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EQUAL PAY مساویات



GENDER  
REPORT

# GENDER SALARY GAPS IN ISRAEL

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## THE PROJECT "EQUAL PAY"



Equalizing Wages in Israel's Workforce is a three-year, joint venture funded by the European Union with the participation of the Israel Women's Network, Shatil, the Adva Center, and the Equal Opportunities in Employment Commission of the Ministry of the Economy. The project seeks to eliminate gender pay gaps through research, wage analysis, the development of knowledge and tools for narrowing pay gaps in both the private and public sectors, raising public awareness about the problem, and persuading decision-makers to take effective action to bring about change.

This report is part of the project "Equal Pay: Equalizing Wages in Israel's Workforce".



The report was produced with the assistance of the European Union. The sole responsibility for its contents rests with the project partners and should in no way be construed as reflecting the views of the European Union.

Translation: Gila Svirsky

## INTRO &gt;&gt;



There is little public debate in Israel about the salary gaps between men and women. One exception to this is the annual marking of International Women's Day, which occasions a flurry of articles about these gaps. Similarly, the annual report of the Finance Ministry's Director of Wages, which contains a partial gender analysis, receives some media coverage. The data presented in this report, like others on the subject of gender wage gaps, reinforce the finding that wage gaps between women and men reflect structural discrimination, not isolated instances.

While monthly pay gaps between men and women derive partially from the fact that women generally work fewer hours than men, hourly pay gaps suggest two more factors at work. One is related to occupational segregation: For various reasons, women and men are concentrated in different professions, and those dominated by women generally have lower wage scales. The other factor is discrimination per se, which has several roots: the gender division of labor within the home and its implications for the role of women in the labor market; the prejudice of employers concerning women's abilities and willingness to work; employment norms that perpetuate gender inequality, such as evaluating productivity by the length of the working day; and women's lower bargaining effectiveness and tendency to prefer employment security over high remuneration.

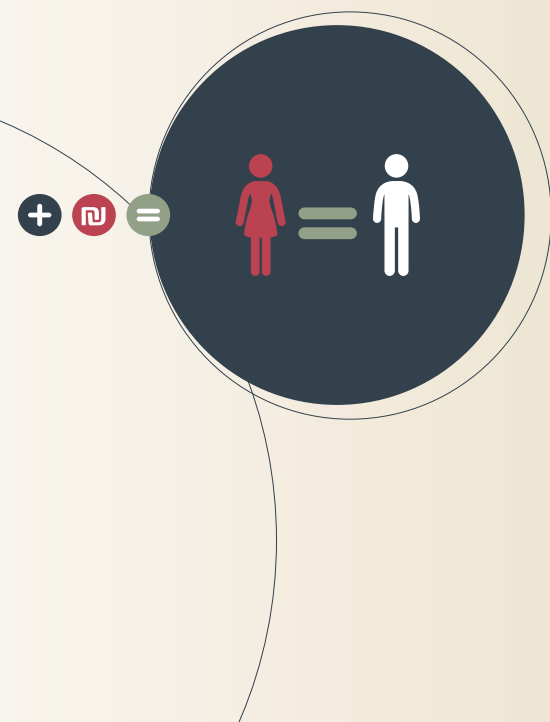
Beyond basic legislation, whose effectiveness in reducing gender pay gaps is limited, no policies in Israel target the reduction of gender pay gaps. This contrasts with long-standing policies designed to increase women's labor market participation as well as legislation that focuses on fair representation, mainly in the public sector.

Furthermore, the Israeli economy lacks transparency regarding the very existence of pay gaps. Although the annual report of the Finance Ministry's Director of Wages includes a chapter on gender pay gaps in the public sector, the analysis remains insufficient.

In the private sector, secrecy about salaries is the prevailing norm. This impedes transparency and constitutes an obstacle for women who wish to compare their

salaries with those of their male colleagues. The idea of "corporate responsibility", which trickled down to private firms in Israel over the last decade, further occludes the picture of gender pay gaps. Although some measures of the social responsibility of companies, such as the Maala Index, include comparisons by gender, such as the proportion of women on company boards, the figures are limited on the subject of salary gaps. Moreover, efforts made by the "Equal Pay" project to advance legislation that would require all employers to gather data on gender salary gaps ran into considerable opposition from private businesses and even the Ministry of the Economy.

This report seeks to illuminate the current situation with regard to gender salary gaps in Israel, and to review the existing legal structures designed to reduce them. A separate report will focus on policy recommendations to reduce gender pay gaps based on experience accumulated in other countries.





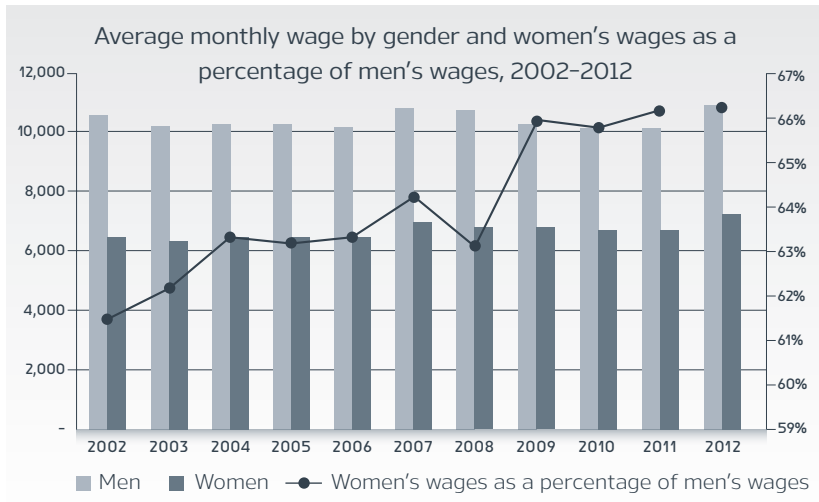
# PART 1

## ASPECTS OF GENDER SALARY GAPS

### GENERAL DATA | MONTHLY AND HOURLY GENDER PAY GAPS

Monthly gender pay gaps: The average monthly wage of women is 66% that of men.

The gender gap is particularly evident in monthly wages: The average monthly salary of a woman in 2012 was 66% that of men. Over the course of the past decade and compared to 2002, the monthly wage gap has decreased by some 5%.

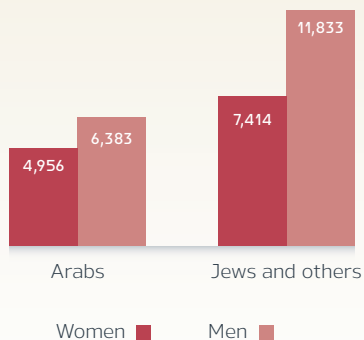


**Source** | Adva Center analysis of CBS, Income Surveys, various years. Data for 2012 were provided courtesy of the Consumption Department of the CBS.

The average monthly salary of a Jewish woman is about 63% that of a Jewish man. Among Arab Israelis, a woman earns approximately 78% what a man earns.

## Average monthly wage by ethnicity and gender, 2012

In NIS at 2012 prices

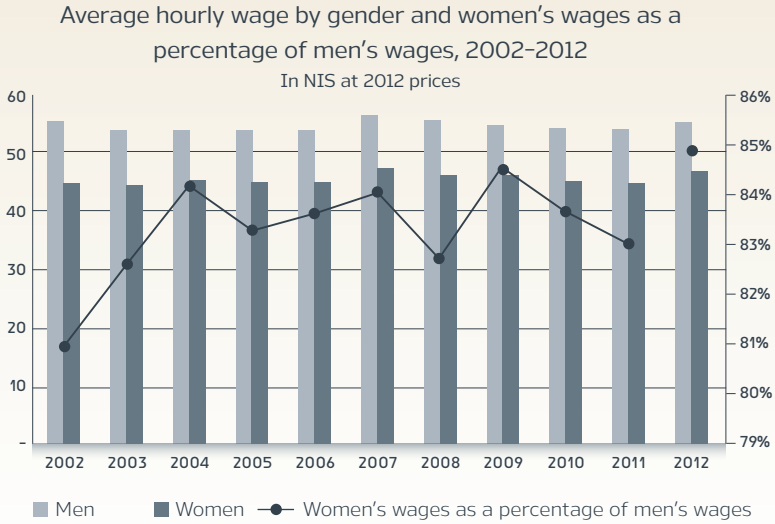



 **Source** | Adva Center analysis of CBS, Household Expenditure Survey, 2012.

**Hourly gender pay gaps:****The average hourly wage of women is 85% that of men.**

One of the most critical factors affecting gender pay gaps is the fact that women work fewer hours than men, on average. Nevertheless, even in terms of hourly wages, women earn less than men. The average<sup>1</sup> wage of women per hour was 85% that of men in 2012. This disparity decreased by some 4% over the course of the last decade.

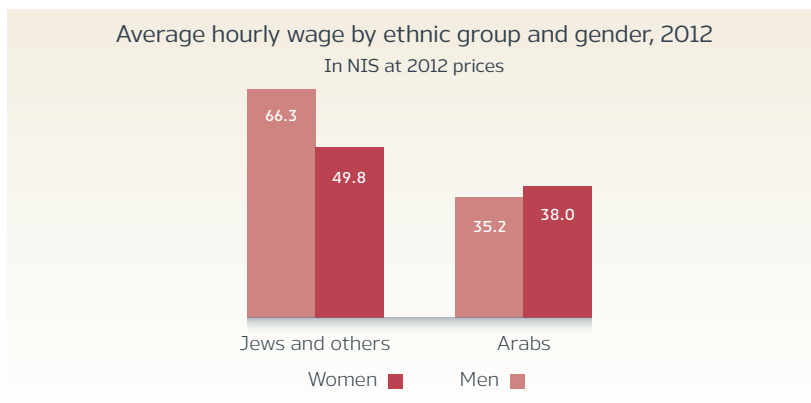
<sup>1</sup> According to CBS figures, 66.7% of salaried women worked full time (35 or more hours per week) compared with 86.6% of salaried men. CBS, 4 March 2014.



 **Source** | Adva Center analysis of CBS, Income Surveys, various years. Data for 2012 were provided courtesy of the Consumption Department of the CBS.

The average hourly wage of salaried Jewish workers (both women and men) is higher than the average hourly wage of salaried Arab workers in Israel. The wage gaps between the two groups are larger for men than for women.

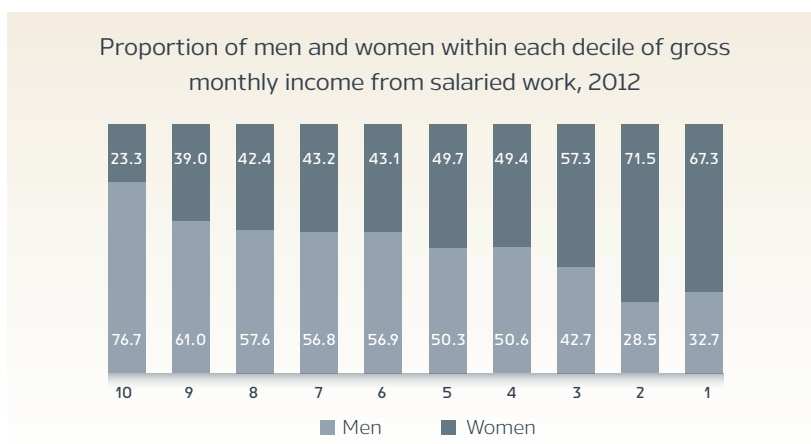
Interestingly, the average hourly wage of Arab women is higher than that of Arab men, while their average monthly wage is lower (see figure on page 8). This might have to do with the employment profile of Arab women: only 27% of Arab women participated in the labor market, and only 23% were employed in 2012 (CBS, 2013); most of those employed have a college education, hence their hourly wage is relatively high. However, because half of the employed Arab women work only part-time (ibid.), their monthly wage is lower on average than that of Arab men.



Source | Adva Center analysis of CBS, Household Expenditure Survey, 2012.

### Over-representation of women in the lower wage deciles

An overview of the wage deciles reveals that the proportion of women declines as wages rise, while the proportion of men increases. Women comprise 67.3% of employed persons in the lowest wage decile – those who earn an average of NIS 1,317 a month. And women comprise about a quarter (23.3%) of the wage earners in the top decile – those who earn an average of NIS 15,413 monthly.



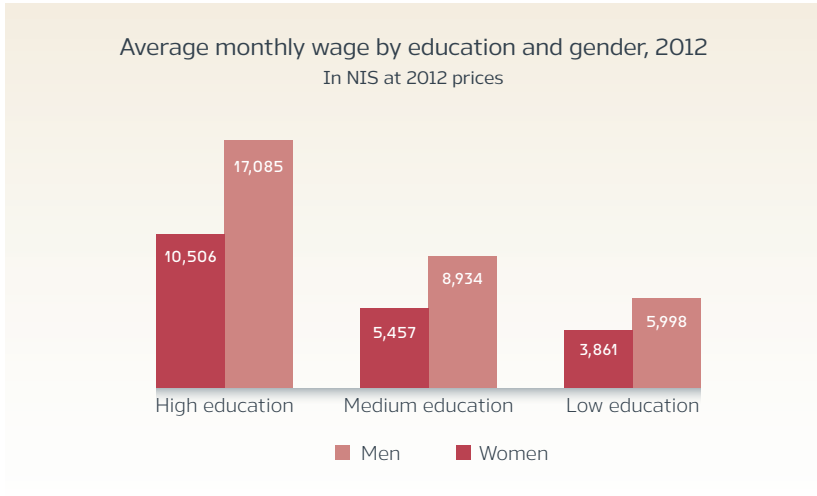
Source: CBS, Media Release, Income of Wage-earners from the Household Expenditure Survey 2012, 5 November 2013.



## EDUCATION AND GENDER PAY GAPS: WAGE GAPS ARE ALSO SUBSTANTIAL AMONG THE COLLEGE EDUCATED

There are wage gaps between women and men at every level of education. In 2012, the average monthly wage of college-educated women was approximately 61% that of college-educated men. The gap is similar between women and men at “medium” levels of education.

Among those with little education, the average monthly wage of women was approximately 64% that of men.



**Note** | Low education – up to 12 years of schooling; medium education – matriculation certificate and post-secondary schooling; high education – academic degree.

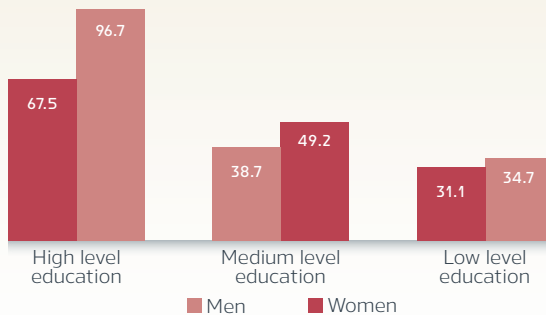
**Source** | Adva Center analysis of data from CBS, Household Expenditure Survey, 2012.

With respect to hourly wages, the gaps between women and men widen with more schooling, with the largest gaps appearing among the college educated: The salaries of college-educated women are 70% those of college-educated men; at the middle level of education, the salaries of women are 79% that of men; while among those with little education, women’s salaries are approximately 90% those of men.

This disparity might be related to the fields of study chosen by women as opposed to those chosen by men. Women and men are socialized to choose different fields of study, and this perpetuates occupational segregation between the genders (Kraus, 2002). Thus, women are overrepresented in the teaching and paramedical professions, and underrepresented in engineering, math, and computer sciences (Goldschmidt, 2012). Men tend to study professions that are more lucrative.

### Average hourly wage by education and gender, 2012

In NIS at 2012 prices



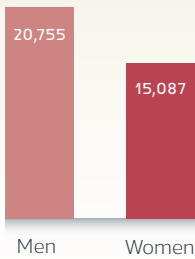
**Note** | Low education – up to 12 years of schooling; medium education – matriculation certificate and post-secondary schooling; high education – academic degree.

**Source** | Adva Center analysis of data from CBS, Household Expenditure Survey, 2012.

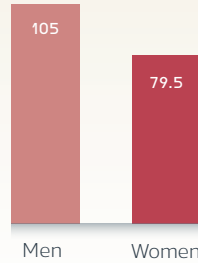
## WOMEN EARN LESS THAN MEN EVEN IN MANAGERIAL POSITIONS

There are significant wage gaps between women and men even at the level of management. The average monthly wage of women managers is some 73% that of male managers. Some of this disparity can be attributed to the fact that women are concentrated in civil service jobs, where managers earn less than in the private sector, and also that men hold a majority of the senior management positions. The balance of the discrepancy stems from discrimination rooted in the prejudice of employers and gender stereotypes.

Average monthly wage of  
women and men in managerial  
positions, 2012  
In NIS at 2012 prices



Average hourly wage  
of women and men in  
managerial positions, 2012  
In NIS at 2012 prices



**Source** | Adva Center analysis of data from CBS, Household Expenditure Survey, 2012.

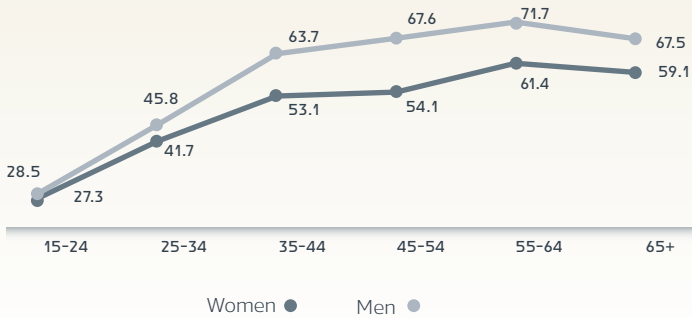
**Note** | Data are for the main working years – salaried men and women aged 25-59.

The hourly wage gaps for managers are somewhat smaller, but still significant. The hourly wage of female managers is about 76% that of male managers.

## WAGE GAPS BY AGE

An analysis by age shows men earning more than women at every age level. The largest gap in average wage per hour of work – 20% – is found for those aged 45-54. The smallest gap is 4% and is evident in the 15-24 age grouping (Central Bureau of Statistics, 2013).

Average hourly wage by age group and gender, 2012



**Source** | CBS, Media Release, Income of Wage-earners from the Household Expenditure Survey 2012, 5 November 2013.



## ISRAEL AND THE WORLD: INTERNATIONAL COMPARISONS

According to data from 2011 published by the OECD comparing hourly wages, Israel is to be found between countries in which the gender gap exceeds 20% (Ireland, Austria, and Germany) and countries in which the gap falls below 10% (Italy, Slovenia, Poland, and Turkey) (Swirski, Konor-Attias, and Ophir, 2014).

Gender pay gap in hourly wage rate for selected countries, 2011,  
in percentages

Country	Gap between hourly wage of women and men, 2011	Country	Gap between hourly wage of women and men, 2011
Estonia	273	Sweden	15.8
Iceland (2008)	24.5	France	14.7
Austria	23.7	Ireland (2010)	13.9
Germany	22.2	Canada	13.7
Greece (2008)	22.0	Latvia	13.6
Czech Republic	21.0	Bulgaria	13.0
Slovakia	20.5	Portugal	12.5
Britain	20.1	Malta	12.9
Finland	18.2	Romania	12.1
Hungary	18.0	Lithuania	11.9
Holland	17.9	United States	10.6
Switzerland	17.9	Belgium	10.2
Israel	17.0	Luxemburg	8.7
Cyprus	16.4	Italy	5.8
Denmark	16.4	Poland	4.5
Spain	16.2	Turkey (2010)	3.8
Norway	15.9	Slovenia	2.3

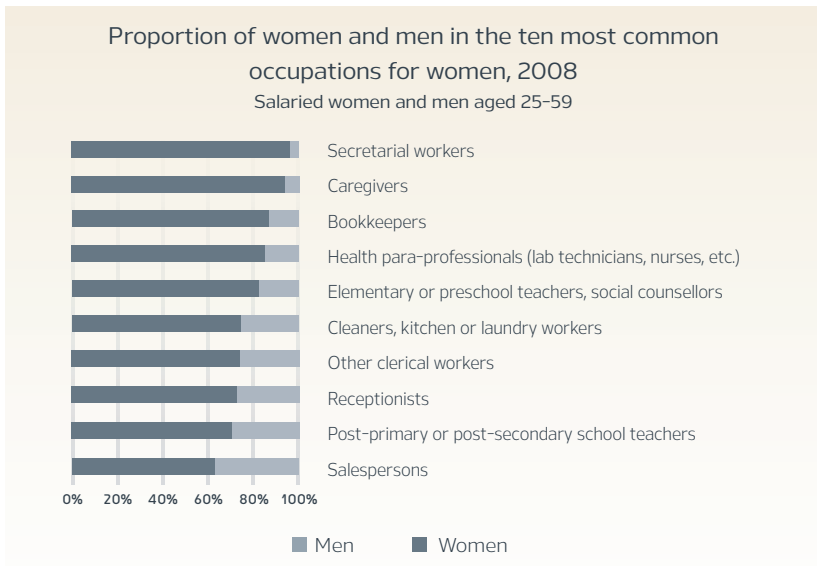
 **Note** | Data for Israel are based on CBS figures.

**Source** | UNECE Statistical Database, December 2013 [http://w3.unece.org/pxweb/Dialog/varval.asp?ma=ZZZ\\_CoSummary\\_r&path=../database/STAT/10-CountryOverviews/01-Figures/&lang=1](http://w3.unece.org/pxweb/Dialog/varval.asp?ma=ZZZ_CoSummary_r&path=../database/STAT/10-CountryOverviews/01-Figures/&lang=1)

## OCCUPATIONAL SEGREGATION AND GENDER WAGE GAPS

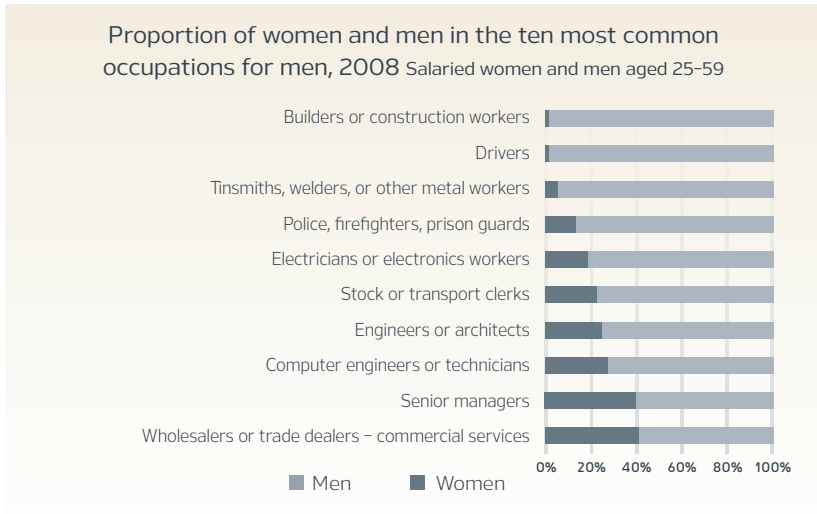
Gender wage gaps in the labor force are largely a product of occupational segregation, whereby women and men are concentrated in different economic sectors and different professions. The occupations that women tend to select are characteristically low in status, wages, and employment conditions. Lower wages are rooted in lower assessments of the value of women's and men's occupations (Hasson and Dagan-Buzaglo, 2013).

The Israeli labor force, like that of other countries, is marked by occupational segregation: Women and men are concentrated in different professions. Furthermore, women gravitate toward a relatively low number of professions: In 2008, some 60% of salaried women were employed in the ten most common occupations for women, compared to 42% of men who were concentrated in the ten most common occupations for men. Women's main occupations were teaching, administration, and caregiving. Men worked mostly in technical professions, engineering, management, and manual labor (ibid.).



**Note** | In descending order according to the percentage of women in each profession.

**Source** | Adva Center analysis of CBS, Population and Housing Census 2008.



**Note** | In descending order according to percentage of men in each profession.

**Source** | Adva Center analysis of CBS, Population and Housing Census 2008.

The salary data in this section of the document are based on an analysis of data from the Population and Housing Census conducted in 2008 by the Central Bureau of Statistics. This census provides the most detailed information available about the salaries of women and men in various occupations. Data about wage gaps will be presented in this section according to the median salary, not the average, to better reflect the actual distribution of wages among women and men.

An analysis of the wage gaps in selected occupations for full-time employees revealed that women earned less than men in every occupation – both in the ten most common occupations for women and in the ten most common occupations for men (Hasson and Dagan-Buzaglo, 2013).

Women employed in “men’s occupations” earned more than women employed in “women’s occupations”. The median salaries of women in women’s occupations ranged from NIS 4,300 a month (paid to cleaners, kitchen or laundry workers) to NIS 9,200 a month (paid to health para-professionals – lab technicians, nurses, etc.). The median salary of women in men’s occupations ranged from NIS 5,000 a month for police, firefighters, or prison guards to NIS 12,900 a month for computer engineers or technicians (ibid.).

## Median monthly salary of women and men in the ten most common occupations for women, 2008

Full-time employees aged 25-59, in NIS at current prices

	Median – men	Median – women	Median ratio
Elementary and preschool teachers, social counsellors	8,100	7,100	88%
Caregivers	6,300	4,400	70%
Secretarial workers	8,000	6,400	80%
Cleaners, kitchen or laundry workers	5,100	4,300	84%
Bookkeepers	11,000	7,400	67%
Other clerical workers	9,700	6,900	71%
Salespersons	5,800	4,600	79%
Post-primary or post-secondary school teachers	10,200	9,100	89%
Health para-professionals (lab technicians, nurses, etc.)	10,100	9,200	91%
Receptionists	8,300	6,200	75%

### Notes |

Full-time – 35 weekly hours or more; part-time – 34 weekly hours or less.

For teachers in elementary schools, full-time is defined as 30 weekly hours or more.

For teachers in secondary schools, full-time is defined as 20 weekly hours or more.

**Source** | Adva Center analysis of CBS, Population and Housing Census 2008.

Men earn more in every occupation – those more common for men and those more common for women. The median monthly salary of men in women's occupations ranges from NIS 5,100 for cleaners, kitchen or laundry workers to NIS 11,000 for bookkeepers. The median monthly salary of men in men's occupations ranges from NIS 5,500 for police, firefighters, or prison guards to NIS 18,900 for engineers or architects (ibid).



## Median monthly salary of women and men working in the ten most common occupations for men, 2008

Full-time employees aged 25-59, in NIS at current prices<sup>c</sup>

	Occupation	Median – men	Median – women	Median ratio
1	Drivers	6,800	[5,600]	--
2	Engineers or architects	18,900	11,300	60%
3	Managers	17,700	12,200	69%
4	Electricians or electronics workers	8,000	5,500	69%
5	Computer engineers or technicians	14,700	12,900	88%
6	Police, firefighters, prison guards	5,500	5,000	91%
7	Tinsmiths, welders, or other metal workers	7,500	[5,500]	--
8	Wholesalers or trade dealers – commercial services	9,600	7,400	77%
9	Stock or transport clerks	7,500	6,300	84%
10	Builders or construction workers	4,700	[7,500]	--

### Notes |

Full-time – 35 weekly hours or more.

The data for some occupations that have a low number of women – drivers, builders or construction workers, and tinsmiths, welders, or other metal workers – may reflect a statistical error.

Managers – production managers, human resource managers, treasurers, foreign currency or securities managers, advertising executives, computerization or security managers, directors of community centers or welfare services, directors of Culture, Welfare and Youth Departments (for details, see CBS, Standard Classification of Occupations 1994).

**Source** | Adva Center analysis of CBS, Population and Housing Census 2008.



## MISSING DATA

To better understand the reason for the wage gaps between women and men, more information is needed that is currently not collected in Israel, or is collected only partially. Data should be gathered about career tracks and the effect on wages and pensions of the division of labor at home and in the family:

1. **Wage data about working mothers and fathers** – broken down by the age and number of children, and whether the job is full or part-time<sup>2</sup>
2. **Time-use surveys** – The first and only time-use survey in Israel carried out by the Central Bureau of Statistics was in 1992. Time-use studies ask the respondents for detailed information about their activities in a given period. These surveys are useful for recording the time that women devote to unpaid labor (Gross and Swirski, 2002). The advantages of time-use research:
  - Data disaggregation – to what extent women and men engage in paid or unpaid work;
  - Understanding the contribution and economic value of unpaid labor
  - Helping understand how unpaid labor affects women
  - Recognizing the value of caretaking and finding ways to remunerate those engaged in it
3. **Wage data by length of service** – These figures can help examine if women are promoted less and whether differences in years of work explain the wage gaps<sup>3</sup>
4. **Data about occupational continuity** – Entering and leaving the workforce and the effect on the wages of women and men
5. **Data about the pensions of women and men** – Gender wage gaps during working years naturally lead to significant gaps in the income of women and men after retirement. Pension data were collected in the Household Expenditure Survey of the CBS, but the sample was very small and therefore of limited reliability.

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2. The Central Bureau of Statistics collects these numbers, but it does not make them available to scholars or the public.

3. A pioneering study carried out by Dobrin based on the 2008 Social Survey done by the CBS indicates that women are promoted less than men primarily because of the nature of the job, in which long hours are a condition for career advancement (Nurit Dobrin, "Factor analysis of promotion of employees in the workplace: The gender aspect", Working Paper 65, Central Bureau of Statistics, January 2012)



## PART 2

# USING LEGAL MEANS TO REDUCE WAGE GAPS

Over the years, two laws have provided the main legal tools available to women who encounter wage gaps in their jobs: the Female and Male Workers Equal Pay Law and the Employment (Equal Opportunities) Law. Taking legal action based on these laws, however, has been fraught with obstacles, as the individual women filing claims had an onerous burden of proof – having to bring evidence of a wage gap in comparison with a male employee holding an equal or similar job. As a result, few suits were filed, and only a handful received a legal remedy.

Thus, even though research demonstrates the frequency of wage gaps between women and men, legal action has hardly helped eliminate them.

In recent years, advocates of gender equality have considered a new strategy – legal reform that recognizes the collective aspect of the wage gap, rather than treating it as an individual instance of inequality. A step in this direction was already taken by expanding the obligation of employers to publish data about gender wage gaps in their companies. Exposing wage gaps is a vital first step, one that shifts the spotlight from individual cases to the broader social concerns, and provides information that can help women and their employers eradicate these gaps. In the private sector, however, opposition remains to legislation that would obligate all employers to reveal gender wage gaps in their companies. Sadly, most private firms do not engage in this of their own accord: Even those that publish social responsibility reports almost never include data comparing the wages of women and men in their organizations. Thus, transparency remains key, and it is currently endorsed only in the public sector, and partially so even there.



## LEGISLATION AND LITIGATION ON GENDER WAGE GAPS: THE INDIVIDUAL MODEL OF INEQUALITY

The law books in Israel contain two laws that deal with equal pay for women and men, another law that addresses equality between the sexes in general, and two amendments concerned with wage disparities.

### **Female and Male Workers Equal Pay Law – 1996**

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The Female and Male Workers Equal Pay Law (hereinafter “the Equal Pay Law”) is the main legislative act that mandates the payment of equal salaries to women and men. It states that a woman and a man employed by the same employer in the same place of work are entitled to an equal wage for the same work, or for essentially the same work, or for work of comparable worth. The law relates to wages and any other remuneration of the employee for this work (benefits, supplements, grants, bonuses, reimbursement of expenses, etc. by money or a monetary equivalent). This replaced an earlier law from 1964.

A 1996 amendment to the Equal Pay Law moves away from the narrow conception of equality – equal pay for equal work – to a broader conception – equal pay for work of comparable worth. This broader view takes into account occupational segregation, i.e., the fact that women and men are generally employed in different tasks or professions, and that wages are lower in the occupations generally chosen by women (Hasson and Dagan-Buzaglo, 2013). Under this conception, the fact that women and men have different employment characteristics does not invalidate the right of women to equal pay.

The 1996 amendment also calls for equality with regard to all financial remuneration for work, not just wages. And article 7 of the same amendment grants the employee the right to information about wage gaps from the employer. This article stipulates that the employer is obligated to provide information upon demand by the employee, even before a suit is filed in a labor court (Labor Court [Jerusalem] 1551/00 Ronnie Aloni v. ORT, judgment issued 20 March 2001).

Another change in the law relates to the statute of limitations. Following the ruling in the Orit Goren case (see below), article 7(a) of the law was amended (Amendment 2 – 2012) to extend the statute of limitations from two to five years. The amendment was intended to ease the filing of suits, but so far no real change

has occurred in the number of suits filed.

The Equal Pay Law divides the burden of proof between the employer and the employee. Initially, the plaintiff must prove that the criteria of article 2 are met, i.e., that the plaintiff and the male employee to whom she is comparing her pay are employed by the same employer at the same place of work and are performing the same work, or work that is essentially the same or of comparable worth. Once the plaintiff proves that these criteria are met, the employer may draw upon one of the exceptions listed in article 6(a) – that the nature or character of the work is different – to justify differential wages. The onus of proof now rests on the employer (article 6(b)). The model of equality inherent in the Equal Pay Law is outcome based, and does not examine the decision-making process of the employer in setting the salary (Rabin-Margalioth, 2010).

**The judicial relief afforded by the Equal Pay law is limited.** The Equal Pay Law states that two workers employed in the same task at the same place of work are entitled to an equal wage. Therefore, if one of the workers was earning less, he or she is entitled to receive the wage differential.

In 2013, the member organizations of the project “Equal Pay: Equalizing Wages in Israel’s Workforce” advocated passage of another amendment. The proposed change to article 4 would enable the court to award compensation for non-pecuniary damages in a formulation similar to that of the Employment (Equal Opportunities) Law– for damage to the dignity or professional standing of the worker as a result of the discrimination experienced.

A proposal was also made to amend article 7, which deals with the obligation of the employer to provide the employee with information about wage gaps in the organization. This amendment would require the employer to provide this information also to the workers’ organization that represents the employee or, with the consent of the employee, to an organization that deals with women’s rights.

The proposed amendment – the Female and Male Workers Equal Pay Law (Reparations for non-pecuniary damages and access to information by the employer) – was tabled in the Nineteenth Knesset, passed the preliminary hearing, and was referred to the Knesset’s Labor, Welfare and Health Committee, which has not yet approved a final version.

## **Employment (Equal Opportunities) Law– 1988**

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The Employment (Equal Opportunities) Law (hereinafter the “Equal Opportunities Law”) was enacted in 1988. This law was intended to prevent discrimination of employees and job-seekers due to age, sex, personal status, religion, race, ethnic origin, political views, party affiliation, military reserve service, pregnancy, etc. The law deals comprehensively with different forms of discrimination – from discrimination against job seekers to discrimination in salary or employment conditions to the dismissal of employees.

The inequality model used in the Equal Opportunities Law is “differential behavior” anchored in article 2(a) of the law, which states, “An employer shall not discriminate among his employees or among persons seeking employment on account of their gender with regard to ... terms of employment”. In the context of the right to equal pay, this means that the employer may not discriminate between employees based on their gender in any matter related to their salaries. This model obligates the plaintiff to present proof of discrimination.

### **The difficulty of proving a causal relationship between inequality and gender**

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The Equal Opportunities Law poses difficulties for women who wish to file suit on the grounds of salary discrimination. The law requires proof of a causal relationship between the gender of the employee and the wage gap, i.e., proof that the employee experienced discrimination as a result of her gender. Here the burden of proof is more stringent than that set in the Equal Pay Law.

The need to prove a causal relationship is a difficult hurdle, particularly in light of the interpretation given by the judiciary. In several cases, the Court ruled that because there were several men – or even one man – whose salaries were comparable to that of the plaintiff, the claim of discrimination was unfounded. In the case of Turjeman, in which the plaintiff argued that she received a lower salary due to her lower rank, compared to colleagues in parallel jobs, the Labor Court denied her claim of discrimination on the grounds that two men in the same workplace had a rank similar to hers. In another case, Ben Moshe, a woman project director in a marketing division, and a female colleague were the only ones in their division who were not given stock options. In this case, the court expanded the reference group for comparison to three marketing divisions. Since several men were found

who were not given stock options, the claim of discrimination was denied (Labor Court [Tel Aviv-Jaffa] 8860/06 Tamar Turjeman v. Israel Airports Authority, judgment issued 12 February 2009; Labor Court Appeal 114/09 Comverse Inc. v. Irit Ben-Moshe, judgment issued 27 January 2010).

In the case of Orit Goren and Home Center, the plaintiff's claim was accepted based on comparison with another employee holding an identical job, and she was awarded the salary differential. However, the National Labor Court (the majority opinion) rejected her claim of discrimination and accepted Home Center's argument that the salary level was set in individual negotiations and bore no relation to the gender of the worker (Labor Court Appeal [National] 1156/04 Home Center (DIY) Inc. v. Orit Goren, judgment issued 20 November 2007).

With assistance from the Israel Women's Network, this case reached the High Court of Justice, which ruled that in some circumstances – when wage gap claim is established according to the Equal Pay Law – the burden of proof shifts to the employer to prove that no discrimination occurred according to the Equal Opportunities Law (HCJ 1758/11 Orit Goren v. Home Center (DIY) Inc., judgment issued 17 May 2012).

**In two suits heard by the Labor Courts in the past decade dealing with the employment terms of a group of employees, a claim of discrimination was accepted.**

One case concerned an early retirement plan in the Clalit Health Services, where the age for calculating the pension differed for women and men. The question of gender discrimination reached the High Court, which ruled in 2002 that the retirement plan was indeed discriminatory, as it created two separate retirement tracks – one for men and another for women, based on the assumption that women employees would retire at age 60 and not take advantage of their right to work until age 65. In light of this High Court ruling, the District Labor Court awarded compensation to plaintiffs who had taken early retirement as part of the plan, increasing their retirement package to that of the male employees. Due to the statute of limitations, claims of discrimination according to the Equal Opportunities Law were not deliberated in these suits<sup>4</sup>.

The second case concerned equalizing the rights of men to those of women. In several instances, teachers who were fathers of small children demanded the

4. HCJ 6845/00 Eitana Niv v. National Labor Court, judgment issued 9 October 2002, PD 56(6); Labor Court (Nazareth) 2598/03 Sofia Stern v. Clalit Health Services, judgment issued 23 February 2009; Labor Court (Tel Aviv-Jaffa) 10222/02 Leah Fass v. Clalit Health Services, judgment issued 24 July 2008.

same parental benefits enjoyed by working mothers, such as a shorter work week, “day care supplements”, and a “mother’s supplement”. The Labor Courts ruled that these parental rights were not intended only for women, but applied also to fathers if two conditions are met: Women workers in the man’s place of work are also entitled to these rights, and the man’s spouse also works<sup>5</sup>.

### **Reducing the burden of proof for the Equal Opportunities Law**

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In light of the difficulties of proving discrimination according to the Equal Opportunities Law, article 9 was amended in July 2010 making it sufficient for the plaintiff to submit initial evidence that the employer had asked her for information relevant to discriminatory practices in order for the burden of proof to shift to the employer. In the Elhanani case, the Court followed this amendment with respect to the setting of the rank and salary of the plaintiff based on circumstantial evidence that, after being presented by the plaintiff, shifted the burden of proof to the employer<sup>6</sup>.

The significance of easing the criteria for proving discrimination stems from the advantages conferred by the Equal Opportunities Law compared to the Equal Pay Law. The Equal Opportunities Law allows the Court to impose sanctions on employers who have unlawfully discriminated against an employee. Sanctions include monetary compensation without having to prove pecuniary damage to the plaintiff as well as an injunction to the employer to correct the situation.

### **Limitations of the Equal Pay and Equal Opportunities Laws in reducing gender wage gaps – an individual model of violating equality**

As of this writing, the Equal Pay and Equal Opportunities Laws have not achieved the goal of reducing wage gaps. There are several reasons why so few cases have been filed to date regarding wage disparities between women and men:

First, the two laws that address this issue are based on a model of “filing suit” in which the individual woman plaintiff bears responsibility for discovering the wage gap, bringing the matter to Court, and providing evidence that her work is similar or identical to that of a man in the same place of work whose wages are higher. The Equal Pay Law imposes no obligation on the employer with regard to wage gaps other than providing the employee with information upon demand in the framework of her preparation for filing suit on the matter. The employer

5. Labor Court (Haifa) 570/5 Shlomo Levy v. State of Israel – Ministry of Education, judgment issued 8 September 2008; Labor Court (Beer Sheva) 300301/97 Avraham Saadon v. State of Israel, judgment issued 30 September 2001.

6. Labor Court, Labor Dispute (Tel Aviv) 4700-12-11 Sarah Elhanani v. State of Israel – Israel Water and Sewage Authority, judgment issued 17 June 2013.



has no obligation to take action unless the Court rules that the law was violated (Turner, 2013).

Second, the limited judicial relief offered by the Equal Pay Law does not serve as a deterrent or an educational tool against the discrimination of women, and therefore has so far not led to change in the behavior of employers (HCJ 1758/11 Orit Goren v. Home Center (DIY) Inc., judgment issued 17 May 2012).

Third, even though an amendment to the Equal Pay Law introduced a broader conception of equality – the right to equal pay for work of comparable worth – the courts are reluctant to rule that non-identical jobs or jobs “essentially equal” are nevertheless of comparable worth (Rabin-Margalioth, 2010)<sup>7</sup>. And a job evaluation expert is rarely appointed to make this assessment, although the option is provided by law.

Finally, the two laws do not bring about change in the structural conditions that lead to gender wage gaps. This is because they are based on an individual model of violations, and do not relate to the fundamental issue – the fact that inequality in wages between women and men is a collective problem.

As noted by Rabin-Margalioth (2010), implementation of the Equal Wages Law is limited to one employer at one place of work, while occupational segregation between women and men generally is relevant to more than one employer. The model of differential treatment in the Equal Opportunities Law focuses on how decisions were made by one particular employer. It examines whether the employer took gender considerations into account when the terms of employment were set. It does not deal with the question of whether wage gaps are the product of factors external to the employer and employee – macro-social factors that contribute to wage gaps between women and men.

Turner (2013) and Rabin-Margalioth (2010) cite the need to adopt a collective approach to the right to equality – shifting the emphasis from the individual to the group. The collective conception includes an analysis of systemic factors that explain the lower wages of women, and whether these factors are relevant for the case at hand in which wage discrimination is claimed. For example, one factor that affects wage gaps between women and men is occupational segregation. The collective approach to ensuring equal rights would seek to reduce the effect of occupational segregation on wage levels. The key insight here is that the

<sup>7</sup> As in the case of Simi Nidam (Labor Court [Beer Sheva] 1576/99 Simi Nidam v. Rali Electric and Electronics Inc., judgment issued 5 November 2012), in which the Labor Court refused to recognize the sale of small electric appliances as work of comparable worth to the sale of large electric appliances, relying on the opinion of a job evaluation expert. When the Court rules that two jobs with such a broad common denominator require different expertise, skills, and qualifications, it is not likely that the Court is about to recognize different jobs, such as hospital nurses and technicians, as work of comparable worth.

average wage is lower in “women’s professions”, and this constitutes collective discrimination. In the individual model, the claim that occupational segregation constitutes gender-based discrimination cannot be used, because it is not the gender of the woman that explains her lower salary, but the fact that she is doing different work.

In proposing reform of the Equal Pay Law to prevent collective inequality, Turner (2013) notes that this model would obligate employers to take active steps to identify and correct gender pay gaps at the place of work. This differs from the existing law, as it is based on broader action, not guilt or violation of an individual right. The law would bring about social change by recruiting all parties at a place of work, rather than creating an employee–employer conflict. It also recognizes the power imbalance between the individual woman employee and her employer, and the obstacles she faces when filing suit (the cost, burden of proof, public exposure, risking her job) (Rabin-Margalioth 2010; Turner 2013).

## LEGISLATION AND LITIGATION BASED ON THE COLLECTIVE PERSPECTIVE OF WAGE GAPS

Two amendments and a court ruling from recent years have drawn upon the collective legislative model to prevent wage gaps between women and men.

### **Women’s Equal Rights Law – 1951 – Amendment 7 from 2008**

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The Women’s Equal Rights Law deals broadly with the right of women to equality before the law. Amendment 7 to this law, legislated with the active support of the Women’s Budget Forum lead by the Adva Center, obligates all public bodies that collect, process, and publish data to include data broken down by gender. This applies to all government ministries, subsidiary units, local authorities, and statutory corporations (section 6(c)(3)).

Although this law covers more than wage gaps and the labor market, it does deal with data about these matters. The amendment is a breakthrough as it is based on the activist–collective model in mandating that gender data be made public.

### **Equal Pay for Female and Male Workers Law (Amendment 3: Collecting, processing, and publishing gender data) – 2014**

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In March 2014, at the initiative of the “Equal Pay” project, an amendment was enacted for the first time that addresses wage gaps between women and men based on the collective model.

The bill submitted by MK Aliza Lavie and others was primarily intended to grapple with the lack of information about gender wage gaps and the prevailing practice of prohibiting employees from revealing their salaries. The original bill, formulated by members of the “Equal Pay” project, had made it obligatory for all organizations having a hundred or more employees to collect and publicize wage data by gender. It also mandated the provision of wage information to employees upon demand (subject to privacy constraints), and the consideration of gender wage gaps when deciding on the remuneration of company officers. Finally, the bill proposed that the Equal Opportunities Law be amended to disallow the practice of forbidding employees from revealing their wages and employment terms to each other.

This bill aroused opposition from the Ministry of the Economy as well as representatives of private sector employers. The law that ultimately passed is a softer and more limited version: It mandates gender disaggregation and publication of wage data only for public bodies, which are required to publish their wage data anyway. Thus, Israel has not yet joined the community of nations that obligate employers to collect and study data about gender wage differences<sup>8</sup>.

Note that most companies in the private sector do not publish wage data broken down by gender. Even companies that issue “corporate responsibility” reports generally present very limited information, which does not include salary data<sup>9</sup>.

8 In Sweden and Finland, employers are required to carry out a salary survey; in Estonia and Finland, employers are required to collect wage data by gender; in Belgium, Denmark, France, Italy, Luxembourg, and Austria, employers are required to provide workers' organizations with periodic reports that include a breakdown of wages by gender (Knesset Research and Information Center, 11 February 2014). The United States recently enacted legislation in the spirit of the original bill rejected by the Knesset; the US law obligates contractors that work with the government to generate reports about gender wage gaps and it prohibits them from instructing employees not to reveal their wages to each other.

9 An exception to this is the Strauss Company report of 2012, which includes a comparison of the wages earned by women and men at various levels.

**Two amendments that were passed:**

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1. The addition of article 6(a) to the Equal Pay Law: This provision states that any entity legally required to publish data or to report on the wages of workers and officers must include an analysis by gender. This applies to all public companies and nonprofits that are required to list the five highest salary-recipients in their organizations and to public bodies required to report wage data to the Director of Wages in the Finance Ministry.
2. Amendment 6 to the Women's Equal Rights Law (1951), which anchors the obligation to collect, process, and publish wage data by gender, will now also apply to government companies.

**Court-ordered survey of gender wage gaps by the employer**

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An important precedent was recently set in the Jerusalem District Labor Court in response to a suit filed against the Jerusalem Municipality by two women employees, with the assistance of the Israel Women's Network and the Equal Employment Opportunities Commission. For the first time, the Court ordered an employer found to have gender wage disparities among its employees to carry out a comprehensive survey of wage gaps in the organization. In this case, two women in charge of human resources in the municipal Sanitation Department of Jerusalem claimed that men with the same responsibilities enjoyed wage supplements given to garage and transport employees, while they were not eligible for these supplements even though they performed similar work. The Court accepted their claim and ruled that the Jerusalem Municipality had to compensate the women for the difference in pay, which amounted to tens of thousands of shekels as a result of the rank and the salary supplements they had not received. The Court acknowledged the gender bias of having applied the collective wage agreements of garage workers to the men only, even though the men performed administrative tasks similar to those of the women. The breakthrough here is the fact that the demand of the Jerusalem District's Equal Employment Opportunities Commission was also accepted – that the Municipality be ordered to conduct a survey of wage gaps between women and men employees, and to make specific recommendations for measures to reduce the gaps (Labor Court, Labor Dispute 22000-08-10, Galit Keidar et al. v. Jerusalem Municipality, judgment issued 12 March 2014).

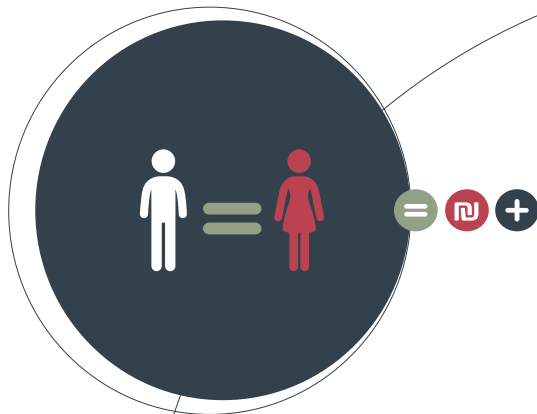
### **Agreement to encourage equal opportunities for women at work**

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Another suit filed by the Equal Employment Opportunities Commission ended in a precedent-setting agreement between the Commission and the defendant that will encourage equal opportunities for women in the company.

This suit was filed against the media company Ulpanei Habira Inc. with respect to wage gaps between its male and female employees and discriminatory activity toward working mothers. The claim was that for eight years (2003-2010), only two women were hired in the company's news division out of a total of 131 employees hired during that period. Furthermore, the proportion of women employed in the company's news division decreased by 76% during those years.

In the compromise agreement, the company made a commitment to work toward equal opportunity for women, particularly mothers of small children employed by the company. It is to appoint an equal opportunity officer responsible for promoting equal opportunity, train company managers, conduct an annual survey of gender wage gaps, and take other measures.



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## שוות ערך

לקידום שכר שווה  
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Shatil | [www.shatil.org.il](http://www.shatil.org.il)

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The Israel Women's Network | [www.iwn.org.il](http://www.iwn.org.il)

Equal Opportunities Employment Commission |  
[www.moital.gov.il/CmsTamam/Rsrc/Shivyon/Shivyon.html](http://www.moital.gov.il/CmsTamam/Rsrc/Shivyon/Shivyon.html)

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