
Pay cut for male BBC stars 'would be unlawful'



Any attempts by the BBC to enforce a pay cut for male employees would be unlawful, lawyers said yesterday.

The only option would be for male stars to agree to being sacked and re-hired on lower pay or to voluntarily agree to pay cuts in the face of public pressure. The BBC published the salaries of all its presenters earning £150,000 or more yesterday, revealing a large gender pay gap.

Anne Sammon, gender pay specialist at the City law firm Simmons & Simmons, said: "Imposing pay cuts unilaterally is extremely difficult. Their [male stars'] pay is an absolute right in their employment contracts. One option would be for the BBC to dismiss the men concerned and then re-employ them on new terms, namely, lower pay. But the male stars would have to agree to that, because legally they would have a clear-cut case of unfair dismissal. It would be legally very risky for an employer.

"Usually, when employers are found to have a significant gender pay gap, they are advised to level up instead of levelling down. Levelling down on pay is very difficult to achieve."

Public pressure

However, she added: "But the difference with the BBC case is that the male stars may feel external pressures, in other words, public pressure to take a pay cut."

An employment law barrister, **Andrew Burns, QC**, said: "The BBC has to abide by its contracts with male presenters – it cannot unilaterally reduce an employee's salary without his agreement. However many presenters may be independent contractors and pay can be renegotiated at the end of each contract. Women on the other hand may have a claim for a pay rise if they are due equal pay to the men – but they would normally have to show that they do 'like' work."

However, he said, if a presenter brought in a big TV or radio audience, that would be a factor that "normally justified higher pay and which would be unrelated to their gender".

Peter McTigue, senior lecturer in law at Nottingham Law School, Nottingham Trent University, said: "Can the BBC legally enforce pay cuts on men? Quite simply, no. A pay cut cannot be imposed without an employee's consent so any attempt by the BBC to cut the pay of their male presenters would amount to a breach of contract.

"The presenters involved could have a number of options. One would be to stay with the BBC but commence legal action in order to recover the deductions from their wages. Another option would be for them to resign and bring a wrongful dismissal action against the BBC. Damages could then be awarded for the presenter's 'lost' wages."

Consent and negotiation

Richard Isham, an employment partner at Wedlake Bell, said that the BBC could not vary key terms of employee contracts without consent – and that it must be a matter for negotiation with the individuals involved. "Simply paying its male stars 10 per cent less, starting, for example, next month, without their agreement will be a breach of contract," he said. He pointed out that the sums involved would necessitate a claim being heard before the High Court.

Elaine Aarons, employment partner at Withers, agreed that the general rule in employment law was that an individual "doesn't have to agree to a reduction in their contractual pay". "It's a completely voluntary matter, but where employers are negotiating fixed term contracts – like for a TV series – the employer has more scope to dictate the rate payable on any renewal," she said.

"The BBC's top male stars may feel social pressure to be seen to acknowledge the huge gap in gender pay, for if they resist by suggesting they are being discriminated against, they are likely to be regarded as a laughing stock."