



**(Ne)jednakost zarada**

**(Un)Equal Pay**

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Publisher: JPM | Partners

Delta House, 8a Vladimira Popovića street

[www.jpm.law](http://www.jpm.law)

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Design and prepress: JPM | Partners

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Pravo na jednaku zaradu za isti rad ili rad jednake vrijednosti jedno je od osnovnih prava zaposlenih, koje je zaštićeno kako domaćim zakonodavstvom, tako i međunarodnim standardima.

U Crnoj Gori, ovo pravo je regulisano Zakonom o radu, dok sudska praksa doprinosi njegovom tumačenju i primjeni. Takođe, značajnu ulogu u oblikovanju pravnog okvira ima i praksa Suda pravde Evropske Unije, na osnovu koje se stvaraju smjernice i u vezi sa zaštitom od diskriminacije zaposlenih u pogledu jednakosti zarada..

The right to equal pay for the same work or work of equal value is one of the fundamental rights of employees, protected by both domestic legislation and international standards.

In Montenegro, this right is regulated by the Labor Law, while judicial practice contributes to its interpretation and application. Furthermore, the case law of the Court of Justice of the European Union plays a significant role in shaping the legal framework, providing guidelines for the protection against discrimination in terms of wage equality.

### **Zakonsko rješenje**

U Zakonu o radu Crne Gore, koji je važio do donošenja sada važećeg Zakona o radu, princip jednakosti zarada bio je formulisan u čl. 77, st. 2 na način što je zaposlenom muškarcu, odnosno ženi, garantovao jednaku zaradu za isti rad ili rad iste vrijednosti koji ostvaruje kod poslodavca.

Ovakvo zakonsko rješenje bilo je usmjereno na zaštitu zaposlenih samo u slučajevima polne diskriminacije. Međutim, važeći Zakon o radu u čl. 99, st. 2 predviđa da se zaposlenom garantuje jednaka zarada za isti rad ili rad iste vrijednosti, pri čemu se pod radom iste vrijednosti podrazumijeva rad za koji se zahtijeva isti i) nivo kvalifikacije obrazovanja, odnosno stručne kvalifikacije, ii) stepen odgovornosti, iii) nivo vještina, iv) uslovi rada i v) rezultati rada. Iako se razlika u zaradama često dovodi u vezu s polnom diskriminacijom, važno je naglasiti da je princip jednake zarade, kako je definisan u crnogorskom Zakonu o radu, znatno složeniji.

### **Legal Framework**

The previous Labor Law that was in force before the adoption of the currently valid Labor Law, provided the principle of equal pay in Article 77, paragraph 2, ensuring that a male or female employee was entitled to equal pay for the same work or work of equal value performed for the employer.

This legal provision aimed to protect employees exclusively in cases of gender discrimination. However, Article 99, paragraph 2 of the current Labor Law stipulates that employees are guaranteed equal pay for the same work or work of equal value. Work of equal value is defined as work requiring the same: (i) level of education or professional qualification, (ii) degree of responsibility, (iii) level of skills, (iv) working conditions, and (v) work performance. Although wage disparity is often associated with gender discrimination, it is important to emphasize that the principle of equal pay, as defined in the current Labor Law, is significantly more complex.

**Prava zaposlenih u slučaju  
povrede prava na jednaku zaradu za isti rad  
(rad iste vrijednosti)**

Zaposleni koji smatra da mu je povrijeđeno pravo na jednaku zaradu za isti rad, odnosno rad iste vrijednosti shodno čl. 99, st. 3 Zakona o radu ima pravo na naknadu štete u visini neisplaćenog dijela zarade, iz čega proizilazi da se tužbeni zahtjev sastoji u potraživanju naknade materijalne štete iz radnog odnosa na ime razlike između zarade koju ostvaruje tužilac i u zarada zaposlenih na uporedivim radnim mjestima.

Tužbom se eventualno može zahtijevati i utvrđenje ništavosti odluke ili sporazuma poslodavca koji je u suprotnosti sa principom jednake zarade za isti rad odnosno rad iste vrijednosti, u skladu sa st. 4 navedenog člana.

**Employees' Rights in Case of a  
Violation of the Right to Equal Pay for the  
Same Work (or Work of Equal Value)**

Pursuant to Article 99, paragraph 3 of the Labor Law, an employee who believes that their right to equal pay for the same work or work of equal value has been violated, has the right to compensation for damages in the amount of the unpaid portion of their salary. This means that the lawsuit would be based on seeking compensation for material damages arising from the employment relationship in the form of the difference between the plaintiff's salary and the salaries of employees in comparable positions.

A lawsuit may also include a request to annul the employer's decision or agreement that contradicts the principle of equal pay for the same work or work of equal value, in accordance with paragraph 4 of the cited article.

Ukoliko je u pitanju i diskriminacija po nekom od zakonom propisanih osnova, što u praksi često može biti slučaj postojanje diskriminacije se ispituje primjenom tzv. testa diskriminacije, pa će tako sud ispitivati da li:

1. postoji nepovoljniji tretman prema osobi koja tvrdi da je diskriminisana, (npr. nejednaka plata)
2. različit tretman zasnovan na ličnim karakteristikama i
3. je tretman drugačiji u poređenju sa drugom osobom ili grupom osoba koje nemaju takve lične karakteristike.

U slučaju da zaposleni-tužilac dostavi sudu činjenice na osnovu kojih se može makar i pretpostaviti postojanje direktne ili indirektne diskriminacija, teret dokazivanja da nije bilo diskriminacije prebacuje se na poslodavca.

If discrimination is based on any legally prescribed grounds, which is often the case in practice, the existence of discrimination is examined using the so-called discrimination test. The court will assess whether:

1. there is less favorable treatment towards the person claiming discrimination (e.g., unequal pay),
2. the different treatment is based on personal characteristics, and
3. the treatment differs compared to another person or group of persons who do not have those personal characteristics.

If the employee (plaintiff) provides the court with facts that at least suggest the existence of direct or indirect discrimination, the burden of proving that discrimination did not occur shifts to the employer.

### **Kriterijumi za utvrđivanje rada iste vrijednosti**

Rad na istim poslovima može se smatrati radom iste vrijednosti, međutim, radom iste vrijednosti smatra se i posao iste važnosti na različitim radnim mjestima. Ovaj kriterijum „iste važnosti“ cijeni se na osnovu bitnih elemenata za obavljanje poslova određenog radnog mjesta kao što su: stepen potrebne stručne spreme, složenost poslova, uslovi rada pod kojima se ti poslovi obavljaju, stepen odgovornosti.

Radne vještine će se smatrati različitim ako zaposleni posjeduju različite obuke, nivo znanja, stepen samostalnosti u radu, kao i iskustvo neophodno za određena radna mjesta, što direktno utiče na kvalitet obavljanja posla.

Dakle, kada se razmatra postojanje nejednakosti zarada, jedan od neophodnih uslova koji mora biti ispunjen jeste da se mora raditi o uporedivim radnim mjestima, odnosno da se obavljanje poslova na različitim radnim mjestima podudara po pitanju navedenih bitnih elemenata.

### **Criteria for Determining Work of Equal Value**

Working in the same jobs can be considered work of equal value; however, work of equal value is also considered to be a job of equal importance in different workplaces. The criterion of “equal importance” is assessed based on key elements necessary for performing a specific job, such as the required level of education, job complexity, working conditions, and degree of responsibility.

Work skills are considered different if employees possess different training, levels of knowledge, autonomy in work, and experience necessary for particular positions, which directly affects job performance quality.

Therefore, when evaluating wage inequality, one of the necessary conditions is that the compared jobs must be comparable, meaning that the work performed in different positions must align in terms of these key elements.

U predmetu C-381/99, o kome je Sud pravde EU donio odluku 26. juna 2001. godine, a koji se odnosi na princip jednake plate za muškarce i žene, postavljena su pitanja u vezi sa razlikom u naknadama koje je poslodavac – banka isplaćivao tužiteljki i njenom muškom kolegi. Odlučeno je da, iako su dva sporna radna mjesta u početku smatrana radom jednake vrijednosti, muški kolega tužiteljke u stvarnosti je obavljao značajnije funkcije, budući da je bio odgovoran za važne klijente i imao ovlašćenje da u ime banke preuzima obavezujuće ugovorne obaveze. Takvo ovlašćenje nije bilo dato tužiteljki, koja je imala manje kontakta s klijentima, što objašnjava zašto je primala niži dodatak na platu u odnosu na svog muškog kolegu. Jedan od zaključaka koje je Sud pravde EU iznio u ovoj presudi jeste da je poslodavac u obavezi da u slučajevima kada pravi razliku u zaradi zaposlenih, tu razliku objektivno i opravda. Shodno tome, veći stepen odgovornosti koji se predviđa na pojedinim radnim mjestima jeste objektivno mjerilo za pravljenje razlike u zaradi zaposlenih.

Court of Justice of the EU issued a ruling on June 26, 2001, in C-381/99 in which it raised questions concerning the principle of equal pay for men and women, regarding the difference in remuneration paid by the employer – a bank – to the claimant and her male colleague. It was decided that, although the two disputed positions were initially considered work of equal value, the claimant's male colleague performed more significant functions, as he was responsible for important clients and had the authority to enter into binding contractual obligations on behalf of the bank. This authority was not granted to the claimant, who had less contact with clients, which explains why she received a lower salary supplement compared to her male colleague. One of the conclusions reached by the Court of Justice of the EU in this ruling is that when an employer differentiates employees' pay, they are obliged to justify this difference objectively. Accordingly, a higher degree of responsibility associated with certain positions constitutes an objective criterion for differentiating employees' salaries.



Opravdana razlika u zaradi zaposlenih može biti obrazložena različitim uslovima rada. Primjera radi, kompanije koje posjeduju lanac supermarketa tokom ljetnjih mjeseci bilježe veći promet na Primorju nego na Sjeveru, koji je posljedica značajno većeg broja turista u primorskim gradovima. Kao rezultat, zaposleni koji rade na Primorju, imaju veći stepen odgovornosti, budući da povećani promet dovodi do većeg obima posla za zaposlene, usljed čega se suočavaju sa većim rizikom od pravljenja grešaka. Budući da u ovakvoj situaciji zaposleni u različitim regijama faktički obavljaju iste poslove za istog poslodavca, međutim u znatno drugačijim uslovima rada, moglo bi se smatrati da postoji objektivni kriterijum za diferencijaciju zarada zaposlenih, čime se ne ugrožava princip jednakih zarada.

Kao još jedan primjer, poslodavac koji ima knobare zaposlene u dva hotela (jedan sa 3 zvjezdice, a drugi sa 5 zvjezdica) može opravdati različite plate različitim uslovima rada i nivoom usluge koji se zahtijeva u ova dva hotela.

A justified difference in wages can also be explained by different working conditions. For example, companies operating a chain of supermarkets may experience higher sales in coastal areas during the summer due to a significant increase in the number of tourists. As a result, employees working on the coast bear a greater degree of responsibility since increased sales volume leads to a higher workload and a greater risk of errors. Since, in such a scenario, employees in different regions perform essentially the same work for the same employer but under significantly different working conditions, an objective criterion for wage differentiation may exist without violating the principle of equal pay.

As another example, an employer who has waiters employed in two hotels (one with 3 stars and the other with 5 stars) may justify different salaries based on the different working conditions and the level of service required in these two hotels.

S druge strane, razlika u kategoriji hotela ne bi uticala na uslove rada računovođe, što znači da bi poslodavac zaposlenima, računovođama u oba hotela, bio u obavezi da isplaćuje jednaku zaradu, pod uslovom da su ispunjeni preostali uslovi.

Važno je istaći da princip jednake zarade za isti rad, odnosno rad iste vrijednosti nije samo pitanje pravičnosti, već i zakonska obaveza poslodavca.

Poštovanje ovog principa znači izbjegavanje potencijalnih sporova sa zaposlenima i izgradnju transparentnog sistema nagrađivanja zasnovanog na objektivnim kriterijumima.

Sa stanovišta zaposlenih, primjena ovog principa osigurava zaštitu od diskriminacije i podstiče motivisanost kroz osjećaj pravedne valorizacije rada.

On the other hand, the difference in hotel categories would not affect the working conditions of an accountant, meaning that the employer would be obliged to pay accountants in both hotels the same salary, provided that other criteria are met.

It is important to emphasize that the principle of equal pay for the same work or work of equal value is not merely a matter of fairness but also a legal obligation for employers.

Compliance with this principle helps prevent potential disputes with employees and establishes a transparent pay system based on objective criteria.

From the employees' perspective, implementing this principle ensures protection against discrimination and fosters motivation through a sense of fair compensation for their work.

Imajući u vidu da je teret dokazivanja opravdanosti razlike u zaradi na poslodavcu, dodatno je naglašena potreba za jasnim i dosljednim politikama zarada.

Naposlijetku, bitno je napomenuti da u savremenom poslovnom okruženju, usklađenost sa zakonskim regulativama nije samo obaveza, već i strateška prednost koja doprinosi stabilnosti i održivosti kompanije, jačajući povjerenje zaposlenih i ukupnu konkurentnost na tržištu.

Given that the burden of proving the justification for wage differences rests with the employer, the need for clear and consistent wage policies is further highlighted.

Finally, in the modern business environment, adherence to legal regulations is not just an obligation but also a strategic advantage that contributes to company stability and sustainability, strengthening employee trust and overall market competitiveness.

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