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State of  
Minnesota  
DEPARTMENT  
OF EMPLOYEE  
RELATIONS

14 - 1036

# A Guide to Implementing

# PAY EQUITY

## in Local Government

Revised September 1990

# TABLE OF CONTENTS

INTRODUCTION	2
--------------	---

SECTION I. MINNESOTA'S EXPERIENCE WITH PAY EQUITY	4
--	---

*State government employment \* Local government  
employment \* Sample of local plans*

SECTION II. THE LOCAL GOVERNMENT PAY EQUITY ACT	11
--	----

*Policy \* Process \* The implementation report \*  
Prototype worksheet*

SECTION III. QUESTIONS & ANSWERS	20
----------------------------------	----

*Employers covered \* Small jurisdictions \* Employees  
covered \* Job classes \* Balanced classes \* Personnel  
systems \* Consultants \* Statistical formula for  
compliance \* Collective bargaining \* Little  
Bacon-Davis Act \* Pay for male classes \* Market \*  
Reasonable relationships \* Job evaluation ratings \*  
Balanced line or corridor \* Benefits \* Longevity pay*

SECTION IV. GUIDELINES FOR COMPLIANCE DETERMINATIONS	30
---	----

*Examples in & out of compliance \* Number of  
incumbents \* No male comparison \* Offsetters \*  
Sore thumb \* Single incumbent reversal \* No  
pay ranges \* Recruitment difficulty \* Retention  
difficulty \* Recent arbitration \* Good faith  
effort*

APPENDIX	52
----------	----

*Publications and software available \* Attorney General's  
memo on hospitals & nursing homes \* Local Government  
Pay Equity Act*

Detailed contents are shown at the beginning of each section.

# INTRODUCTION

In 1984, the Minnesota Legislature passed a bill requiring pay equity for employees of local governments: cities, counties, school districts, and others. The legislation was modeled on the State Government Pay Equity Act of 1982, which had similar requirements for employees of state government.

The law has been amended several times since 1984, but the overall concept remains unchanged. *The purpose of pay equity has always been to eliminate sex-based wage disparities.*

The law as amended requires the Department of Employee Relations (DOER) to

- \* provide technical assistance to local governments in implementing pay equity;
- \* determine compliance after the implementation deadline of December 31, 1991, and advise local governments of any changes needed to achieve compliance if they are out of compliance;
- \* report to the legislature annually on the status of compliance.

This guidebook was originally written in response to the many requests for assistance DOER received. This revised edition includes additional material that reflects changes in the law since 1984, as well as the experience of local governments in planning for and implementing pay equity over the past six years. Material that is no longer relevant has been deleted.

Section I of the guidebook provides a summary of the state's experience with pay equity. This section has been expanded to include a sample survey analyzing local government compliance to date.

## Introduction

Section II summarizes the law as amended. It also includes general information about job evaluation and pay analysis, and identifies the information which will be needed for preparing implementation reports in January 1992. This replaces the information in the original guidebook which explained the report required in 1985. The 1985 report is referred to in this revised edition as the "planning report" to distinguish it from the implementation report required by the 1990 amendments.

Section III responds to commonly-asked questions about the law, the implementation process, and the compliance process. The department has not changed its original interpretations of the law. However, new material has been added to reflect the recent amendments, and material related to now-expired deadlines has been deleted.

Section IV explains how DOER will determine compliance, with examples of jurisdictions that would be considered in compliance and jurisdictions that would be considered out of compliance.

The department will develop rules and regulations designed to implement the requirements of the Local Government Pay Equity Act prior to the deadline date of December 31, 1991.

An appendix includes the full text of the law as amended, a copy of the Attorney General's memo on jurisdictional issues, and a list of publications and software available from the Department of Employee Relations. None of these publications are copyrighted. Please make and distribute copies as needed.

For more information, you may write or call:

Pay Equity Coordinator  
Department of Employee Relations  
520 Lafayette Road North  
St. Paul, Minnesota 55155  
612/296-2653

# **SECTION I. MINNESOTA'S EXPERIENCE WITH PAY EQUITY**

Pay equity in state government employment	5
Pay equity in local government employment	7
Analysis 100 - A sample of local government plans	8

# SECTION I. MINNESOTA'S EXPERIENCE WITH PAY EQUITY

The purpose of the local government pay equity law is to correct historic sex bias, also called gender bias, in wages paid for "women's" jobs. Pay equity is also called "comparable worth" or "equal pay for work of equal value."

Pay equity is a simple concept. It is a remedy for patterns of sex bias in the pay for jobs held mostly by women. Here is a brief history of pay equity in Minnesota's state and local governments.

## **Pay equity in state government employment**

Minnesota state government has about 35,000 full-time employees working in more than 1,800 job classifications. About half of state employees are women. There are 15 bargaining units, and about 90 percent of state employees are covered by collective bargaining contracts.

In 1979, the Department of Employee Relations established a job evaluation system to measure the content of jobs in state service. The system was developed by Hay Associates, a personnel consulting firm. The Hay system assigns points to jobs based on four factors: know-how, problem-solving, accountability, and working conditions. The "value" of each job is determined by adding up the points for each of the factors.

In October 1981, the Council on the Economic Status of Women established a task force to review pay practices for male and female state employees. The task force used the Hay system to document disparities between male-dominated and female-dominated job classes of equal value. (The terms "male-dominated" and "female-dominated" are defined in the law, included in the appendix to this guidebook.)

For example, the male-dominated job of Delivery Van Driver and the female-dominated job of Clerk Typist 2 each received 117 points on the

## Minnesota's Experience

Hay scale. However, the female job paid about \$250 per month less than the male job. The council study showed that this kind of disparity was consistent throughout state service. Female jobs were almost invariably paid less than male jobs of comparable value. And in some cases, female jobs were paid less than male jobs of lower value.

The council calculated the cost for increasing the pay of female classes to the level of their male counterparts, in order to correct this problem. The estimated one year cost for full implementation was \$26 million, an amount which was equivalent to 4 percent of the state's payroll.

In 1982, the state legislature changed the personnel law covering state employees to 1) establish a policy to provide "equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees" and 2) establish a process for making comparability increases for female-dominated job classes.

In 1983, this procedure led to the first pay equity increases for state employees. The legislature earmarked funds for pay equity increases within the amount available for all salary increases.

This earmarking process meant that some funds were designated exclusively for "comparability adjustments" for underpaid female-dominated classes. The earmarked funds could not be used for any other purpose: if this money was not used for pay equity, the law required the money to be returned to the state treasury.

(Similar language is included in the Local Government Pay Equity Act: "...It is not an unfair labor practice for a political subdivision to specify an amount of funds to be used solely to correct inequitable compensation relationships.")

In the state process, the earmarked pay equity funds were then assigned to the different bargaining units in proportion to the total cost of implementing pay equity for each unit. The actual distribution of pay equity increases, like other salary increases, was negotiated through the usual collective bargaining process. Contracts signed in 1983 awarded these funds to those in underpaid female classes.



The process was repeated in the next biennium, with additional funds earmarked and distributed through the bargaining process. Pay equity was fully implemented by the end of that biennium, four years after the process began. The law requires continued monitoring and reporting by DOER to ensure that pay equity is maintained.

Some results of the state program include:

- \* The total cost of pay equity was 3.7 percent of payroll.
- \* About 8,500 employees in 200 female-dominated classes received pay equity increases.
- \* The major groups affected were clerical workers and health care workers. About 10 percent of the workers in the classes receiving increases were men.
- \* The average annual pay equity increase was \$2,200.
- \* No state employee had wages cut as a result of pay equity and there were no employee layoffs.

The state's experience has demonstrated that pay equity can be implemented in a cooperative manner, with involvement from both management and labor, and at a reasonable cost. The success of the state pay equity law was a significant factor in passage of the local government pay equity law.

#### **Pay equity in local government employment**

Minnesota local governments employ an estimated 163,000 people. About half of these employees are women, although women's representation varies widely by type of jurisdiction. The number of employees represented by unions also varies widely.

Local government compliance with the pay equity law cannot be judged until after the implementation deadline at the end of 1991. However, there is considerable evidence that most local governments are making a good faith effort to comply, and will have achieved full compliance by that date.

Over 1,500 jurisdictions have submitted pay equity planning reports. Each of these jurisdictions has evaluated its jobs, analyzed pay disparities and identified pay inequities, determined the cost to



correct the inequities, and developed at least a preliminary timetable for phasing in the corrections.

No other state in the nation has undertaken such a broad-based program. These first steps are even more impressive with the recognition that they represent some fundamental changes in the way people think about compensation. In addition, many local governments started the process without written job descriptions or formal pay ranges -- both tools which are helpful, if not essential, in achieving pay equity.

The following information is taken from the planning reports. (Please note that reports were filed between September 1985 and October 1988, and plans may have changed since that time.)

- \* Local governments used a variety of job evaluation systems: the state job match system, consulting systems, and systems borrowed from other employers or designed by the jurisdiction itself.
- \* All of the systems showed similar results and the cost of correcting inequities was similar regardless of the job evaluation system used.
- \* Virtually all of the employers with more than 10 employees identified inequities.
- \* An estimated 30,000 employees are eligible for pay equity increases. The average amount of pay equity increase is estimated at \$200 per eligible employee per month.
- \* The average cost of pay equity is 2.6 percent of payroll -- 1.7 percent for schools, 4.1 percent for cities, and 3.8 percent for counties.

### Analysis 100 - A sample of local government plans

In the fall of 1989, the Department of Employee Relations reviewed reports from 100 jurisdictions to determine if the plans they had submitted would result in pay equity. Here is a summary of that review, called "Analysis 100."

The department analyzed a statewide representative sample of one hundred pay equity planning reports from 37 cities, 24 counties, 27 school districts, and 12 other political subdivisions.

Data were entered into the computer and "scattergrams" were generated.

**A scattergram is a graph showing the relationship between job evaluation points and salaries for job classes within a political subdivision.**

Each scattergram showed what the compensation would look like if the pay equity raises shown in the report were implemented. If it appeared that gender-based wage disparities would be eliminated, and compensation for female-dominated classes would not be consistently below compensation for male-dominated classes of comparable work value, the plan was considered in compliance.

**Throughout this guidebook, the term "consistently" means usually or most of the time.**

Please note that these determinations were preliminary. Final compliance decisions will be made based on data submitted after the December 31, 1991 deadline. While the scattergram is a useful tool, other details of the compensation system may be considered in making final decisions. Section IV explains how the final compliance decisions will be made, and includes sample scattergrams.

Based on this analysis, 59 percent of plans were in compliance, while 29 percent were out of compliance and more information would be needed in 12 percent of the cases.

Counties and schools had relatively high compliance rates, while cities were more likely to be out of compliance.

<u>Jurisdiction Type</u>	<u>In compliance</u>	<u>Out of compliance</u>	<u>More Information Needed</u>
Cities	40.5%	40.5%	19.0%
Counties	70.0%	21.0%	8.0%
Schools	63.0%	26.0%	11.0%
Others	83.0%	17.0%	0.0%

## Minnesota's Experience

Other Analysis 100 findings were:

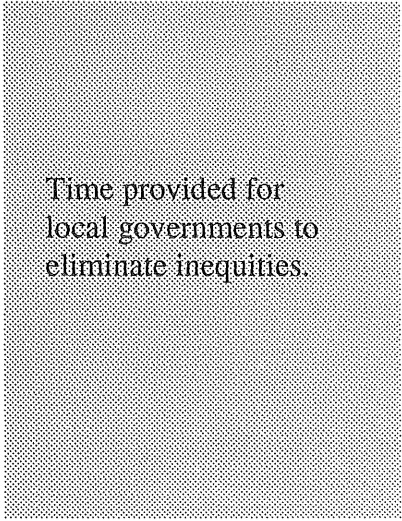
- \* 62 percent of plans from non-metro jurisdictions were in compliance, while 45 percent of plans from metro jurisdictions were in compliance.
- \* 78 percent of plans which matched local jobs to state jobs (state job match system) were in compliance, while 55 percent of plans using paid consultants were in compliance.
- \* The average cost to eliminate sex-based disparities was 2 percent of payroll. This average cost in the sample study was similar to the average costs shown in all planning reports, as noted earlier.

Minnesota has made enormous progress toward achieving pay equity. While adjustments will be needed to ensure that all local governments will be in compliance by the deadline, it appears that pay equity will soon be a reality for all public sector employees in this state.

## SECTION II. THE LOCAL GOVERNMENT PAY EQUITY ACT

Chronology of the process	12
The policy	13
The process	13
Job evaluation	14
Pay analysis	14
The planning report	15
The implementation report	16
Prototype worksheet	17
Compliance decision	19
Penalties	19

## CHRONOLOGY OF THE LOCAL GOVERNMENT PAY EQUITY PROCESS

	<u>State Action</u>	<u>Local Government Action</u>
1984	Law passes. Publications & software available.	Begin studies. Select job evaluation system. Evaluate jobs. Identify inequities. Establish implementation plan.
1985	Training available.	
1986	Report to legislature.	
1987		
1988		
1989		
1990	Publications revised and re-printed.	
1991	<b>December 31, 1991 is implementation deadline.</b>	
1992	<b>January 31, 1992 is deadline for implementation reports.</b> Review reports. Determine compliance and discuss with local governments.  Report to legislature. Notify Department of Revenue of penalties to be imposed.	Submit implementation reports.       Maintain pay equity.

## SECTION II. THE LOCAL GOVERNMENT PAY EQUITY ACT

The local government pay equity law (M.S. 471.991 - 471.999) establishes a pay equity policy and procedure, much like the 1982 law for state employees. However, the local government law maintains flexibility and overall control of the process at the local level.

### The policy

The policy section of the law states that:

*...Every political subdivision of this state shall establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees in order to eliminate sex-based wage disparities in public employment in this state. A primary consideration in negotiating, establishing, recommending, and approving compensation is comparable work value in relationship to other employee positions within the political subdivision.*

*..."Equitable compensation relationship" means that the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value...within the political subdivision.*

### The process

The law required each local government to evaluate jobs, analyze pay, and develop and report on an implementation plan by October 1985. Later amendments established a deadline for implementation, required an implementation report, and provided for financial penalties for any jurisdictions found out of compliance.

### Job evaluation

Each local government was to use a job evaluation system to determine comparable work value for jobs in that jurisdiction. If the jurisdiction had employees who belong to bargaining units, the employer was required to meet and confer with exclusive representatives in developing or selecting a system.

Each jurisdiction was allowed to choose or develop any job evaluation system, so long as the system measures four factors: skill, effort, responsibility, and working conditions.

Here is a brief review of job evaluation concepts.

- \* Employers have always compared dissimilar jobs by paying different wages for those jobs. Formal job evaluation systems make it possible to identify those job factors which the employer values and to adjust pay accordingly.
- \* Job evaluation is not based on the performance or qualifications of the person doing the job. Evaluators should consider the amount of education the job requires, not the amount of education a current employee brings to the job. In evaluating the job, they should not consider longevity, seniority, or performance of current employees.
- \* One possible source of gender bias in job evaluation is to limit the working conditions considered to those typical of male jobs, such as outdoor work or heavy lifting, while overlooking conditions associated with female jobs such as confinement, eyestrain, or stress from repetitive small muscle movement.

Job evaluation is not an exact science. But current job evaluation systems provide a realistic starting point for establishing pay equity. Once employers know the "comparable work value" for each job, they can proceed to analyze the pay relationships.

### Pay analysis

The law required local governments to identify "classes for which a compensation inequity exists based on the comparable work value."

Pay equity addresses the problem of a dual wage structure, with one pay pattern for jobs performed mostly by women and another pay pattern for jobs performed mostly by men. Each jurisdiction was required to analyze its internal pay structure for evidence of sex-based wage disparities.



Pay methods such as seniority and job performance are not affected by pay equity. These factors are typically recognized by movement through a pay range. The pay equity analysis is generally limited to a comparison of male-dominated and female-dominated classes at the maximum of the range.

Pay equity does not require external comparisons. Overall wage levels can and do vary widely from one jurisdiction to another. For example, employers outside the metropolitan areas generally pay less than employers in the metropolitan areas, and pay equity does not require any change in that practice. Pay equity refers only to relationships within a jurisdiction.

Pay equity does not require a strict "pay for points" system. While jobs with more points should generally be paid more, employers do not need to establish a formula which awards a certain amount of money for each job evaluation point. Jobs with the same points may be paid at different rates, so long as female classes are not paid consistently below male classes of comparable work value.

Job evaluation systems establish general guidelines for appropriate internal pay relationships. But employers retain flexibility to account for factors such as collective bargaining in pay setting.

The simplest way to analyze pay is to prepare a scattergram showing the relationship between job value and pay for each class in the jurisdiction. The graph can be homemade, or it can be generated by a computer. Section IV of this guidebook includes some sample scattergrams and guidelines on how to interpret them.

### **The planning report**

Each local government was required to report to the Department of Employee Relations by October 1, 1985. That report included job class information, job evaluation ratings, salary information, identification of classes with inequities, and an implementation plan. The implementation plan included a timetable for implementation and the estimated cost of implementation.

Later amendments to the Local Government Pay Equity Act added some important new provisions to the process. In 1988, the legislature established implementation deadlines and penalties for jurisdictions who failed to comply with the law. And in 1990, the legislature clarified the final steps of this process.

### The implementation report

The law states that *equitable compensation relationships must be achieved by December 31, 1991*. This means that all pay adjustments needed to eliminate gender-based wage disparities must be made by that time.

Each local government must submit an implementation report to the Department of Employee Relations by January 31, 1992, to serve as the basis for the compliance determination. The final report must be based on the jurisdiction's payroll as of December 31, 1991.

The format will be similar to the one used for the planning report, and all of the required information should be readily available in each jurisdiction. The report form will be about four pages long.

Detailed instructions and a final reporting form will be sent to all local governments at a later time. In the meantime, here is a summary of the information that will be required and a prototype sample for the job class information section of the report.

*Part One. Identifying information.* This section of the report form will include the name and address of the jurisdiction and the name and telephone number of the person preparing the form.

*Part Two. Signature block.* This section of the report must be signed by the chief elected official in the jurisdiction, verifying that the information is accurate, has been approved by the governing body, and will be made available as public data.

*Part Three. Job evaluation system.* In this section, the jurisdiction names the job evaluation system used.

*Part Four. Job class information.* This section will be similar to Part C of the planning report. The prototype worksheet included here is not the final form, but rather a draft version intended to show the information that will be required.

# PROTOTYPE WORKSHEET FOR IMPLEMENTATION REPORT

<u>Class Title*</u>	<u>Number of Male Employees</u>	<u>Number of Female Employees</u>	<u>Class Type (M-F-B)</u>	<u>Comp Work Value</u>	<u>Minimum Monthly Salary</u>	<u>Maximum Monthly Salary**</u>	<u>Years to Max</u>	<u>Other Cash Compensation***</u>	<u>Number Ees Elig/Recvg Other Comp</u>
<u>Custodian</u>	<u>19</u>	<u>2</u>	<u>M</u>	<u>175</u>	<u>\$1180</u>	<u>\$1340</u>	<u>4</u>	<u>longevity</u>	<u>2113</u>
<u>Cook</u>	<u>0</u>	<u>9</u>	<u>F</u>	<u>225</u>	<u>\$1300</u>	<u>\$1450</u>	<u>4</u>		<u>1</u>
<u>Maint. II</u>	<u>1</u>	<u>0</u>	<u>M</u>	<u>240</u>	<u>\$1350</u>	<u>\$1480</u>	<u>4</u>	<u>lump sum</u>	<u>111</u>

SAMPLE

\* If your jurisdiction has a two-tier pay system, and there are employees in both tiers, please list each tier as a separate class. The "class type" and all other data for each tier is based on the information for that tier only.

\*\* If employees in the class are actually paid more than the maximum of the salary range, through a lump sum, bonus, or other premium paid within the last six months, add these amounts to the maximum salary and write in the total here. To show this was done, write the words "lump sum" or "bonus" in the next column. Please circle the dollar figures in this column if there is no pay range for a class. The circle means that the salary data reflects the highest salary actually paid to any current employee in the class.

\*\*\* "Other cash compensation" includes, but is not limited to: incentives, pay-for-performance, longevity pay, shift differentials, and any other pay which employees may receive beyond the figure listed as the maximum of the pay range. For this report, simply write in the words describing the additional pay. DOER will request the actual amounts if there appears to be an inequity. In the next column, list the number of employees in the class who were eligible for, and the number who received, any of these kinds of compensation in the past six months.

For each class, the local government will need to provide information about the numbers of male and female employees, the comparable work value, and the compensation. If no salary ranges exist, list the lowest salary actually paid to any employee in the class as the minimum salary, and the highest salary actually paid to any employee in the class as the maximum salary.

The list must include all classes which have been occupied at any point in the last six months, even if the class is vacant as of December 31, 1991, unless the class has been abolished. Jurisdictions should not list any classes which are vacant as of December 31, 1991, and have been vacant for the past six months.

*Part Five. Other information.* Each jurisdiction will also be asked to provide a figure representing the jurisdiction's total payroll for the year ending in December, 1991.

Finally, the report will ask for any other information about the compensation system that the jurisdiction believes is relevant to the compliance determination.

*Optional information.* Larger jurisdictions are encouraged to submit their data on a computer diskette along with the written form, to simplify transmitting and analyzing the data. More specific instructions will be included with the final report form.

The department also encourages local governments to supply their own scattergrams to help in interpreting the information in the reports. The department can only consider scattergrams which meet these specifications:

- \* Scattergrams must plot maximum salaries and job values for all male and female classes in the jurisdiction. Where there are no salary ranges, scattergrams must plot the highest actual salary for each class.
- \* The classes must be labelled "M" and "F," and no trend lines may appear on the scattergram.
- \* Scattergrams should not include balanced classes unless they represent a significant percentage of employees in the jurisdiction.
- \* The scattergram must use an arithmetic scale.

- \* The scale must fit the data points. That is, the graph should end just below the lowest-paid or lowest-rated class, and just above the highest-paid or highest-rated class.

*Public information.* All information in the implementation report is public information and must be made available to anyone on request. The obligation to make the information available applies both to the department and to the jurisdiction. The planning reports submitted previously are also public information.

To receive a copy of either report, please call the pay equity coordinator at the number listed in the front of this booklet. There is a nominal charge for this service.

### Compliance decision

The Department of Employee Relations must review the implementation reports, make compliance decisions, and notify local governments. The law specifies information the department must consider if the local government disagrees with the department's decision. If the local government disagrees with the department's final decision, the law allows the local government to appeal to an administrative law judge.

The next two sections of this guidebook explain how the department will make those decisions.

### Penalties

If full compliance does not occur by December 31, 1991, a financial penalty will be imposed. The penalty is a five percent reduction in state funds, or a fine of \$100 a day, whichever amount is larger. The five percent reduction applies to local government aid, general education aid, or disparity reduction aid paid by the state to local governments.

The full text of the law, including the 1990 amendments, is included in the appendix.

## SECTION III. QUESTIONS & ANSWERS

1. What employers are covered?	21
2. What about small jurisdictions, and jurisdictions other than cities, counties, and school districts?	21
3. Can subdivisions exclude any employees?	22
4. What is a job class?	22
5. How should balanced classes be treated?	22
6. Does the law require us to completely revise our personnel system?	23
7. Do we have to hire a consultant?	23
8. Is there a formula we can use to guarantee that our jurisdiction will be in compliance?	24
9. Does the pay equity law replace collective bargaining with job evaluation?	24
10. How does the pay equity law fit with the Little Bacon-Davis Act?	25
11. Does the law allow employers to achieve pay equity by reducing, freezing, or slowing pay for male classes?	25
12. What is the role of the market in pay equity?	25
13. Does the "reasonable relationships" section of the law require us to pay the same as other employers?	26
14. What if employees are not satisfied with their job evaluation ratings?	27
15. Can our jurisdiction use a balanced line, all-jobs line, combined line, and/or a corridor to achieve compliance with the law?	27
16. How will benefits be viewed when determining compliance?	28
17. What kinds of pay other than straight salary are included when determining whether compensation relationships are equitable?	28
18. Is there any way to find out if a particular jurisdiction is on the right track?	29

## SECTION III. QUESTIONS & ANSWERS

1. *What employers are covered by the Local Government Pay Equity Act?*

The law applies to political subdivisions which fall under the Public Employees Labor Relations Act (PELRA, M.S. 179A), and which have final budgetary approval authority over wages for a group of employees. This includes, but is not limited to, cities, counties, and school districts.

The department assumes that hospitals, nursing homes, and libraries are part of a city or county jurisdiction unless the jurisdiction demonstrates otherwise. The appendix to this guidebook includes an Attorney General's memo addressing this issue. Although the memo includes some information specific to hospitals and nursing homes, it also includes information which is helpful in other jurisdictional questions.

If it is not clear who has final budgetary approval authority, questions may be directed to the Bureau of Mediation Services, 1380 Energy Lane, Suite 2, St. Paul, MN 55108, (612) 649-5421.

2. *What about small jurisdictions, and jurisdictions other than cities, counties, and school districts?*

The Attorney General's office has advised the Department of Employee Relations that these jurisdictions are covered in the same way as larger jurisdictions under the law.

That is, jurisdictions with fewer than 10 employees, and jurisdictions other than cities, counties, and school districts must achieve pay equity by the implementation deadline of December 31, 1991. They must file the same implementation report as other jurisdictions, and the same financial penalties apply to these jurisdictions.



3. *Can subdivisions exclude any employees?*

The local government pay equity law does not specifically exclude any employee groups. The definition of a public employee found in the Public Employees Labor Relations Act (PELRA) will be used in making compliance decisions.

In general, PELRA defines a public employee as anyone who works (a) at least 67 days in the year, or at least 100 days for full-time students, and (b) at least 14 hours per week or at least 35 percent of the normal work week. Elected officials are excluded.

If it is not clear which employees fall under the PELRA definition, the Bureau of Mediation Services can make a determination.

4. *What is a job class?*

The law defines "class" as "one or more positions that have similar duties, responsibilities, and general qualifications necessary to perform the duties, with comparable selection procedures used to recruit employees, and use of the same compensation schedule."

Clerk Typist 3 and Maintenance Worker are classes. These two classes may be evaluated at the same level, and they may be in the same pay grade. However, they are separate classes because they have different duties, titles, and qualifications.

For specific definitions of "male-dominated class" and "female-dominated class," please see the text of the law in the appendix.

5. *How should balanced classes be treated?*

Balanced classes are usually not considered when deciding if gender-based pay disparities have been eliminated. There are several reasons for this. First, by definition, balanced classes are neither male-dominated nor female-dominated and therefore it is unlikely that any pay disparities between these classes and other classes are based on gender.

Second, most jurisdictions have relatively few balanced classes, or no balanced classes at all, and, therefore, the compensation for these classes is not significant in reviewing the overall compensation structure.

The law does require jurisdictions to evaluate balanced classes as well as all other classes, and to include information about these classes with the implementation report. In determining compliance, the department will usually disregard balanced classes.

In interest arbitration and collective bargaining for balanced classes, the law requires consideration of "similar or like classifications in other political subdivisions."

6. *Does the law require us to completely revise our personnel system?*

No. Pay equity cannot correct all compensation problems that may have evolved over the years. Rather, the law requires you to examine your current system and to correct any gender-based disparities in pay between female job classes and male classes.

Some jurisdictions have interpreted the law to require a "pay-for-points" system and have used this interpretation to justify large increases for male-dominated classes or highly paid male administrators. While there is nothing in the law to prevent special increases for these classes, the law itself does not require any increases except for those which would eliminate a consistent pattern of lower pay for jobs held predominantly by women.

7. *Do we have to hire a consultant?*

No. Many local governments have existing classification and job evaluation systems which can be used just as they are, or which can be adapted to meet pay equity needs. Others may use the free state job match system explained in the supplements to this guidebook (included on the publications list in the appendix). This guidebook and the supplements provide basic information about pay analysis.

8. *Is there a statistical formula we can use to guarantee that our jurisdiction will be in compliance?*

Because of the diversity of local jurisdictions, it is not possible or desirable to establish a single formula that applies to all jurisdictions. However, statistical analysis will be used as part of the compliance decision for individual jurisdictions.

The 1600 jurisdictions covered by the law include cities, counties, schools, joint powers organizations, libraries, hospitals, utilities, metropolitan agencies, and others -- all with unique employment and compensation structures. Jurisdictions also vary widely in size, from those with two employees to those with more than 9,000 employees. The number of job classes ranges from 2 to 600. Many organizations are predominantly male and many are predominantly female.

As explained in Section IV, the department will make compliance decisions on a case-by-case basis, considering the unique factors in each jurisdiction. It's important to remember that pay equity refers only to relationships within a jurisdiction, not across jurisdictional lines, and there is no requirement that all jurisdictions have similar compensation structures.

9. *Does the pay equity law replace collective bargaining with job evaluation?*

No. Wages are still set through bargaining where there is an exclusive representative. The job evaluation can provide pay guidelines, clarify pay problems, and show relationships between various job classes within a jurisdiction.

The law does not require all jobs with the same value to be paid the same. It only requires that female classes not be paid consistently below male classes of comparable value.

The law states that "This law may not be construed to limit the ability of the parties to collectively bargain in good faith." And the law allows for earmarking of pay equity funds: "It is not an unfair labor practice...to specify an amount of funds to be used solely to correct inequitable compensation relationships."

The State of Minnesota achieved pay equity for 35,000 workers through collective bargaining. And there were no problems with state employee bargaining units -- male-dominated, female-dominated, and balanced units all settled their contracts as usual.

10. *How does the pay equity law fit with the "Little Bacon-Davis Act," Minnesota Statutes 177.41 - 177.44?*

The pay equity law does not supersede the Little Bacon-Davis Act, which requires contractors or subcontractors on state projects, including highway contracts, to pay prevailing wages to laborers and mechanics.

Contracted employees are not covered by pay equity, and, therefore, there is no conflict between these two laws. The pay equity law does not set any limits on compensation for male-dominated classes. It simply requires eliminating any disparities between pay for these classes and pay for female-dominated classes of comparable value.

11. *Does the law allow employers to achieve pay equity by reducing, freezing, or slowing pay rates for male classes?*

The law does not prescribe methods to be used to achieve pay equity, so local governments have a great deal of flexibility.

The department's compliance decisions in 1992 will be based on the pay patterns within each jurisdiction as of December 31, 1991. The process used to achieve pay equity will not be relevant to that decision.

Pay equity does not prescribe a "correct" pay rate for any job class. Instead, pay equity addresses the relationships between male-dominated and female-dominated classes.

12. *What is the role of the market in pay equity?*

The law says that a primary consideration in wage-setting is "comparable work value in relationship to other employee positions within the political subdivision." The only reference in the law to "the market" is that "the [implementation] plan does not have to contain a market study."

The law requires the department to consider recruitment and retention difficulties, if requested by the jurisdiction, in determining compliance. No consideration is required for more general market factors.

Here are two of the reasons why "the market" cannot be used as a justification for maintaining pay systems in which female classes are consistently paid less than male classes.

(1) "The market" is not a single, objective number which employers must pay to attract staff. "Market rates" vary a great deal depending on the industries, employers, positions and geographic areas surveyed, the job descriptions used, and many other factors. In one Twin Cities salary survey, the "market rate" for a Clerk 1 ranged from \$11,484 to \$19,716.

(2) Market rates reflect sex bias in pay-setting more than they reflect supply and demand. There are female-dominated occupations where market rates are low although there is a shortage of qualified workers. And there are male-dominated occupations where market rates are high even though many qualified workers are available. Often, female jobs requiring years of education and experience are paid less than entry-level male jobs.

Employers are free to pay male classes at any level, whether that level is set through collective bargaining, market rates, or other factors. However, the pay for female classes must keep pace with the pay for male classes of comparable work value.

13. *Does the "reasonable relationships" section of the law require us to pay the same as other employers?*

The law says that local governments should "assure that...compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivision's employment..."

Every employer needs to make sure their pay rates are adequate for attracting and retaining qualified workers while controlling costs, and this section of the law allows for this. As explained in Question 12, the law also requires the department to consider recruitment and retention problems in determining compliance with pay equity.

In applying the law, the first obligation of the jurisdiction is to achieve pay equity. The equitable compensation relationships section of the law has priority over the reasonable relationships section.

"Reasonable relationships" does not require that all employers pay the same amount for similar jobs. If it did, local governments would need to adjust the pay for many male jobs as well as female jobs which one could argue were paid "above the market" or "below the market." The legislature did not intend to change the existing wage-setting process to that extent.

14. *What if employees are not satisfied with their job evaluation ratings?*

The choice of a job evaluation system, and the ratings themselves, are local decisions. The law requires only that the evaluations be based on the skill, effort, responsibility, and working conditions normally required in the performance of the work.

The Department of Employee Relations will not challenge job evaluation results if the system is based on these four factors and ratings appear credible. DOER may challenge ratings or systems which appear to have the purpose or effect of maintaining sex-based wage disparities.

Employees should take up any concerns about their evaluation scores with their local employer. Employees are encouraged to ask how the points were assigned and whether there is any local appeal process.

15. *Can our jurisdiction use a balanced line, all-jobs line, combined line, and/or a corridor to achieve compliance with the law?*

The law does not specify the process to be used to achieve pay equity. Instead, the compliance decision will be based on results. The department will make its initial decision based on a scattergram showing data points for each job class. The scattergram will not include trend lines or corridors.

If these lines or corridors have been used and sex-based pay disparities are eliminated, the jurisdiction will be found in compliance. However, these methods may not be used to justify paying female-dominated classes less than male-dominated classes of comparable value.

If a local government has used a corridor, for example, but most female classes are paid at the bottom of the corridor while most male classes are paid at the top of the corridor, the jurisdiction is likely to be found out of compliance.

16. *How will benefits be viewed when determining compliance?*

Benefits are part of total compensation and must figure into pay equity. However, jurisdictions will not be asked to report benefits unless DOER has reason to believe there may be some inequity.

To be in compliance, jurisdictions should make sure that eligibility for benefits is similar for all employees with jobs of comparable value. Benefit packages may differ slightly among employee groups, and the department will not attempt to cost out the value of such packages if benefits for male and female classes of comparable value appear to be similar.

In the case of part-time employees, there is no requirement to pro-rate benefits. However, DOER may look at part-time male classes compared to part-time female classes to see if there are gender-based inequities.

17. *What kinds of pay other than straight salary are included when determining whether compensation relationships are equitable?*

The law requires local governments to report "any additional cash compensation, such as bonuses or lump sum payments, paid to the members of a class." The purpose is to ensure that the jurisdiction's compensation practice is presented completely and accurately as the basis for the compliance decision.

Jurisdictions will be asked to report any compensation received by members of a class which might result in actual pay above the maximum of the pay range for that class. However, there are two categories of additional compensation, and the two categories will be treated differently.



Category One includes longevity pay, shift differentials, and performance pay. These pay differentials will not be considered part of base pay unless there is evidence that the differentials are maintaining gender-based compensation inequities. (Such evidence might show, for example, that male classes receive longevity pay while female classes do not, even though there is no difference in longevity between incumbents of the male and female classes.)

Jurisdictions will be asked to report which classes are eligible for these kinds of pay differentials and how many incumbents receive the differentials. However, they will not be required to report the amounts of these pay differentials unless there is a question about inequities in this area.

DOER will look for any pattern where male classes receive pay differentials and female classes of comparable value do not. If an initial review shows that there may be some inequity, the department may ask for additional information such as the actual amount of longevity pay, years required to receive it, and distribution among male and female classes.

Category Two includes other pay differentials such as bonuses, premiums, and lump sum payments. These differentials must be reported. That is, these amounts will be added to the maximum of the pay range for purposes of pay comparisons.

18. *Is there any way to find out if a particular jurisdiction is on the right track toward compliance?*

Yes. The department has free computer software available for anyone to prepare a scattergram. The software is included on the publications list in the appendix. When you have prepared a scattergram, you can apply the criteria listed in Section IV to see if your jurisdiction will be in compliance.

In addition, you may call the department to request a preliminary evaluation, or for any other technical assistance that might be helpful.

## SECTION IV. GUIDELINES FOR COMPLIANCE DETERMINATIONS

A flexible approach	31
How is compliance defined?	31
Basic assumptions	32
Step 1. Prepare a scattergram	32
<i>Actual salaries or pay ranges * Is the maximum accurate? * Other cash compensation * Two-tier pay systems * Number of incumbents</i>	
Step 2. Conduct an initial review	34
Example A.	<i>In compliance</i>
Example B.	<i>In compliance</i>
Example C.	<i>Out of compliance</i>
Example D.	<i>Out of compliance</i>
Example E.	<i>Out of compliance</i>
Example F.	<i>Number of incumbents</i>
Example G.	<i>No male comparison</i>
Step 3. For jurisdictions that appear to be out of compliance, conduct further review	42
Example H.	<i>Offsetters</i>
Example I.	<i>Sore thumb</i>
Example J.	<i>Single incumbent reversal</i>
Example K.	<i>No pay ranges</i>
What happens after the compliance decision is made?	47
<i>Notification * Consultation * Recruitment difficulty * Retention difficulty * Good faith effort * Penalties and appeals * Maintaining pay equity</i>	

## **SECTION IV. GUIDELINES FOR COMPLIANCE DETERMINATIONS**

The law requires the Department of Employee Relations to determine whether compliance with the pay equity law has been achieved, based on the implementation reports submitted by local governments in January 1992. These guidelines explain the general principles the department will use to make those decisions.

The department will develop rules and regulations designed to implement the requirements of the Local Government Pay Equity Act prior to the deadline date of December 31, 1991.

### **A flexible approach**

The department will use a flexible approach based on the principle of eliminating sex-based wage disparities within each jurisdiction, rather than imposing a rigid formula for compliance. Flexibility is needed because the state's 1,600 local governments vary widely in terms of size, type and complexity of compensation systems.

There may be situations not covered by these guidelines and examples, and these situations will be resolved on a case by case basis.

### **How is compliance defined?**

The guiding principle will always be to eliminate sex-based wage disparities. Jurisdictions which have reduced but not eliminated pay disparities between male and female classes will be considered out of compliance. And pay disparities which are not gender-based will not be relevant to the compliance decision.

The main questions DOER will consider are:

- \* Have sex-based wage disparities been eliminated?
- \* Are female-dominated classes compensated consistently below male-dominated classes of comparable work value?  
"Consistently" means most of the time, or usually.

## Guidelines for compliance determinations

- \* Is there a pattern of differential treatment of women and men in the compensation system?

### Basic assumptions

Here are the basic assumptions DOER will make in determining compliance.

- \* The job evaluation system used by the jurisdiction measures skill, effort, responsibility and working conditions.
- \* The ratings assigned to jobs are acceptable.
- \* The information in the report is complete and accurate.
- \* Eligibility for benefits is similar for jobs of comparable value.
- \* Monthly rates are all based on same number of hours (prorated if necessary by multiplying hourly rate times 174).

On rare occasions the department may question these assumptions. For example, employees of a local government might inform the department that a report is inaccurate because some employees have been excluded, salary data is incorrect, or the job evaluation system has been manipulated to hide inequities.

In those situations, DOER will consult with the local governments to ensure the accuracy of the report. The law requires jurisdictions to provide any other information requested by the commissioner in order to make compliance decisions.

### How will the reports be reviewed?

*Step 1. Prepare a scattergram which provides an accurate picture of the jurisdiction's compensation system.*

A scattergram is a graph showing the relationship of pay to job value for all jobs in the jurisdiction, as explained in the previous section of this report. The scattergram plots points and maximum salaries for each male and female class.

DOER will examine the information in each report to generate an accurate scattergram. If the jurisdiction has supplied its own scattergram, the department will check to make sure the scattergram is based on accurate data.

*Actual salaries or pay ranges?* If the jurisdiction does not have salary ranges, the highest actual salary for each class will be plotted as the maximum for that class. If ranges are reported, but some actual salaries are higher than range maximums, DOER will plot the actual salaries on the scattergram rather than the range maximums.

*Is the pay range maximum accurate?* In some pay systems, no employee receives the maximum salary or a salary near the maximum. DOER would first ask whether this is true for both male and female classes. If so, this practice would not represent an inequity.

But if men are generally paid at the top of the ranges and women are paid at the bottom, DOER will investigate to see if gender-based discrimination is occurring. Documented seniority and performance systems are two acceptable explanations for this pattern.

*Other cash compensation.* In some jurisdictions, employees receive lump sums or other bonus payments placing their pay above the reported range maximums. In this case, the true compensation is the salary range maximum plus the lump sum, and this is the amount that will be plotted on the scattergram for these classes. This will include all lump sum or bonus payments made within the six months preceding December 31, 1991.

Payments such as shift differentials or longevity payments will not be added to range maximums or plotted on the scattergram, unless there is evidence that male and female classes are treated differently with respect to these payments. Please note, however, that these payments must be noted in the implementation report.

*Two-tier pay systems.* If a jurisdiction has established a two-tier pay system, and there are employees in both tiers, each tier will be treated as a separate class and both salary maximums will be plotted on the scattergram. If there are no employees in one of the tiers, that tier will not be plotted on the scattergram.

*Number of incumbents.* Each point on the scattergram will represent one class, whether that class has one employee or many employees. However, in making compliance decisions, DOER will pay particular attention to the status of the largest female classes, especially those at lower pay levels. The number of employees in male classes used for comparison with female classes may also be relevant in some cases.

## Guidelines for compliance determinations

*Step 2. Conduct an initial review based on the scattergram.*

Next, department staff will look at the scattergram. Are male-dominated classes (M's) and female-dominated classes (F's) interwoven? Is there a good mix, or are there F's below M's?

If there are F's below M's, the next step is to decide if they are consistently below. There are several ways to measure this.

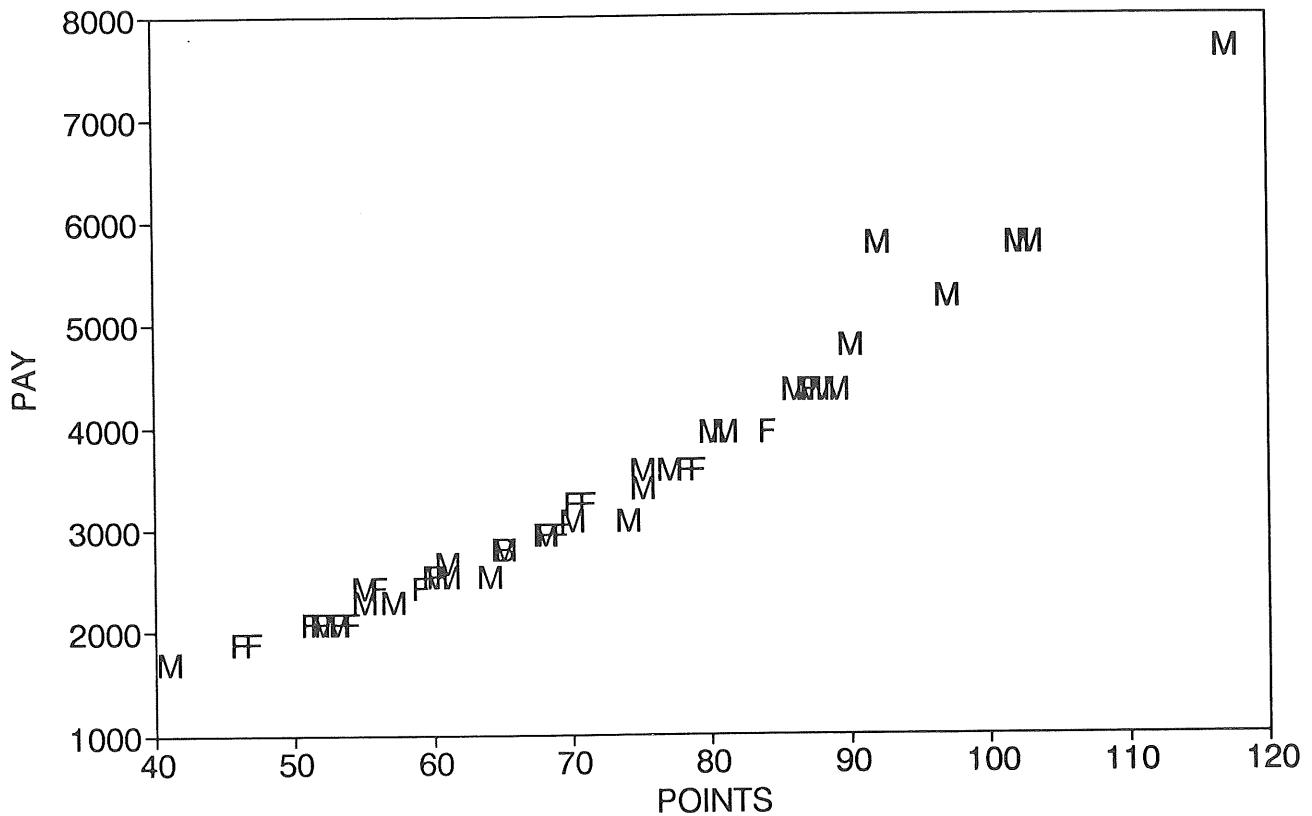
- \* When viewing the scattergram as a whole, female classes fall below the mainstream of compensation for male classes; or,
- \* female classes are paid below male classes with the same points; or,
- \* female classes are paid below lower-rated male classes; or,
- \* where there are no male comparison classes at the same or lower point levels, there is an unreasonable relationship between pay for female classes and pay for male classes with higher points.

The following pages show some examples of scattergram patterns. All of the scattergrams in these guidelines are actual examples from Minnesota jurisdictions.

## Guidelines for compliance determinations

The scattergram below shows a good mix of M's and F's. This jurisdiction would be found in compliance, assuming the information is complete, and there are no verified reports of inaccuracies from employees or others. (Please remember these assumptions in all the examples that follow.)

Example A. In compliance.

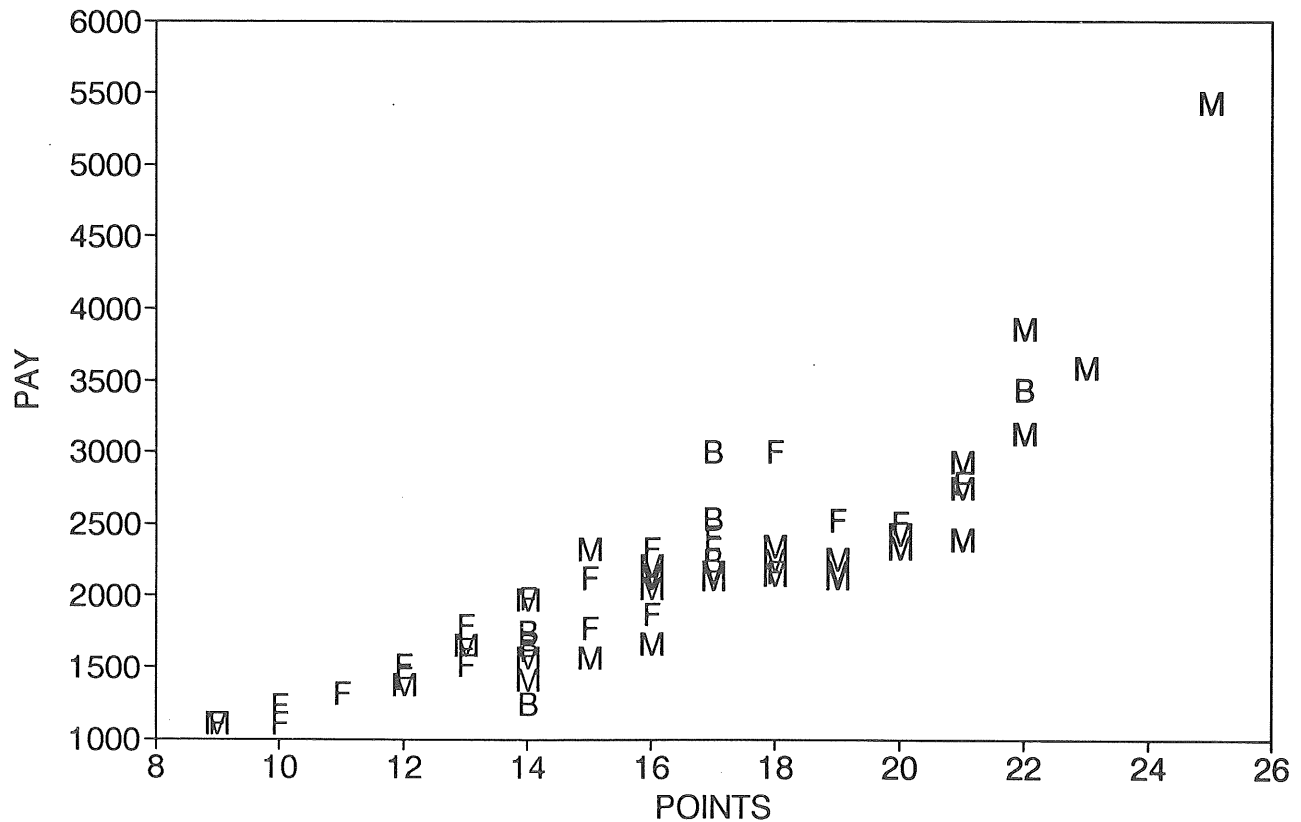




## Guidelines for compliance determinations

This jurisdiction would also be found in compliance even though all of the jobs do not neatly "line up." This scattergram shows a wide range of pay for jobs of the same value, and this is acceptable. There is a good mix of M's and F's. There is no pattern showing female classes are treated differently than male classes.

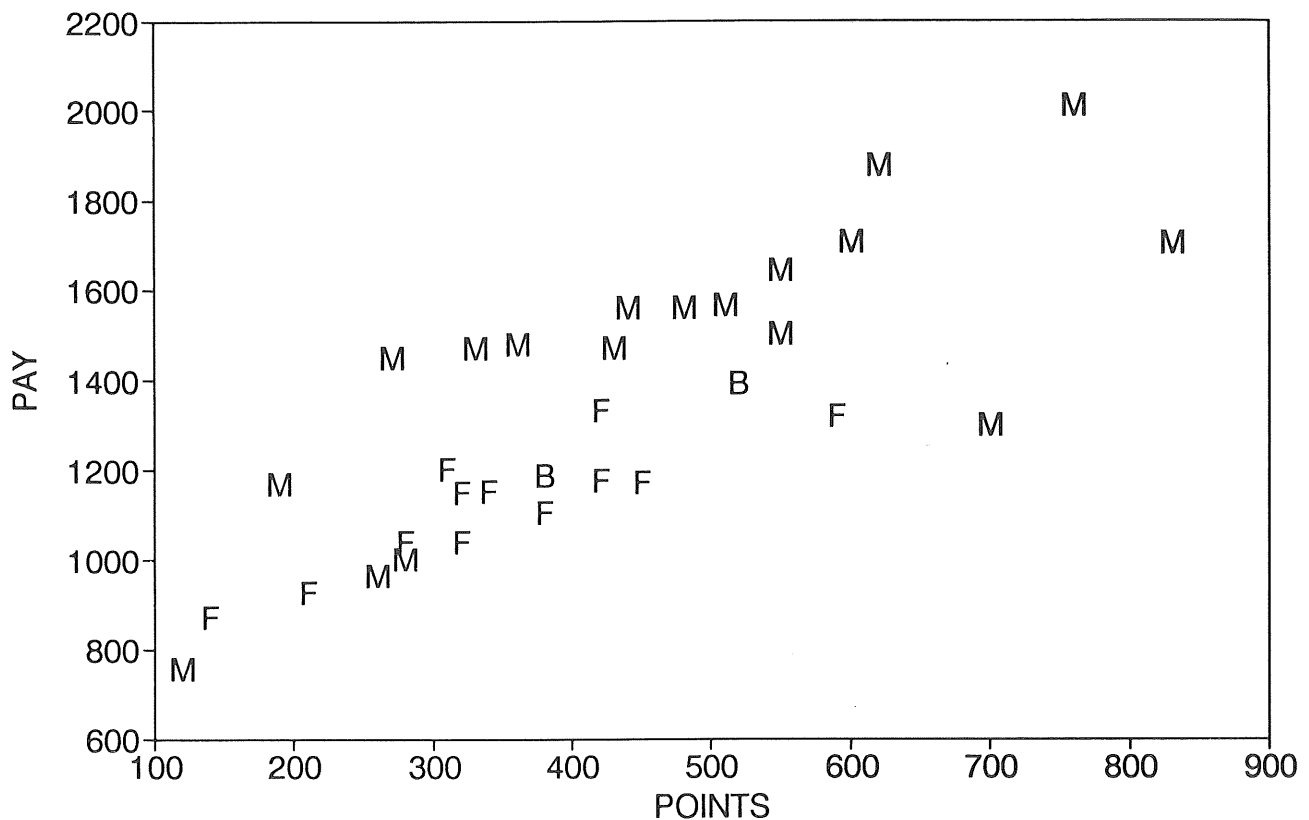
Example B. In compliance.



## Guidelines for compliance determinations

In the example below, some M's are below some F's, but most female jobs are paid less than most male jobs. This jurisdiction would be found out of compliance unless there are non-gender-based reasons for the disparities shown on the scattergram.

Example C. Out of compliance.



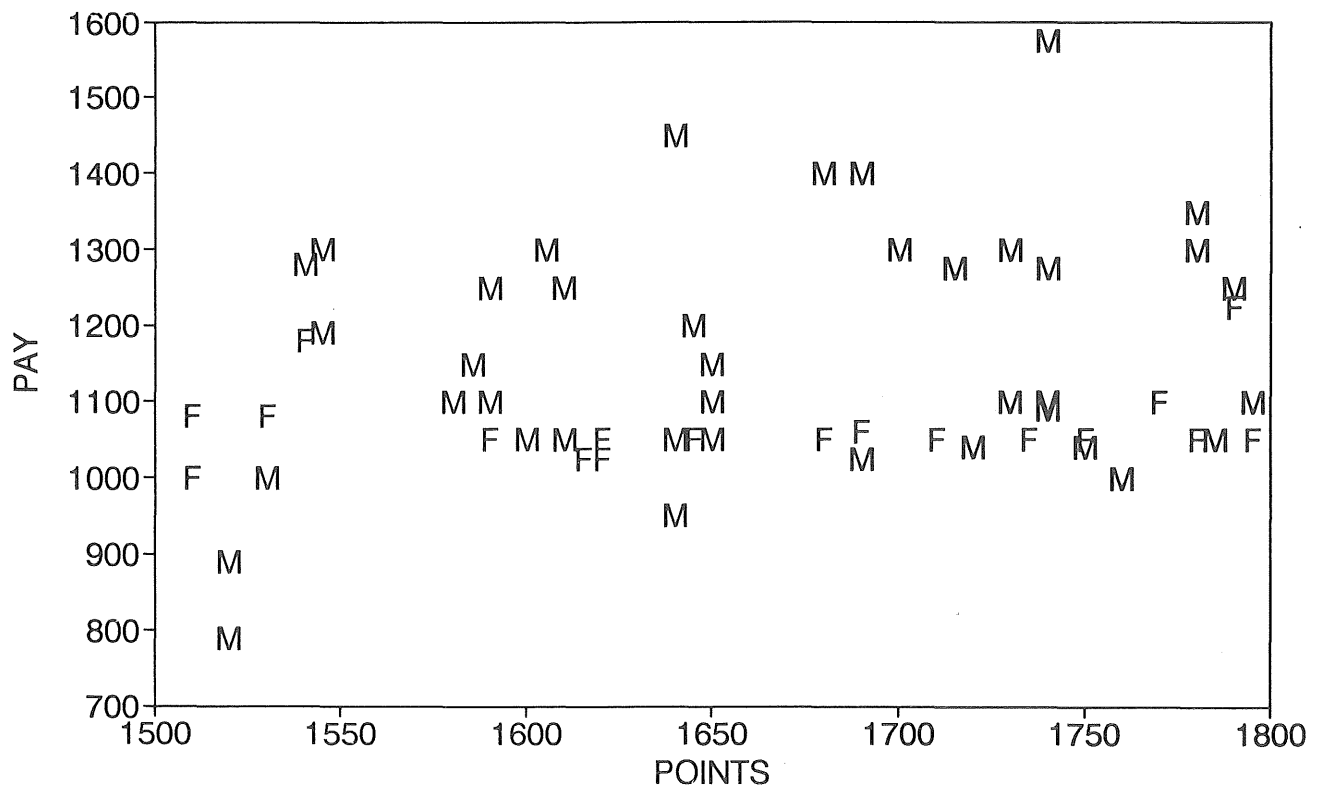
## Guidelines for compliance determinations

The scattergram below represents one segment of a large jurisdiction. Even though some M's are below F's, this jurisdiction would be found out of compliance unless there are non-gender-based reasons for the disparities.

The scattergram is more difficult to interpret because there are so many classes and there is such a wide scatter. However, a close look shows that female classes are paid less than male classes most of the time.

For example, at about 1700 points, the two female classes are paid less than three of four male classes. In addition, these two female classes are paid less than, or the same as, 16 of the 21 male classes rated lower. Nearly all female classes are compensated alike, while compensation for male classes at each point level shows a much greater range.

Example D. Out of compliance.

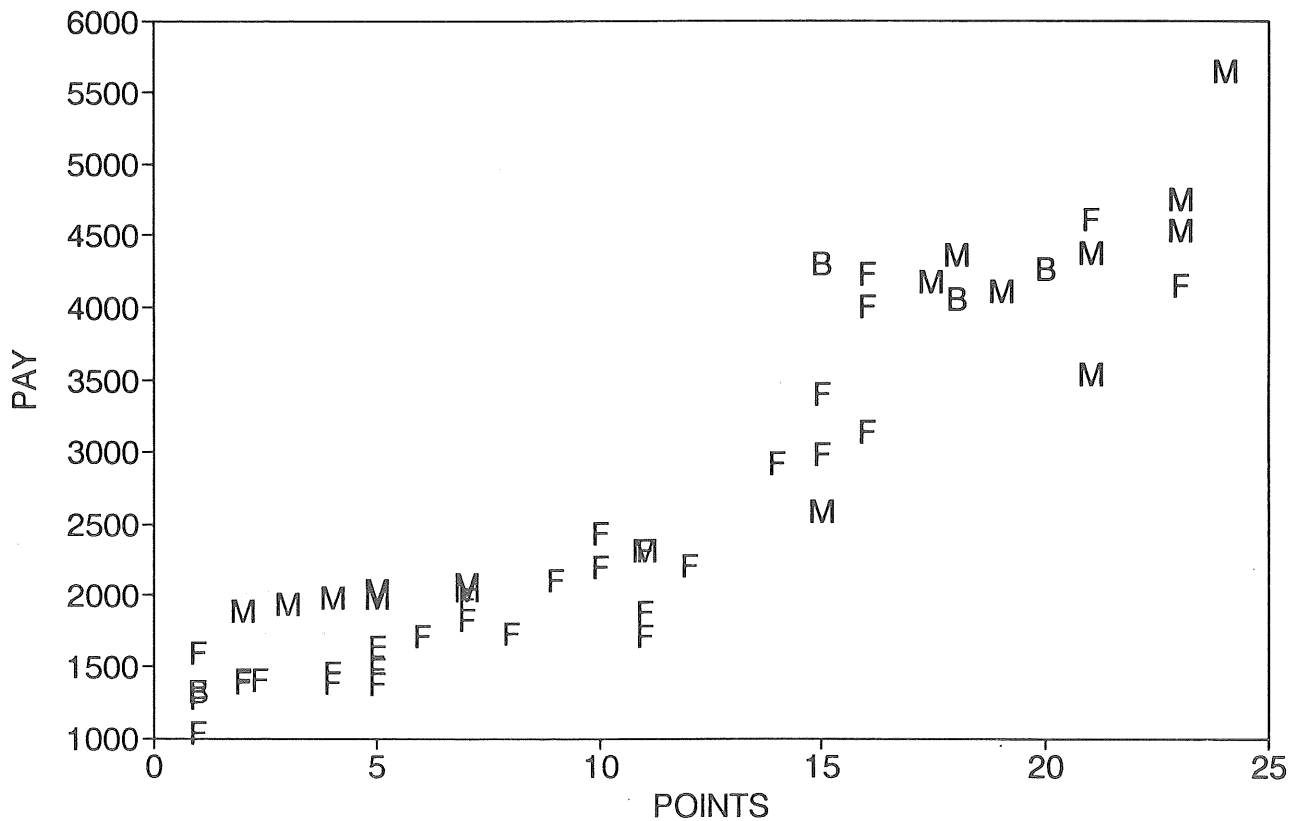


## Guidelines for compliance determinations

This jurisdiction would also be found out of compliance unless there are non-gender-based reasons for the disparities shown in the scattergram.

At 12 points and below, the female classes are paid consistently below male classes. This is especially important because in this jurisdiction, as in most others, a large percentage of the female employees are concentrated at the lower end of the pay scale.

Example E. Out of compliance.



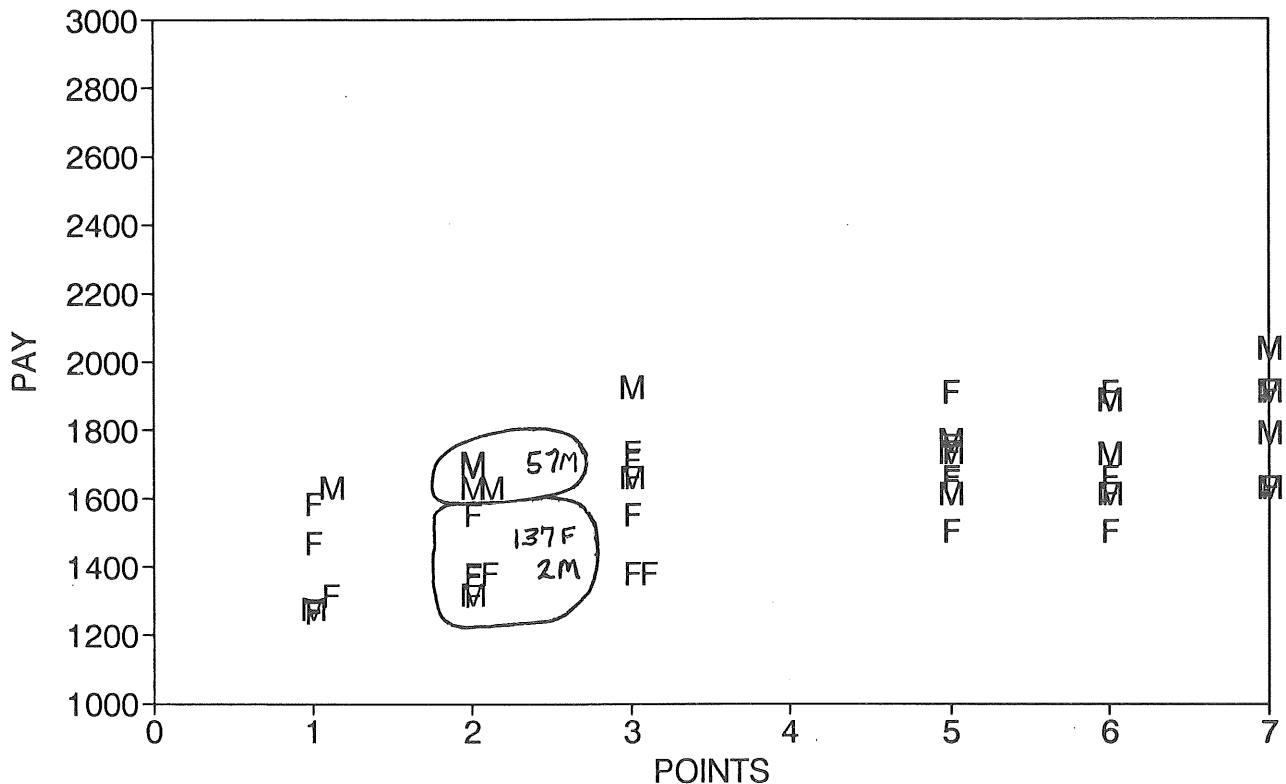
## Guidelines for compliance determinations

Some scattergrams appear to have a good mix of M's and F's, but a closer look at the data reveals that the lower paid F's represent classes with large numbers of incumbents while the higher paid F's represent classes with only one or very few incumbents.

This situation can be compounded if the reverse is true for the M's. That is, the higher paid M's may represent the jurisdiction's larger male classes while the lower paid M's represent only a few incumbents. When this occurs, females are compensated consistently below males in jobs of comparable value.

In the example below, the numbers of incumbents in the classes are written in on the graph. For example, at point level 2, all 137 women are paid less than 57 of 59 men. If the numbers of incumbents in the higher-paid and lower-paid male classes were fairly equal, there would not be a problem.

Example F. Number of Incumbents.



## Guidelines for compliance determinations

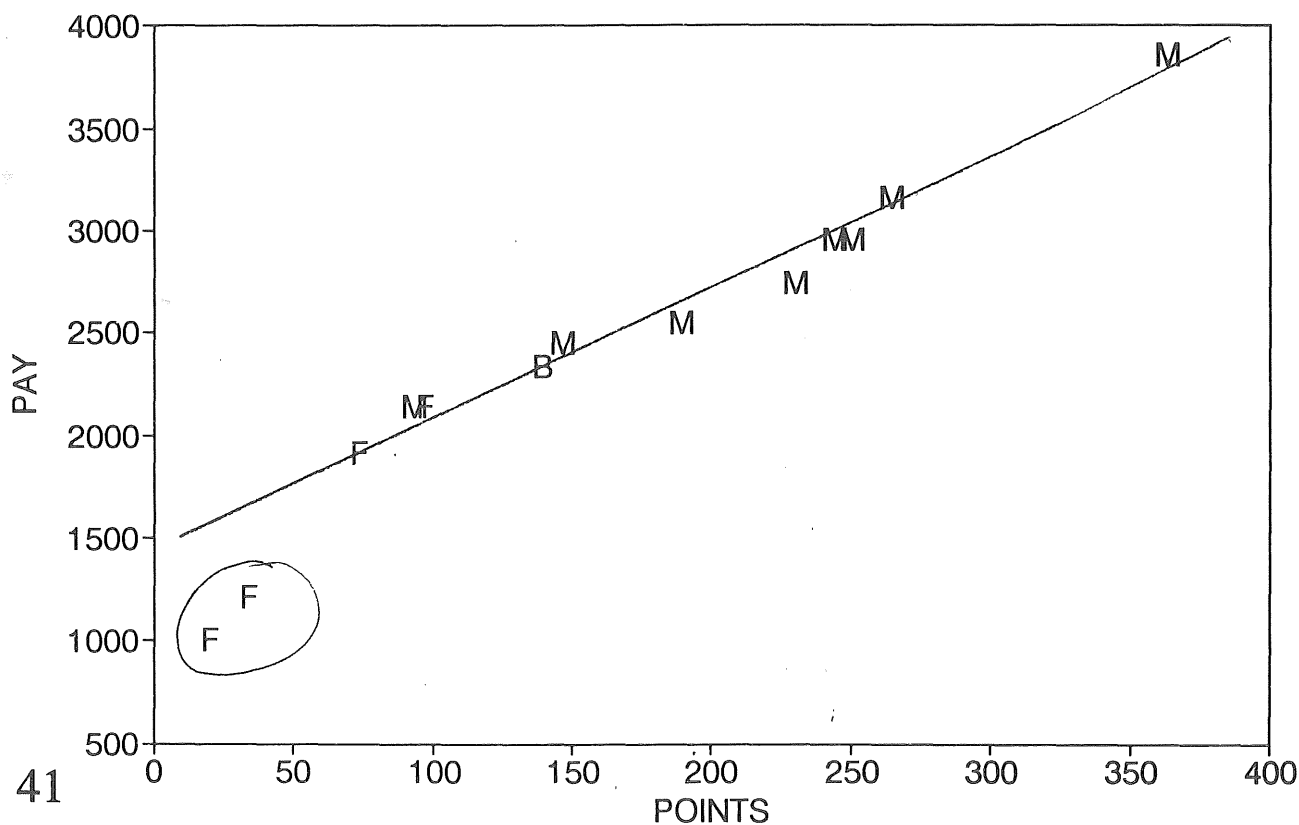
If there are female classes with no male comparison (that is, no male classes of comparable work value), and the female classes are out of the mainstream of compensation, the female classes may need adjustment. While pay equity does not require "pay for points," the law does require reasonable relationships between male and female classes.

In the example below, the two female classes circled represent one-third of female employees in the jurisdiction. These two classes "fall off the cliff." Adjustments are needed for these classes.

A regression line is a statistical tool that can be used to show the mainstream of pay for male classes. In Example G, the line demonstrates that pay for the circled female classes is below the amount that would be predicted for male classes at that point level.

While a regression line is useful in this situation, it is not always an appropriate tool for judging compliance. The line may not be an accurate description of the actual pay practice in small jurisdictions or in other situations. The department will consider this, along with any information that does not appear on the scattergram, in compliance decisions.

Example G. No Male Comparison.



*Step 3. For jurisdictions that appear to be out of compliance, conduct further review including consideration of other information.*

In the following examples, an initial review of the scattergram does not show female classes completely mixed in with male classes. In these cases, DOER will examine the scattergram more closely. Each F below an M will be considered a red flag.

When examining these parts of the scattergram, the department will consider whether the disparities result from some factor other than sex-based wage discrimination. If the disparities cannot be explained by some non-discriminatory factor, the jurisdiction will be found out of compliance.

The scattergram is generally a reliable tool for preliminary compliance decisions, but DOER will also consider other factors when determining compliance, as shown in these examples.

The examples illustrate situations where jurisdictions with scattergrams that appear inequitable may be found in compliance. In all situations, only gender-based disparities are significant.

## Guidelines for compliance determinations

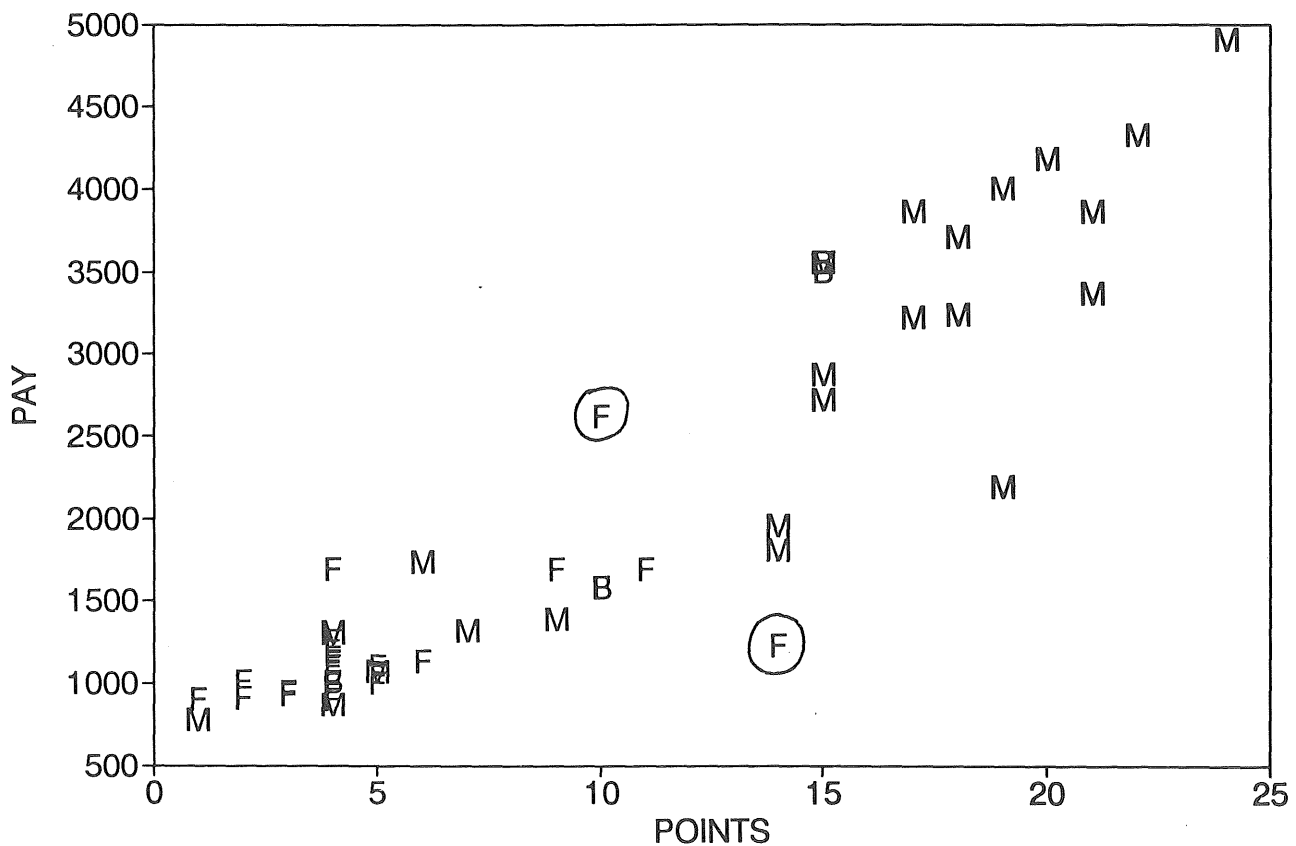
In some jurisdictions, female classes paid less than male classes may be offset by female classes paid more than male classes. In these cases, the department will determine how many employees are represented in each of the classes.

The number of female classes and the number of female employees above the M's should be nearly equal to the number of female classes and the number of female employees below the M's.

If the numbers are nearly equal, it may be that no adjustment is needed. But if the lower-paid F's represent a significant number of women in the system, and the higher-paid F's represent a smaller number of women, adjustments likely would be needed.

The jurisdiction shown below would be found in compliance because the lower-paid female classes are offset by higher-paid female classes.

Example H. Offsetters.





## Guidelines for compliance determinations

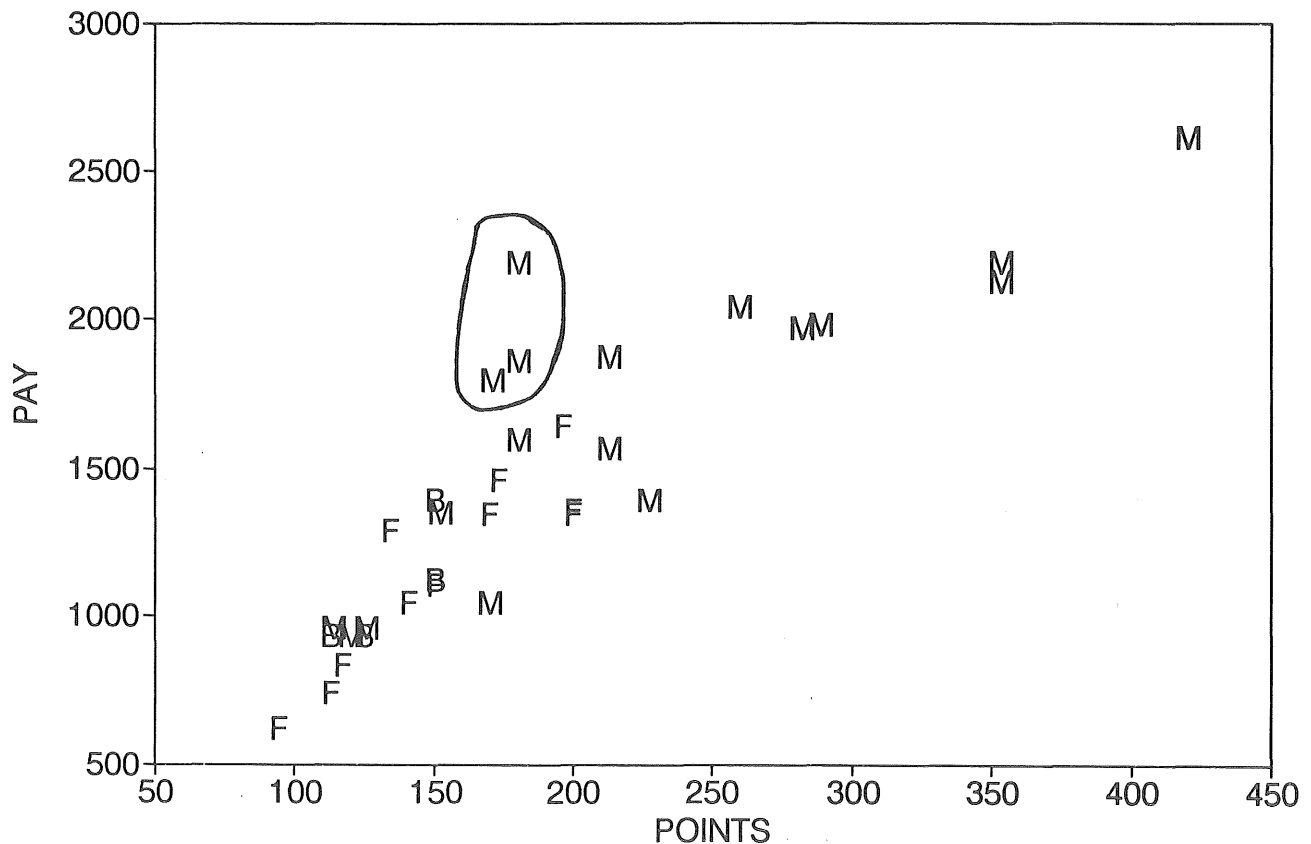
Some jurisdictions may show a "sore thumb" pattern. Is the M that's above the F an anomaly? Is it out of the mainstream of other jobs in the system? On the scattergram look ahead to M's with more points. Are they paid less than the F's in question?

If the M sticks up like a sore thumb, a smaller adjustment or perhaps no adjustment would be needed. On the other hand, if the M is in the mainstream, adjustments would be needed.

The circled male classes in the example below represent a sore thumb. There are higher-rated male classes which are paid less than, or only slightly more than, the circled male classes.

This jurisdiction would probably be found in compliance, especially if the circled classes represent a small number of employees or if their pay is higher because of factors such as recruitment, retention, or recent arbitration awards (explained later in this section).

Example I. Sore Thumb.

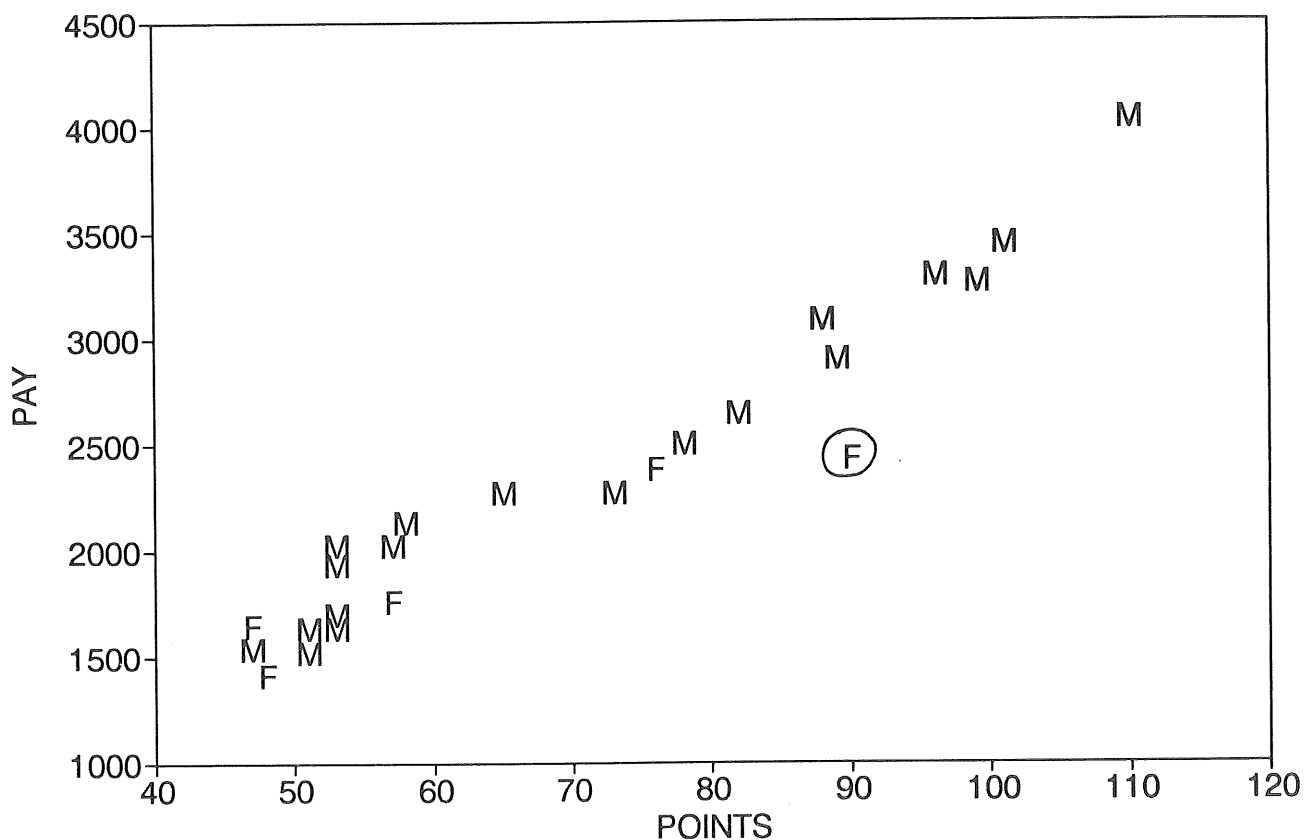


## Guidelines for compliance determinations

Sometimes an apparent inequity may be the result of frequent turnover in a class, resulting in class dominance changing between male and female. This is most likely in single-person classes. In this case, if the jurisdiction could demonstrate that since 1984 the position had sometimes been filled by a man and sometimes by a woman, the department would be likely to find the jurisdiction in compliance.

The "reversal" argument might be made for the circled female class in the example below. In this situation, DOER would ask the jurisdiction for information about the employees in that job from 1984 to the present.

Example J. Single Incumbent Reversal.

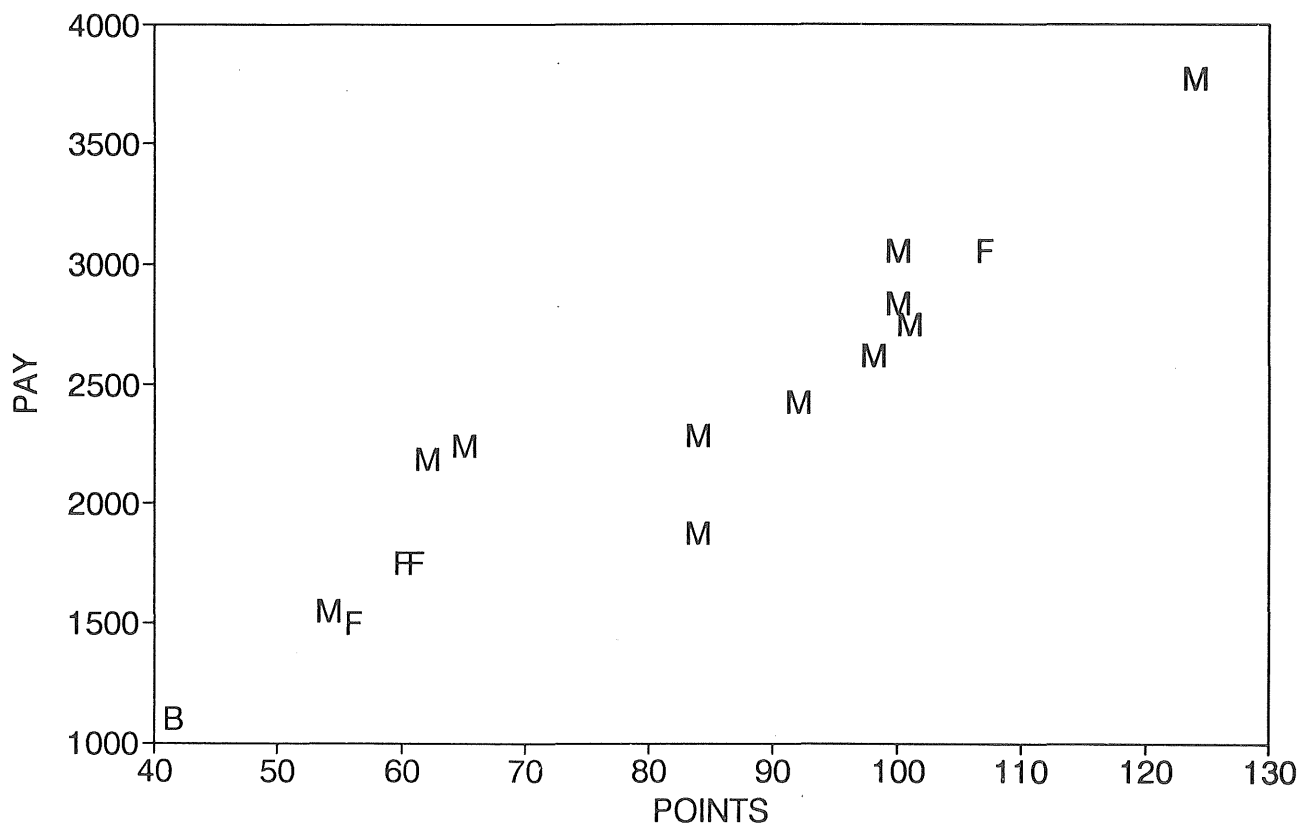


Some local governments have no pay ranges, and therefore the scattergram will plot the highest actual salary in each class. In this situation, the scattergram alone may not be a reliable tool for determining compliance.

In the example below, if the jurisdiction can show that the male employees are paid more because they have more years of service than the comparable female employees, the jurisdiction would be found in compliance.

When actual pay rather than pay range information is used, the opposite situation may also occur. If female employees have more seniority than male employees, but the female employees have similar or lower pay, the jurisdiction may be found out of compliance even if the scattergram looks equitable.

Example K. No Pay Ranges.



**SUMMARY OF THE DECISION PROCESS**

- \* The guiding principle is to eliminate sex-based wage disparities. Other disparities are not relevant.
- \* The implementation report must accurately reflect the jurisdiction's true compensation practice.
- \* The scattergram will be reviewed to determine whether there is a good mix of male and female classes at the various pay levels.
- \* The scattergram is important, but other factors will be considered in determining compliance.
- \* The department may request additional information to be used in making compliance decisions.
- \* Local governments may present additional evidence before the department's decision is made, or after the preliminary compliance decision has been made.

**What happens after the compliance decision is made?**

*Local governments are notified.*

If a jurisdiction is found in compliance, DOER will send a written notice.

If more information is needed to determine compliance, DOER will ask the jurisdiction to provide that information.

If a jurisdiction is found out of compliance, DOER will send a written notice which includes:

- \* a detailed description of the basis for the finding;
- \* recommendations about corrective action to be taken;
- \* an estimate of the cost of the correction; and,
- \* a required completion date.

## Guidelines for compliance determinations

### *The consultation process.*

Jurisdictions found out of compliance may ask for a consultation with DOER to clarify information and work out a plan to reach compliance.

If a jurisdiction disagrees with a non-compliance finding, the jurisdiction must notify the department. The department will then specify a time period in which the jurisdiction may submit additional evidence. Jurisdictions are encouraged, but not required, to submit any explanatory information with the original implementation report, rather than waiting for a compliance decision.

Here are the additional factors which the department must consider at the jurisdiction's request.

*The "recruitment difficulty" factor.* A jurisdiction may state that one or more female classes are paid less than male classes of comparable work value because of recruitment difficulties, and therefore there is no gender-based wage disparity.

The jurisdiction would need to show (1) that recruitment problems in female classes would be identified, evaluated, and treated the same as recruitment problems in male classes, and (2) that the higher pay for male classes is needed to attract qualified candidates.

In this case, the department may ask for some or all of the following documentation: number of openings in the class since 1984, extent of advertising and number of qualified applicants when attempting to fill the position at a lower pay rate and at the current pay rate, number of qualified applicants refusing to take the position at a lower pay rate and at the current pay rate, required qualifications, size of the pool of qualified applicants, and efforts to recruit or train female candidates for the male-dominated class.

*The "retention difficulty" factor.* A similar argument may be made about retention difficulty as the explanation for an apparent sex-based disparity. The jurisdiction would need to show (1) that retention problems in female classes would be identified, evaluated, and treated the same as retention problems in male classes in the jurisdiction, and (2) that the higher pay rate for male classes is needed to retain employees.

## Guidelines for compliance determinations

In this case, the department may ask for some or all of the following documentation: data on turnover in the relevant classes since 1984, resignation letters or other documents citing pay as a reason for the turnover, importance of retention in the class, size of the pool of qualified applicants, and efforts to recruit or train female candidates for the male-dominated class.

*The "recent arbitration" factor.* The law requires the department to consider "recent arbitration awards that are inconsistent with equitable compensation relationships." For purposes of the compliance decision to be made in 1992, "recent arbitration" means an arbitration award made since the pay equity law was passed in 1984.

Example I, included earlier in these guidelines, shows a situation where this factor might be relevant. If the jurisdiction can show that these male classes are paid at the higher level because of arbitration awards made since 1984, it may be that no adjustments are needed.

*Please note that the law does not provide an automatic exception or general immunity for jurisdictions which have experienced one or more arbitration awards which the jurisdiction believes are inconsistent with pay equity.* This factor, like all the others listed here, will be considered in the context of the jurisdiction's entire compensation system and the jurisdiction's good faith efforts to correct inequities.

*The "good faith effort" factor.* The law also requires the department to consider "information that can demonstrate a good faith effort to achieve progress and continued progress toward compliance, including any constraints the subdivision faces." In this case, "the subdivision shall also present a plan for achieving compliance and a date for additional review by the commissioner."

The department will judge continued progress toward compliance by comparing the jurisdiction's original planning report (based on 1984 data) with the implementation report (based on 1991 data). Here are some of the criteria which may be used in deciding whether a good faith effort has been made to achieve pay equity.

- \* How much have the inequities in women's salaries been reduced since 1984?
- \* Of the amounts available for salary increases since 1984, how much has been spent on underpaid female classes compared with other classes?

## Guidelines for compliance determinations

- \* Apart from general salary increases such as cost of living increases, what dollar amount has been spent for pay equity increases for female-dominated classes?
- \* If the jurisdiction chose not to use the free state job match system, how much money has been spent on outside consultants?
- \* When was the job evaluation study completed and was the planning report filed with DOER on time? If multiple studies were conducted, what was the purpose of the additional studies?
- \* Has the jurisdiction fully complied with its obligation to meet and confer with employees on the selection or development of a job evaluation system?

The department will generally interpret "constraints" to mean fiscal constraints that have occurred since 1984. The jurisdiction would need to demonstrate that the constraints were severe, and that the constraints had similar effects on male and female classes.

The department will review the amount of money set aside for salary increases in general and where those dollars were directed. For example, if the fiscal emergency resulted in a salary freeze that applied to all employees for a significant number of years, the department may grant an extension of time for pay equity compliance.

After consulting with the jurisdiction and reviewing information submitted by the jurisdiction, the department will make its final decision about that jurisdiction's compliance. If DOER finds the evidence offered during the consultation process compelling and agrees to the plan offered by the jurisdiction, no further action would be taken until the completion date of the plan.

The next section explains the final stages of the process for jurisdictions found out of compliance.

### Penalties and appeals

If DOER finds the evidence lacking and decides the jurisdiction is out of compliance, and if the jurisdiction does not correct the inequities in the time prescribed by the commissioner, the penalty phase of the process begins.

- \* DOER reports to the legislature with a list of non-complying jurisdictions.

## Guidelines for compliance determinations

- \* At the end of that legislative session, the Department of Revenue enforces the penalty.
- \* Any non-complying jurisdiction is subject to the penalty of a 5% reduction in local government aid, or a fine of \$100 per day, whichever is greater.
- \* The penalty remains in effect until the subdivision achieves compliance.
- \* The penalty may be suspended if DOER finds that non-compliance was beyond the control of the subdivision or due to severe hardship, or "that non-compliance results from factors unrelated to the sex of the members dominating the affected classes and that the subdivision is taking substantial steps to achieve compliance to the extent possible."

If the jurisdiction is found out of compliance and a penalty is imposed, the jurisdiction may appeal to an administrative law judge. The appeal must be made within 30 days of the department's notification to the subdivision of the penalty.

### Maintaining pay equity

Once pay equity has been established, each local government must maintain its job evaluation system, in order to evaluate new job classes and address any changes in existing classes. If the jurisdiction adopts a new job evaluation system, or substantially modifies its system, the jurisdiction must notify the department.

The purpose of maintaining the job evaluation system is to maintain equitable compensation relationships.

The law requires DOER to report to the legislature each year on the status of pay equity compliance. The department expects to develop a system of compliance reviews for about one-third of the jurisdictions each year. This means that each jurisdiction will be asked to provide new information about every three years. In addition, the department will investigate any significant complaints received from employees, and will monitor the status of any jurisdictions still working to achieve compliance.



# APPENDIX

Publications and software available	53
Attorney General's Memo: hospitals and nursing homes	54
Local Government Pay Equity Act	59

## Pay Equity Materials Order Form

Available from the Minnesota Department of Employee Relations

Faith Zwemke  
Pay Equity Coordinator  
MN Department of Employee Relations  
520 Lafayette Road  
St. Paul, MN 55155  
(612) 296-2653

\_\_\_\_\_ Pay Equity Software. You need IBM and Lotus 123 to run it. YOU MUST SUPPLY us with blank, double-sided, double-density 5 1/4 floppy disk and a stamped, self-addressed disk mailer.

### Publications:

\_\_\_\_\_ Guide to Implementing Pay Equity (Revised 1990)  
\_\_\_\_\_ Supplement for Cities (1984)  
\_\_\_\_\_ Supplement for Small Cities (1984)  
\_\_\_\_\_ Supplement for School Districts (1984)  
\_\_\_\_\_ Supplement for Counties (1984)  
\_\_\_\_\_ Supplement for Hospitals and Nursing Homes (1984)

Name \_\_\_\_\_ Phone \_\_\_\_\_

Jurisdiction \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
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Available from the Minnesota Commission on the Economic Status of Women

Commission on the Economic Status of Women  
State Office Building  
Room 85  
St. Paul, MN 55155

(612) 296-8590  
(800) 652-9747

\_\_\_\_\_ Pay Equity: The Minnesota Experience (Revised 1989)

Name \_\_\_\_\_ Phone \_\_\_\_\_

Jurisdiction \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
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DEPARTMENT

ATTORNEY GENERAL

*Office Memorandum*

TO: Nina Rothchild, Commissioner  
Department of Employee Relations

DATE: 3-11-85

FROM: SCOTT R. STRAND   
Special Assistant  
Attorney General

PHONE:

SUBJECT: **LOCAL GOVERNMENT PAY EQUITY ACT-- Hospitals and Nursing Homes**

This memo is in response to your request for assistance on construing the Local Government Pay Equity Act. Apparently, a number of public hospital and nursing home representatives have inquired whether their institutions are covered by the Local Government Pay Equity Act and Minn. Stat. §§ 471.991-.999 (1984). Other local government officials have assumed that they are covered, but have asked whether they can formulate separate job evaluation systems and reports for their hospitals and nursing homes, or whether they must be grouped together with other city or county employees for pay equity purposes.

As you know, there are no definite answers to these questions because the statute itself is not clear. Moreover, the Department of Employee Relations has no rule-making authority under this law and the Attorney General's Office does not render formal opinions in response to hypothetical questions. Op. Atty. Gen. 629-a, May 9, 1975. Consequently, you must emphasize to local government officials that they must rely on their own judgment and the advice of their own attorneys to determine what course they should take. All this memo can do is to identify some of the factors local government officials might wish to consider before they decide how to respond to the Act's requirements.

Coverage of Hospitals and Nursing Homes

Apparently, several hospitals and nursing homes plan to take the position that, since they are not covered by the Public Employment Labor Relations Act (PELRA), they are not covered by the Local Government Pay Equity Act either. They base that conclusion on:

(1) Minn. Stat. § 471.993, subd. 1 (1984), which arguably requires only "public employers" as defined in PELRA or under the Minnesota merit system to use comparable worth concepts in preparing management negotiating positions or setting up compensation plans, and

March 11, 1985

Nina Rothchild, Commissioner  
DOER

Page 2

(2) DOER's "Guide to Implementing Pay Equity in Local Government", which suggests that only political subdivisions falling under PELRA with final budgetary authority are covered by the pay equity law.

In my opinion, the position of those hospitals and nursing homes is untenable. Every section of the pay equity law other than Minn. Stat. § 471.993 (1984) uses the broader term "political subdivision" rather than the narrower manover term "public employer", the clear implication being that the Legislature intended all government employees (except state and federal, of course) to be covered. Moreover, the law suggests no reason why hospital or nursing home employees should be excluded; the broad remedial objectives of the statute would seem to be as compelling for nurses and medical technicians as they are for courthouse clericals and highway technicians. The right to strike--the principal difference between the Charitable Hospitals Act and the Public Employment Labor Relations Act--is not affected by the pay equity law, and there is no indication in any of the legisltive history material of which I am aware that hospitals were to be excluded. Consequently, you should advise hospital officials that claiming an exemption from the entire pay equity law is risky.

#### Identifying the Responsible Authority

The more difficult problem is to identify the "political subdivision" responsible, in each case, for setting up the job evaluation system, Minn. Stat. § 471.994 (1984), making the required reports. Minn. Stat. § 471.995 and 471.998 (1984) and, ultimately, establishing equitable compensation relationships, Minn. Stat. § 471.992 (1984). Since the term "political subdivision" is not self-explanatory, local governments must try to ascertain who, in the final analysis, has the power to establish compensation relationships. The solution to that problem for each set of employees may depend on the answers to the following questions:

##### (1) Who has the taxing authority?

Minn. Stat. § 471.49, subd. 3 (1984) defines "political subdivision" for chapter 471 purposes as "any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied." As a result, the courts may well conclude that, unless a board or commission has taxing authority, it cannot be the agency or unit responsible for complying with the pay equity law.

March 11, 1985

Nina Rothchild, Commissioner  
DOER

Page 3

(2) Who is or would be the employer for collective bargaining purposes?

Minn. Stat. § 471.993 (1984) requires political subdivisions who are also "public employers" under PELRA to assure that equitable compensation relationships are factored into management negotiation positions and compensation plans. PELRA, of course, provides that the "public employer" is that agency or unit which has final budgetary authority over compensation for a group of employees. Minn. Stat. § 179A.03, subd. 15 (1984). Consequently, whether or not it is the county board or the hospital or nursing home board that negotiates, administers, and/or ratifies the applicable collective bargaining agreements will no doubt be highly probative. Local government officials dealing with the hospital-nursing home issue also need to be aware that PELRA also provides that:

When two or more units of government subject to [PELRA] undertake a project or form a new agency under law authorizing common or joint action, the employer is the governing person or board of the created agency. The governing official or body of the cooperating governmental units shall be bound by an agreement entered into by the created agency according to [PELRA].

This language suggests by analogy that, while a joint hospital or nursing home board might be the appropriate political subdivision for pay equity purposes, the units of government that set up that board may ultimately be responsible for that board's actions.

(3) Who is the employer for purposes of Title VII or the Minnesota Human Rights Act?

Ultimately, of course, the issue is who the liable "employer" would be under the employment discrimination statutes. The "divide and conquer" tactic has been notably unsuccessful for defendant employee in these cases because the courts have been willing to find "single employers," "integrated enterprises," "joint employers," or "agents" in a variety of circumstances. Factors considered in determining whether separate entities may be treated as a single employer are:

- (a) interrelation of operations;
- (b) centralized control of labor relations;

March 11, 1985

Nina Rothchild, Commissioner  
DOER

Page 4

(c) common management; and

(d) common ownership or financial control

See Baker v. Stuart Broadcasting Co., 560 F.2d 389, 15 FEP 394 (8th Cir. 1977). Even if two entities are not operationally integrated, the existence of an agency relationship, limited solely to settling compensation, may be enough to make them jointly and severally liable in a compensation based Title VII suit. E.g. Harrah v. Teachers Retirement System, 26 FEP 527 (S.D.N.Y. 1981) (public retirement system is employer along with school board since former controlled some aspects of plaintiff's compensation and could be regarded as arm of school district); Aguilera v. Cook County Police & Corrections Merit Bd., 21 FEP 731 (N.D.Ill. 1979), rev'd on other grounds, 661 F.2d 937, 26 FEP 1416 (7th Cir. 1981) (county personnel boards selecting employees for police department is agent of police department).

For hospitals and nursing homes, the answers to these questions will vary depending on their organizational structure. Hospital boards running hospital districts created pursuant to Minn. Stat. §§ 447.31-.37 (1984) have the power under statute, Minn. Stat. § 447.33, subd. 2 (1984) to employ personnel, set their compensation, as part of the budget prepare reports, and levy taxes, and therefore, they are the logical agencies to be held responsible for implementing pay equity for their employees, rather than their "client" cities and counties. On the other hand, employees of county hospitals and nursing homes established pursuant to Minn. Stat. ch. 376 (1984) probably remain the responsibility of the county boards, since, those hospital and nursing home boards exist only at the pleasure of the county boards and remain under their supervision. Generally, whenever a board or commission is expressly given final budgetary and compensation setting authority by statute, that board or commission is probably the responsible political subdivision.

The most difficult situations are those where hospitals and nursing homes are the joint responsibility of a number of county and/or city governments e.g. county nursing homes set up pursuant to Minn. Stat. §§ 376.55-.60 (1984). In those cases, the taxing and final budgetary authority is usually shared, and the day-to-day management responsibility is normally delegated to a board or executive committee. Compensation relationships are often determined by hospital or nursing boards, but their decisions may be subject to review by the county boards and city councils that provide the funding.

March 11, 1985

Nina Rothchild, Commissioner  
DOER

Page 5

In those cases, there are at least three possible approaches. First, the individual hospital or nursing home board might be treated as a separate political subdivision responsible only for its own employees. Given the state of the law under Title VII with respect to joint employers and agency relationships, this option may be risky, since the various county and city governments would almost certainly be held at least partially responsible where an employee or group of employees working at one of these hospitals or homes is able to prosecute a comparable worth claim successfully.

Second, the individual city or county that provides the most support (funding, location, services) to the hospital or nursing home in question could assume the responsibility for including the hospital or nursing home employees. While nothing in the statute compels such a result, it does assure that all employees are covered somehow and also satisfies a common-sense notion of who ought to be responsible.

Finally, third, what may be the least risky approach would be for the cities and counties involved to commission a joint report dealing with the hospital and nursing home employees, making all of the relevant comparisons. For example, such a study might reveal that licensed practical nurses, a female-dominated hospital class, making Salary A are doing work comparable not only to the hospital's maintenance foreman, who is male, and making Salary B, but also to truck drivers in the three counties that jointly administer the hospital (making salaries C, D and E). As I see it, the law does not require that all five of these salary levels be equalized immediately at the highest level; all it requires is that the sex-based disparities be eliminated pursuant to some kind of plan, a requirement which can more easily be met if the various responsible authorities are fully informed.

Again, I must emphasize that these ideas are mine only, and do not constitute the opinion of the Attorney General. Local government officials must make their own decisions.

If you have questions or problems, please give me a call.

SRS:jks

cc Steven M. Gunn  
Bonnie Watkins

# LOCAL GOVERNMENT PAY EQUITY ACT

## Chapter 471

### Rights, Powers, Duties: Several Political Subdivisions

#### 471.991 Definitions.

Subdivision 1. **Terms.** For the purposes of Laws 1984, chapter 651, the following terms have the meanings given them.

Subd. 2. **Balanced class.** "Balanced class" means any class in which no more than 80 percent of the members are male and no more than 70 percent of the members are female.

Subd. 3. **Comparable work value.** "Comparable work value" means the value of work measured by the skill, effort, responsibility, and working conditions normally required in the performance of the work.

Subd. 4. **Class.** "Class" means one or more positions that have similar duties, responsibilities, and general qualifications necessary to perform the duties, with comparable selection procedures used to recruit employees, and use of the same compensation schedule.

Subd. 5. **Equitable compensation relationship.** "Equitable compensation relationship" means that the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value as determined under section 471.994, within the political subdivision.

Subd. 6. **Female-dominated class.** "Female-dominated class" means any class in which 70 percent or more of the members are female.

Subd. 7. **Male-dominated class.** "Male-dominated class" means any class in which 80 percent or more of the members are male.

Subd. 8. **Position.** "Position" means a group of current duties and responsibilities assigned or delegated by a supervisor to an individual.

#### 471.992 Equitable Compensation Relationships.

Subdivision 1. **Establishment.** Subject to sections 179A.01 to 179A.25 and sections 177.41 to 177.44 but notwithstanding any other law to the contrary, every political subdivision of this state shall establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees in order to eliminate sex-based wage disparities in public employment in this state. A primary consideration in negotiating, establishing, recommending, and approving compensation is comparable work value in relationship to other employee positions within the political subdivision. This law may not be construed to limit the ability of the parties to collectively bargain in good faith.

Subd. 2. **Arbitration.** In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993 together with other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study. In interest arbitration for a balanced class, the arbitrator may consider the standards established under this section and the results of, and any employee objections to, a job evaluation study, but shall also consider similar or like classifications in other political subdivisions.

Subd. 3. **Collective Bargaining.** In collective bargaining for a balanced class, the parties may consider the equitable compensation relationship standards established by this section and the results of a job evaluation study, but shall also consider similar or like classifications in other political subdivisions.



#### **471.993 Compensation Relationships of Positions.**

**Subdivision 1. Assurance of reasonable relationship.** In preparing management negotiation positions for compensation established through collective bargaining under chapter 179A and in establishing, recommending, and approving compensation plans for employees of political subdivisions not represented by an exclusive representative under chapter 179A, the respective political subdivision as the public employer, as defined in section 179A.03, subdivision 15, or, where appropriate, the Minnesota merit system, shall assure that:

- (1) compensation for positions in the classified civil service, unclassified civil service, and management bear reasonable relationship to one another;
- (2) compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivision's employment; and
- (3) compensation for positions within the employer's work force bear reasonable relationship among related job classes and among various levels within the same occupational group.

**Subd. 2. Reasonable relationship defined.** For purposes of subdivision 1, compensation for positions bear "reasonable relationship" to one another if:

- (1) the compensation for positions which require comparable skill, effort, responsibility, working conditions, and other relevant work-related criteria is comparable; and
- (2) the compensation for positions which require differing skill, effort, responsibility, working conditions, and other relevant work-related criteria is proportional to the skill, effort, responsibility, working conditions, and other relevant work-related criteria required.

#### **471.994 Job Evaluation System.**

Every political subdivision shall use a job evaluation system in order to determine the comparable work value of the work performed by each class of its employees. The system must be maintained and updated to account for new employee classes and any changes in factors affecting the comparable work value of existing classes. A political subdivision that substantially modifies its job evaluation system or adopts a new system shall notify the commissioner. The political subdivision may use the system of some other public employer in the state. Each political subdivision shall meet and confer with the exclusive representatives of their employees on the development or selection of a job evaluation system.

#### **471.995 Report Availability.**

Notwithstanding section 13.37, every political subdivision shall submit a report containing the results of the job evaluation system to the exclusive representatives of their employees to be used by both parties in contract negotiations. At a minimum, the report to each exclusive representative shall identify the female-dominated classes in the political subdivision for which compensation inequity exists, based on the comparable work value, and all data not on individuals used to support these findings.

#### **471.996 Repealed, 1990, c 512 s 13**

#### **471.9966 Effect on Other Law.**

Notwithstanding section 179A.13, subdivision 2, it is not an unfair labor practice for a political subdivision to specify an amount of funds to be used solely to correct inequitable compensation relationships. A political subdivision may specify an amount of funds to be used for general salary increases. The provisions of section 471.991 to 471.999 do not diminish a political subdivision's duty to bargain in good faith under chapter 179A or sections 179.35 to 179.39.

#### **471.997 Human Rights Act Evidence.**

The commissioner of human rights or any state court may use as evidence the results of any job evaluation system established under section 471.994 and the reports compiled under section 471.995 in any proceeding or action alleging discrimination.

**471.9975 Suits Barred.**

No cause of action arises before August 1, 1987 for failure to comply with the requirements of Laws 1984, chapter 651.

**471.998 Report to Commissioner.**

**Subdivision 1. Report on implementation plan: contents.** Every political subdivision shall report to the commissioner of employee relations by October 1, 1985, on its plan for implementation of sections 471.994 and 471.995. Each report shall include:

- (1) the title of each job class which the political subdivision has established;
- (2) the following information for each class as of July 1, 1984:
  - (a) the number of incumbents;
  - (b) the percentage of incumbents who are female;
  - (c) the comparable work value of the class, as determined under the system chosen under section 471.994; and
  - (d) the minimum and maximum monthly salary for the class;
- (3) a description of the job evaluation system used by the political subdivision; and
- (4) a plan for establishing equitable compensation relationships between female-dominated and male-dominated classes, including:
  - (a) identification of classes for which a compensation inequity exists based on the comparable work value;
  - (b) a timetable for implementation of pay equity; and
  - (c) the estimated cost of implementation.

**Subd. 2. Technical assistance.** The commissioner of employee relations shall, upon request of a political subdivision, provide technical assistance in completing the required reports.

**Subd. 3. Public Data.** The report required by subdivision 1 is public data governed by chapter 13.

**471.9981 Counties and Cities: Pay Equity Compliance.**

**Subdivision 1. 1988 report.** A home rule charter or statutory city or county, referred to in this section as a "governmental subdivision," that employs ten or more people and that did not submit a report according to section 471.998, shall submit the report by October 1, 1988, to the commissioner of employee relations.

The plan for implementing equitable compensation for the employees must provide for complete implementation not later than December 31, 1991, unless a later date has been approved by the commissioner. If a report was filed before October 1, 1987, and had an implementation date after December 31, 1991, the date in the report shall be approved by the commissioner. The plan need not contain a market study.

**Subd. 2. Repealed, 1990, c 512, s 13**

**Subd. 3. Repealed, 1990, c 512, s 13**

**Subd. 4. Repealed, 1990, c 512, s 13**

**Subd. 5. Repealed, 1990, c 512, s 13**

**Subd. 5a. Implementation Report.** By January 31, 1992, each political subdivision shall submit to the commissioner an implementation report that includes the following information as of December 31, 1991:

- (1) a list of all job classes in the political subdivision;

- (2) the number of employees in each class;
- (3) the number of female employees in each class;
- (4) an identification of each class as male-dominated, female-dominated, or balanced as defined in section 471.991;
- (5) the comparable work value of each class as determined by the job evaluation used by the subdivision in accordance with section 471.994;
- (6) the minimum and maximum salary for each class, if salary ranges have been established, and the amount of time in employment required to qualify for the maximum;
- (7) any additional cash compensation, such as bonuses or lump-sum payments, paid to the members of a class; and
- (8) any other information requested by the commissioner.

If a subdivision fails to submit a report, the commissioner shall find the subdivision not in compliance with subdivision 6 and shall impose the penalty prescribed by that subdivision.

**Subd. 5b . Public Data.** The implementation report required by subdivision 5a is public data governed by chapter 13.

**Subd. 6. Penalty for failure to implement plan.** (a) The commissioner of employee relations shall review the implementation report submitted by a governmental subdivision, to determine whether the subdivision has established equitable compensation relationships as required by section 471.992, subdivision 5a, by December 31, 1991, or the later date approved by the commissioner. The commissioner shall notify a subdivision found to have achieved compliance with section 471.992, subdivision 1.

(b) If the commissioner finds that the subdivision is not in compliance based on the information contained in the implementation report required by section 471.9981, subdivision 5a, the commissioner shall notify the subdivision of the basis for the finding. The notice must include a detailed description of the basis for the finding, specific recommended actions to achieve compliance, and an estimated cost of compliance. If the subdivision disagrees with the finding, it shall notify the commissioner, who shall provide a specified time period in which to submit additional evidence in support of its claim that is in compliance. The commissioner shall consider at least the following additional information in reconsidering whether the subdivision is in compliance:

- (1) recruitment difficulties;
- (2) retention difficulties;
- (3) recent arbitration awards that are inconsistent with equitable compensation relationships; and
- (4) information that can demonstrate a good-faith effort to achieve compliance and continued progress toward compliance, including any constraints the subdivision faces.

The subdivision shall also present a plan for achieving compliance and a date for additional review by the commissioner.

(c) If the subdivision does not make the changes to achieve compliance within a reasonable time set by the commissioner, the commissioner shall notify the subdivision and the commissioner of revenue that the subdivision is subject to a five percent reduction in the aid that would otherwise be payable to that governmental subdivision under section 124A.23, 273.1398, or sections 477A.011 to 477A.014, or to a fine of \$100 a day, whichever is greatest. The commissioner of revenue shall enforce the penalty beginning in calendar year 1992 or in the first calendar year beginning after the date for implementation of the plan of a governmental subdivision for which the commissioner of employee relations has approved an implementation date later than December 31, 1991. However, the commissioner of revenue may not enforce a penalty until after the end of the first regular legislative session after a report listing the subdivision as not in compliance has been submitted to the legislature under section 471.999. The penalty remains in effect until the subdivision achieves compliance. The commissioner of employee relations may suspend the penalty upon making a finding that the failure to implement was attributable to cir-

cumstances beyond the control of the governmental subdivision or to severe hardship, or that non-compliance results from factors unrelated to the sex of the members dominating the affected classes and that the subdivision is taking substantial steps to achieve compliance to the extent possible.

**Subd. 7. Appeal.** A governmental subdivision may appeal the imposition of a penalty under subdivision 6 by filing a notice of appeal with the commissioner of employee relations within 30 days of the commissioner's notification to the subdivision of the penalty. An appeal must be heard as a contested case under section 14.57 to 14.62. No penalty may be imposed while an appeal is pending.

**471.999 Report to Legislature.**

The commissioner of employee relations shall report to the legislature by January 1 of each year on the status of compliance with section 471.992, subdivision 1, by governmental subdivisions.

The report must include a list of the political subdivisions in compliance with section 471.992, subdivision 1, and the estimated cost of compliance. The report must also include a list of political subdivisions found by the commissioner to be not in compliance, the basis for that finding, recommended changes to achieve compliance, estimated cost of compliance, and recommended penalties, if any. The commissioner's report must include a list of subdivisions that did not comply with the reporting requirements of this section. The commissioner may request, and a subdivision shall provide, any additional information needed for the preparation of a report under this subdivision.

*Laws 1984, Chapter 651, sections 1-11*

*(Amended) Laws 1986, Chapter 459, sections 1-3*

*(Amended) Laws 1988, Chapter 702, section 15*

*(Amended) Laws 1990, Chapter 512, sections 1-13*