**Equal pay for work of Equal value in terms of the Employment Equity Act 55 of 1998: Lessons from the International Labour Organisation and the United Kingdom**[[1]](#footnote-1)\*

**[[2]](#footnote-2)\*\***

**SUMMARY**

Equal pay is an area of employment law that is complex and not easily understood. This complexity is recognised by the International Labour Organisation[[3]](#footnote-3), which notes, that equal pay for work of equal value has proved to be difficult to understand, both with regard to what it entails and in its application.[[4]](#footnote-4) Amendments have been made to the *Employment Equity Act*[[5]](#footnote-5) to include a specific provision to regulate equal pay claims in the form of section 6(4)-(5) of the EEA. The amendments were made in terms of the *Employment Equity Amendment Act* 47 of 2013 which came into effect on 1 August 2014 by presidential proclamation.[[6]](#footnote-6) Prior to section 6(4), the EEA did not contain a specific provision regulating equal pay claims. Claims could be brought in terms of section 6(1) of the EEA which prohibits unfair discrimination on a number of grounds. The recent amendments to the EEA in the form of section 6(4)-(5) (including the Employment Equity Regulations and the Code of Good Practice on Equal Pay for Work of Equal Value), in respect of equal pay claims, is a response to the ILO criticism of South Africa’s failure to include specific equal pay provisions in the EEA.[[7]](#footnote-7)

Section 6(4) of the EEA provides for three causes of action in respect of equal pay. They are as follows: (a) equal pay for the same work; (b) equal pay for substantially the same work; and (c) equal pay for work of equal value. The first two causes of action are not difficult to understand as opposed to the third cause of action which is complex. The ILO has recognised the complexity of the third cause of action “equal pay for work of equal value”.[[8]](#footnote-8) In *Mangena v Fila South Africa*[[9]](#footnote-9), the Labour Court remarked in the context of an equal pay for work of equal value claim, that it does not have expertise in job grading and in the allocation of value to particular occupations. This article will only deal with the third cause of action “equal pay for work of equal value”.

The purpose of this article is to critically analyse the law relating to equal pay for work of equal value in terms of the EEA (including the Employment Equity Regulations) and evaluate it against the equal pay laws of the ILO and the United Kingdom which deals with equal pay for work of equal value. Lastly, this article seeks to ascertain whether the EEA (including the Employment Equity Regulations) provides an adequate legal framework for determining an equal pay for work of equal value claim.

**KEYWORDS**:Equal pay, Employment Equity Act, Equality Act, International Labour Organisation, Equal Pay Guide, Equal Remuneration Convention, Equal pay for work of equal value.

1. \* This article is based on the author’s unpublished LLM short dissertation titled: This article is furthermore partly based on a paper delivered at the South African Society for Labour Law (SASLAW) Second Annual Student Conference, Chalsty Auditorium, University of the Witwatersrand, Johannesburg, 29 August 2015. [↑](#footnote-ref-1)
2. \*\* [↑](#footnote-ref-2)
3. “ILO”. [↑](#footnote-ref-3)
4. Oelz, Olney and Manuel *Equal Pay Guide* iii. [↑](#footnote-ref-4)
5. 55 of 1998 (“EEA”). The amendments were made in terms of the Employment Equity Amendment Act 47 of 2013. [↑](#footnote-ref-5)
6. Proclamation No 50 on the Commencement of the *Employment Equity Amendment Act*, 2013 *GG* No 37871 of 21 July 2014. [↑](#footnote-ref-6)
7. Commission for Employment Equity in respect of opportunity and treatment in employment Annual Report 2009–2010 at 3; Clause 3.3.3 of the Memorandum on Objects of Employment Equity Amendment Bill, *GG* No 35799 of 19 October 2012; McGregor 2011 *SA Merc LJ* 497; Benjamin 2010 *ILJ* 866. [↑](#footnote-ref-7)
8. Oelz, Olney and Manuel *Equal Pay Guide* iii. [↑](#footnote-ref-8)
9. [2009] 12 BLLR 1224 (LC). [↑](#footnote-ref-9)