

# What are the implications of the recent Tesco equal pay ruling?

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All of the 'big four' supermarkets, as well as other retailers, have seen equal pay claims submitted in the Employment Tribunal in recent years. The majority of these cases involve workers, or former workers, who work in the supermarket stores (with a higher proportion of women), arguing that they have not been paid equally compared to colleagues in the distribution centres of the business, where there is usually a higher proportion of men. Their argument is that they carry out work of equal value to these colleagues and that, as a result, their pay should be equal.

In the latest of a string of decisions involving these claims, the Court of Justice of the European Union (CJEU) has determined that former Tesco workers can rely upon the 'single source' test in respect of their claims of equal pay. The 'single source' test comes from EU law and allows for workers to compare their roles to those of colleagues in a different location for the purposes of an equal pay claim if their terms and conditions of employment come from a 'single source'. This is a single body which is responsible for the inequality and is in a position to rectify it.

As this is a test under EU law, Tesco tried to argue that it should not be applied directly to businesses within the UK. However, the CJEU has now determined that the 'single source' test *does* apply to UK businesses. The CJEU was of the view that the EU law clearly imposes an obligation to achieve equality of pay for equal work and work of equal value by eliminating discrimination on the grounds of sex from all aspects of remuneration. Therefore, where one body is responsible for terms and conditions relating to pay, its workers can compare themselves regardless of where they work.

This does not necessarily determine that there will be a single source in every employer which faces claims – the decision of the CJEU simply states that the workers are able to use this as an argument against businesses in the UK. This will therefore depend on the particular organisation in question. However, unfortunately for Tesco, their workers have established that there is one 'single source' for the purposes of their claims. They are therefore able to compare their work despite working in different locations. It is worth adding that this judgment will be binding on Employment Tribunals in the UK moving forwards, as the question was asked of the CJEU before the UK formally left the EU.

The CJEU decision follows on the back of a decision of the Supreme Court in March this year in which it was determined that ASDA shop workers and depot workers were on common terms and therefore could be compared with one another. The key question is whether the depot workers would be employed on the same, or substantially the same, terms if they were employed at the retail workers' establishment.

With both the ASDA and the Tesco cases, these 'wins' are only a small step for the claimants trying to win their claims for equal pay. They still need to be able to show that they performed work of equal value and it is likely that the supermarkets will try to defend the claims on the basis that the difference in pay was as a result of another factor which was not discriminatory such as skill sets, demands and unsociable working hours. Some of these equal pay claims could take years to resolve.

Having said that, the combination of the CJEU and Supreme Court judgments make it clear that employers will need to look more carefully when seeking to ensure that its employees are paid equally regardless of their sex, especially where the employer has multiple

parts to its business; it is expected that all retailers will be watching the outcome of the remainder of this litigation with particular interest.

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