

United States Equal Employment Opportunity Commission



**WAGE DISCRIMINATION:
WOMEN ARE JUST LIKE MEN,
ONLY CHEAPER**

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Why Focus on Equal Pay?

- In 1963, when President Kennedy signed the Equal Pay Act, women earned 59% of the wages men did.
- Today, the average woman in the U.S. earns about 23 cents less on the dollar than the average man (earning 77 cents for every dollar a man earns).
- The gap is even greater for women of color.
 - 60 cents for Hispanic women
 - 69.5 cents for Black women

Source: U.S. Census & National Committee on Pay Equity

Sex Based Wage Discrimination and the Wage Gap

- **41% of the wage gap** cannot be explained by differences in experience, specific work performed, education, or other nondiscriminatory factors
 - (Source: Center for American Progress Action, 2010)
- Yet, EEOC Charges alleging equal pay allegations have consistently made up about **1%** of all charges received over the past decade.



WHITE HOUSE

EQUAL PAY TASK FORCE



- **President Obama pledged to crack down on violations of equal pay laws.**
- White House Administration created the National Equal Pay Task Force to address the issue and promote work-family balance for families.
- The Task force calls for interagency coordination between EEOC, DOJ, DOL, and OPM
- Recommendations released in July 2010 to expand coordination, collect data, undertake a public education campaign, strategize on making the federal government a model employer.



STRATEGIC ENFORCEMENT PLAN (SEP) PRIORITIES

- Eliminating barriers in recruitment & hiring
- Protecting immigrant, migrant & vulnerable workers
- Addressing emerging & developing employment discrimination issues
- ***Enforcing equal pay laws***
- Preserving access to the legal system
- Preventing harassment through systemic enforcement & targeted outreach

What you need to know about federal compensation discrimination laws. . .



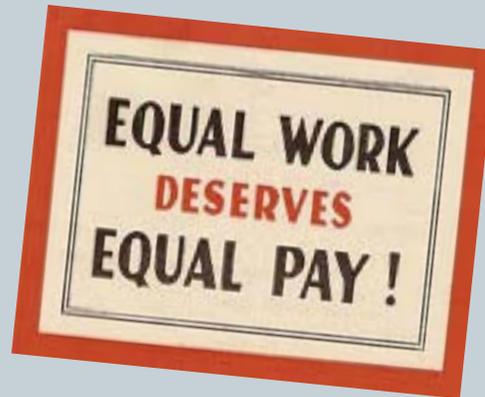
THE EQUAL PAY ACT



The Equal Pay Act



- One Claim: gender-based wage discrimination
- Prohibits discrimination in wages for men and women performing substantially equal work under similar conditions in the same establishment.



EPA General Provisions



- **No payment of lower wages on the basis of sex to women and men who perform jobs that:**
 - **Share “common core” of tasks**
 - **Require substantially equal skill, effort and responsibility and are performed under similar working conditions**
 - **Are in the same establishment**

What are Wages?



Forms of Compensation:

- Hourly Wages
- Salary
- Overtime Pay
- Commissions
- Bonuses
- Premium Pay

What are Wages?



Forms of Compensation (continued):

- **Company Car**
- **Medical, Accident, Life Insurance**
- **Retirement Benefits**
- **Stock Options, Profit Sharing, Bonus Plans**
- **Travel expenses, Expense Accounts**
- **Other benefits**

“Common Core” of Tasks



Do the jobs share the same “common core” of tasks?

- Is a significant proportion of the tasks the same?
- Does the comparator's job involve extra duties?
 - If so, are they substantial?
 - Extra duties that are insignificant will not render the jobs unequal.



EPA Prima Facie Case:



- CP is paid lower wages than employee of the opposite sex for performing the same job (substantially equal work)
- Work requiring equal skill, effort and responsibility
- Work performed under similar working conditions
- Work performed within the same establishment

NOTE: Title VII



Title VII of the Civil Rights Act prohibits practices that result in lower compensation on a prohibited basis (race, color, national origin, sex, or religion) for similarly situated employees

- Disparate Treatment - Intentional differences in compensation between, for example, men and women because of their gender
- Disparate Impact - Practices that have an adverse impact on compensation paid to women, if the practices are not job-related and consistent with business necessity

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What is Skill?



- Experience
- Ability
- Education
- Training required to perform the job



What is Effort?



Effort is measured by the amount of physical or mental exertion needed to perform a job.



What is Responsibility?



- **Work done without supervision**
- **Supervisory functions**
- **Impact of functions on the business (usually financial accountability)**

What are Similar Working Conditions?



Two Factors:

- 1) Physical surroundings, i.e. temperature, fumes, ventilation)
- 2) Hazards



What is Same Establishment/Workplace?



- Colloquially the term “establishment” is used to describe a single, distinct place.
- Legally, an “establishment” may include multiple locations, depending on the employer’s work customs, such as where a central administrative unit hires the employees, sets the compensation, and assigns work locations.

Employer Defenses



- Seniority System
- Merit System
- Incentive System
- Any other factor, other than sex/gender



Seniority System



- Length of Employment
- A difference in pay based on a seniority system is permitted as long as it is:
 - based on predetermined criteria,
 - has been communicated to employees, and
 - is applied consistently and evenhandedly.

Merit System



- Job performance
- A difference in pay based on a merit system is permitted as long as it is:
 - based on predetermined criteria,
 - has been communicated to employees, and
 - is applied consistently and evenhandedly.

Quality or Quantity of Production, Incentive System



- Quality or quantity of production
- A difference in pay based on an incentive system is permitted if it is:
 - based on predetermined criteria,
 - has been communicated to employees, and
 - is applied consistently and evenhandedly.

Factors Other Than Sex/Gender



- Employers may offer higher compensation to applicants and employees who have:
 - greater education
 - experience
 - training
 - ability
- Where the qualification is related to job performance or otherwise benefits the employer's business.

Factors Other Than Sex/Gender



A difference in pay for night and day shifts may be justified as long as both men and women are allowed to work either shift.



Note: Factors other than sex



- Doesn't really mean *any* other factor.
 - Factor must be a legitimate business reason.
 - Heavy burden to prove this defense



Directed Investigation



- EEOC has authority to conduct reviews of any respondent where it has information that there may be a violation
- Does not require a formal charge or advance notice to the respondent
- Opportunities for coordination with Partner Agencies

Subpoenas Under the EPA



- Unlike Title VII, an employer cannot petition to revoke or modify a subpoena under the EPA

EPA Statute of Limitations



- Time limitations apply to filing a lawsuit, not filing a charge
- Two year statute of limitations
- Three years, if willful

EPA Coverage



- The EPA covers any employee who is “engaged in commerce or the production of goods in commerce,” or any employees working within an enterprise engaged in commerce or the production of goods in commerce that has at least \$500,000 in annual gross business volume.



Direct Suit



- An individual alleging a violation of the EPA may go directly to court without filing an EEOC charge.
- Filing a charge does not toll the timeframe to go to court.

Unique Aspects of the EPA



- Directed Investigation – No charge required
- Subpoenas under EPA – employers cannot petition
- Statute of Limitations – 2 or 3 years to sue
- EPA Coverage – business gross, not number of employees
- Direct Suit
- Retaliation
- Employer Defenses

Retaliation



EPA prohibits retaliation against an individual because he or she has either:

- Opposed an unlawful employment practice, or
- Made a charge, testified, assisted or participated in an EEO process

Examples of Employer Defenses



- Education, Experience, Training and Ability
- Participation in Training Program
- Shift Differential
- Job Classification System
- “Red Circle” Rate
- Temporary Reassignment

Examples of Employer Defenses (cont.)



- Revenue Production
- Market Factors
- Negotiation
- Prior Salary

A Note on Market Forces



- Not acceptable unless employer rationally can explain use of market information
- “Strong desire” to hire particular employee will be examined critically
- Cannot be used as a disguise for employer’s belief that women come more cheaply than men

Not Employer Defenses



- **Error**
- **Collective Bargaining Agreement**

Remedies and Relief



- Two years back pay for violation; three years if willful;
- Liquidated damages if lacked good faith
- Compensatory and punitive damages recovered for retaliation under EPA are not subject to statutory caps which apply only to claims under Title VII and ADA.



Remedies and Relief (cont.)



Remedies ***for wage discrimination violations*** include:

- Salary increase
- Back pay
- Attorneys fees and costs
- Liquidated damages (EPA only)
- Compensatory damages (Title VII only)
- Punitive damages (Title VII)
- Injunctive relief



President Barack Obama signs the Lilly Ledbetter Fair Pay Act on Jan. 29, 2009



Lilly Ledbetter Fair Pay Act of 2009

- Lilly Ledbetter Fair Pay Act was signed by President Obama on January 29, 2009.
- Compensation discrimination claim is timely as long as at least one discriminatory paycheck was received within the filing period.
- Restores EEOC's position prior to Supreme Court's Ledbetter decision.

Examples of Discriminatory Practices Affecting Compensation



- Paying employees less or giving them lesser benefits on a prohibited basis
- Steering or classifying employees or applicants into lower paid positions – e.g., by refusing to place people into higher compensated positions – on a prohibited basis;
- Discriminatorily denying networking, mentoring, or training opportunities that facilitate promotion or assignment to higher paid positions;
- Paying part-time employees less on an hourly basis than their full time counterparts, which could disproportionately impact people on statutorily prohibited bases.



EEOC EQUAL PAY CASES



- 2 Texas state agencies, TX Dept. of Agriculture & TX General Land Office, paid \$175,000 to 4 females paid less than male counterparts (2012, Austin)
- Amtrak paid \$171,483 to a female HR regional director who was paid less, had larger workload than male counterparts, then was barred from senior staff meetings in retaliation for complaining (2011, Philadelphia)
- Southeast Telecom paid \$95,000 to a female sales account executive who was fired 1 week after protesting unequal pay (2011, Nashville)
- Simula, a military contractor, paid \$110,000 to 3 temporary employees paid less than males performing the same duties; permanent status also denied (2009, Phoenix)



BEST PAY PRACTICES



- Consistency in Establishing Starting Salaries
- Have a Written Policy for Promotional Pay Increases
- Communicate Your Policy and
- Promote Transparency
- Limit Managerial Discretion in Setting Pay
- Train Key Decision Makers
- Implement Checks and Balances to Prevent Discrimination and Avoid Liability

Questions?



For more information



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