70
Total with written requirement	35 092	100	33 502	1590	3 263 269	100

### **The concept of employer in the Equal Opportunities Act - a plan or several sub-plans?**

In the preparatory work of the Equal Opportunities Act, it is evident that the concept "employer" has the same meaning as in other labour law legislation, where it forms a starting point for legal duties of various kinds.<sup>12</sup> This assessment applies to the Equal Opportunities Act in its entirety and involves that an assessment of who is the employer is made with reference to established legal practice.<sup>13</sup>

In addition, the preparatory work of the law states that in large enterprises or authorities, it may be more appropriate to create a separate gender equality plan for each area of activity, unit or department. For instance, a county council can create plans for separate hospitals, clinics or other care units. Then the employer can compile sub-plans with a summary that clarifies the strategy of the employer for the collective gender equality work. The purpose of this approach is that the active measures shall be as concrete and well established as possible in the current activities.<sup>14</sup>

The situation is somewhat different concerning the regulations on wage surveys. The survey aims to expose the employer's overall pay structure for women and men. Therefore it is important that all work at the employer's enterprise or organisation is included in the survey and analysis.

In a decentralised organisation where pay is set locally, it is certainly natural that wage surveys and analysis are firstly conducted on a local level. Even local action plans for equal pay can be practical to make. However, a central overview of all the wage surveys and action plans of local units is needed. A central comparison of pay differentials between female-

<sup>11</sup> These statistics are taken from Statistics Sweden's Business Register, [www.scb.se/foretagsregistret](http://www.scb.se/foretagsregistret). The figures are from 2004.

<sup>12</sup> Prop. 1978/79:175, p 111.

<sup>13</sup> Please refer to The Swedish Labour Court 1999:21.

<sup>14</sup> Prop. 1990/91:113, p 75.

dominated and non-female-dominated groups of *work of equal value* is further necessary to expose the pay structure of the employer. It follows that a central action plan, an overall summary of the results of wage surveys and analysis for activities are needed.

## **Wage surveys of smaller employers**

As a rule, the smaller employers do not have people employed as personnel administrators. A small employer can thus feel that various legal requirements on written documentation are burdensome; this view has been presented when JämO has been in contact with these employers. JämO has created a special form in two pages that shows how a small employer can meet the requirements of the law (see Appendix 2). The complications that can occur in connection with wage surveys hardly ever occur within an enterprise with only a few employees. Wage surveys are thus not particularly complicated to conduct at small enterprises; on the contrary, they tend to be quite easy.

## **JämO's conclusions**

The boundary for written documentation of ten employees was decided on because pay issues should not differ from the handling of other areas in a gender equality plan.<sup>15</sup> The lawmaker has chosen to put the boundary for written documentation at the same level as the act that in its character is most similar to the active measures of the Equal Opportunities Act. The regulations of AFS 2001:1 on systematic work environment management state that work environment policy and routines shall be documented in writing if there are at least ten employees at the enterprise or organisation. JämO's experience is that the boundary of ten employees is well founded.

### **3.4 Regulations and practice**

An action plan for equal pay shall present the results of the analysis of the regulations and practice on pay and other employment terms that are applied by the employer. It is not unusual that this analysis only consists of a short statement that pay is established in the collective agreement. Since collective agreements are the result of some form of collaboration process, employers or local union parties are often confused and ask why "the agreement shall be examined once more".

It is true that criteria and assessment grounds in collective agreements at the central level are gender-neutral in their design. At the same time, it must be remembered that different forms of local wage formation apply for the vast majority of the country's employees. Today, only seven per cent of Sweden's employees receive a pay level that has been decided on through a central collective agreement.<sup>16</sup> Thus it is necessary to assess how central collective agreements are interpreted and applied in the local negotiations. The main question is if women or men benefit or not from the application of regulations and practice for the setting of pay.

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<sup>15</sup> Prop. 1993/94:147, p 49.

<sup>16</sup> National Mediation Office, Annual Report 2004, p 76.

## What should be done

According to JämO, the provision on wage surveys should be interpreted as follows: With the purpose to identify, rectify and prevent unwarranted pay differentials, the local parties shall present all relevant information on pay regulations in the collective agreement, as well as regulations on any other fringe benefits. Since central agreements as a rule are formulated so that pay shall be related to the level of difficulty of the work and responsibility, as well as the qualifications and skills of the individual, the regulations imply that the parties, from a *gender perspective*, shall examine how these general principles are translated and applied in the local activities.

In other words, questions that should be answered are:

- Does the local agreement and pay policy give an answer to how different work is evaluated in relation to each other?
- Does the agreement and pay policy give an answer to which criteria should be used for assessment of qualifications of the work performance for those who perform equal work?
- Are the criteria to assess the level of difficulty of the work (what is required of the work) and the individual's qualifications (*how* a certain job is done) known to the managers who set the pay and to the employees? Are the criteria *also applied in practice*?
- Do the criteria for setting of pay for women's and men's work evaluate the work to the same amount of detail? Does an analysis show that any applied criteria directly or indirectly favours certain characteristics or qualifications?
- Are other pay or employment benefits used in addition to basic pay? Does an examination of separate benefits show that these directly or indirectly favour women or men? Do extra fringe benefits above all occur in non-female dominated jobs?

The parties also need to make comparisons beyond the borders of agreements *from a gender-related perspective*. The fact that a group of employees of one sex has more beneficial terms than a group of the other sex can often be due to the fact that they have different collective agreements. But according to the Equal Opportunities Act, this is no reason that differences in pay or employment benefits should be regarded as factual<sup>17</sup>

## JämO's assessment grounds

Up until now JämO has in practice accepted correspondence in wage surveys that concisely states that the local parties have "looked at" regulations and practice. Upon assessment, JämO has also taken into account if the wage surveys are one-sided or the result of a collaboration process. The Equal Opportunities Commission has in this context remarked that a wage survey shall be particularly examined to see if the collaboration has had shortfalls.<sup>18</sup>

Another relevant alternative has been that the employer, in connection with evaluation has sent in all the existing documentation about the basics of setting of pay. This form of "using safeguards" has resulted in the fact that the investigator has practically drowned in agreements and memorandums. JämO's staff has then of course been able to make an assessment on their own whether the existing explanations for pay differentials have been reasonable. However, in the latter case the local parties had in reality not fulfilled the requirements of their own analysis.

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<sup>17</sup> See C 172/92, Enderby, p 22 and prop. 1999/2000:143, S 76, 2 points

<sup>18</sup> Item 4/03, JämO ./i. Närkes Elektriska AB, p 6.

The character of the regulations and the above example show that the requirement for analysis of regulations and practice can actually come in two different contexts. Firstly in the beginning phase, where the basis for continued wage surveys and analysis work is laid. In a number of cases it can also be interesting "when a wage survey is already done" to analyse the effect of certain regulations or pay-setting criteria. Are the results in agreement with the purpose of the law and the pay policy aims of the enterprise or organisation? A measure in an action plan can very well involve corrections or clarifications of the regulations and practice.

In summary, JämO sees a need for clarification and better guidance so that the parties on the central as well as the local level can comply with the intentions of the lawmaker in this part of the regulations on wage surveys.

### **3.5 Work that is equal and of equal value**

#### **Information on wage dispersion for surveys and analysis of equal work**

On numerous occasions, JämO has been asked to what degree can it be relevant to draw attention to wage dispersion, not only for analysis of *work of equal value* but also for analysis of *equal work*.

Section 2 of the Equal Opportunities Act states that measures shall be taken to promote equal opportunity in wage development for women and men. In this connection, it is also relevant that the purpose of pay analysis according to Section 10 is to identify, rectify and prevent unwarranted pay differentials.

Wage dispersion is a measure that can indicate the possibility of wage development within the framework of a job. For example, a wage survey from an institute of higher education revealed that there was considerable wage dispersion in most of the institutes. But at two female-dominated institutes, the wage dispersion was shown to be much more "compressed". When this picture was compared with the employer's pay policy principles, it was clear that the setting of pay at these institutes deviated from the principles. The structure of pay was clearly connected with gender.

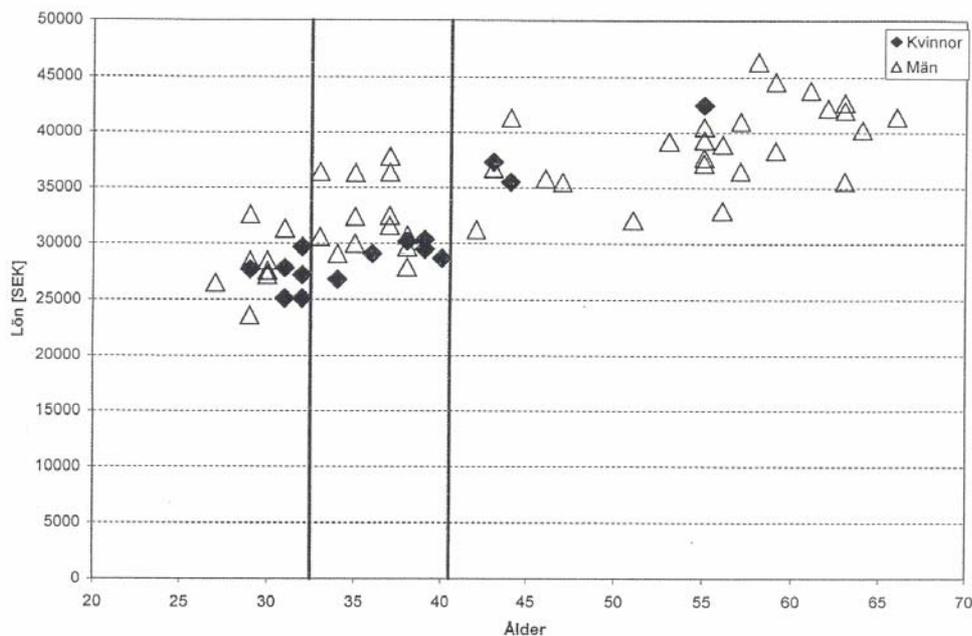
In the proposition for the change in legislation in 2001, it is evident that a great deal of the analysis work is expected to concern the issue of whether norms and criteria for assessment of the employees is applied in a similar manner.<sup>19</sup> In this case, the measure of wage dispersion was relevant, both from the individual's perspective within the "same group" and from a group perspective, which was realised in the analysis of work of equal value. If wage surveys and analysis only had concerned average and median pay for the relevant groups, the above-mentioned problems would have never been given attention.

Another example of why a presentation of wage dispersion facilitates an analysis is when an employer presents dispersion in the form of a plot diagram that shows where men and women are distributed in fields of *equal work*. This form of presentation is suitable to quickly identify any patterns in setting of pay that can relate to sex. The diagram gives information about the

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<sup>19</sup> Proposition 1999/2000:143, p 74.

need for pay adjustments on an individual level at the same time that it illustrates the structures that can be relevant when reasoning about *work of equal value*.



Figur 1  
Lönestatistik för grupp 3.

The above illustrated plot diagram shows the connection between age, pay and sex for female (square) and male (triangle) engineers at an enterprise examined by JämO. The illustration brought about a number of interesting reflections in connection with the wage analysis that was conducted:

It was obvious that the enterprise had in recent years considerably changed its recruiting policy compared to 20 years ago. Among young engineers, the distribution of the sexes is mixed compared to the group aged 41 and above, which was clearly male-dominated. Further, it is taken for granted that the enterprise recruits rationally, i.e. that the young female engineers have at least as high merits as their male colleagues.

Assuming that pay is an adequate receipt of performance and commitment for activities, it is clear that after a few years the female engineers are not considered to contribute to activities to the same degree as their male colleagues. Pay development for women aged 32-41 is practically zero. In this segment there could be reason to analyse in detail if setting of pay is completely based on facts.

The traditional family pattern is probably behind these figures; women reduce their working hours to take care of the children while men compensate reduced family income by working overtime. Most likely there is a great potential for the enterprise to develop measures in accordance with the requirement in Section 5 of the Equal Opportunities Act for employers to facilitate combining gainful employment with parenthood. The absence of active measures

according to Section 5 might have contributed to an upcoming wage gap between female and male engineers; at first this may have been problematic to explain, but after a while it is possible to factually justify since the male colleagues developed their skills to a higher degree than their female colleagues.

The diagram also provides room for interpretation that when the phase of having small children is over, the women catch up with their male colleagues. Pay for those aged 44-46 could be an indication of this.

Questions arise likewise from a strictly profitable perspective. Has the enterprise utilised the newly recruited female civil engineers' potential to the highest degree? Is it certain that the most competent engineers climb the highest on the career ladder during ages 32 and 41?

In summary, JämO has found that the information on wage dispersion provides valuable data both for the analysis of *equal work* and of *work of equal value*. The information could be relevant both from an individual and a group perspective.

## **Work of equal value and the concept of work evaluation**

In connection with recent years' examinations of wage surveys, JämO has found that the concept of work of equal value does not give rise to as many questions compared with several years ago. Even so, it is still common to conduct separate surveys for blue and white-collar workers. In those cases, JämO asks for supplements, pointing out that wage surveys and analysis shall be conducted in relation to one and the same norm for all the employer's activities. It is also common to run into the conception that it is impossible to compare grounds for pay setting between completely different types of work, such as midwives and hospital technicians. Here the central parties can fulfil an important function by clarifying that the concept work of equal value is an integral part of both Swedish law and EC law as well as ILO regulations.

The concept of work of equal value often gives rise to questions of whether the law requires employers to perform work evaluation projects. In the legal preparatory work, nothing is mentioned about an order for systematic work evaluation. However, some kind of method to compare work is required. On its website, JämO presents two methods to assess work requirements, *The Pay Equity Guide* and *Help with wage surveys for smaller enterprises* (the latter is attached here in Appendix 2). None of the methods are systematic work evaluation systems in the full sense of the word. In summer of 2004, JämO updated a report in which some twenty work evaluation systems were presented (which in principle account for all systems on the Swedish market).<sup>20</sup> It has been perceived that JämO examines and approves individual systems, but this is not so. JämO does not set aside any resources to evaluate the quality of individual systems.

The changes in the Equal Opportunities Act are not the only reason for increased interest to conduct work evaluations. Perhaps the most important explanation lies in the development of a decentralised wage formation. It is common that the central wage agreements contain general pay principles that state that pay shall be determined according to the level of difficulty of the work and the skills of the individual. However, these general principles must be made concrete with an active pay policy position on the enterprise or organisational level. The basis for the evaluation of different work must be made clear. In addition, the

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<sup>20</sup> See <http://www.jamombud.se/dokument/rapporteromlone.asp>

employer/local parties must agree on criteria to assess qualifications and performance of individual workers. As a rule, an evaluation of work also facilitates the necessary work by developing criteria to assess the ability of individuals to fulfil those requirements that work places on them.

Nowadays it is normal that a system describes some form of basic model that should be adapted to the conditions at the individual employer. Upon the adaptation/development of a work evaluation system, the forms for collaboration with employees plays a vital role. A high degree of acceptance from the employees' side is an important ingredient for a successful pay policy development work. The forms for collaboration will thereby be key factors that are at least as important as the technical construction of the system in determining if a work evaluation system is "good or bad".

## **JämO's conclusions**

Discussions in recent years on the concept of work of equal value show that the traditional job classification systems of the labour market can only be used in a limited scope. Local work evaluation projects often involve a distinction and diversification of descriptions of female-dominated work. Previously there was a tendency to treat female-dominated work alike, while today this work is broken down into smaller categories/jobs.

There are also considerable differences among the central parties concerning their position towards the traditional job classifications. Within the insurance industry, the employer organisation FAO and its union counterpart FTF have jointly developed a new system, VY codes (Evaluation of occupations). The result has been a tool that meets the need for a detailed occupational classification, as well as information on market pay and to identify work of equal value.

When the Swedish Agency for Government Employers replaced the previous TNS occupational classifications with a new system for statistical occupational grouping, BESTA, the possibility to form a tool that could be used for evaluation of work of equal value was not given attention. As a result, many government authorities find that they need to work double, on the one hand the annual BESTA classification, and on the other the annual wage survey work based on the concept equal work and work of equal value.

Sweden's Municipalities and County Councils have chosen yet another path. Their tool *Pay Link* is mainly a tool for strategic pay policy discussions and an aid to develop a pay policy that is local and tied to activities. At the same time, *the Pay Link* gives detailed guidelines on how the requirements of the Equal Opportunities Act to survey and analyse equal work and work of equal value can be integrated in the overall work for their pay policy.

## **3.6 Regulations and practice**

Now that wage survey work is becoming more and more established, questions are arising about how the variations in supply and demand of labour, or exposure to competition, shall be handled when doing pay analyses. An employer needs to decide which pay differentials are assessed as factual or unwarranted. The legal preparatory work does not give more than these guidelines:

Explanations such as the fact that employers pay according to the collective agreement or that pay is in line with what other employers usually pay, or that the employee who has a female-dominated job has no other alternative labour market does not answer this question, if there is a connection with pay and gender. These types of explanation can thus not usually be sufficient for the legal requirements of analysis to be fulfilled.<sup>21</sup>

### **Municipality X as an example, pay and its three components**

It is common to look at pay on the labour market as a result of three main components based on: occupation, the individual aspect and the market aspect. To make the following situation more concrete, reference is made to conditions in a middle-sized Swedish municipality. The example shows how the purpose of the Equal Opportunities Act, the construction of collective agreements on the central level and the municipalities' own pay policy principles coincide when striving to find a setting of pay founded on facts. Basically, this example is also applicable to conditions within the private sector.

*Occupation* is described as the basic value of the work and is related to the requirements of the job, i.e. the level of difficulty. The Equal Opportunities Act demands that there are no unwarranted reasons for pay setting in this part. This is examined in connection with the pay analysis of *work of equal value*, i.e. a comparison of average or median salaries on a group level. The starting point is that on average, employees in different groups are equally educated and have the same level of occupational skills. If this is not the case, it should be explained why.

To see that pay is based on facts from a gender perspective regarding what is known as the *individual aspect* the analysis is examined regarding *equal work*. That is to say, the criteria of the municipality to assess skills and commitment should be able to explain why certain park maintenance workers or child care workers earn considerably more than their colleagues who do the same kind of work.

The *market aspect* of pay is difficult to evaluate, since there are variations over time depending on the occupational group, and how the market looks when it is time to recruit new staff. The municipality has not yet found any good way to examine objectivity in relation to this third component which for some occupations, but not all, affects the setting of pay. To examine objectivity, the municipality would benefit from an annual market pay analysis, to decide whether the difficulties to hire new staff or keep their staff requires any extra mark-up in pay setting for certain occupations. In this connection, municipalities and trade unions should have a joint interest in quantifying this "bonus for shortfalls", as well as in assessing the changes on the local labour market. The municipality reports that the lack of labour changes over time.

An employer who is of the opinion that a specific market pay share can exist must also take a position on certain pay policies. Is the "shortage of labour" handled in the form of a variable pay supplement which lasts as long as it is shown that there is a difficulty to recruit new staff? Or is it better to have a model that results in a permanent rise in pay when a "shortage in labour" is noted that is not corrected downwards when supply and demand are in balance again?

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<sup>21</sup> Prop 1999/2000:143, p 76, 2 places

JämO is under the impression that more understandable guidance for pay policies is needed, especially in organisations with many managers who are setting pay and where there are large number of unions.

The actual purpose of the requirement to compare levels of pay between female-dominated and non-female-dominated work is that the individual employer has a responsibility to correct structural pay differentials between women and men. Thereby evaluations upon setting of pay are referring to values that are not necessarily unique to the individual employer but rather occur more generally on the labour market. Thus it is not enough with an explanation that is pointing at existing pay structures within a certain geographical area in order to explain pay differentials between female-dominated work that is of equal value and non-female dominated work in an organisation or enterprise.

Development within the municipality area shows a trend away from centralised wage formation towards a model that places demands on the individual municipality to develop its own pay policy profile. In other words, the country's municipalities shall no longer need to apply a common evaluation template for different occupational categories. Each municipality can relatively freely compete on pay levels with neighbouring municipalities to also develop different models for wage dispersion, career development, etc.

The actual construction of today's central agreements aims to see that the individual municipalities are not forced to follow other municipalities' evaluations in the setting of pay. On the contrary, agreements aim to see that individual municipalities develop their own pay policy profile. *Nor in these circumstances does a simple reference to wage statistics from municipalities within nearby areas give any factual explanation why the average pay for a certain occupational group must be on a certain level.* The development of agreements towards a decentralised but structured setting of pay based on clear and transparent criteria is in turn a strong incentive for pay setting on the whole to factually be explained by a series of aspects besides gender.

The Equal Opportunities Act requires that the basis of pay is factual from a gender perspective. In the municipality's pay policy the level of ambition is expanded for the benefit of an objective norm that does not only apply between women and men. In order for the pay policy to be understood as "fair" the first point is that pay policy measures shall /.../ be understood as systematic, consistent, object and motivated.

When JämO examined the wage survey it was obvious that the municipality attached great importance to the market factor. The market factor in the region was the most common explanation for pay differentials between female-dominated work of equal value and non-female dominated work. In its analysis, the municipality had nine groups of work of equal value where such an analysis had been done. In five of these groups, *all* non-female dominated work was the highest paid, and all female-dominated work was the lowest paid. Consequently, there was a group consisting of work of equal value for four female-dominated occupations where the average pay is SEK 16 915-16 952, and three non-female dominated occupations where the average pay is 22 600-25 000. The difference in average pay between these occupations of equal value is from about 5 600 to 8 000, with disadvantage to female-dominated work. *In other words, it is apparent that this municipality has problems with a structural under-evaluation of female-dominated work.*

## Research on individual setting of pay

The market situation for pay for a certain occupation is usually mainly important in connection with recruitment. If agreement has been reached in the beginning on a certain pay level, there are often a number of other essential factors besides pay that an employee considers when continuing employment. Pay is usually described as an incentive with high intensity but of short duration, while factors of low intensity but long duration are a good working environment, opportunities to develop on the job, supporting managers and co-workers. In other words, the amount of pay is hardly the only factor that determines whether an employer succeeds in keeping employees who are already hired.<sup>22</sup>

The parties on the labour market have begun to handle analysis of the *occupational aspect* and analysis of the *individual aspect* according to a somewhat similar method. In recent years, consultancy and support for methods from trade organisations and consultants have developed considerably. However, wage surveys from the same industries and the same geographic market illustrate significant variations concerning analysis and methods for the *market aspect*. Methods for analysis of market pay show large qualitative differences. Nevertheless, it is still unusual for an employer to comment on the market factor in his/her pay analysis with annual wage surveys.

There are other ways to describe pay. In a report done on behalf of the Swedish Federation of County Councils, Calmfors and Richardson report that *pay is completely determined by the market*.<sup>23</sup> According to this point of view, there are no other factors that influence pay besides the market, but rather the market is the mechanism which weighs together all factors that influence pay. From this standpoint, the concept of a pay analysis from a market aspect has a completely different meaning than that of the example of the above municipality. In other words, the terminology in this area is far from consistent.

## JämO's conclusions

The central parties within the various agreement areas have a vital role to play to bring about attention to the issue. There is obviously a need to reduce the space for arbitrariness when the market argument comes up. The increase of clarity and understanding for employers' pay setting is a "win-win" situation for all involved parties. From a gender perspective, the purpose of this kind of methodology could be summarised with a quotation from the national economist Anna Thoursie:

Value discrimination largely occurs due to market forces, which cannot nor should be made illegal. Market forces are needed to reflect the changes in supply and demand. But we must be able to better distinguish this necessary signal system from a signal system that reflects values which are sexually discriminatory.<sup>24</sup>

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<sup>22</sup> For example, see "Individual pay - does it pay? Facts and beliefs on individual pay setting by Tommy Nilsson and Annbritt Ryman, The National Institute for Working Life, 2005.

<sup>23</sup> Market forces and wage formation in county councils and regions. Lars Calmfors, Katarina Richardson. The Swedish Federation of County Councils. See Section 3.2, p. 17. "For example, in Wage Analysis (2001) from the Swedish Federation of County Councils, age, length of employment, and individual performance and competence are given as other factors that can motivate pay differentials. But it is not actually possible to make such a breakdown. There are not a number of factors that influence pay in addition to the market, but rather the market is a mechanism that weighs these factors together."

<sup>24</sup> Why women earn less. Handbook in pay discrimination, LO 2004

### **3.7 Action plan for equal pay**

Employers with at least ten employees are required to present results of wage surveys and analyses in a written action plan for equal pay. In addition, the presentation shall list any pay adjustments and other measures that need to be taken. Examples of such adjustments are pay adjustments, changes in fringe benefits or pay routines, competence development or other measures which promote an equal development of pay. The results of the survey and analysis shall be presented in an action plan, regardless of whether pay adjustments or other measures need to be taken. Measures shall be cost-calculated and put into a time plan. Those adjustments that need to be made shall be carried out as soon as possible and latest within three years.

The purpose of the regulations on wage surveys is to create equal pay at workplaces, i.e. that pay is set on factual grounds from a gender perspective in relation to a common norm. The local parties have a joint responsibility to guarantee a human rights perspective (principle of equal treatment) is used when pay is set, and these parties are expected to go beyond the borders of single collective agreements. Pay adjustments to obtain equal pay shall be differentiated from the traditional negotiation system where every union is guarding the interests of their members and where the pay level is mainly an issue of the relative strength among the parties. The employers' representatives in the collaboration group shall also work for equal pay for all employees, regardless of their union or non-union background. JämO has not always found this to be so.

Among other things, the regulations of the Equal Opportunities Act on a separate action plan, cost calculations and a time plan are meant to clearly differentiate pay adjustments based on the collaboration principle of the Equal Opportunities Act from pay adjustments based on negotiations and conflict principles. The need for cost calculations in connection with pay analyses is made extra clear if seen from the perspective of an employee who is not a union member. The collaboration group that analyses pay differentials from a gender perspective has just as great a responsibility towards all employees regardless of union membership.

More and more employers that JämO has met in its examination work have made wage surveys, but it is not as common that analyses are compiled in an action plan according to the instructions of the law. It can be a problem to correct unwarranted pay differentials when cost calculations are not available. In the legal preparatory work for the expansion of the Equal Opportunities Act in 2001, the following is stated:

The requirement for analysis has different implications depending on how the pay system looks like. If individual pay setting is applied, it is usually necessary to work on an individual level to assess if there is any factual reason for pay differentials which is not dependent on sex. The entire pay differential must be able to be explained. It is thus not sufficient to list a number of probable reasons for the pay differential.<sup>25</sup>

It is not uncommon for JämO to find formulations stating that the difference between women's and men's pay is for instance "largely" due to men having more experience. Formulations with the implication that pay for certain individuals or groups shall "be particularly looked over" also come up. JämO reports that this is a type of reasoning which lacks support in the law and its preparatory work.

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<sup>25</sup> Proposition 1999/2000:143, p. 74.

In connection with the examinations, JämO sees two different starting points for explanations of pay differentials, particularly in the analysis of *equal* work. The first starting point is that the employer explains existing pay differentials by referring to those prevailing criteria that are used to assess qualifications of employees. This "positive" or explanatory point of view is supported by a number of formulations in the preparatory work.<sup>26</sup> The second starting point is also common. In this case, a rather standard formulation is used saying that existing pay differentials are not due to sex. Further comments to this are usually lacking.

JämO has found that in many cases, it is doubtful if the legal requirements for analysis have been fulfilled. Consequently, the authority must often request for supplementary information. At the same time, JämO has noted that the legal space is limited to use a deficient analysis as a basis for an application for fining procedures. The proposition states that the Equal Opportunities Commission shall examine if an analysis according to the law has been conducted, but not if a correct assessment in connection with sex has been made. "The main point is whether the employer's analysis has concerned the question if pay differentials are factual in the sense that they do not relate directly or indirectly to the sex of the employee."<sup>27</sup>

Currently, there is no established practice about how existing pay adjustments shall be cost-calculated. For example, pay adjustments are sometimes stated per month about as often as they are calculated on a yearly basis. Sometimes, gross costs for the employer are reported, and sometimes the pay increase in SEK excluding social security costs.

A common question is whether from a privacy standpoint it is problematic to report in detail about the individuals who are objects for pay adjustments and the reasons why. JämO then points out the slight difference between the detailed requirements in Section 11 of the Equal Opportunities Act concerning what an action plan shall contain and the formulation in Section 13. The legislation states that a gender equality plan, which is supposed to be conveyed to all employees, shall contain an overall presentation of the action plan for equal pay that the employer shall make according to Section 11. Thus even this boundary should be clear, as Section 11 is referring to rules of confidentiality and damages.

According to JämO's view, it should be clear which individuals or groups should have pay adjustments, expressed in SEK at the time of pay revisions. The local parties have a joint responsibility to see that these pay adjustments are carried out, regardless of the following wage negotiations between the various unions and employers, or between the union-member employees and the employer. However, the results of the gender equality analysis only need to be given an overall presentation in the gender equality plan that the employer shall produce.

### **3.8 Pressure mechanisms to increase compliance to the law**

#### **Penalty sanctions**

In the past it was unusual for JämO to apply for fining procedures at the Equal Opportunities Commission because an employer did not follow the regulations on active measures as

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<sup>26</sup> Prop. 1999/200:143 p. 74, 4 places, p. 76, 2 places and p. 103, 6 places

<sup>27</sup> Prop. 1999/2000:143, p 75, 4 places

described in Sections 4-13. However, this situation should not be interpreted to mean that the sanction possibility is of no consequence. At a certain stage in the handling of the matter, JämO usually reminds that fining procedures according to Section 35 could result if an employer does not comply with JämO's standpoints. On its own, the reminder of possible fining sanctions is usually an effective way to get the employer to deal with what has not been done.

Similarly, there are numerous examples where JämO, after reminding the employer of possible fining procedures, has received the necessary information for supervision (Section 34). Another important reason to see that matters are not transferred to the Equal Opportunities Commission is that the legislation clearly emphasises that JämO shall persuade employers to voluntarily follow the demands of the law (Section 31).

Since 2001, 13 applications for fining procedures have been sent to the Equal Opportunities Commission. All these matters concern regulations for wage surveys. Only a few of the applications deal with fining procedures in other areas of the gender equality plan. During the first 20 years of the commission's existence, i.e. up until 2001, a total of 11 presentations on fining procedures have been submitted.

On two occasions, the central union organisation has turned to the commission with an application for fining procedures. The section on collaboration starting on page 16 of this report discusses possible explanations why unions increasingly hesitate to use the possibilities of the Equal Opportunities Act according to Section 35.

One of the problems in formulating fining procedures with support of Section 35 is that the regulations for wage surveys are characterised by a broad area for subjective considerations. The fining procedures shall explain in detail what the employer has to do. The following question has come up: To what degree have detailed and precise demands towards the employer been fulfilled if JämO, in close connection to the formulation of the legal text, requests for a survey and analysis on work of equal value? Referring only to legal texts always means that demands are framed in a rather general way.

Another alternative could be that JämO always states in detail which measures shall be carried out, for example, which particular jobs or individuals shall be analysed and compared with each other, to what degree average pay, median pay or wage dispersion shall be given attention, etc. This degree of precision in fining procedures would perhaps be understood as unduly detailed, not least considering there are different methods to determine which jobs are equal or of equal value, and various ways to analyse existing pay differentials. Practice in the Equal Opportunities Commission gives examples of both alternatives.<sup>28</sup>

In an earlier investigation, it was questioned whether an authority that is not itself in charge of the sanction possibilities - but rather is only considered as a "claimant", in this case to the Equal Opportunities Commission - exercises supervision in the sense of the word in other legal contexts. One alternative would be to let JämO decide itself on fining procedures, with the possibility to appeal to an ordinary administrative court or to the Equal Opportunities Commission.<sup>29</sup>

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<sup>28</sup> Alternative 1 is presented in cases concerning Köttcentralen and Upscale County Council. Alternative is presented in the case concerning United Tankers.

<sup>29</sup> See verdict Ds 2001:37, p. 44

## "Supervision" by other actors than JämO

At the same time that JämO has noted that unions rarely use the possibility to apply for fining procedures, it is striking that more organisations over the last two years have developed alternative methods to mark a responsibility for compliance with the regulations on wage surveys. The following are examples of activities that have come about; this list is by no means exhaustive:

- In October 2003, the Swedish Association of Graduate Engineers conducted an inquiry among union representative concerning gender equality at workplaces. Of 330 replies, about one in four did not have a gender equality plan. Half of the employers conducted annual wage surveys.
- In the middle of 2004, the Graphic Workers' Union conducted an examination of gender equality plans of 56 employers within the graphics industry.
- In autumn of 2004, the Swedish Metal Workers Union did a survey on gender equality plans in enterprises within the Skövde region. Plans were requested from all employers with at least ten employees.
- On 20 January 2005, the Union of Civil Servants reported that they would demand wage surveys from all workplaces where the union was active. This was described in their activity plan for 2005.
- In 2003 and 2004, SKTF, a Swedish union for public and private employees in the service industry, carried out a survey of all municipalities and county councils concerning work with wage surveys. According to figures from 2004, one in three employers did not conduct wage surveys.
- Sif, Sweden's leading white-collar union, has spent considerable resources since 2004 on issues concerning wage surveys. Seven people were hired on a project basis to work with training for representatives and employees in regions around the country. The aim is to conduct wage surveys at all workplaces where there are Sif members, to illustrate and remove unwarranted and unexplainable pay differentials. Sif has 364 000 members at 2 500 branches.

These examples show that activities have been developed among unions belonging to both the white-collar and blue-collar sectors, as well as female-dominated and male-dominated unions. These six examples show that the number of employers who are included in the union's examinations is much more than the average of 150-200 wage surveys that JämO examines every year.

Another actor who conducts studies of the compliance with the law is the *media* in connection with reports on gender-related pay differentials. In addition, there is at least one example of a rather large *consulting agency* within the industry that "keeps on the lookout". On 26 April 2004, the daily newspaper Göteborgsposten reported that Thomson Fakta had conducted its own survey on the compliance with the law. The examination concerned nearly 1 000 enterprises, municipalities and county councils. Of these, 46 per cent had not conducted wage surveys and 26 per cent did not have an action plan for equal pay. Experts at some of the country's *county administrative boards* have developed and conducted a combination of examination and consultancy services on a regular basis for employers' wage surveys in their own regions. However, they do not conduct supervision in a strict legal sense.

Public debate on pay and gender together with knowledge about the existence of the regulations of wage surveys probably explain why *individuals* make reports that cause JämO to begin examinations that were not on the regular plan of activities. These reports have mainly concerned employers in the public sector. In some cases, JämO has examined a wage survey from a municipality after a report from local politicians. Within the county council sector, reports from employees have involved especially comprehensive examinations. In recent years, seven out of eight examined county councils have come about through reports to JämO.

## **JämO's conclusions**

On the whole, JämO has seen an increased commitment from a number of different actors in giving attention to compliance of the Equal Opportunities Act, particularly concerning the regulations for wage surveys. JämO can see a connection to what has been described above and those changes in legislation that were carried out in 2001. In addition, increased activities, especially during the last two years, have affected the assignment of the National Mediation Office to:

give attention to the importance that central collective agreements are constructed so that the agreement promotes the work of the local parties in pay issues from a gender perspective. The National Mediation Office shall consult with JämO in connection with conducting the assignment.<sup>30</sup>

The 2004 annual report from the National Mediation Office gives a detailed description of the various clarifications in central collective agreements to facilitate the application of the regulations of wage surveys on the local level.

### ***3.9 Interaction between law and agreement***

Today, wage formation and gender equality analysis occurs mainly on the enterprise level. Changes in the construction of pay agreements have implied that the circle of comparison of the Equal Opportunities Act, which is limited to employees of the same employer, usually coincides with the circle that is affected by pay agreements in the form of collective agreements. The employer's responsibility to see that pay must be set on factual grounds is thereby in line with his/her possibilities to take action. Pay agreements with centrally established tariffs are now only applied for seven per cent of the country's employees.

The development towards a more decentralised and individual setting of pay is followed by formulations in union agreements that pay shall be set on factual and transparent grounds. Parallel to this development in Swedish collective agreements, EC law has from a human rights perspective formulated increased requirements for pay setting based on factual grounds. As a result, an employer must be able to justify pay decisions in the light of more and more grounds for discrimination or else risk being penalised before a court. These two development tendencies have resulted in central collective agreements that often order more detailed pay analyses than those that only concern gender. The requirement in the Equal Opportunities Act for wage surveys and analysis thus does not go further than what the parties have agreed on in the collective agreement, rather to the contrary.

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<sup>30</sup> Assignment from the Ministry of Industry, Employment and Communications Reg. no. 257/03

The requirement of collective agreements that pay shall firstly be related to the demands of the work and the skills and performance corresponds well with the concept of the Equal Opportunities Act. The law specifies four main criteria as the basis of assessment of the requirements of work demands. In a system with individualised wage formation on the enterprise or organisational level, the individual employer has a responsibility to make active choices and assessments concerning criteria for setting of pay. If the individual employer has taken a stand towards how jobs are evaluated in relation to one another, the answer should be obvious which jobs are equal or of equal value. And if the employer has developed clear criteria for assessing qualifications and performance of employees, it should not be a problem to explain pay differentials for equal work.

Interaction between necessary standpoints of pay policy and the pair of concepts in the Equal Opportunities Act of equal work and work of equal value are now also described in reports from specific trades, such as *the Pay Link*, a tool for strategic pay policy discussions produced by the employer organisation Sweden's Municipalities and County Councils.

Since JämO's report on regulations for wage surveys in 2003, central collective agreements have been signed for large parts of the Swedish labour market. The National Mediation Office and JämO have previously remarked that the union agreements for the same industry should contain the same formulations about coordination between the different agreements regarding surveys and analysis from a gender perspective. The 2004 agreement between The Association of Swedish Engineering Industries and the Swedish Metal Workers Union, Sif and the Swedish Association of Graduate Engineers was an example of this new way of thinking. According to the agreement, a joint working group has been given the task to prepare guidelines adapted to the industries concerning wage surveys and analysis. The parties have also pledged to arrange seminars during the agreement period to spread knowledge and create an arena for discussions on the subject.

JämO welcomes the work which has begun in different areas where parties jointly develop industrially adapted guidelines. One of JämO's aims in examining the 40 industrial employers was to link the parties' joint gender equality work via the reference groups and bring about a dialog on assessment levels and methods.

The issue of the choice between forced legislation for active measures or to re-introduce an opportunity for local agreements in the form of collective agreements has been the subject of discussions within the framework for the ongoing discrimination investigation. JämO noted that the industrial unions the Swedish Metal Workers, the Swedish Industrial Workers, the Swedish Forestry Workers, Paper Workers, Food Workers, Sif and the Swedish Association of Graduate Engineers have worked on a project between 2003 and 2005 called "Gender Equality and Discrimination, Project Agreement or law". The purpose of this project was to form a proposal that would strengthen the significance of collective agreements and to develop a joint viewpoint of the role of the collective agreement. The project can be summarised with the following statement:

The project group assesses that it is not necessary to change the legal regulations on active measures so that they become semi-optional according to the model of the working time law, and thereby are excluded from JämO's and DO's supervision. Concerning the current regulations, we also assess that there is room to conduct union work and to bring about a functioning collaboration with employers regarding these issues.<sup>31</sup>

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<sup>31</sup> , Jämställdhet & diskriminering. Projekt avtal eller lag. Facken inom industrin april 2005, p 21.

It is apparent that JämO's supervision and the regulations forced by law are actually understood as a complement to the roles of the parties, and not as a threat or complication to the collective agreement system.

## **JämO's conclusion**

The difficulties in interaction between law and agreements on the local level often concern how the provision on collaboration should be interpreted. In order for wage survey work to function smoothly, JämO often recommends that the parties can locally define the framework for collaboration. This concerns the ability to determine the purpose of the collaboration group, to inform when the activities shall occur, how often the parties shall meet, who shall participate in the work, and last but not least, how the results of the collaboration, i.e. the action plan for equal pay, shall be regarded in relation to the normal wage negotiations.

The overall conclusion is that the Equal Opportunities Act hardly presents a threat or any questions about the Swedish form of collective agreements. On the contrary, the legislation is quite able to integrate with the wage formation process on the labour market, both centrally and locally.

# APPENDICES

## ***Appendix 1, Equal Opportunities Act, Sections 2, 10-13, 33-35***

### **The Equal Opportunities Act (1991:433)**

As of 1 July 2005

#### **Cooperation**

**Section 2.** Employers and employees shall cooperate in pursuing active efforts to promote equality in working life. They shall strive in particular to prevent and eliminate differences in pay and in other conditions of employment between women and men performing work that may be considered equal or of equal value. They shall also promote equal opportunities for wage growth for women and men.

Work is to be considered equal in value to other work if, based on an overall assessment of the nature of the work and the requirements imposed on the worker, it may be deemed to be of similar value. Assessments of work requirements shall take into account criteria such as knowledge and skills, responsibility and effort. When the nature of the work is assessed, particular regard shall be taken of the working conditions. (2000:773)

#### **Pay issues**

**Section 10.** With the purpose of identifying, rectifying and preventing unwarranted pay differentials and other terms of employment between women and men, employers shall annually survey and analyse

- regulations and practice concerning pay and other terms of employment that they apply, and
- pay differentials between women and men who perform work considered equal or of equal value.

Employers shall assess whether pay differentials that exist are directly or indirectly gender-related. This assessment shall in particular examine differences between

- women and men who perform work considered to be equal (like work), and
- groups of employees who perform work that is or is normally regarded as female dominated and groups of employees who perform work that is considered to be of equal value to such work but is not or is not normally regarded as female dominated. (2000:773)

**Section 11.** Each year, employers shall prepare a plan of action for equal pay and therein report the results of the survey and analysis in accordance with Section 10. The plan shall state what pay adjustments and other measures need to be implemented to attain equal pay for work considered equal or of equal value. The plan shall further contain a cost computation and a time schedule aimed at ensuring that the required pay adjustments are implemented as soon as possible and at the latest within three years.

A report and an evaluation of how the planned measures were implemented shall be included in the plan of action for the following year.

The obligation to prepare a plan of action for equal pay shall not apply where the employer had less than ten employees at the end of the immediately preceding calendar year. (2000:773)

**Section 12.** Employers shall supply any employees' organisation to which they are bound by a collective bargaining agreement with whatever information may be necessary to enable the organisation to collaborate in the pay survey and analysis and in the preparation of a plan of action for equal pay.

If the information concerns data relating to pay or other circumstances that affect an individual employee, the rules of confidentiality and damages contained in Sections 21, 22 and 56 of the Employment (Co-Determination in the Workplace) Act (1976:580) apply. The provisions of Chapter 14, Sections 7, 9 and 10 of the Secrecy Act (1980:100) apply in public activities. (2000:773)

### **Plan of action for equality**

**Section 13.** Each year, employers shall prepare a plan describing their efforts to promote equality. The plan shall contain a survey of the measures pursuant to Sections 4-9 which are required at the workplace and shall indicate which of such measures the employer intends to initiate or implement during the coming year.

The plan shall also provide a summary report of the plan of action for equal pay that employers are required to implement under Section 11.

A report concerning how the planned measures pursuant to the first paragraph have been implemented shall be included in the plan for the following year.

The obligation to prepare an equality plan shall not apply where the employer had less than ten employees at the end of the immediately preceding calendar year. (2000:773)

### **Duty to provide information**

**Section 33.** Employers are liable at the request of the Equal Opportunities Ombudsman – to make available all information concerning their activities that may be of value to the

Ombudsman for the purpose of monitoring compliance with the Act pursuant to Section 30, and

– to allow the Ombudsman access to the workplace for the purpose of undertaking investigations connected with such monitoring. (2000:773)

### **Default fines**

**Section 34.** If the employer fails to comply with a request pursuant to Section 33, the Equal Opportunities Ombudsman may order the employer to do so on pain of a default fine.

**Section 35.** Employers failing to comply with any of the provisions set forth in Sections 4-13 may be ordered to fulfil their obligations on pain of a default fine. Such orders are issued by the Equal Opportunities Commission upon application by the Equal Opportunities Ombudsman, or, where the Ombudsman has declared itself unwilling to make an application, by a central employees' organisation to which the employer is bound by a collective bargaining agreement. The order may also be directed against the State as an employer. The Ombudsman shall, in the application, specify what measures the employer should be ordered to undertake, the reasons invoked in support of the application, and what investigation or investigations have been carried out. (2000:773)

## Appendix 2, Help with Wage Surveys for Smaller Enterprises

### An overall description of how to conduct the survey

*(If the enterprise is mainly of one sex only, please also refer to the italicised instructions)*

1. The first step is to survey and analyse the provisions and practice for pay and other employment terms that apply at the enterprise, and how they affect women and men. The review shall among other things include pay provisions and various fringe benefits.
2. Decide and report which jobs are **equal** or have nearly equal working duties.

Example:

Type of work
A
B
C
D

3. List the number of women and men who do the work.

Example:

Type of work	number of women	number of men	Total
A			
B			
C			
D			

*If there are either only women or only men who do the same type of work (equal work) continue to item 6.*

4. Calculate the average pay for women and men respectively and women and men together.

Example:

Type of work	Number of women	Number of men	Average pay Women	Average pay Men	Average pay W + M	Analysis
A						
B						
C						
D						

5. Analyse any difference in pay for equal work. Pay differentials shall be explained with factual reasons. Otherwise, list proposals for measures to be taken.
6. Mark the jobs that are female-dominated (more than 60 per cent) *even if there is only one or a few women.*

Example:

Type of Work
A
B
C
D

7. Female-dominated work shall be compared to work that is male-dominated or mixed - but of equal value. Review the different jobs to find which ones are **of equal value** based on the demands placed on the jobs.

*Even if you only have one woman employed, you shall compare her demands for the job with those for male-dominated or mixed jobs. The purpose of the law is to discover and correct any pay differentials that have not been discovered earlier.*

The overall assessment of work of equal value shall be made based on the following four criteria:

- I. **Knowledge and skills** - needed for the job
- II. **Responsibility** - required for the job
- III. **Effort** - mental or physical involved with the job
- IV. **Working conditions** - for the job

Example:

Type of Work	Criteria				Overall assessment
	I	II	III	IV	
A					
B					
C					
D					

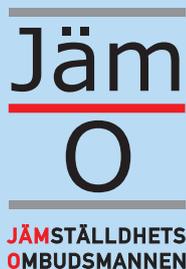
An overall assessment of the criteria I-IV above illustrates if different jobs are of equal value with consideration to the demands of the job. An assessment of the demands could be described as follows: slight, average, great or very great demands. For example, if job B which is female-dominated and D which is not are assessed to be **of equal value** the pay differentials shall be analysed and explained with factual reasons. Otherwise, list proposals for measures to be taken.

Example:

Type of work	Average pay W + M	Analysis
B		
D		

8. If in the analysis, pay differentials according to items 5 and 8 cannot be explained in a factual way, you shall make a cost calculation and time plan to rectify the differences. This shall be presented in a separate action plan for equal pay. The differences shall be corrected as soon as possible, and latest within three years. You should also investigate if other types of measures should be taken, such as competence development.

Jämställdhetsombudsmannen (JämO) övervakar att kvinnor och män har lika villkor på en rad samhällsområden. Grunden för JämOs arbete är jämställdhetslagen (arbetslivet), lagen om likabehandling av studenter i högskolan samt lagen om förbud mot diskriminering (arbetsmarknadspolitisk verksamhet, socialförsäkringssystemet, arbetslöshetsförsäkringen, start och bedrivande av näringsverksamhet, behörighet/legitimation/auktorisering för yrke, medlemskap i arbetstagar-, arbetsgivar-, eller yrkesorganisation, yrkesmässigt tillhandahållande av varor, tjänster och bostäder). JämO utreder diskrimineringsanmälningar, övervakar arbetsgivares och högskolors aktiva åtgärder, informerar, utbildar, ger råd till arbetsgivare, fack och näringsidkare m m.



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