

United States Equal Employment Opportunity Commission



WAGE DISCRIMINATION: WOMEN ARE JUST LIKE MEN, ONLY CHEAPER

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Why Focus on Equal Pay?

- 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).
- 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. . .



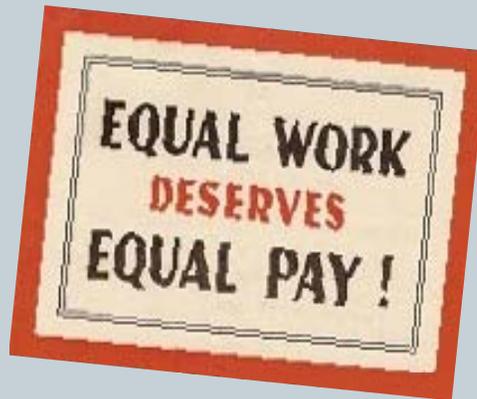
THE EQUAL PAY ACT



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.



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

EPA General Provisions



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

“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.



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.

EPA Prima Facie Case:



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

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.

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



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)

- **Participation in a Training Program**
- **Shift Differential**
- **Job Classification Systems**

Factors Other Than Sex/Gender



- **“Red Circle” Rates** – paid higher than a normal wage for a particular reason
- **Temporary Reassignments** – covering for a lower level employer at your remaining higher wage
- **Revenue Production** – generates more revenue, but support must be the same
- **Market Factors** – *only* if can prove assessed market place value of the particular individual’s job related qualifications (not prior salary)
- **Part-Time/Temporary Job Status**

Not Employer Defenses



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

A note on **WAGE DISCRIMINATION**



In addition to EPA, EEOC enforces other laws that prohibit wage discrimination based on race, sex, religion, national origin, color, age (40 and above), disability, genetic information and retaliation:

- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967
- Sections 501 & 505 of The Rehabilitation Act
- Americans with Disabilities Act of 1990
- The Genetic Information Non Discrimination Act of 2008

EPA - 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 under the EPA
- Opportunities for coordination with partner agencies

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”
- Interstate 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.
- Virtually all are covered. Only 1 employee needed for coverage

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.

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

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.
- Salary increase
- Attorney's fees
- Injunctive Relief: Policy change, training





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;



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
- Promote Transparency
- Limit Managerial Discretion in Setting Pay
- Train Key Decision Makers
- Implement Checks and Balances to Prevent Discrimination and Avoid Liability
- Periodic Review of Pay Scales

Questions?



For more information



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