

EQUAL GENDER PAY



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THE GENDER PAY GAP: FIGURES AND TRENDS



Between 2012 and 2014, the pay gap between women and men in Switzerland fell from 21.3% to 19.5%. However, in 2016, it increased again to 19.6%. According to the results of the Federal Statistical Office (FSO), 42.9% of these wage differences are unexplained.⁽¹⁾ In the private sector, the pay gap between the sexes is bigger (2016: 19.6%) than in the public sector (2016: 16.7%).⁽²⁾ There is also a noticeable variation between different economy branches: While the pay gap was 8.3% in the hospitality sector in 2014, it amounted to 33.3% in the credit and insurance sector.⁽³⁾

There are multiple reasons for the gender pay gap in Switzerland. On the one hand, young women often have typical “women professions” for which the entrance wage is around CHF 200 less per month than in typical “male professions”. On the other hand, even if they have the same qualifications and identical education, young women get paid less than their male colleagues. Furthermore, even in well paid professions, women often choose or get assigned work content with lower compensation, even if their education qualifies them for better paid tasks. Also, there are inequalities concerning the division of labour within the family to the disadvantage of women: The division usually affects the profession which is less lucrative and this is often the women’s profession. As a consequence, inequalities between men and women are created and consolidated early in the Swiss working life.⁽⁴⁾

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The Federal Constitution of the Swiss Confederation (FC) guarantees various fundamental rights, among others the principle of equality of rights in Article (Art.) 8 BV. Paragraph 3 of the said article states that men and women are entitled to equal pay for work of equivalent value.⁽⁵⁾ The Federal Act on Gender Equality (GEA) supports the goal of Art. 8(3)

FC and prohibits discrimination on grounds of sex in working life in general and in particular wage discrimination. The prohibition applies equally to public law and private law.⁽⁶⁾ The GEA facilitates the enforcement of the principle of equal pay with an individual right to sue (Art. 5), a reduced burden of proof (Art. 6), a protection against dismissal (Art. 10), and the right of organisations to sue (Art. 7).⁽⁷⁾

In 2018, the Federal Assembly decided to revise the GEA to further enhance the equal treatment of men and women with government measures.⁽⁸⁾

Generally, employers who employ 100 or more employees will soon be required by law to carry out an in-house wage equality analysis every four years and have it reviewed. The result of such analysis must be published, but there are no sanctions if the analysis shows that no equal wages are paid. If the analysis shows that the wage equality is being complied with, the employer will be released from the obligation to make an analysis.⁽⁹⁾

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



An employee can submit a claim for equal pay for equivalent work based on Art. 8 (3), sentence 3 FC or Art. 3 GEA. Claims based on one of the two Articles shall be asserted before the Federal Supreme Court in private law wage disputes after exhaustion of the cantonal remedies with complaints in civil matters (Art. 72 et seq. Swiss Federal Supreme Court Act (BGG)) and in public law employment relationships with complaints in public law matters (Art. 82 et seq. BGG). If both complaints mentioned above are not available, the subsidiary constitutional complaint pursuant to Art. 113 et seq. BGG shall be used. Both parties (discriminants or discriminators) are entitled to bring actions under federal law.⁽¹⁰⁾

The Federal Office of Justice recognized in its evaluation of the not yet revised GEA that it does not provide for official enforcement of the constitutional

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right to equal pay. Therefore, employers who discriminate their employees with regard to wages based on gender were only held responsible in a few individual cases. In addition, the sanctions that could be imposed for wage discrimination were not very severe. As a result, certain companies accepted the risk of wage lawsuits.⁽¹¹⁾

However, the revised version of the GEA passed by parliament does not provide for more severe sanctions than its predecessor. Moreover, not even 1% of the companies in Switzerland are affected by the obligation of the revised GEA to execute a wage equality analysis and the duration of the reformed GEA is limited to 12 years. Nonetheless, 1% of the Swiss companies employ 46% of the Swiss employees and the employers have to inform their employees about the result of the wage analysis.⁽¹²⁾

Furthermore, for public procurement, the Swiss Federal Law on Public Procurement (BöB) constitutes that the Confederation may only award contracts to companies that guarantee equal pay for men and women (Art. 8 (1) (c) BöB). Nevertheless, certain labour unions are still not satisfied with the circumstances and are calling for a strike.⁽¹³⁾

⁽¹⁾ Bundesamt für Statistik, *Analyse der Lohnunterschiede zwischen Frauen und Männern 2016*, Medienmitteilung.

⁽²⁾ Bundesamt für Statistik, a.a.O.

⁽³⁾ Bundesamt für Statistik, a.a.O.

⁽⁴⁾ Michael Marti / Kathrin Bertschy, Belodis – Berufseinstieg und Lohndiskriminierung – neue Erklärungsansätze zu einer Schlüsselphase für geschlechtsspezifische Ungleichheiten, NFP 60, 2013, S. 2.

⁽⁵⁾ Art. 8 (3) BV; BGE 130 III 145 E. 3.1.2, 158 f.

⁽⁶⁾ Bundesamt für Justiz, *Erläuternder Bericht zum Entwurf zur Änderung des Bundesgesetzes über die Gleichstellung von Frau und Mann*, 2015, S. 3.

⁽⁷⁾ Bundesamt für Justiz, a.a.O., S. 3.

⁽⁸⁾ BBl 2017 5507, p. 5508.

⁽⁹⁾ BBl 2018 7875, p. 7875.

⁽¹⁰⁾ Rainer J. Schweizer/ Margrith Bigler-Eggenberger/ Regula Kägi-Diener, *Die Schweizerische Bundesverfassung – St. Galler Kommentar*, 3. Aufl., Zürich 2014, Art. 8 BV, para. 131.

⁽¹¹⁾ Bundesamt für Justiz, a.a.O., p. 4.

⁽¹²⁾ sda, *Gleichstellung: National- und Ständerat einigen sich bei Lohnanalysen*, 3.12.18, retrieved from <<https://www.tagblatt.ch/schweiz/gleichstellung-national-und-staenderat-einigen-sich-bei-lohnanalysen-ld.1075466>>.

⁽¹³⁾ Cf. *Frauen*streik*, <<https://www.14juni.ch/>.file:///C:/Users/SWE/Desktop/WALDERWY.png>>