



The Discrimination Act's equal pay survey requirement – a blunt instrument for reducing the gender pay gap

The Government has a target for economic gender equality. One instrument for achieving this is the requirement that employers conduct equal pay surveys. (We use the term “equal pay surveys” synonymously with “equal pay audits”.) The legislation on equal pay surveys is written into the Discrimination Act (2008:567), the third chapter of which requires employers to discover, remedy and prevent unfair gender differences in pay. Equal pay surveys mean for example that employers must analyse whether there are unfair gender differences for equal work or work assessed to be of equal value. The work on equal pay surveys must be carried out annually and employers with ten or more employees must document this work. The Discrimination Ombudsman (DO) is responsible for supervising compliance with this legislation.

The legislation regarding equal pay surveys has been in place since 1994 and has been amended on several occasions, most recently in 2017. The supervisory activity has also changed during this period. However, despite this legislation having been in place for 25 years, there is little knowledge of whether equal pay surveys really contribute to reducing pay inequality.

The Swedish National Audit Office has audited how well equal pay surveys function in combating unfair gender differences in pay and other terms of employment. The following questions were asked in the audit:

- To what extent can equal pay survey contribute to reducing unfair pay differences in the labour market?
- Does the requirement for documentation of equal pay surveys affect the gender differences at workplaces?
- Does the legislation work in practice for employers to discover, remedy and prevent unfair differences in pay and other terms of employment?

The questions were answered through statistical analyses, a questionnaire sent to employer and employee organisations, interviews and a review of written material.

Audit findings

The overall findings of the audit are that equal pay surveys, as the current legislation is formulated, have limited potential to affect gender pay differences in the labour market. The requirements to document equal pay surveys had little or no effect on gender differences at workplaces. There are also problems regarding how the legislation can be applied by employers.

Lower pay differences at employer level than on the labour market as a whole

Gender pay differences have been constantly declining in the 2000s. According to the Swedish National Mediation Office, the average pay gap was 12 per cent in 2016. However, the audit revealed that the pay gap was 6 per cent when gender pay differences are measured at one and the same employer. This information, which we refer to as differences at employer level, is interesting, as the legislation on equal pay surveys is intended for use in comparing the pay of employees with the same employer. The pay differences at employer level thus provide a picture of the size of the gap that the equal pay survey requirement can help reduce. The audit also shows that the average pay difference is somewhat smaller at employers with few employees than employers with many employees.

In its audit, the Swedish NAO examined what significance the number of employees and level of the pay differences has for the ability to systematically assess whether an employer has unfair pay differences based on gender. The survey was made by simulating an employer's ability to identify unfair pay differences between two groups depending on its number of employees and different levels of pay differences. The simulation indicates that if the average pay difference between two groups in a company with up to around 40 employees is five per cent, then it is almost impossible (for an employer) to ascertain that there are unfair pay differences between those groups using standard statistical means. The larger the number of employees at the company and the greater the pay differences are, the better the ability to identify unfair pay differences. The ability to identify unfair gender pay differences also increases if the groups compared are roughly the same size.

The pay differences at employer level that equal pay surveys could help reduce are, on average, relatively small. In addition, it may be difficult to systematically prove unfair pay differences at employers with few employees and low pay differences. This means that the potential effect

that equal pay surveys can have in reducing pay differences in the labour market is probably small.

Legislative amendment on documentation did not affect gender inequality

In 2009, companies with fewer than 25 employees were exempted from the requirement to document equal pay surveys as well as gender equality and action plans. The audit compared developments at employers that after 2009 were no longer subject to these requirements with employers who were still subject to them. Several different gender equality aspects were investigated to see whether the documentation requirements had any significance for the differences between men and women in the workplaces. One of the aspects investigated was the employees' earned income. For earned income (which covers both wage level and how much the employee worked during a year) there were no differences in development between companies with a documentation requirement and companies not subject to the requirement. Other aspects investigated included recruitment of women and appointment of women as managers. There are signs that more women received employment at the companies subject to the documentation requirements, but the effect is small and uncertain. There is also a tendency for more women to be appointed as managers in the companies still subject to the documentation requirements, but here too the measured effect is small and uncertain.

All in all, the Swedish NAO assesses that the effects of the requirements for documentation of equal pay surveys are minor, or non-existent. However, the companies studied in the audit have relatively few employees. It is therefore not possible to rule out the possibility of the requirements having significance in reducing pay differences at larger employers.

Social partners see problems with the legislation

In the audit, 21 employer and employee organisations responded to questions on how they assess the effectiveness of the legislation on equal pay surveys among employers in the sector or sectors they represent.

The organisations painted a relatively unanimous picture of it being easy for employers to compare pay differences for work that can be regarded as equal. On the other hand, most of them considered it very difficult for the employer to assess whether there were unfair pay differences for work that can be regarded as of equal value. The work on equal pay surveys was also considered to be quite demanding, at the same time as employers rarely find unfair pay differences by means of equal pay surveys.

The organisations considered that knowledge of equal pay surveys was fairly good among employers in their own sectors. The employers that have a personnel department or HR function were considered to have greater knowledge of the legislation than companies lacking this function. On the other hand, the organisations found it difficult to assess the extent of

compliance with the different parts of the legislation and it was therefore difficult to gain an overall view of how well employers are observing the legal requirements.

The majority of the organisations considered that on the whole the legislation functions fairly poorly in counteracting unfair pay differences. They pointed in particular to the difficulty of small employers lacking an HR function to apply the legislation. But even for very large employers, it was considered difficult to apply the legislation, as it may be hard from a central position to gain an overview of the different professional roles within the company or organisation.

On the other hand, there were partly differing views on how the legislation and work on it should be amended to function better. Half of the organisations considered that the legislation should be amended, for instance, by clarifying or simplifying the requirements for employers. An equal number, from both sides, wanted to see increased support from the DO in the form of information, for example. The employee organisations also stated that it would be desirable to have extended supervision of the employers' work on equal pay surveys and more effective sanctions for employers who failed to meet the legal requirements.

Conclusions and recommendations

The pay differences between men and women have decreased over time. This means that progress is in the direction intended by the policy. It also means that the scope for equal pay surveys to facilitate reduction of gender pay differences has shrunk. To obtain greater knowledge of how much equal pay surveys can influence pay differences, the Swedish NAO considers that the development of pay differences at employer level should be regularly monitored. Better knowledge of how pay differences develop over time at employer level and how they differ between employers of different sizes and between different sectors would create a better foundation for developing measures to reduce pay differences between men and women. The development of pay differences at employer level can be monitored by instructing the Swedish National Mediation Office to regularly produce this information as a complement to its annual reports on gender pay differences. The Swedish NAO therefore recommends that:

- the Government instructs the Swedish National Mediation Office to monitor developments in gender pay differences at employer level.

According to the Swedish NAO, there is reason to examine whether the legislation on equal pay surveys needs to be amended. The reason is that the scope for equal pay surveys to facilitate reduction of unfair gender pay differences has decreased in recent years. This means that it is more difficult to establish that there are unfair pay differences among employers. Moreover, the

audit showed that the effect of the documentation requirements regarding equal pay surveys is very slight for smaller companies. The employer and employee organisations state that the legislation in general functions rather poorly. The audit has found some areas to be problematic. For example, compliance with the legislation may be difficult for both small and very large employers. The Swedish NAO therefore considers it necessary to investigate whether the legislation can be better adapted to both larger and smaller employers. The Swedish NAO therefore recommends that:

- the Government investigates whether the legislation on equal pay surveys can be better adapted to employers of different sizes.

Another area that there may be reason to adjust is the extent to which employers are required to work on equal pay surveys. In much of the legislative history of this legislation the Government has stated that administrative burdens for employers should be avoided. The questionnaire to employer and employee organisations shows that this is not the case. The organisations consider in general that the work on equal pay surveys is fairly or very demanding. One area that is mentioned in particular is that compliance with the requirement to analyse pay differences for jobs of equal value is difficult for employers. The Swedish NAO therefore sees a need to investigate whether the legislation can be simplified, both to reduce the administrative burdens on employers and to facilitate compliance with the law. The Swedish NAO therefore recommends that:

- the Government investigates whether the legislation on equal pay surveys can be made less demanding for employers, particularly with regard to assessing pay differences for work that can be regarded as of equal value.

The Government has previously announced that it will appoint an inquiry aimed at reviewing the need for more effective supervision and sanctions linked to the Discrimination Act (ToR 2018:99). One possible means of managing the areas for improvement identified by the Swedish NAO is to extend the inquiry's remit to also include the Swedish NAO's recommendations, to investigate whether the legislation can be better adapted to employers of different sizes and whether the workload for employers can be reduced. Clear legislation that is manageable for employers is a necessary condition for achieving effective supervision and the possibility to impose sanctions.