

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

THE EQUAL PAY ACT & CLOSING THE WAGE GAP



Robin M. Lybolt
EEOC Senior Trial Attorney
Lexington TAPS
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TOPICS

- **Equal Pay Act Basics**
- **Beyond the EPA**
- **The Persistent Pay Gap**
- **Closing the Gap & Proposed EEO-1 Pay Data Collection**



EQUAL PAY ACT HISTORY



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

EPA ENFORCED BY EEOC SINCE 1979



**1979 – President Jimmy Carter
Transferred Enforcement of
Equal Pay Act to EEOC**

WHAT DOES THE EPA DO?

The EPA, which is part of the Fair Labor Standards Act of 1938, as amended (FLSA), prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions.



EPA BASICS

One Claim: Gender based wage discrimination



EPA BASICS

Did a female employee receive lower wages than male employees in the ***same establishment***?; and



EPA BASICS

Did the female and male employees perform substantially equal **work** requiring equal **skill, effort, and responsibility** under **similar working conditions**?

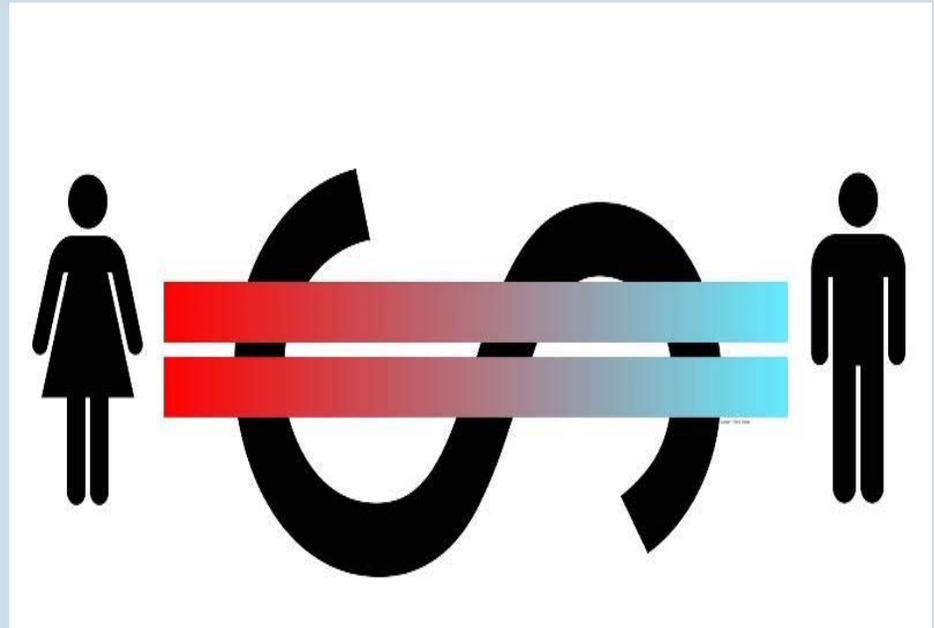
EMPLOYER DEFENSES FOR WAGE DIFFERENCES

- Seniority system

- Merit system

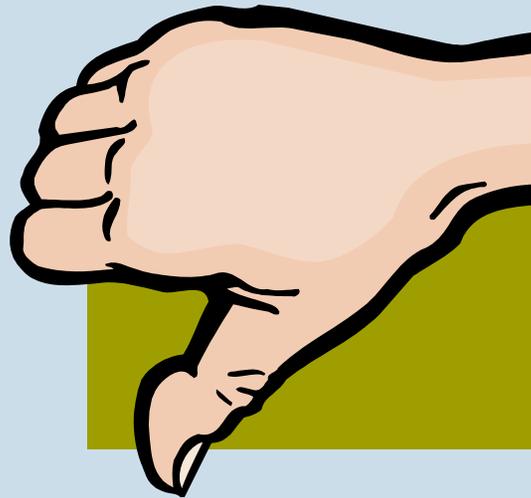
- Incentive system

- Factor other than sex/gender



NOT ALL FACTORS OTHER THAN SEX = A DEFENSE

- If adopted for illegitimate, discriminatory reasons
- If not pertinent to the job
- Error
- CBA



SOME FACTORS OTHER THAN SEX - NOT ALWAYS A DEFENSE

- **Education, Experience, Training, and Ability**
- **Job Classification Systems**
- **Market Factors**
- **Participation in Training Program**

SOME FACTORS OTHER THAN SEX - NOT ALWAYS A DEFENSE

- Part-time/temporary job status
- “Red Circle” Rates
- Revenue Production
- Shift Differential

REMEDIES & RELIEF

- **Back pay - Two years or if willful, three years;**
- **Liquidated damages unless employer acted in good faith;**
- **Compensatory/punitive damages recovered for retaliation under EPA not subject to statutory caps which apply only to claims under Title VII and ADA;**
- **Injunctive relief if EEOC action;**
- **Attorney's fees and costs.**



BEYOND THE EPA

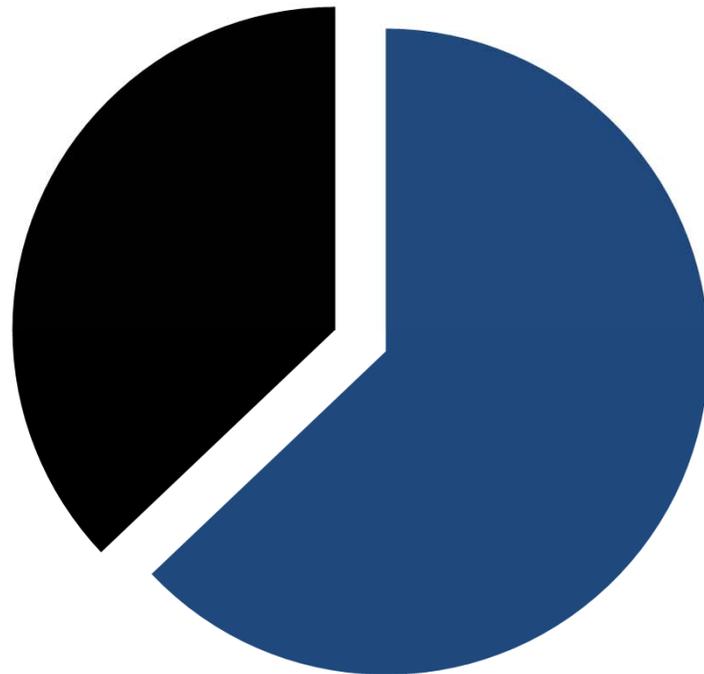
- In addition to the Equal Pay Act of 1963, EEOC enforces the following laws that prohibit wage discrimination based on race, sex (including pregnancy), religion, national origin, color, age (40 and above), disability, genetic information and retaliation.
 - Title VII of the Civil Rights Act of 1964
 - The Age Discrimination in Employment Act of 1967
 - Sections 501 & 505 of The Rehabilitation Act of 1973
 - The Americans with Disabilities Act of 1990
 - The Genetic Information Non Discrimination Act of 2008

PAY GAP - DEFINED

Pay gap is the difference in men's and women's median earnings, usually reported as either the earning's ratio between men and women or an actual pay gap

$$\text{Pay gap} = \frac{[\text{Men's median earnings} - \text{Women's median earnings}]}{\text{Men's median earnings}}$$

PAY GAP AT TIME EPA SIGNED



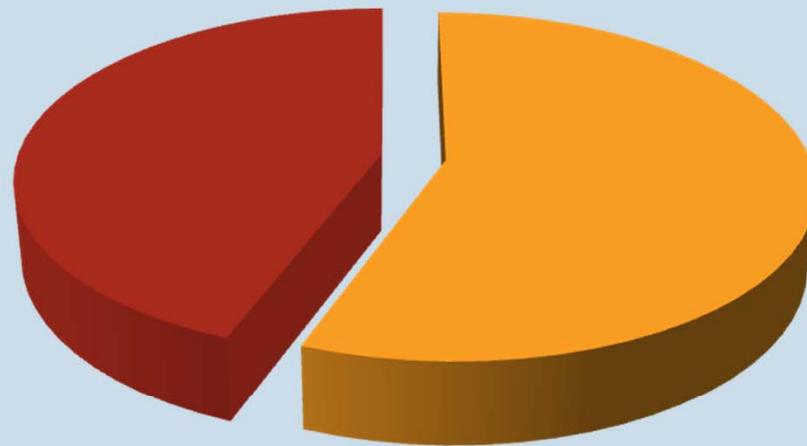
59%

Median Earnings

■ Males \$28,684

■ Females \$16,908

PAY GAP NOW



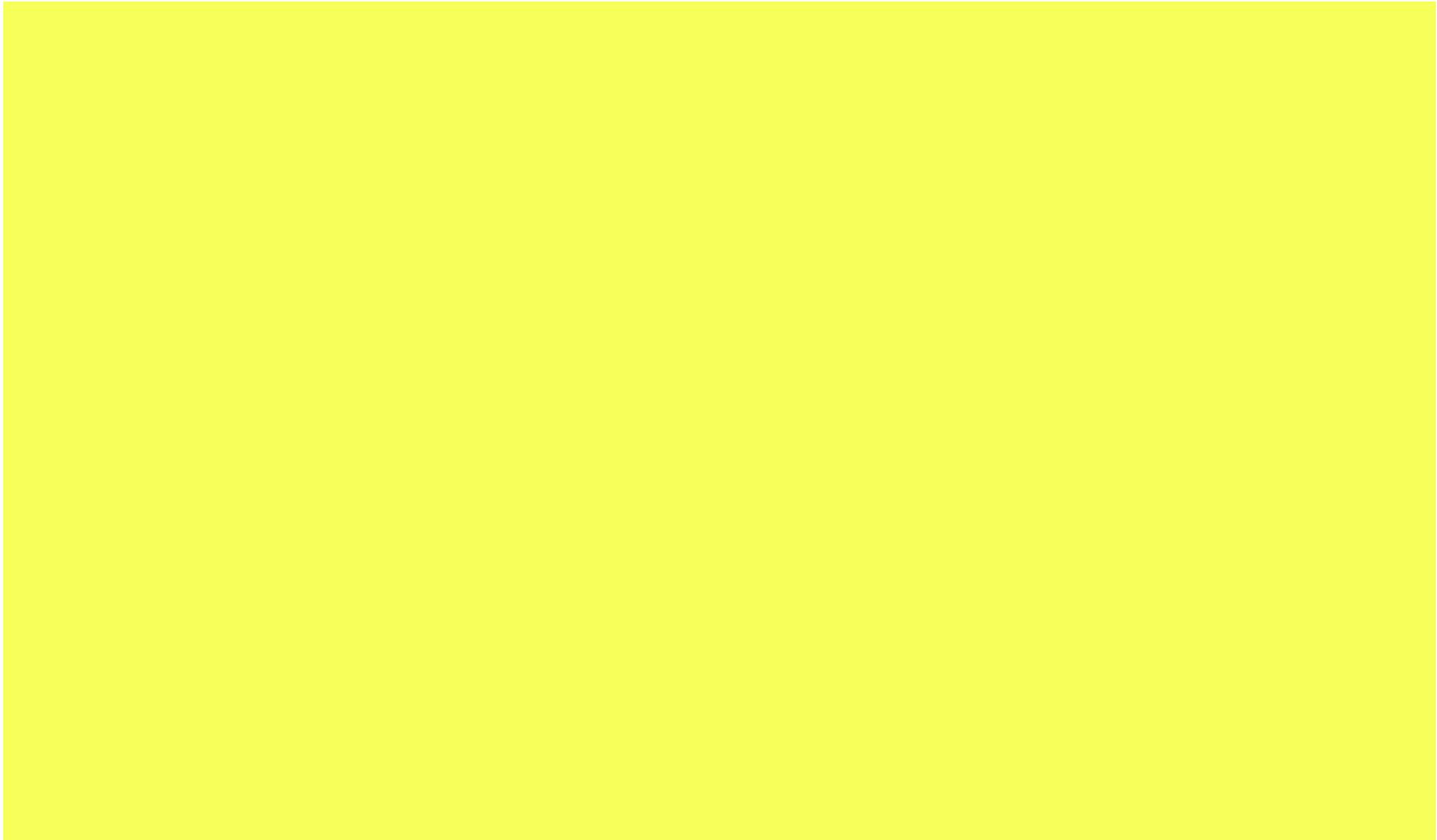
79%

Median Earnings

■ Male

■ Female

LEMONADE STAND: LESSONS IN EQUAL PAY FROM CORPORATE AMERICA



RECENT CENSUS DATA SHOWS

- Pay gap exists across race and ethnicity:

African American - 90%

Hispanic - 89%

Native Hawaiian - 88%

American Indian - 85%

Asian American - 79%

White - 78%



RECENT CENSUS DATA SHOWS

- Pay gap grows across age groups:

- 20-24 years - 92%
- 25-34 years - 90%
- 35-44 years - 81%
- 45-54 years - 77%
- 55-64 years - 76%
- 65 years + - 76%



RECENT CENSUS DATA SHOWS

- Female judges, magistrates and other judicial workers paid 71.8% of male counterparts pay
- Female legal support workers paid 73.7% of male legal support worker pay
- Median pay for full-time females lawyers 77.4% of pay earned by male counterparts
- Female paralegals and legal assistants earned 94% of male paralegal pay

STATE BY STATE COMPARISON

- Kentucky – women earn 20% less
- Indiana – women earn 25% less
- California and New York – Women earn 16% and 13% respectively less than male counter parts
- Smallest gap - Washington D.C. (women earn .90 cents for each \$1.00)
- Greatest gap - Louisiana (women earn .65 cents to each \$1.00)

FROM THE HEADLINES

- ***“5 Players accuse US soccer federation of wage discrimination”*** - Associated Press, March 31, 2016:
 - Women’s top soccer players had potential to earn \$99,000 dollars for winning all 20 exhibition games, while male top soccer players to be paid \$263,320 dollars for same feat
 - Female soccer players paid \$30,000 dollars each for making World Cup, while male soccer players paid \$68,750 dollars each
 - While women won their World Cup in 2015 earning collectively \$2 million dollars, men lost prior to championship game but earned collectively \$9 million dollars

FROM THE HEADLINES

- **“Why you should care about the Hollywood Wage Gap” - Money Magazine, Feb. 26, 2016**

- Jennifer Lawrence and Amy Adams paid significantly less for work in American Hustle than male co-stars Bradley Cooper and Christian Bale

- **Lessons learned from Hollywood wage gap:**

Earnings tend to peak for women earlier – between 34-39 - than for men who see wages rise steadily towards 50.

None of traditional justifications (i.e. job variances, absence from workforce for family caretaking, profitability of product) for wage-gap are applicable yet wag gap persists!

Does the wage gap mean that
women get to
leave work 23%
early today?



your  cards
someecards.com

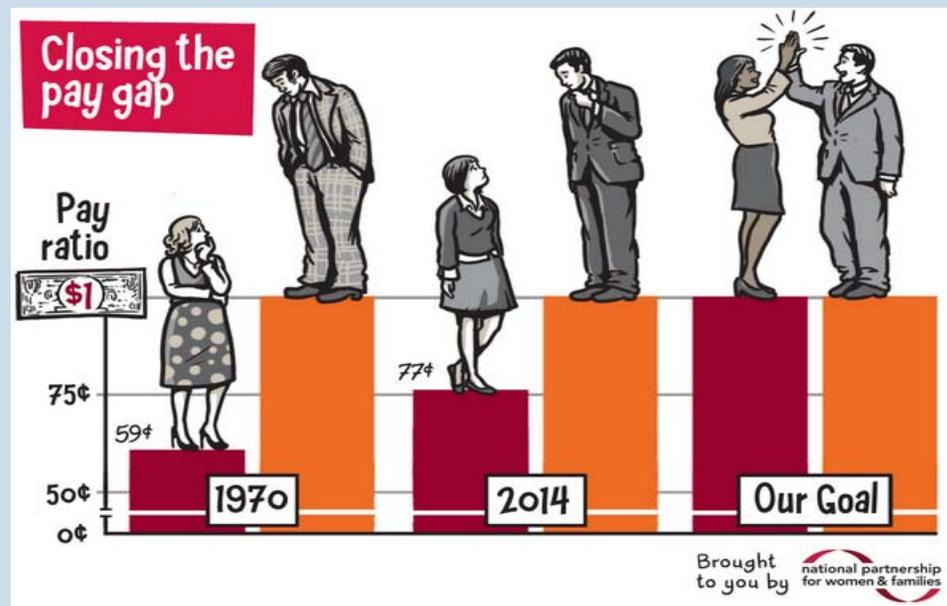
WHY DOES IT MATTER?

- Families increasingly rely on women's wages to make ends meet!
- Between 1967-2012, percentage of women who brought home at least a quarter of family earnings rose from less than 28% to nearly 63%.
- Retention of significant talent!



WHY DOES IT MATTER (*CON.'T*)

- Paying employees fairly improves worker morale and improved morale means increased productivity.



CLOSING THE GAP

IMPROVED TRANSPARENCY

- **Voluntary Audit/Monitoring by Employers**
 - **Salesforce** – lessened pay gap by reviewing payroll and adjusting salaries so that all employees in comparable rolls paid same amount
 - **Apple** – stated that it pays women and men equally
 - **Amazon** – stated that it pays women & men equally
 - **Microsoft** – reported pay gap only 2%
 - **Facebook** – touts equal pay

CLOSING THE GAP

IMPROVED TRANSPARENCY

EEOC Proposed EEO-1 Pay Data Collection:

- Employers, including federal contractors, with 100 or more employees would be required to submit summary pay data grouped by sex, race, and ethnicity.

PROPOSED EEO-1 PAY DATA COLLECTION:

- **Measures of pay used for proposed EEO-1 data collection =**
 - W-2 earnings, including wages and salaries and other compensation such as commissions, tips, taxable fringe benefits, and bonuses.
 - Number of hours worked, which helps account for part-time workers, workers with W-2's from multiple employers, and entries and exits.

PROPOSED EEO-1 PAY DATA COLLECTION:

- **Format used to report W-2 earnings =**
 - Tabulate and report the number of employees within each pay band.
 - Track pay bands used by the Bureau of Labor Statistics in the Occupation Employment Statistics survey - 12 bands total - (1) 19,238 and under through (12) 208,000 and over.

PROPOSED EEO-1 DATA COLLECTION

- **Why use pay bands to report compensation?**
 - Pay bands will generate reliable aggregated data to discern potential discrimination while preserving confidentiality.
 - HRIS software developers are already accustomed to using pay bands.
 - Reported pay data at the individual level would raise potential privacy concerns.

PROPOSED EEO-1 DATA COLLECTION

Will part-time or partial-year employment be taken into account in analyzing rates of pay?

Yes. By collecting data about hours of work and W-2 earnings, the proposed EEO-1 will allow the EEOC and OFCCP to take into account periods of time when employees were not employed or worked part-time.

PROPOSED EEO-1 PAY DATA COLLECTION

How will data on pay and hours be protected from public disclosure?

- Legal protections: Section 709(e) of Title VII, 42 U.S.C. 2000e-8(e) forbids EEOC or any EEOC officer or employee from making public any information, including EEO-1 data, before a Title VII proceeding is instituted that involves that information.
- EEOC only publishes aggregated EEO-1 data in a manner that does not reveal any particular employer's or employee's information.

PROPOSED EEO-1 DATA COLLECTION

How will data be collected?

- Beginning in 2017, all filers would be required to submit proposed EEO-1 report electronically.

ADDITIONAL RESOURCE

[http://www.eeoc.gov/eeoc/
publications/equal_pay_day.
cfm](http://www.eeoc.gov/eeoc/publications/equal_pay_day.cfm)

QUESTIONS ?

