



## **Can I offer external hires more pay than current employees if they are doing the same job?**

It's a reality that market conditions often mean external hires receive more pay or greater benefits than comparable internal employees. Are there any legal issues with this?

Well, fundamentally, it is certainly possible for wages or benefits to differ between staff doing the same job. However, it's crucial to ensure that there is not a discriminatory reason for the difference.

Most commentary and case law in this area focuses on gender equality, which has long been an issue, perhaps most famously in the context of the industrial action at Ford's Dagenham car plant in 1968, that led to the 1970 Equal Pay Act 1970 and more recently, became the setting for a motion picture. Equal pay laws are now enshrined in the Equality Act and effectively mean that employers must be able to demonstrate that there is a material reason, unconnected to sex, behind any pay differential between men and women doing the same or similar work.

It is, of course, not just sex that's an issue. Businesses must be careful to ensure that pay and benefit differences are not tainted by any other protected characteristics.

When considering whether to offer more money or increased benefits to an external hire, it's therefore important to consider what justification there is for the differential.

For example, can the difference be justified for a non-discriminatory reason, such as meeting the demands of a more qualified candidate, accounting for higher costs of living in certain locations or general market forces considerations. Even if there is a potential reason which, on the face of it, looks non-discriminatory, it's wise to scrutinise this carefully to ensure that it doesn't indirectly treat those with protected characteristics less favourably.

It is often helpful to document the reasons for offering increased pay and benefits so that these reasons can be evidenced if necessary. However, regardless of whether or not there is a discrimination risk, businesses need to be alert to the risk of internal grumbles and disputes if pay and benefit disparities become known, which could, in turn, lead to the risk of constructive dismissal. In such cases, it may be difficult to avoid commencing a process of equalising pay.