EEOC

Equal Pay/Wages Workshop
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Sponsored by
Michigan Works! Association
EO Summit
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OUR VISION

A Strong and Prosperous Nation
Secured Through a Fair
and Inclusive Workplace

OUR MISSION

We Promote Equality of Opportunity in the Workplace and Enforce Federal Laws Prohibiting Employment Discrimination
The Equal Pay Act

Prohibits discrimination in wages for men and women performing substantially equal work under similar conditions in the same establishment.
Barack Obama signs the Lilly Ledbetter Fair Pay Act on Jan. 29, 2009
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.
Key Laws Enforced by EEOC

Title VII of the Civil Rights Act of 1964

Age Discrimination in Employment Act of 1967

Equal Pay Act of 1963

The Americans with Disabilities Act of 1990

Genetic Information Nondiscrimination Act of 2008
Employment Practices Which May Result in Prohibited Discrimination

- Hiring
- Firing, layoff, or not recalled to work
- Your Pay (wages, salary, compensation)
- Assignment or classification
- Transfer
- Promotion denied
- Job testing is unfair
- Recruitment and job ads
- Reasonable or religious accommodation
- Use of company facilities (segregation)

- Training and apprenticeship programs
- Benefits (fringe, retirement)
- Disability leave
- Other terms, conditions and privileges of employment
- No hire or mistreatment because of your association with someone from a certain race, religion, national origin, disabled, etc.
- No hire or mistreatment because of stereotypes or assumptions of your protected category
- Harassment (all protected categories)
Equal Pay Act/Title VII Interaction

- EPA is more targeted than other laws enforced by EEOC
- EPA is targeted only at pay discrimination between men and women
- Unequal pay claims based on sex may be brought under Title VII and EPA
- Title VII and EPA differ with regard to who is covered, who may file a charge, time limits for filing and remedies.
Why Focus on Equal Pay?

• Despite significant gains in labor force participation and educational attainment, women still are paid an average of only 77 cents for every dollar paid to men
• The gap is even greater for women of color and women with disabilities
• In 2009, there was an 11 cent wage gap between men and women in the federal sector workforce
Sex Based Wage Discrimination and the Wage Gap

• Forty-one percent of the wage gap cannot be explained by differences in experience, specific work performed, education, or other nondiscriminatory factors

• Since 1997, EEOC has received almost 33,000 charges alleging sex-based wage discrimination
What you need to know about federal compensation discrimination laws. . .
Title VII of the Civil Rights Act of 1964

Title VII prohibits practices that result in lower compensation on a prohibited basis (race, color, national origin, sex, or religion) for similarly situated employees

- **Disparate Treatment** - Intentional differences in compensation between, for example, men and women because of their gender

- **Disparate Impact** - Practices that have an adverse impact on compensation paid to women, if the practices are not job-related and consistent with business necessity
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;

- Paying part-time employees less on an hourly basis than their full time counterparts, which could disproportionately impact people on statutorily prohibited bases.
Theories of Discrimination

• Disparate Treatment
• Disparate Impact
• Harassment
• Religious or Reasonable Accommodation
• Retaliation
Disparate Treatment

• The Charging Party is a member of a protected group.

• Charging Party was treated differently (less favorably) than similarly situated individuals outside of the protected group.

  e.g., CP is paid less than others of the opposite sex who are similarly situated for the purposes of the employer’s wage & salary system.
Method of Proof
Establishing Disparate Treatment Using Indirect Evidence

• Whether Charging Party made out a PRIMA FACIE CASE

• Whether the employer has articulated a LEGITIMATE, NON-DISCRIMINATORY REASON for the employment decision

• Whether the employer’s stated reason for the employment decision was a PRETEXT
THE EQUAL PAY ACT
Equal Pay Act Coverage

• One person – the employer only need one employee in order to be covered by the EPA.

• One Claim: the EPA covers only sex-based wage discrimination

Who May File Under EPA?

• An Individual
EPA General Provisions

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

Forms of Compensation

- Hourly Wages
- Salary
- Overtime Pay
- Commissions
- Bonuses
- Premium Pay
- Vacation or Holiday Pay
What are Wages?

*Forms of Compensation*

- Company Car
- Medical, Accident, Life Insurance
- Retirement Benefits
- Stock Options, Profit Sharing, Bonus Plans
- Travel expenses, Expense Accounts
- Other benefits
“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.
EPA
PRIMA FACIE

• CP is paid lower wages than employee of the opposite sex for performing the same job (substantially equal work)
• Work requiring equal skill, effort and responsibility
• Work performed under similar working conditions
• Work performed within the same establishment
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?

- Historically, an establishment was defined as a single, distinct place.
- However, because of the computer revolution and differing work customs, the establishment may be expanded depending on the employer’s work customs.
- 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.
Employer Defenses

- Education, Experience, Training and Ability
- Seniority System
- Market Factors
- Prior Salary
- 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.
Not Employer Defenses

• Error

• Collective Bargaining Agreement
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.
Factors Other Than Sex/Gender

A difference in pay for night and day shifts may be justified as long as both men and women are allowed to work either shift.
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
- Opportunities for coordination with Partner Agencies
Subpoenas Under the EPA

• Headquarters approval is necessary to issue an EPA administrative subpoena

• Unlike Title VII, an employer cannot petition to revoke or modify a subpoena under the EPA
EPA Statute of Limitations

• Time limitations apply to filing a lawsuit, not filing a charge
• Two year statute of limitations
• Three years, if willful
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.
• CP may not intervene in an EEOC suit as to alleged EPA violations.
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
Unique Aspects of the EPA

- Directed Investigation – No charge required
- Subpoenas under EPA – employers cannot petition
- Statute of Limitations – 2 or 3 years to sue
  - Within 2 years of alleged unlawful compensation, or
  - Within 3 years, if willful violation
- EPA Coverage – business gross, not number of employees
- Direct Suit
- Retaliation
- Employer Defenses
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.
EPA Remedies and Relief

Remedies for wage discrimination violations include:

• Salary increase
• Back pay
• Attorneys fees and costs
• Liquidated damages (EPA only)
• Compensatory damages (Title VII only)
• Punitive damages (Title VII)
• Injunctive relief
Remedies

In correcting a pay differential, no employee’s pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.
Special Wage Discrimination Remedy Issues

- In EPA claims, raise the pay of the lower paid comparators to eliminate the discriminatory discrepancy, and provide backpay. If the EPA claim involves segregated job categories, raise the pay of all the employees in the lower paid category to an equal level and provide back pay.

- The employer cannot equalize an unlawful compensation differential by periodically paying the underpaid employees.

- Title VII permits recovery of compensatory and punitive damages in addition to back pay.
Special Wage Discrimination Remedy Issues (continued)

• EPA provides for liquidated damages at an amount equal to back pay unless Respondent proves that it acted in “good faith.”

• CP cannot obtain both liquidated damages under EPA and compensatory damages under Title VII for the same injury.

• Relief should be computed under both statutes if applicable and we should pursue the larger amount.

• Availability of EPA liquidated damages does not effect the availability of punitive damages under Title VII.
EEOC’s Process

1. Take complaint
2. Investigate
3. Make finding
4. Mediate

- Reasonable Cause
- Conciliate
- Litigate
- No Cause
- Private Suit
QUESTIONS?
Contact Information

For Outreach / Training
Contact:
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THANK YOU