THE EQUAL PAY ACT

2013 EEOC EXCEL TRAINING CONFERENCE

DENVER, COLORADO

August 29, 2013

President John F. Kennedy signed the Equal Pay Act on June 10, 1963

Source:: **www.jfklibrary.org**

Equal Pay Act of 1963

- No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.
  - 29 U.S.C. Section 206(d)(1)

The Equal Pay Act

One Claim: gender-based wage discrimination

Prima Facie Case

- unequal wages
- employees of the opposite sex
- within an establishment
- equal work on jobs the performance of which requires equal skill, effort, and responsibility
- performed under similar working conditions

Intent Unnecessary

- Intentional discrimination needed for Title VII, not for Equal Pay Act

Equal Pay Claim

The complainant receives a lower *wage* than an employee of the opposite sex in the *same establishment.*

Who are the comparators?

- Can make one-on-one comparisons
- Can compare salary of female plaintiff to the average salary of males
- Can compare average salaries of females to average salary of males

Who are the comparators?

- Can compare salaries of lower paid female groups to higher paid male groups
  - Cause of action for wage discrimination exists, even when the two groups at issue are mixed gender.
  - Violation will not exist when gender diversity includes a “substantial” number of both men and women.
  - What numbers work to make wage violation between two groups???

Who are the comparators?

- Concurrent Employment Unnecessary

"Inflationary forces" will be examined critically

Equal Pay Claim

The employees perform substantially *equal work* requiring equal *skill, effort* and *responsibility* under *similar working conditions.*

What is Skill?

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

What is Effort?

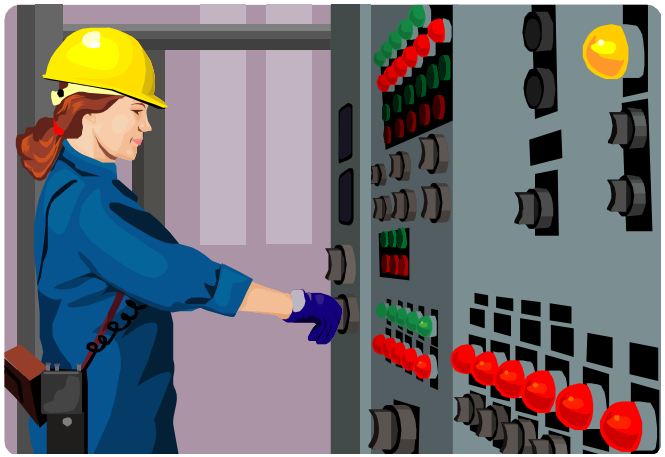
Effort is measured by the amount of physical or mental exertion needed to perform a job.

What is Responsibility?

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

Working Conditions

- Physical surroundings and hazards
- Intensity of environmental elements
- Number and frequency of physical hazards and severity of potential injury



Employer Defenses for Differences in Wages

- 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 even-handedly.**

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 even-handedly.**

Incentive System
Quality or Quantity of Production

- **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 even-handedly.**

Factors Other Than Sex/Gender

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

Factors Other Than Sex/Gender

- Night differential
- Training program
- Saved grade/red circle rates
- Job classification
- Market valuation
- Prior salary
- Part-time status

Remedies

- **Back pay**
- **Raise**
- **EPA liquidated damages**
- **Attorney's fees?**