“Leigh Day combine fantastic knowledge with really meticulous, client-focused work. They never let their clients down”

*Chambers and Partners, A Client’s Guide to the Legal Profession*
This brief guide provides information on the equal pay claims currently being brought against Asda and how you can join in.

There is a gender pay gap at many of Britain’s supermarkets. This case is about whether workers in Asda stores do work of “equal value” with workers in the distribution centres.

If we can show that the reason for the difference in pay between the stores and the distribution centres is unjustified sex discrimination, then the claims will be successful. This will mean that employees in the underpaid jobs in Asda stores will be able to claim back pay for up to six years (five years in Scotland).

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Historic Claims

The equal pay claims against Asda started in 2008, when around 300 “colleagues” brought cases in Manchester and Liverpool. The cases were initially brought by GMB.

The case was originally brought by solicitors acting on behalf of GMB, before the employment tribunal. They were “paused” so that Asda and GMB could negotiate the matter.

An agreement was reached in 2013 between GMB and Asda. GMB agreed not to pursue employment tribunal claims in return for a four year working party with Asda about equal pay.

Following this Leigh Day were alerted to this matter and have subsequently taken over the case.

The Law

We are only able to bring claims for people who have worked for Asda in the last 6 years (5 years in Scotland). This means that anyone who wishes to bring a claim against Asda must either be a current employee, or must have left Asda in the last 6 years.

The Equality Act 2010 (before 1 October 2010, the Equal Pay Act 1970) states that men and women should receive equal pay for equal work. This is also set out in European law.

Any employee is entitled to enjoy contractual terms that are as favourable as those of a male comparator, if they are employed in jobs of equal work.
Equal Value

There are three categories of equal work: “like work”, “work rated as equivalent” and “work of equal value”. The relevant category in this case is “work of equal value”.

Work is of equal value if it is equal “in terms of the demands made” on the claimant and their comparator. These demands are measured using different factors, such as:

- knowledge and skill;
- effort;
- physical demands;
- working environment;
- decision-making.

An equal value claim can also be brought where the claimant’s work is considered to be of greater value than that of their comparator.

The comparator in an equal pay claim:

- must be of the opposite gender to the claimant;
- can be a current or previous employee;
- must be (or have been) working “in the same employment”;
- must be actual, not hypothetical.

The comparator is the person with whom your work will be evaluated to see if it is of equal value.
Equal Value

The tribunal will usually appoint an independent expert to prepare a report on the question of equal value.

The independent expert will evaluate the jobs undertaken by the claimant and their comparator. A detailed job description will be drawn up for each job. The final report must evaluate whether the jobs are of equal value in terms of the type of factors outlined above.

The independent expert will mark each job against all the factors, to reach an overall score. Even if they are not given exactly the same scores a tribunal can still find that the two jobs are of equal value. A claimant can also succeed if they show that their work is of greater value than that of the comparator.

Workers at the Distribution Centres are being used as the comparator in this case. They are being used because 90% of the Distribution Centre workers are male. They are also paid a higher wage than the retail workers. We have found that Distribution Centre workers are paid anything from £1 - £4 an hour more than retail workers at Asda.
How this affects you

The historic claims from 2008 are ongoing in the tribunal, and our aim is to join your potential claim to these existing cases, as the issues are very similar.

We have recently been contacted by tens of thousands of individuals in relation to these claims, and the more people that bring claims, the greater the amount of pressure placed on Asda to make sure they pay their “colleagues” equally.

The compensation claimed will be based on the amount of hours you have worked for Asda in the last 6 years. We will claim for the difference between your salary and the salary of your comparator for each hour that you have worked at Asda.
Victimisation and Harrassment

Please also be assured that strong victimisation laws are in place to prevent any action being taken against you for bringing an equal pay claim.

The Equality Act 2010 states that if an employer victimises an employee for bringing proceedings under the Act, they will be able to bring a claim for victimisation under the act.

Victimisation would include:

• less favourable treatment than others;
• being given less overtime; and,
• being dismissed.

We have been provided with assurances from Asda’s solicitors that no colleagues will suffer from victimisation as a result of bringing an equal pay case.

If there is any suggestion that changes to your job would result from bringing an equal pay claim, please contact us immediately.
Current Position

You may have been aware that a preliminary hearing was listed on 14th July. As we were able to agree directions with Asda’s lawyers, it was decided that a hearing was no longer necessary. It has been agreed that claims made in 2014 will join the equal pay claims against Asda which started in 2008. This means that they can all be dealt with at the same time.

It has also been agreed that, due to the number of claims from Asda employees all over the country, it would be efficient for all Asda equal pay claims to be dealt with in one location.

We are currently awaiting the agreement of the President of the Employment Tribunals regarding this matter, but we anticipate that all claims will be dealt with by the Manchester Employment Tribunal.

We have also agreed that by the end of October 2014, a list of issues will be finalised so that a further preliminary hearing can take place.

The list of issues are the questions the tribunal has to answer to decide whether the claims are successful or not. We will update you about when this hearing will take place.

Please note that it is very common that claims of this nature will take months, or even years, to resolve and there are likely to be many preliminary and final hearings.

There was to be a further hearing on 13th November 2014, however this has now been relisted. We will update all Asda colleagues once we have been provided with a date. This will be a preliminary case management hearing where any initial issues are decided such as the issues for the tribunal to decide, documents to be exchanged, experts to be instructed, witnesses to be called and any other preparation that will need to take place.
Same Establishment

The next hearing is likely to be on the issue of same establishment.

If it can be established that the claimant and their chosen comparator are employed by the same employer or associated employers, the next question is whether they work at the “same establishment”.

If it is established that they do work at the “same establishment”, then it becomes increasingly difficult for the employer to justify a difference in terms and conditions.

In some cases, the question of whether the claimant and the comparator work at the same establishment will be easy to answer; for example, where they work in the same factory or plant. However in Asda, the retail workers and the Distribution Centre workers work in different sites.

An equal pay claimant is able to use a comparator working for the same employer at a different establishment if they are subject to “common terms”, at both establishments.

Another possible key issue is whether the employees’ terms and conditions come from a single source, or whether a single body is responsible for the pay inequality which can remedy this so that there is equal treatment.

We will attempt to establish on your behalf that this single source is Asda and that they are in a position to remedy the pay inequality.

How can I join?

If you wish to join the Equal Pay case against Asda, please contact us:

Phone: 0800 0374 045
Email: asda@leighday.co.uk
Post: Priory House
25 St John’s Lane
London
EC1M 4LB
FAQs

*How much will this cost me?*

Leigh Day are bringing this case on a “no win, no fee”, basis. Please refer to the terms and conditions of the agreement for further information.

*At what stage will Asda know that I have brought a claim against them?*

Asda will only be aware that you have brought a claim against them once you have signed a no win no fee agreement with Leigh Day, and we have submitted your claim to the Employment Tribunal. We will write to you to confirm when this has been done.

*Will I get in any trouble?*

You have extensive legal rights and protection when making a claim for equality and fairness. Additionally, these are claims being made by large numbers of workers and there is even more safety in numbers. The claims will be dealt with as a group at Head Office and not in local stores.

*If you win the case, won’t everyone receive compensation anyway?*

Asda have no legal obligation to pay back pay unless you have brought a claim, and they are unlikely to do this voluntarily. If the claims are successful Asda will have to remedy the pay gap. This could either be through raising the pay of those in stores, or through lowering the pay in distribution centres.

*Will the claims definitely win?*

In our view, the case is strong. ASDA dispute the claim and are contesting the current tribunal proceedings so no promises can be made. Remember however, that if the claims don’t win, then there is no cost to you provided that you follow the terms of the “no win, no fee” agreement.
FAQs continued

Can men also make a pay claim?
Yes definitely. If the women’s claims are successful then men can then claim equality with those women – a “piggy back” claim.

What about people who have now left ASDA?
Anyone who has worked in the last 6 years can make a claim.

What ASDA jobs are included?
This current campaign is for all store workers. You cannot claim if you work at a Distribution Center.

When will I get my money?
Claims can take a long time so it may well be months or even a few years.

For any further enquiries please contact us directly by phone on 0800 037 4045 or by email on asda@leighday.co.uk.
Leigh Day was established in 1987 and has become a highly distinctive law firm that is not afraid to take on challenges that would daunt many others. The firm’s ethos is to ensure that the ordinary person has just as good quality legal advice as our state bodies, insurers and multi-nationals which has led us to take on many ‘David and Goliath’ legal struggles for justice.