An Employer's Guide to Equal Pay

Women's Bureau
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Abstract
[Excerpt] This guide is designed to help employers understand the primary federal laws that govern equal pay and compensation, provide tips to monitor pay practices and identify resources to help ensure compliance with those laws.

Keywords
pay equity, gender, wage gap, earnings

Comments
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Our Nation’s workforce includes more women than ever before. Working women comprise almost half of the U.S. labor force and are a growing number of breadwinners in their families. More women are also working in positions and fields that have been traditionally occupied by men. Despite continued progress toward gender equality in the workplace, there still exists a significant earnings gap between women and men. The gap is larger for minority women and women with disabilities.

The gender earnings gap persists even when variables such as experience, education, industry and hours worked are controlled. Many economists have concluded that some – or all – of the remaining gap may be due to pay discrimination based on sex. Equal pay is not just a women’s issue. American families, our communities and the entire economy suffer as a result of this continuing pay disparity.

This guide is designed to help employers understand the primary federal laws that govern equal pay and compensation, provide tips to monitor pay practices and identify resources to help ensure compliance with those laws.

MAJOR LAWS AFFECTING EQUAL PAY
There are five major federal laws addressing equal pay and compensation.

➤ Under the Equal Pay Act, all employers must pay equal wages to women and men in the same establishment for performing substantially equal work. The law covers jobs that require
substantially equal skill, effort and responsibility and
are performed under similar working conditions. The
law covers all forms of pay, including salary, overtime
pay, bonuses, stock options, profit sharing and bonus
plans, life insurance, vacation and holiday pay, cleaning
or gasoline allowances, hotel accommodations,
reimbursement for travel expenses and benefits. Unequal
compensation can
be justified only if the
employer shows that
the pay differential
is attributable to a
fair seniority, merit or
incentive system, or a
factor other than sex.

➤ Title VII of the Civil
Rights Act of 1964 (Title
VII) prohibits employers
with at least 15 workers
from discriminating
against their employees
on the basis of their
race, color, religion,
sex or national origin in all terms
and conditions of their employment,
including pay. In addition to prohibiting
different pay for men and women
doing the same or similar job, Title
VII prohibits the pay discrimination
that results from steering women into
lower-paying jobs, unfairly denying
them promotions and other forms of
discrimination that can impact pay.

➤ Both the Equal Pay Act and Title
VII are enforced by the U.S.
Equal Employment Opportunity
Commission (EEOC). Many states
and cities have similar fair employment practices
agencies, which enforce state and local laws that
prohibit employment discrimination. Some of these
laws cover employers with fewer than 15 employees.

➤ The Lilly Ledbetter Fair Pay Act of 2009 clarifies
that each paycheck containing discriminatory
compensation is actionable under Title VII. Under the
act, an employee has up to 180 days (or 300 days in
jurisdictions that have a local or state law prohibiting
compensation discrimination on the same basis) to file a
charge with the EEOC after the employer’s most recent
paycheck that reflects
unequal wages in violation
of Title VII.

➤ Executive Order
11246 prohibits federal
contractors, federally-
assisted construction
contractors and federal
subcontractors from
discriminating in
employment decisions,
including compensation,
on the basis of race, color,
religion, sex or national
origin, when these
entities’ contracts
or subcontracts exceed $10,000.

➤ The National Labor Relations Act
(NLRA) protects the rights of most
private sector employees to join
together, with or without a union, to
improve their wages and working
conditions. Section 7 of the NLRA
prohibits employers from retaliating
against their non-supervisory
employees covered by the act for
discussing their wages or working
conditions with their colleagues as
part of an effort to improve their
working conditions, even if there is no union or formal
organization involved in the effort. These employee
rights are enforced by the National Labor Relations
Board (NLRB).
LISTEN to what your managers and employees are saying. The following types of statements can be red flags telling you to review your pay practices:

- "It is not our fault if they are bad negotiators for their own salaries."
- "We should be able to pay our workers what we want to pay them."
- "We can’t talk about pay at work."
- "I assume everything is fair because no one is complaining."
- "I’m not sure who checks our compensation system for equality, but I know it’s not me."
- "I’m not exactly sure what was used to decide this salary."

LOOK at Whether and How You Monitor Your Pay Practices

- Designate individuals who will be responsible for monitoring pay practices and reviewing your compliance with federal, state and local anti-discrimination laws.
- Evaluate your compensation system at least annually for potential pay disparities based on race/ethnicity and gender.
- Evaluate all forms of compensation (starting salary, benefits, bonuses, shift differentials, overtime, training opportunities, separation pay, etc.).
- In addition to an annual assessment, throughout the year conduct periodic “spot” checks for potential compensation problems.

INCREASE TRANSPARENCY IN COMPENSATION

You may want to consider an open pay policy. An open pay policy allows workers to know how much their colleagues are earning. Such a policy can:

- Stop speculation about pay—workers will know they are being paid fairly.
- Make it clear that top performers are rewarded, which creates an incentive to work harder.
- Stop meritless complaints about unequal pay.
- Identify pay disparities so they can be fixed.

In addition to an annual assessment, throughout the year conduct periodic “spot” checks for potential compensation problems.

- Correct problems as soon as they are discovered.
- Conduct regular equal employment opportunity training on compensation to increase awareness.
- Evaluate how you assign your employees to specific jobs:
  - Focus on job recruitment, placement and how pay is assigned to job classes.
- How are women and minorities placed in your workforce? Do you make assumptions about what they can or cannot do?
- Does your hiring process seek diversity in the qualified applicant pool?
- Do you offer career training or opportunities for both genders?
- Evaluate whether all workers have equal opportunity for advancement.
- Evaluate how pay raises and bonuses are determined to ensure that decisions are made in a non-discriminatory manner.
- Performance evaluations can impact pay. Periodically review your performance evaluation process and the ratings given to each employee to determine whether the process or the ratings unfairly disadvantage women, or any other protected class.
ASK FOR HELP
The previous examples and suggestions are only a starting point. There is no one correct way to conduct an appropriate evaluation of compensation practices for potential discrimination. Achieving legal compliance and a truly fair and equitable compensation system cannot be reduced to a checklist. You can obtain further compliance assistance from the resources listed below.

WHERE TO GO FOR HELP
U.S. Department of Labor
Phone: 1-866-4-USA-DOL
(TTY: 1-877-889-5627)
Web site: www.dol.gov

Women's Bureau
Phone: 1-800-827-5335
Web site: www.dol.gov/wb

Office of Federal Contract Compliance Programs
Phone: 1-800-397-6251
(TTY: 1-877-889-5627)
Web site: www.dol.gov/ofccp

U.S. Equal Employment Opportunity Commission
Phone: 1-800-669-4000
(TTY: 1-800-669-6820)
Web site: www.eeoc.gov

National Labor Relations Board
Phone: 1-866-667-6572
(TTY: 1-866-315-6572)
Web site: www.nlrb.gov