

KWDI Issue Paper

Research Title: Study on the Equal Pay Law in Korea
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Legislative and Institutional Improvement Tasks for Correcting Gender Discrimination in Wages

Abstract

- ◆ Although the legal provision for equal pay for equal value work was enacted in 1989, there have been very few cases where it has been applied in practice and questions have been raised about its practical applicability.
- ◆ This study examines judgments and foreign cases that have been decided on the issue of whether equal pay has been violated, confirming the limitations of the current law's provisions. It suggests how the judgment criteria and related policy support and institutions should be improved to ensure the effective application of the principle of equal pay for equal value work.
- ◆ In particular, this study aims to show how the provision for equal pay for equal value work can be applied in Korean companies with a seniority wage system and the challenges that need to be addressed.

The obsolescence of the provision for equal pay for equal value work

- The provision for equal pay for equal value work was introduced in the former Equal Employment Opportunity And Work-family Balance Assistance Act in 1989, but it has been disused, making it difficult to find examples of its application. Despite this long-standing situation, there have been insufficient policy efforts to improve the situation. The 6th Basic Plan for Equal Employment Opportunity for Men and Women was supposed to publish a manual on the application of equal pay for equal value work principle, but there has been little progress in its implementation.

- Despite the fact that the principle of equal pay for equal value work has not been applied to the Equal Employment Opportunity Act, the discussion of the principle of equal pay for equal value work in the Labor Standards Act and the Act on the Protection of Fixed-term and Part-time Employees has been activated. As the number of wage discrimination lawsuits based on employment type has increased, the criteria and jurisprudence of the equal pay provisions have become an important reference. In a situation where the Labor Act is being discussed as a general principle of labor law, research is needed to support the interpretation and application of the principle in a way that contributes to gender equality.

Key implications from the analysis of equal pay for equal value work judgments

- The key implications from reviewing the judgments of the TDK Korea case and the Hyosung Co., Ltd. case, and from interviewing those involved, are as follows.

- Failure to conduct analytical job evaluations

- ▶ It was observed that job values were compared and evaluated in non-analytical ways, such as the hierarchy method. In addition, in some cases, even non-analytical methods were not applied appropriately, as the hierarchy between jobs was not clear and the evaluation was based on whether the jobs were the same or matched in terms of components. While both cases took place over a decade ago, it is still unlikely that courts, labor commissions, or labor inspectors had the capacity and infrastructure to conduct analytical job evaluations today. Considering the Ministry of Employment and Labor has been developing and distributing job evaluation tools and related manuals since 2015, there is a need for policy support to actually utilize these tools in discrimination correction bodies.
- ▶ It is also an important task for entities such as courts, responsible for discrimination judgments, to develop the capability to accurately evaluate the four factors of job value. In the case of Hyosung Co., Ltd. below, it was found that evaluating the responsibility factor based on production volume is not the correct method; in the TDK Korea case, the delicate manual work required in sorting work and the importance of repetitive work in terms of effort were not considered; and the comparison of the value of the job with that of the packaging department was concluded without any evidence.

"In other processes, hundreds of units are produced in a day, but in the rewind process, only about 5 units can be produced. A difference in responsibility? They based their argument on that, but it's related to the productivity of the machine, which was originally designed to produce hundreds of units a day. The rewind process involves joining leftover threads, so it's not possible to produce indefinitely. Women were given older and less productive machines, while men received newer ones. Writing the judgment as if the value of men's and women's work was different is absurd." (Legal representative 2 for the Hyosung case)

● The importance of gender-neutral job evaluations

- ▶ Long-standing criticisms have been raised that job evaluations influenced by gender-biased prejudices and stereotypes could rationalize the undervaluation of women's work. The cases of TDK Korea and Hyosung confirmed that the value of women's work was overlooked. In TDK Korea, the ruling did not mention the physical and mental effort required for manual sorting work compared to standardized, automated kiln work. In the Hyosung case, the effort involved in rejoining broken threads by female production workers was underestimated. Also, it was not considered that the working conditions women faced were colder compared to those men faced during the winter.

"Yes, the recycling process, the process of collecting scrap yarn, broken yarn, and making new, finished, quality A-grade yarn. For example, men may carry more raw materials, but even if they do, is the physical effort required of them different in value from the effort of women standing upright and concentrating with a very delicate hand? The court did not make a proper judgment on this. The working conditions were also not properly considered; the judgment was based on men working in extremely hot conditions in summer, but the female workers say we suffer more from the cold in winter." (Legal representative 2 for the Hyosung case)

● Insufficiency in the basis for job evaluations

- ▶ The first instance tribunals in both cases made efforts to conduct on-site inspection but faced limitations and difficulties in dealing with the specialized area of job evaluation. The plaintiffs criticized that the site inspections, conducted without sufficient prior consultation regarding their purpose, schedule, and targets, ended up focusing primarily on what the company wanted to show.

"I believe it's necessary to ensure a procedure that allows parties or their representatives to be involved in and to intervene in the site inspections. When the court was conducting the inspection, our designated lawyer did accompany us, but it was also their first time entering the Hyosung Ulsan factory, so they didn't know what the employer would show or what needed to be observed. There should have been a procedure that allowed for a preliminary overview of the entire factory beforehand, but this was not guaranteed at all, and there was no clear basis for ensuring that this should be guaranteed. If it's necessary to compare all job categories across all processes, then it's proper to view all processes, not just select them as needed. Both the Ministry of Employment and Labor and the courts, in reality, ended up deciding where to visit based on the company's intentions. The company arranged for scenes to be observed at the site where men are working shirtless and sweating heavily, while on the other hand, women were seen working with yarn in a cooler location." (Legal Representative 2)

● Detailed procedures should be developed to ensure that the on-site inspection for job evaluation can be conducted in a gender-neutral and objective manner.

Application of the equal pay for equal value work principle in a seniority wage system

- ▶ In Korea, where the seniority wage system has been in place for a long time, criticisms have been raised that the principle of equal pay for equal value work is "difficult to apply" and that the provision of equal pay for equal value work "mandates a job-based wage system". However, while respecting the existing wage system chosen based on the employer's discretion, the essence of the equal pay for equal value work provision is to provide tools and means to judge the presence of wage discrimination after evaluating job values, in cases of possible violation of equal pay for equal value work. Even if it is found that job values are the same, it does not immediately necessitate the abolition of the seniority wage system and the introduction of a job-based system. It is possible to address the issue by adjusting the wage gap between job categories to an extent that does not violate equal pay for equal value work principle, or by establishing new wage determination criteria that are not discriminatory.
- ▶ Proposals to include personal attributes such as seniority and education as job evaluation factors undermine the fundamental framework of job evaluation and fail to realize the goal of detecting wage discrimination, which is the purpose of equal pay for equal value work provision. Therefore, personal attributes such as seniority and education should be considered when determining if there are legitimate reasons (rational reasons) for the exemption.
- ▶ Furthermore, upon reviewing domestic and international discussions and cases where seniority-based wage discrimination was actually an issue, it was confirmed that the approach must differ depending on the nature of the seniority system. In the case of a single salary system with no job classification, such as the civil service, there is no need to go through the step of evaluating the equality of job value. This is because in a system where wages are determined solely by years of service, if wages differ between men and women with the same number of years of service, a causal relationship between gender and wage disparity can be presumed.
- ▶ Typically, employers argue that "differences are inevitable because the job values of the specific sub-categories differ, leading to a different application of the wage system, and the sub-categories where women are predominantly concentrated involve simple and peripheral tasks." In such cases, it is necessary to evaluate whether the job values of men and women in each job category are the same (or to what extent they differ) and then determine whether the wages set in relation to the job value are appropriately calculated before judging the violation of equal pay for equal value work principle. Even under a seniority wage system, if different seniority scales are applied to job categories based on differences in job value or content, the presence of violations should be judged based on the results of job evaluations.
- ▶ The last point is whether the seniority wage system can be claimed as one of the justifications, and by what criteria its legitimacy can be judged. A review of foreign cases shows that seniority is allowed as a justification for gender discrimination in wages if it is not tainted by gender discrimination or if it can

explain why the seniority system has a significant adverse impact on a particular gender. A seniority wage system, untainted by discrimination, can be considered a legitimate reason within the context of the principle of equal pay for equal value work and anti-discrimination laws.

- Taking into account legislative examples from Canada, the United States, and others, it is necessary to legally define justifications for the equal pay for equal value work provision. A nuanced approach is needed because unconditionally accepting the seniority wage systems as a justification undermines the legislative purpose of the provision. The basic principle is that a defense capable of breaking the presumption of wage discrimination (a violation of the equal pay for equal value work provision) must be presented. When applying a senior wage system, which is unfavorable for new hires who perform the same job (like the Wilson case in the United Kingdom), a comprehensive examination is necessary; such as whether the change in the existing seniority wage system was influenced by gender-discriminatory decisions, how large the gender pay gap is, and whether the need to apply a proportionally discriminatory seniority system is so great as to justify the gender pay gap and so on.

Suggestions to the policy of Equal Employment Opportunity

- The current regulations on <Equal Employment Opportunity and Work-Family Balance Assistance Act> primarily illustrate clear cases of wage discrimination but fail to adequately explain or provide specific criteria related to the assessment of equality of job value. Therefore, it is necessary to revise this regulation in consideration of the purpose and system of the provision. The following table summarizes the problems with the current provision.

Current	Reasons for improvement
<p>Article 4 (Equal Pay for Equal Value Work)</p> <p>① Under Article 8, Paragraph 1 of the law, "equal value work" refers to work between men and women that are either identical or of a similar nature in terms of the skills, effort, responsibility, and working conditions required for job performance, or even if the two tasks are somewhat different, work that is recognized as having essentially the same value through methods such as job evaluation.</p> <p>② "Skills, effort, responsibility, and working conditions required for job performance" mentioned in Article 8, Paragraph 2 are as follows:</p> <ol style="list-style-type: none"> 1. Skill: The objective level of ability required for job performance, including qualifications and acquired experience 2. Effort: The physical strength and mental strain needed to perform the job 3. Responsibility: The nature and scope of duties inherent in the job, and the extent to which the employer relies on the job 4. Working Conditions: The extent of noise, heat, physical and chemical hazards, and other environmental conditions typically faced by workers <p>③ <u>When determining whether the work between men and women is of equal value, the criteria of skills, effort, responsibility, and working conditions outlined in Article 8, Paragraph 2, in addition to the worker's education, experience, years of service, etc. shall be comprehensively considered.</u></p>	<ul style="list-style-type: none"> • Paragraph 1.1: Originally, the skills element refers to the skills standardly required to perform the job. However, the current law could be misinterpreted to mean the experience of the individual worker as Paragraph 1 defines it as "The objective level of ability required for job performance, including qualifications and acquired experience". • Paragraph 1.4: It does not include physical and mental risks from violence, emotional labor, musculoskeletal disorders, etc. • There is a need to supplement the details of gender-neutral job evaluation criteria considering major international standards published by the ILO, the EU, etc.. • Paragraph 3: It is incorrectly stipulates that intrinsic factors should be included in the evaluation of job value. • Paragraph 4: It is appropriate to establish a new provision prohibiting wage discrimination (refer to the proposed amendments) and to exemplify types of wage discrimination that violate this provision. • Paragraph 5.1: The use of education as a justification for equal pay violations should be reviewed. It is inappropriate to recognize educational differences as a general justification without considering their relevance to the performance of the job in question.

Current	Reasons for improvement
<p><Omitted></p> <p>⑤ Notwithstanding the provisions of the preceding paragraph, the following cases shall not be considered gender discrimination in the payment of wages.</p> <ol style="list-style-type: none"> 1. When wages are paid differently based on objective and reasonable criteria, such as differences in education, experience, years of service, and position, even if the male and female workers do the same or similar work. 2. When wages are differentiated based on a wage system like salary grade, performance pay, or competency pay, and there are concrete and objective differences in job duties, performance, or ability between the compared male and female workers 	<ul style="list-style-type: none"> • For wage differences based on years of service, it is not sufficient that they are based on objective and rational criteria; it must be assessed whether they satisfy the proportionality to justify gender wage differences.

Revision of laws and manuals to establish principles of gender-neutral job evaluations

- ▶ The essence of the equal pay for equal value work principle lies in the evaluation of job value, however, this process is susceptible to the influences of gender stereotypes and biases, potentially rationalizing the lower wages of female-dominated professions. The importance of gender-neutral job evaluation is emphasized in the legislations and rulings of major countries and the International Labour Organization(ILO). The current provisions under Article 8, Paragraph 2, of the Equal Employment Opportunity and Work-Family Balance Assistance Act, which involve consulting the opinions of employee representatives in labor-management councils, are insufficient to guarantee gender-neutral job evaluation. Therefore, there is a need to create new provisions highlighting the importance of gender-neutral job evaluation as follows.

Current	Revision
<p>Article 8 of the Equal Employment Opportunity Act</p> <p>② Standards for equal-value work shall be skills, labor, responsibility, working conditions, etc. required for the performance of duties, and employers shall, in setting such standards, hear opinions of the <u>member representing the employees at the labor-management council under Article 25.</u></p> <p><New></p>	<p>Article 8 of the Equal Employment Opportunity Act</p> <p>② esponsibility, working conditions, etc. required for the performance of duties, and employers shall, in setting such standards, hear opinions of the member representing the employees at the labor-management council under Article 25. <u>The proportion of a specific gender among the members shall not exceed six-tenth.</u></p> <p>③ <u>In cases where the criteria set by the employer in Paragraph 2 are reasonably suspected to be discriminatory or unreliable, the results of such evaluation shall be considered invalid.</u></p>

- ▶ In 2008, the ILO published the 『Gender-Neutral Job Evaluation for Equal Pay: A Step-By-Step Guide』, detailing the step-by-step procedures and considerations that must be taken during job evaluations. Since there has been no domestic research that specifically introduces the contents of this guide, the Ministry of Employment and Labor should include the content of the ILO in their manual, job evaluation tool guides or other publications. The industry-specific job evaluation tools developed by the Ministry of Employment and Labor since 2015 have limitations from a gender perspective. For instance, the job evaluation tool for the social welfare services sector, which is a female-dominated field, does not include jobs such as childcare teachers and caregivers. Additionally, it lacks consideration for physical effort in the lower evaluation elements related to efforts by social service workers and inaccurately represents the importance of "responsibility towards people" as a sub-criterion of responsibility. These issues indicate that there are limitations in appropriately evaluating the job value of front-line caregiving professions.

The need for policies to support gender-sensitive job evaluations

- ▶ The technical difficulties and cost issues associated with job evaluations pose significant challenges for individual workers or labor unions to undertake them. In Canada, where the lawsuits for the violation of equal pay for equal value work have been most actively pursued, it has been critically noted that their application has been primarily limited to public sector unions or unions of large private corporations. Therefore, there is a need to explore initiatives to support the cost and expertise of gender-neutral job evaluations to help organizations proactively and preventively assess whether their pay systems are disadvantaging or discriminatory to certain groups and seek ways to improve them.
- ▶ The UK's Equality Act of 2010 grants employment tribunals the authority to request an evaluation from an independent expert designated by ACAS in cases that require a determination of whether wages are of equal value. Drawing from this example, it is necessary to improve the system to allow labor committees or courts to refer to the investigation results of expert panels when deciding on violations of the equal pay for equal value work principle(or conducting job evaluations). The significance of the independent expert system lies in the unreliability of job value evaluations conducted by individuals who have not been trained in gender-neutral job evaluation or who directly observe the workplace. Australia also amended its laws to establish expert panels specialized in job evaluation and care work, a field predominantly occupied by women, within its existing wage discrimination remedy procedures, marking an effort to make informed decisions and remedies related to equal pay for equal value work(effective from March 6, 2023). Consequently, four members with expertise in care work were appointed, supported by a dedicated research team.
- ▶ Although it's possible to utilize the expertise evaluation process or on-site inspection within the existing civil litigation procedures, the actual use of these measures can vary depending on the individual judge's or labor inspector's willingness. Considering this, along with the need for a system that can provide assistance from a group of experts who specialize in gender-neutral job evaluation, it should be institutionalized as a tool available for remedy procedures.

Implementation of pilot projects to improve low wages in female-dominated professions in the public sector

- ▶ Chapter 5 of the original research report highlights the significance of examples from Minnesota and the UK, where government-led initiatives have created gender-neutral job evaluation systems targeting the public sector, to preemptively and retroactively prevent or rectify wage discrimination. Unlike the private sector, the public sector bears a direct and higher level of responsibility regarding the principles of equality and the realization of gender equality. Considering the lack of established job evaluation practices in South Korea, the public sector should pilot gender-neutral job evaluations and try to reduce gender pay gap. In the cases from Minnesota and the UK, it is found that gender-neutral job evaluations have led to improvements in wage inequality, especially in female-dominated professions such as care work. These instances suggest that research and policies are needed in South Korea to identify and improve the low wages of care workers within the social services sector.

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