

# Same job titles don't demand the same pay

**Issue:** Some employers wrongly believe that they must pay the same amount to employees with equal titles and duties.

**Benefit:** The Equal Pay Act's exceptions allow you to pay different amounts based on seniority, experience and plain old better work.

**Action:** Learn the difference between illegal gender bias and legal wage differentials.

While the Equal Pay Act prohibits wage discrimination against women, make sure you and your supervisors realize that it doesn't require every employee in the same position to earn the same salary. If you can point to factors other than gender (seniority, education, experience, skills, etc.), you can set radically different salaries for employees who hold the exact same job.

Still, it's smart to periodically check your compensation levels for inadvertent discriminatory patterns. For example, if all female line managers earn at the bottom of the pay scale and all male line managers earn toward the top, make sure you document the legal reasons why those differentials exist. (*See box below for list of legal reasons.*)

**Case in point:** HCA hired Shannon Balmer as a claims supervisor on the same day it hired a male applicant for the same job. Balmer earned a \$39,500 starting salary (an increase from her previous position) while the male employee started at \$50,800 (a decrease from his previous position).

Balmer complained about the disparity. Even after she earned a higher raise than others, she quit in disgust after a year and sued under the Equal Pay Act.

The court tossed out her lawsuit because the company was able to point to legal factors other than gender for the pay disparity. Specifically, the male employee had extensive experience at previous jobs (compared to Balmer's light experience) and he had a higher salary at his prior position. (*Balmer v. HCA*, No. 04-5688, 6th Cir., 2005)

## Legal reasons for pay disparities

*If you can point to one or more of the following reasons, usually you can successfully justify wage differentials between men and women doing the same job:*

**Seniority.** It's perfectly OK to pay more to loyal employees who have worked for your organization for years.

**Merit increases.** As long as you use neutral performance measures, you have nothing to fear from paying employees more for outstanding performance. Don't discriminate when assigning territories and clients; everyone should have an equal shot at success.

**Production and quality goals.** For example, if an employee routinely hits deadlines and has a low error rate, you can pay more.

**Factors other than gender.** You can also justify higher salaries based on education, training and other legitimate business reasons.