



# An Employer's Guide to Receiving a Pay Equity Claim

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**Te Kāwanatanga o Aotearoa**  
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## About this guide

This guide provides advice to employers who receive a pay equity claim from an employee or a union representing a group of employees.

It can be alarming at first to receive a pay equity claim. This guide is here to help you navigate your obligations under the law and provide you with information about what to do at each stage.

The first step is the simplest: don't panic!

A pay equity claim does not mean you are a “bad employer” or that you have done anything wrong. Most often, sex-based undervaluation of a role or occupation is not employer specific, rather it relates to how society has historically measured and valued skills and effort in female dominated roles. Pay equity is a whole of society issue that you can be part of addressing.

Under the Equal Pay Act 1972 (the Act) employers who receive a pay equity claim have certain legal obligations. Some of these legal obligations come with clear timelines attached which you will need to be aware of. This document will help walk you through these deadlines.

## Key terms

The following key terms are defined below for the purpose of understanding this document. Some of these terms have legal definitions in the Act which have been rephrased here in plain language.

<b>Affected employee</b>	An employee who performs work that is the same as, or substantially similar to, the work performed by the employees that the claim was raised on behalf of.
<b>Arguable</b>	If a claim is deemed to be arguable it means the employer agrees that there is a credible case that sex-based undervaluation may exist.
<b>Claimant</b>	<ul style="list-style-type: none"><li>• An individual employee who raises a pay equity claim</li><li>• A union that raises a pay equity claim on behalf of the members of that union.</li><li>• Multiple unions that jointly raise a pay equity claim on behalf of the members of each union, or that pursue a pay equity claim that is consolidated.</li></ul>
<b>Pay equity</b>	The same remuneration for different work which has the same/similar level of skill, responsibility, and effort.

## Receiving a claim

You should receive notification of a pay equity claim being raised in your organisation in writing either by email or in hard copy.

Claims are most often raised by unions on behalf of workers but can also be raised by individuals. Claims can be raised in one organisation or across multiple organisations for work that is the “same or substantially similar.”

There are certain details that must be included in a claim letter for a pay equity claim to be formally raised under the Equal Pay Act 1972. A link to the legislation can be found here: [Equal Pay Act 1972 No 118 \(as at 20 December 2023\), Public Act Contents – New Zealand Legislation](#). Sections of the Act are referenced throughout this document.

A claim must:

- state that a claim is being made under the Equal Pay Act 1972
- include the name and address of the individual or union/s raising the claim
- state the date on which the claim is made
- include a brief description of the work to be covered by the claim and
- include information about elements that may have or may continue to contribute to sex-based undervaluation of the work.

**Once a claim is received you must follow the below steps within the deadlines.**

## Key

<b>Deadline 1</b>	Within 5 working days of receiving the claim
<b>Deadline 2</b>	No later than 45 working days after receiving a claim
<b>Deadline 3</b>	Within 20 working days of deciding the claim is arguable
<b>Deadline 4</b>	Contact details must be passed on to the union/s “as soon as is reasonably practicable” after the 20 working days provided for employees to opt out of the claim

### Deadline 1

#### 1. Acknowledge receipt of the claim

The first legislated deadline for you is to acknowledge receipt of the claim. **This must be done in writing within 5 working days of receiving the claim (section 13J)**. Acknowledging receipt of the claim is simply a written response to the union or individual who has raised the claim to let them know it has been received and what the date of receipt was. You may wish to state that you will consider the arguability of the claim as outlined in the Act within the required timeframe.

#### 2. Notify unions

Once a claim has been received you will need to consider if there are union/s that need notifying. This must be done in writing within 5 working days of receiving the claim (section 13J) and must attach a copy of the claim with the identifying details of any individual claimant redacted.

##### a) Individual claim

If an individual raises a pay equity claim, you must notify any union or unions (if applicable) who represent employees doing the same or similar work in your organisation that a pay equity claim has been raised.

##### b) Union claim

If a union raises a pay equity claim, you must notify any other union or unions (if applicable) that represent employees doing the same or similar work in your organisation that a pay equity claim has been raised.

### 3. Form a view on whether a claim is arguable

The next step in the process is for you to form a view on whether the claim is arguable. **The deadline for this step is no later than 45 working days after receiving a claim (section 13Q).**

*What is the test of arguability?*

Under section 13F of the Act a pay equity claim is arguable if

- the claim relates to work that is or was predominantly performed by female employees. This means work that is currently, or that was historically, performed by a workforce of which approximately 60 percent or more members are female and
- it is arguable that the work is currently undervalued or has historically been undervalued.

The test of arguability under the Act is designed to be “light touch”. For a claim to be deemed arguable there only needs to be a credible case that sex-based undervaluation may exist. At this stage, a claim does not need to prove there is undervaluation and you are not required to undertake in-depth research.

Agreeing on arguability does not mean you agree up front that the work is undervalued, you are only agreeing that there is the potential that the work is or has been undervalued and you will work together to investigate this. An outcome of a pay equity work assessment may be that no undervaluation is established.

*If you need more time to form a view*

If you require more time to assess arguability, a notice extending the time limit must be given to the party/parties that raised the claim as soon as is reasonably practicable (section 13R). **The extension cannot be longer than 20 working days for a claim with a single employer or 80 working days for a claim with multiple employers** (unless parties agree otherwise).

#### 4. Notify the claimants of your view on arguability

The next step is to give notice to the claimant/s as soon as is reasonably practicable on your view of arguability.

##### A) Not Arguable

**If you find the claim is not arguable**, notice needs to be given to the claimant that sets out the reasons for your decision. Remember, as the law sets out a **low threshold** to enter into a pay equity process you will need clear, strong reasons to find that a claim is not arguable.

In the letter to the claimant you will need to explain the steps that the claimant may take if they wish to challenge your decision.

These steps are:

- Seek further details of the reasons for your decision.
- Refer the question of whether the claim is arguable to mediation.
- Refer the question of whether the claim is arguable to the Employment Relations Authority for facilitation if all the parties agree.
- Apply to the Employment Relations Authority for a determination as to whether the pay equity claim is arguable

##### B) Arguable

In a pay equity claim, the union or unions that raised the claim on behalf of the claimant/s are obliged to act on behalf of all affected employees throughout the claim process, regardless of whether or not they are members of the union. You need to inform affected employees that the claim has been raised and give them the opportunity to opt out.

**If a claim is found to be arguable**, you must:

- Notify the claimant and all affected employees (every employee of the employer who performs work that is the same as, or substantially similar to, the work to which the claim relates) **within 20 working days** of deciding the claim is arguable.<sup>1</sup>
  - A template notification letter to a union or unions notifying them that you have decided the claim is arguable is included at Appendix 1 of this document.
- provide information to the claimant about the pay equity bargaining process under [sections 13ZC to 13ZZE](#); and
- enter into the pay equity bargaining process with the claimant.

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<sup>1</sup>When there are reasonable grounds for requiring an extension, an extension of up to 25 working days may be available.

When notifying all affected employees, there are particular things your notification letter/email must include. The requirements for claims raised by an individual employee are slightly different from those for claims raised by a union or unions. If a claim is raised by an individual employee, you are still obligated to notify all affected employees who are doing the same or substantially similar work to the claimant. Please see Schedule 2 Part 1 of the Act.

The majority of claims in Aotearoa are raised by unions, so for ease, instructions are included below regarding claims raised by a union or unions.

It's important to note you must give affected employees all the relevant information and allow them the opportunity to opt out of the claim process if they wish to.

A template notification letter and fact sheet to all affected employees in a union raised claim are included at Appendix 2 of this document. The template provides a simple notification format and a fact sheet to accompany the letter. Together these documents cover all the necessary information required by Schedule 2 Part 2 of the Act.

**Please note that if you fail to meet the legislative deadlines for notifying the claimant/s and all affected employees of your view on arguability, the claim is automatically deemed arguable under the Act.**

**5. Provide contact information for affected employees to the union/s (if applicable)***A) Passing on contact information for affected employees*

In a union-raised claim, under section 13Z of the Act, you are obligated to pass on contact information to the union or unions for all affected employees that do not opt out of the claim. The required contact information is:

- Employee name
- Contact details for the provision of written communication - usually a work email address.

Your notification letter to affected employees needs to include this information so that employees are informed of their options.

Passing on contact information allows the union to:

- represent all affected employees
- keep affected employees up to date with progress on the claim and
- ensure affected employees can vote.

**Contact details must be passed on to the union/s “as soon as is reasonably practicable” after the 20 working days provided for employees to opt out of the claim. You must not pass on the details of any employees who opt out of the claim to the union/s.**

*B) Agreeing a process with unions to keep contact information up to date.*

You will also need to have a process for notifying any new employees that will be covered by the claim and ensure they have the opportunity to opt out prior to passing on their contact details to the union. New employee details should only be passed on to the union/s after employees have had the appropriate notification for the full 20 working days.

You will need to maintain this process with the union/s for the duration of the claim to meet your legislative obligations.



## **6. Enter the investigation phase**

If a claim is found to be arguable, the process will then move into the investigation phase, which involves undertaking a gender-neutral pay equity work assessment.

Once arguability has been established, you are now legally obligated to work with the claimant party/ies to investigate the claim.

It is helpful to enter the pay equity process with the understanding that it is designed to be a collaborative process and relies heavily on good communication and consensus from the parties involved. Some stages of a pay equity claim may happen simultaneously, and some stages will need to be revisited or adjusted in response to emerging information. While the process is grounded in evidence and data-driven, it also relies on well-informed interpretation and analysis of that information.

# Appendix 1

## Employer letter to claimant acknowledging claim is arguable for a union raised claim.

*This letter should be duplicated or copied to any union that has been notified in writing of the claim.*

[Name]

[Title of organisation]

[Address of organisation]

[Date]

[Name of union representatives]

[Title of union representative]

[Address of union representative]

Dear [Name of union representative/s]

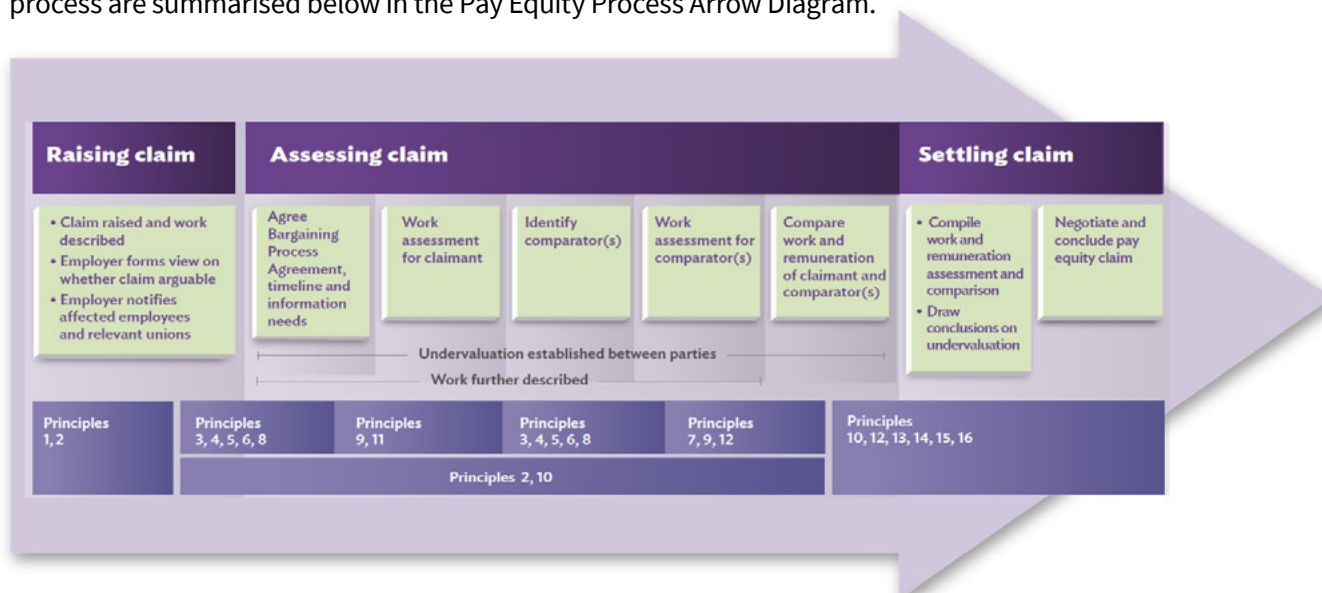
### Pay Equity Claim for [union representative] for [description of work]

We are writing to you regarding the pay equity claim raised by [insert union] on [date]. We want to let you know that, based on the information provided in the claim letter and our light touch assessment in accordance with section 13Q of the Equal Pay Act 1972 (the Act), we agree that the pay equity claim is arguable.

In accordance with the Act, we will now notify all affected employees performing the same or similar work that they are covered by the claim and provide them with the opportunity to opt out of the claim. We intended to do this no later than [insert date].

### Pay equity bargaining process information

The Act also requires that we draw your attention to the pay equity bargaining process under sections [13ZC to 13ZZE](#) of the Act. These sections will be important in shaping our joint work together. The key steps in the process are summarised below in the Pay Equity Process Arrow Diagram.



We look forward to working with you to progress this pay equity claim.

Yours sincerely

[Name]

[Role]

[Agency]

## Appendix 2: Template notification letter to all affected employees with factsheet

The below letter should be sent to all affected employees along with the factsheet

Dear [insert name of employee]

This letter is to notify you that a pay equity claim under the Equal Pay Act 1972 (the Act) has been raised by [insert name of union/s] for [roles or work named in the claim]. We have accepted this claim and will be beginning the pay equity assessment process shortly.

### What does this mean?

A pay equity claim asks us to investigate and understand whether work that is predominantly performed by women may be underpaid when compared to work mainly done by men which may be different but operates at a similar level of skill, effort, responsibility and experience. The aim of this process is to identify and correct any gender-based discrimination so that all people are paid fairly for the work they do. We will be working with the [union/unions] to complete this investigation.

**Your role has been identified as covered by this claim** because you are either doing the work of [named role/s] or work that has been deemed to be substantially similar. This means that **you are automatically covered by this pay equity claim regardless of union membership** unless you choose to opt out. If you are not a member of the union, you are not required to pay fees to the union to receive the benefits of any settlement.

### What do you need to do?

*The only action you need to take is if you want to opt out of this claim.*

### If you choose to stay covered, it means that:

Your name and email address will be provided to [union/unions] for the purposes of progressing the claim.

- If other unions also raise a pay equity claim for [role/occupation] and join the [union/unions] your name and email address will also be shared with those unions.
- You have the right to access the contact information that is shared about you and you can make changes to it if you feel it's incorrect.
- You can participate in the voting processes for any proposed settlement.
- Your employment terms and conditions will change to reflect any agreed claim settlement.

### If you choose to opt out of the claim, it means that:

Provided you opt out by telling us in writing within 20 working days of the date of the letter [insert date] your name and email address won't be shared with [insert union/unions] or any other unions that join the claim.

- You will not receive information or updates about the progress of the claim.
- You can't participate in any voting process to agree any proposed settlement.
- We will provide you with an offer of the benefit of any pay equity settlement agreement. You can then decide whether you'd like to accept that offer.
- If you do accept the offer, you will not be able to raise your own pay equity claim.

If you opt out and decline any offer of the benefit of settlement, you will retain your right to raise or participate in a future pay equity claim for [role/occupation].

### **Opting out of the claim if you are a member of the union**

If your union has raised a pay equity claim covering your work, you cannot opt out of the claim without first resigning your membership of the union.

### **Opting out after the 20-day time period finishing on [insert date]**

If you want to opt out after [insert date] you will need to notify both the union [insert contact] and your employer [insert contact].

### **Options for employees who have an existing pay equity claim**

If you have already raised your own pay equity claim with us and that claim has not been settled, you can:

- withdraw the claim by giving us notice in writing and
- join the union-raised claim by giving notice in writing to the union or unions that raised the claim.

### **Raising a separate pay equity claim**

You can raise your own pay equity claim by writing to us. As there is already a pay equity claim lodged by a union, you will need to opt out of this claim before you can raise your own. To raise your own pay equity claim, you need to opt-out of the union-raised claim before the final day of voting on a proposed settlement or the day before an application to fix remuneration is filed with the Employment Relations Authority by the union.

### **If you want to raise your own pay equity claim, the claim must include the following:**

- state that the claim is a pay equity claim made under the Equal Pay Act 1972
- your name and address
- the date you make the claim
- your occupation, role, and a brief description of the work you carry out and
- the name and address of the person representing you, if applicable and

a description of how your claim meets the requirements to be an arguable pay equity claim under section 13F of the Equal Pay Act 1972.




You may wish to seek independent legal advice on of the above options.

Please feel free to contact [insert appropriate employer contact and/or appropriate union contacts] if you wish to discuss this letter or the claim.




Yours sincerely,

[Insert Organisation name here]

## What does it mean to be automatically covered by the claim?

 <p>Your name and contact details will be sent to [insert name of union] unless you opt out of the claim.</p> <p>[Insert name of union] will communicate with you about the claim, the content of the settlement and the process for voting on any proposed settlement.</p>	 <p>You will be able to vote on any proposed settlement and be kept informed of the process for voting.</p>	 <p>If the claim is settled, the benefits of settlement will automatically apply to you and may result in a change to your terms and conditions of employment. You won't be able to raise your own pay equity claim.</p>	<p><b>YOU WILL NOT BE COVERED BY THE CLAIM IF:</b></p> <ul style="list-style-type: none"> <li>You've already raised or settled a pay equity claim or you've accepted the benefit of a settlement.</li> <li>You're pursuing a claim under the Human Rights Act 1993 or Employment Relations Act 2000 instead, and proceedings have commenced.</li> <li>You tell us in writing before the final day of voting on any pay equity settlement that you're opting out of this claim.</li> </ul>
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## What does opting out of the claim mean?

<p><b>If you choose to 'opt out' within 20 working days you will not:</b></p>			<p><b>YOU WILL:</b></p>
 <p>Have your name and contact details sent to [insert name of union here].</p>	 <p>Receive information about the claim from [insert name of union here].</p>	 <p>Be able to vote on the details of any settlement</p>	<ul style="list-style-type: none"> <li>Be offered the benefits of any settlement.</li> <li>Still be able to raise your own pay equity claim (if you do not accept the benefits of any settlement).</li> </ul> <p>Please note you can opt out of the claim any time up to the final date of voting on the claim. However, after 20 working days of receiving your notification letter from your employer you will need to opt out by contacting [insert name of union] and [insert employer].</p>