

Are you in compliance with the Equal Pay Act?

Complying with the Equal Pay Act of 1963 is quite simple because the law itself is straightforward. Employers cannot pay different wages on the basis of gender for “equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions....” Women must also receive the same level of benefits as men.

Although the EPA has been in effect for more than a half-century, men and women performing the same jobs often still receive different salaries.

Answer the following questions to see if your organization’s policies violate the EPA:

- Are women and men differently compensated for doing similar work, discounting variations based on credentials or experience?
- Does your wage classification system differentiate between “male” and “female” workers?
- Do you use “head of household,” “head of family” or “principal wage earner” classifications to justify higher pay or different benefits?
- Do you use a collective bargaining agreement to justify unequal rates?
- Do you provide different benefits based on gender?
- Does your retirement plan differentiate on the basis of gender in optional retirement ages?

If you answered “Yes” to any of these questions, you may have a hard time defending an action brought against you under the Equal Pay Act.

Be ready to explain any unequal pay

The Equal Pay Act requires employers to pay men and women the same for performing equal work.

Watch out when offering a new hire more money than someone currently holding the same job. If the incumbent is of the opposite sex, you had better have solid documentation explaining exactly why the newcomer deserved more money.

Under the EPA, employers have some latitude to pay some employees more than others. The reason must be something other than differing genders.

However, if the lower-paid employee sues, that defense disappears if you can’t provide any documentation showing why you offered more.

Recent case: Martha holds Texas and Oklahoma medical license, a pharmacist license and several specialty certifications. She worked for Denton County, providing primary care at the county clinic and in the county jail.

When she was hired full-time in 2009, she was offered a starting salary of \$120,000. By 2015, she was earning \$135,695.

Then the county hired another primary-care physician, a man. It offered him a starting salary of \$170,000. Martha found out about the discrepancy after a local newspaper published an article listing the 10 highest paid employees working for the county. She complained to management.

About a year later, the county terminated Martha, allegedly for disruptive behavior.

She went to the EEOC, which sued on her behalf.

Unfortunately for the county, it could not produce any evidence to show it offered the male doctor more money for any reason other than sex. It merely proclaimed that he was worth more.

That didn't cut it with the court, which entered a judgment for Martha, ordering the county to give her \$115,000 in underpaid wages. (*EEOC v. Denton County*, ED TX, 2018)