

## 7.3: Pay Discrimination

### Equal Pay Day

Equal Pay Day—which marks how many days into the new calendar year women must work until they earn what men earned during the previous year—calls attention to the gap between men's and women's wages and to the persistence of pay discrimination based on sex.

Pay discrimination is a broad term. It not only includes discrimination in the regular rate of pay but also in overtime pay, bonuses, stock options, profit-sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and other benefits.

### EEOC and Pay Discrimination Based on Sex

The Equal Employment Opportunity Commission (EEOC) enforces two federal laws prohibiting pay discrimination based on sex:

- **Title VII of the Civil Right Act of 1964**

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in pay and all other aspects of employment based on sex (as well as, race, color, national origin, religion, or retaliation). Title VII became law after the civil rights movement of the 1960s.

Under Title VII, the question is whether you were paid less because of your sex. Occasionally, a worker may learn that the employer has a policy of pay discrimination or that an employer made direct statements about it, but usually evidence of pay discrimination is more subtle. If an employer pays women less than men in the same situation, and its explanation (if any) does not adequately explain the difference, then there is indirect proof of pay discrimination under Title VII.

- **Equal Pay Act of 1963**

The Equal Pay Act of 1963 (EPA) is more technical than Title VII, and it includes several requirements for challenging pay discrimination based on sex. You must show that the employer paid unequal wages to men and women who work in jobs that have the same common core of tasks, require substantially equal skill, effort, and responsibility, and are performed under similar working conditions. Also, the jobs generally must be performed at the same physical place of business or "establishment." For more detail about each of these factors, see [EEOC: Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009](#) and [EEOC: What You Should Know: Questions and Answers About the Equal Pay Act](#).

The EPA also specifies the ways employers can justify such a difference in pay: seniority, merit, quantity or quality of production, or another factor other than sex.

### Qs and As: How to Challenge Pay Discrimination Based on Sex with the EEOC

#### 1. Do Title VII and the EPA apply to the same employers?

No, but they overlap for many employers. Title VII only applies to employers with 15 or more employees, but the EPA also generally applies to employers with fewer than 15 employees. For example, if an employer with 10 employees pays a woman less than a man to do the same functions, the woman would use the EPA rather than Title VII to challenge the practice.

Title VII and the EPA both apply to the federal government and prohibit it from discriminating in pay based on sex.

#### 2. How do I start a Title VII complaint about pay discrimination?

If you work for a private company or a state or local government agency with 15 or more employees, the first step is to file a "charge of discrimination" (charge) with the EEOC or your state or local fair employment agency. If you work for the federal government, the first step is to contact an EEO counselor at your agency.

#### 3. Is there a deadline for starting a Title VII challenge to pay discrimination?

Yes. You must file a Title VII charge within 180 days of when you received the discriminatory pay. (This 180-day deadline may be extended to 300 days if your charge also is covered by a state or local anti-discrimination law.)

- To challenge pay discrimination by the federal government, you only have 45 days to contact your agency's EEO counselor.
- To calculate your deadline for challenging pay discrimination, start counting from the date of your most recent discriminatory paycheck. Under the Lilly Ledbetter Fair Pay Act of 2009, pay discrimination occurs *with payment of every*

*paycheck* that is lower because of a decision that set the discriminatory pay, *even if* the employer adopted that decision more than 180 or 300 days ago.

#### 4. Does the EPA have the same deadlines as Title VII for challenging pay discrimination?

No. Under the EPA, you generally have two years from the date of payment to go to the EEOC or directly to court. The only exception is if you can show that the employer intentionally disregarded the legal requirements of the EPA; then, you have three years from the discriminatory payment.

- You should know that EPA claims often also raise Title VII sex discrimination issues, so it may be advisable to safeguard all of your rights by filing charges under both the EPA and Title VII before the earlier Title VII deadline (see question 4).

## Pay Discrimination for Reasons Other Than Sex

#### 5. Is pay discrimination prohibited for reasons other than sex?

Yes, the laws enforced by the EEOC bar pay discrimination on other bases:

- Title VII prohibits discrimination based on race, color, religion, or national origin (in addition to sex);
- The Age Discrimination in Employment Act (ADEA) prohibits discrimination based on age (40 or over);
- The Americans with Disabilities Act (ADA) prohibits discrimination based on disability; and
- The Genetic Information Nondiscrimination Act (GINA) prohibits discrimination based on genetic information.

Each of these laws (and the EPA) bars employers from retaliating or engaging in reprisal against employees who oppose pay discrimination *or* file a charge, testify, or participate in an investigation, proceeding, or litigation under the Equal Pay Act, Title VII, the ADEA, the ADA, or GINA.

#### 6. What are some examples of pay discrimination that violates Title VII, the ADEA, the ADA, or GINA?

Pay discrimination under Title VII, the ADEA, the ADA, or GINA can occur in a variety of forms. For example:

- A discriminatory pay system that disadvantaged Hispanics in the past was ended by the employer, but salary disparities caused by the system still continue for Hispanic workers.
- An employer pays an employee with a disability less than similarly situated employees without disabilities, and the employer's explanation (if any) does not satisfactorily explain the difference.
- An employer does not intentionally pay older workers less because they are age 40 or above, but it still uses a pay system that effectively limits their rate of pay in the absence of any reasonable factors other than age.

## More Information

#### 7. Where can I find more EEOC information about pay discrimination?

Documents on EEOC's website that provide detailed information about pay discrimination include:

- [EEOC Compliance Manual Section on Compensation Discrimination](#)
- [Questions and Answers: Compliance Manual Section on Compensation Discrimination](#)

#### 8. How can I contact the EEOC or other federal government agencies that can help me challenge pay discrimination?

##### U.S. Equal Employment Opportunity Commission

Phone: 1-800-669-4000

(TTY: 1-800-669-6820)

Web site: [www.eeoc.gov](http://www.eeoc.gov)

- For quick answers from the EEOC, search our [database of frequently asked questions](#).
- If you are ready to file a charge of employment discrimination, you may start with our [online assessment system](#).
- If you need to find an EEOC office, please see the [EEOC Office List and Map](#).

##### U.S. Department of Labor

Phone: 1-866-4-USA-DOL

(TTY: 1-877-889-5627)

Web site: [www.dol.gov](http://www.dol.gov)

- Department of Labor, [Guide to Women's Equal Pay Rights](#)
- Department of Labor, [An Employer's Guide to Equal Pay](#)

- Department of Labor, Office of Federal Contract Compliance Programs, [Equal Pay Fact Sheet](#)

**National Labor Relations Board**

Phone: 1-866-667-6572

(TTY: 1-866-315-6572)

Web site: [www.nlrb.gov](http://www.nlrb.gov)

**9. As a federal employee, where can I learn more about my rights and the federal EEO system?**

For general information on the federal sector EEO process, see the EEOC's website, [http://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm).

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