

Same job, different pay: Is that legal?

Q. We have two employees who have the same job title, job description and functions. We pay one a flat salary (\$120,000). We pay the other a base salary plus a fixed rate for hours that are billable to the customer (\$70,000, plus \$20 for every billable hour). Can we do this or should their salary structures be identical? — T.L., Tennessee

A. As a general rule, it's a good idea to strive for consistency in your treatment of similarly situated employees. Whenever employees in seemingly identical positions are treated differently, it leaves an employer vulnerable to claims that the motivation for the different treatment is unlawful. This could be especially problematic if the individual on the lower end of the pay spectrum is a member of a protected class.

That said, the general principle favoring consistency in employment practices is not a hard-and-fast rule. You may have legitimate business reasons for treating the compensation of these two employees differently.

I'd encourage you to document the reasons behind the different salary structures. If you don't place the employees on the same compensation program, at least collect the data to show that the disparate treatment is justified for nondiscriminatory business purposes.