



# EMPLOYEE COMPENSATION AND EQUITY ISSUES

Presented by Dennis Carpenter, Chief Counsel, Employment Law Section  
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\*This presentation does not constitute an official opinion of the Arizona Attorney General.

# Learning Objectives



- Introduction to the Equal Pay Act of 1963
- Learn definitions of “substantially equal work in the same establishment
- Learn about the employer’s defenses to allegations of Equal Pay Act violations
- Learn about other federal discrimination laws that impact pay equity

# The Equal Pay Act of 1963

- Adds a provision to the Fair Labor Standards Act in the “minimum wage” section requiring that men and women be given equal pay for equal work “in the same establishment.” *29 USC § 206(d)*
- Stated purpose is to “prohibit discrimination on account of sex in the payment of wages by employers.” All public employers added in 1974.

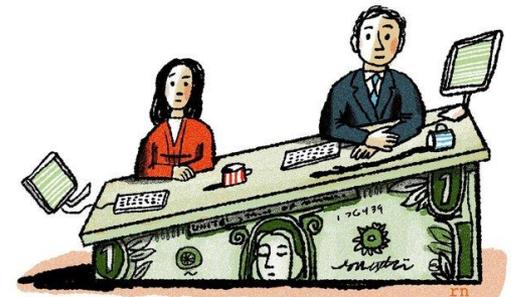
# Wages = Total Compensation

- All forms of compensation constitute the “wages” of the employee
  - Hourly pay
  - Salary
  - Overtime pay
  - Commissions
  - Bonuses
  - Premium Pay



# Equal Pay Act: What is “Equal Work”?

- Jobs don’t have to be identical; equal work is where jobs are “substantially similar.”
- What is “substantially similar?”
  - Share “common core” tasks
  - Require substantially equal skill, effort, and responsibility and are performed under similar working conditions
  - Are in the same establishment



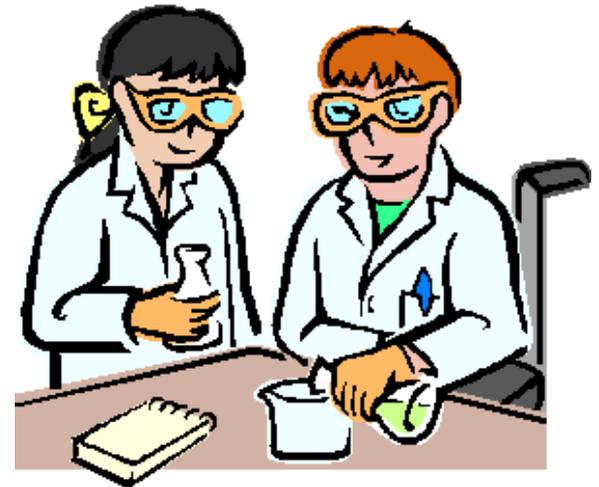
# “Substantially Similar”: Do the jobs share “common core tasks?”

- When comparing the jobs of employees we ask: is a significant proportion of the tasks the same?
- Does the comparator’s job involve extra duties?
  - If so, are they substantial?
    - Extra duties that are insignificant will not render the jobs unequal.



# “Substantially Similar”: Do the jobs require substantially equal skill?

- Skill =
  - Experience
  - Ability
  - Education
  - Training required to perform the job



# “Substantially Similar: Do the jobs require substantially equal effort?”

- Effort is measured by the amount of physical or mental exertion needed to perform the job.



# “Substantially Similar”: Do the jobs require equal responsibility?

- Work done without supervision
- Supervisory functions
- Impact of functions on the business (ex.: financial accountability)



# “Substantially similar”: Do the jobs require equal working conditions?

- Physical surroundings and hazards
- Intensity of environmental elements
- Number and frequency of physical hazards and severity of potential injury



# What is the same establishment?

- Normally, a single distinct place of business
- But this may be expanded based on worker's practices



# Four affirmative defenses exist for employer differences in wages

- Seniority system
- Merit system
- Incentive system
- Any other factor other than sex/gender

# Seniority System

- Length of employment
- A difference in pay based on a seniority system is permitted as long as it is –
  - based on predetermined criteria,
  - has been communicated to employees, and
  - is applied consistently and even-handedly.





# Merit System

- Job performance
- A difference in pay based on a merit system is permitted as long as it is –
  - based on predetermined criteria,
  - has been communicated to employees, and
  - is applied consistently and even-handedly.

# Incentive System: Quality or Quantity of Production

- A difference in pay based on an incentive system is permitted if it is –
- Based on a predetermined criteria
- Has been communicated to employees, and
- Is applied consistently and even-handedly.



# Factors Other than Sex (FOS)

- Employers may offer higher compensation to applicants and employees who have
  - Greater education
  - Experience
  - Training, or
  - Ability
- But only where the qualification is related to job performance or otherwise benefits the employer's business.



# Factors Other than Sex, cont.

- Night differential
- Training program
- Job classification
- Market valuation
- Part-time status



# Other discrimination laws and pay equity

- Title VII (Civil Rights Act)
- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)

Prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

# Other discrimination laws and pay equity

- Unlike EPA, no requirement that claimant's job be substantially similar to that of a higher paid person or that the claimant works in the same building.
- But claimant must show they are "similarly situated" and must show intent on the part of the employer.
- Compare to EPA, where no discriminatory intent need be proven against employer. Instead, claimant must prove that employer had no legal defense to compensation inequity.

# Questions?