

# U.S. Equal Employment Opportunity Commission

Compensation Discrimination



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**Enforces federal civil rights laws regarding equal employment opportunity**



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## What Laws are Enforced?

- > Title VII of the Civil Rights Act of 1964
- > Equal Pay Act of 1963
- > Age Discrimination in Employment Act of 1967
- > Civil Rights Act of 1991
- > Title I – Americans with Disabilities Act of 1990

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## COVERED ENTITIES

include:

### SEC. 12111

- > Employers with 15 or more employees
- > Labor Organizations
- > Employment Agencies
- > Joint Labor-Management Committee
- > State and Local Governments

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## Filing Time Limits

Statute	Deferral Jurisdiction	Non-Deferral
Title VII	300 days	180 days
ADA	300 days	180 days
ADEA	300 days	180 days
EPA	No Referral	3 years

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## Discrimination is:

- Treating someone differently because of the person's race, sex, religion, national origin, age, or disability.
- Excluding a group of people through an employment practice that weeds them out at a higher rate than non-group members.

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 Overview of the Lilly Ledbetter Fair Pay Act 

- Signed by President Obama on January 29, 2009.
- Compensation discrimination claim is timely as long as at least one discriminatory paycheck was received within the filing period.
- Restores EEOC's position prior to Supreme Court's Ledbetter decision.

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 Retroactivity 

- Effective date of May 28, 2007 (day before Ledbetter decision)
- Applies to claims pending on or after May 28, 2007

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 Scope of the Act 

- Applies to Title VII, ADEA, and ADA
- Applies to all forms of compensation
  - Wages, bonuses, health insurance, pension benefits, etc.

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## Compensation Decisions and "Other Practices"



- Applies to discriminatory compensation decision or other discriminatory practice affecting compensation
  - Pay-setting decision
  - Performance appraisals
  - Job classification
  - Career ladder promotion

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## THE EQUAL PAY ACT DECEPTIVE Deceptively Simple Statute

### Designed to remedy Sex-Based Unequal Pay

- ✓ Often takes employers and their attorneys by surprise
- ✓ Places employers in position of having to prove that pay differential was not based on sex
- ✓ Different administrative process compared with Title VII

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## Equal Pay Act v. Title VII

- ✓ Wage Discrimination Only v. Other Sex Discrimination Issues (Promotion, Harassment)
- ✓ No Proof of Intent v. Proof of Intent
- ✓ No Administrative Prerequisites v. Administrative Prerequisites
- ✓ Burden Shifts to Employer v. Burden remains with Employee
- ✓ Statute of Limitations v. EEOC Charge Filing Period
- ✓ Employee's Gender v. Race, Age, Religion, etc.
- ✓ Double Damages v. Compensatory & Punitive

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### What constitutes wages?

The Equal Pay Act defines “wages” broadly to include all forms of compensation.

Fringe benefits, such as medical, hospital, accident, life insurance, and retirement benefits, bonus plans and leave are covered and may not be administered in a discriminatory manner.

29 C.F.R. 1620.11

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### Prima Facie Case

- ✓ Must produce evidence that substantially equal work was performed for unequal compensation.
- ✓ Jobs are equal if their performance requires equal skill, effort, and responsibility and they are performed under similar working conditions.
- ✓ Should rely on actual job performance and content rather than job descriptions, titles, or classifications.

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### SKILL, EFFORT, & RESPONSIBILITY

- ✓ Skill = Factors such as experience, training, education, and ability
- ✓ Effort = Measurement of physical or mental exertion in the performance of a job
- ✓ Responsibility = Degree of accountability required in the performance of a job
- ✓ **EQUAL DOES NOT MEAN IDENTICAL!**

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## AFFIRMATIVE DEFENSES UNDER THE EQUAL PAY ACT

- ✓ A seniority system
- ✓ A merit system
- ✓ A system which measures earnings by quantity or quality of production
- ✓ A differential based on any other factor other than sex.

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## Employer Responses to EPA Claims: Good, Bad or Ugly?

- Lower the comparator's salary
- Emphasize that the complainant is not performing certain tasks (that she has not been allowed to perform)
- Fire the comparator to terminate back pay liability
- Make bottom-line compensation equal
- Fire the complainant (who needs that troublemaker?)

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## Retaliation: Second Chance to Violate EPA

- ✓ It shall be unlawful for any person - ... to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding...
- § 29U.S.C. §215(a)(3)

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