

TODAY IN HR



WAGE & HOUR: WHAT EMPLOYERS NEED TO KNOW ABOUT EQUAL PAY LAW

As Equal Pay issues continue to shift to the forefront of the employment law discussion, employers should be familiar with Equal Pay legislation and review payroll practices regularly to ensure compliance.

The Equal Pay Act

At the federal level, there is the Equal Pay Act (EPA). In addition, most states have enacted their own form of Equal Pay legislation. In fact, only a handful of states (e.g. Alabama and Mississippi) have no equal pay laws on the books. For the most part, the state laws don't deviate all that much from the federal rule, but employers should always consider the federal

laws as more of a baseline for employment regulation rather than the ceiling. Thus, while many state laws mirror the federal rule, some go beyond it and are a bit more restrictive.

Spotting Equal Pay Issues

When trying to identify Equal Pay issues, the first step is to look at what kinds of positions are going to come under scrutiny if there are pay disparities amongst different genders. Any positions which require equal skill, effort, and responsibility, and which are performed under similar working conditions will be compared to one another. It's important to note that these positions don't have to be identical but can be substantially equal or

substantially similar in order to be considered as comparators when you have two employees of different genders.

Employers also need to consider what constitutes wages when talking about Equal Pay. The Equal Pay Act has a very broad definition of wages. This can include anything from an employee's salary, to bonuses, to overtime compensation (including opportunities to earn overtime), to profit sharing, retirement programs or other health and medical benefits. Vacation pay and holiday pay, and other types of pay like allowances, stipends, and expense reimbursement are also included under the "wage" umbrella.

Nevertheless, the EPA does not contemplate a total and complete ban on pay disparities. Employers simply must be able to justify pay disparities based on one of the reasons identified in the Act. These reasons include pay disparities based on a seniority system or merit system. Employers can also have a system which measures earnings by quantity or quality of production.



The EPA also has a catchall reason which includes a differential based on any other factor other than sex. Employers should take care when considering relying on this reason to justify a pay disparity. First, not all states recognize this as a

legitimate reason for justifying pay disparities. Employers in states such as Colorado, for example, may not be able to rely on this one. Another reason to be careful with this reason is that the relied-upon differential must actually be related to the position. For example, when employers justify pay disparities based on education or experience, while these are generally legitimate, non-discriminatory reasons for a pay disparity, the investigating agency may ask whether that education or experience is actually related to the position or a business necessity. On the other hand, some differentials are more self-explanatory. For example, if you have two people in the same position but one is based in New York City, and the other is based in Columbia, South Carolina, it likely would not be considered an Equal Pay violation as long as both salaries are competitive and in line with compensation for the area.

Avoid Equal Pay Violation Pitfalls

To avoid EPA violations, employers should start by auditing and reviewing compensation practices regularly. Looking at whether employees with the same titles or functions are making different amounts with no clear explanation to justify the difference in pay will help highlight potential areas of concern. Employers will also want to review hiring practices and think about what a position will pay before starting the hiring process. In some states, this is required as part of the state's Equal Pay legislation, and the compensation range will have to be determined ahead of time and posted with the job description. And finally, of course employers should also document reasons for justifying pay disparities, especially when relying on one of those catchall reasons.

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