

## Equal pay at ASDA stores - appeal to the Supreme Court unsuccessful

35,000 workers working in ASDA's retail business sought to compare themselves to workers at distribution depots for equal pay purposes. Find out more about this Employment Appeal Tribunal.

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35,000 workers (predominately women) working in ASDA's retail business sought to compare themselves to workers at distribution depots (predominately male) for equal pay purposes. ASDA argued that they were not employed on common terms and therefore could not be used for as a comparison. The Claimants were successful in the Employment Tribunal on this point and ASDA were unsuccessful in the EAT and Court of Appeal.

The Supreme Court has now found in favour of the workers and determined that the depot workers were on common terms and therefore could be compared with one another. The key question is whether the comparators would be employed on the same, or substantially the same, terms if they were employed at the Claimants' establishment. This is not a comparison of contracts, line-by-line, but based on inference from relevant facts.

This case has been widely reported as a win for the Claimants and it is indeed a significant step. However, this is only a small part of the tests that the Claimants need to satisfy in order to be successful in their equal pay claims. They still need to be able to show that they performed work of equal value. ASDA may also seek to defend the claims on the basis that the difference in pay was as a result of another factor which was not discriminatory on the grounds of sex. Indeed, ASDA have indicated that this matter will take years to resolve so it appears that this case will run for some time to come.

It is 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 retailers will be watching the outcome of the remainder of this litigation with particular interest.

## Contact



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