

# Basing pay on past salary alone may spark a legal claim

**Issue:** Employers often set new hires' wages, in part, based on salaries at previous jobs.

**Risk:** A new court ruling says you could run afoul of the Equal Pay Act if those past wages were restricted by gender bias.

**Action:** Base employees' wage levels on bias-proof factors, such as experience and production goals.

A surprising new court ruling says that if your organization uses a common pay practice, setting new hires' salaries based on their past pay, you could be violating the Equal Pay Act (EPA).

The ruling gives you added reason to base new employees' salaries on tangible factors beyond previous wages (including experience, education, responsibilities and production goals).

In an increasing number of EPA cases, women have claimed that their former employers depressed their salaries based on sex discrimination. Now, you (the new employer) are perpetuating that discrimination by basing starting salaries on bias-stained levels.

**Case in point:** When a woman took a job at an Illinois state agency, her salary was 30 percent higher than her past job. Sounds great, right? The problem: A male who started the same job on the same day was paid much more than her.

Why? The agency bases its starting pay on employees' salaries at their past jobs. The new male employee had been paid much more at his last position. The woman filed an EPA lawsuit.

She lost on a technicality, but the court practically invited other women to file such lawsuits, saying, "If sex discrimination led to lower wages in 'feeder' jobs,' then using those wages as the base for pay ... would indeed perpetuate discrimination and violate the Equal Pay Act." (Wernsing v. Illinois Department of Human Services, No. 04-2225, 7th Cir., 2005)