



## Federal Guidelines for Expert Opinions in Wage Discrimination Cases

The Swiss Federal Office for Gender Mainstreaming edited in Q2/2008 guidelines regarding expert court opinions to be rendered in wage discrimination cases.

These guidelines deal with the two possible methods of evaluating whether alleged wage differences are caused by gender discrimination. The Guidelines are primarily addressed to the courts as they are obliged to determine the record of a case if one party demands a court opinion or when expert knowledge is required.

According to the Swiss Federal Supreme Court of Switzerland, such court opinion is required if the equality of different employee functions within one company is not obvious or otherwise ascertainable.

The first method proposed is the so-called statistical wage-analysis. The expert evaluates the influence of the personal and the functional factors on the salary. Salary differences that cannot be explained by these factors are considered to be caused by gender discrimination. This method allows to review all salary components and enables the expert to establish the amount of the correct salary. This method is applicable to entities with over 30 employees and requires the existence of sufficient business-internal data. In the event the data-basis is insufficient, the business entity is too small or the professional position under review is unique, the expert may make a comparison with a reference market, provided the reference market itself is not discriminating.

If the data-basis is insufficient, the guidelines consider the analytical job assessment method as a potential tool. The expert thereby evaluates the value of the employment by allocating certain credits. The objective requirements and particular burdens and challenges of a specific employment are compared with other employ-

ments. The resulting value serves as basis to determine the function wage.

The analytical job assessment method requires insight into the function which has to be evaluated. This method can be applied by using just one comparing function, but the more methods are available the better of course.

The analytical job assessment method may be applicable when the statistical wage-analysis is not practicable or the business has already a wage system based on an analytical job assessment. According to the Federal Supreme Court of Switzerland all this methods are permitted as long as concrete non-discriminating features and criteria are used. Under certain circumstances, also a combination of the two methods is recommended.

October 2008

Dr. Thomas Rihm

For further information please contact Dr. Rihm ([t.rihm@thouvenin.com](mailto:t.rihm@thouvenin.com))