

# Equal Pay for Equal Work

## *Guidance for DOL Employees*

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The Equal Pay Act of 1963, amending the Fair Labor Standards Act, protects against wage discrimination based on sex.<sup>1</sup> The Equal Pay Act (EPA) protects both men and women.

All forms of compensation are covered, including salary, overtime pay, bonuses, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between men and women who perform substantially equal jobs, employers must raise wages to equalize pay but may not reduce the wages of other individuals.

### What is Required to Substantiate an Equal Pay Act Claim?

There are several elements that must be met in compensation discrimination complaints under the Equal Pay Act. The jobs being compared must require substantially equal skill, effort, and responsibility and be performed under similar working conditions within the same establishment.

**Skill:** Measured by factors such as the experience, ability, education, and training required to perform the job. The issue is what skills are required for the job, not what skills the individual employees may have.

**Effort:** The amount of physical or mental exertion needed to perform a job.

**Responsibility:** The degree of accountability required to perform the job.

**Working Conditions:** This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation; and (2) hazards.

**Establishment:** The prohibition against compensation discrimination under the EPA applies only to jobs within an establishment. An establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business. In some circumstances, physically separate places of business may be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to separate work locations, the separate work sites can be considered part of one establishment.

“Equal” work does not mean identical jobs; rather, they must be “substantially equal” in overall job content, even if the position titles are different. In order to be considered substantially equal, the job duties must be “closely related” or “very much alike.” Thus, minor differences in the job duties, or the skill, effort, or responsibility required for the jobs will not render the work unequal. An agency may have a defense if compensation is based on a seniority system, merit system, systems which measure earnings by quantity or quality of production, or any factor other than sex.

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<sup>1</sup> Since passing the EPA, Congress has expanded federal protection against compensation discrimination through additional laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA) of 1967, and Section 501 of the Rehabilitation Act of 1973. These laws also prohibit compensation discrimination on the bases of race, color, national origin, religion, sex (including pregnancy, childbirth and related medical conditions, transgender status, gender identity, sexual orientation and sex stereotyping), age (over 40), marital status, political affiliation and disability. However, these laws have different filing deadlines and standards of proof from the Equal Pay Act, and may not grant Equal Employment Opportunity Commission (EEOC) appeal rights in some cases.

## Reporting Violations

A DOL employee who believes that they have an equal pay claim should contact an Equal Employment Opportunity (EEO) counselor at the Civil Rights Center (CRC) within 45 days of the event or action they believe is discriminatory. Under the Lilly Ledbetter Fair Pay Act of 2009, however, the 45-day requirement to contact an EEO counselor is renewed each time an individual is allegedly paid wages, benefits, or other compensation less than someone from another protected class performing substantially similar duties.

A federal employee also has the right to file an EPA suit in federal district court without exhausting internal administrative remedies. The time limit for filing an EPA case in court is two years from the day the last discriminatory paycheck was received or, in the case of a willful violation, within three years. Filing a complaint with CRC under the EPA does not extend the time limit for filing in federal district court.

Any individual who files an equal pay claim, or assists an individual in filing an equal pay claim is protected against unlawful retaliation by their employer. This protection extends to unlawful retaliation by an employer against an individual for opposing employment practices that allegedly discriminate based on compensation or for filing a discrimination complaint, testifying, or participating in any way in an investigation, proceeding, or litigation under the Equal Pay Act. For purposes of complaints filed with CRC, unlawful retaliation is defined as an adverse employment action by the employer, such as demotion or termination, which is harmful to the point that it could discourage or dissuade a reasonable worker from making or supporting a complaint of discrimination.

## Resources

To file a complaint with CRC:

- Names of EEO counselors appear on posters in DOL buildings, and on DOL's LaborNet website.
- An aggrieved individual may contact the Civil Rights Center (CRC) at:
  - Phone: (202) 693-6500;
  - Federal Relay Service TTY/TDD: (800) 877-8339;
  - Video Relay (877) 708-5797;
  - Email: [CRC-INFORMAL-COMPLAINTS@DOL.GOV](mailto:CRC-INFORMAL-COMPLAINTS@DOL.GOV)

For additional information on the federal sector EEO process in general:

- CRC website: <https://www.dol.gov/oasam/programs/crc/internal-enforcement.htm>
- EEOC website: [http://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)

For additional information on equal pay claims generally, see:

- EEOC page on equal pay and compensation discrimination <http://www.eeoc.gov/laws/types/equalcompensation.cfm>.
- EEOC Questions and Answers About the Equal Pay Act, [http://www.eeoc.gov/eeoc/newsroom/wysk/qanda\\_epa.cfm](http://www.eeoc.gov/eeoc/newsroom/wysk/qanda_epa.cfm)
- EEOC: Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009, [http://www.eeoc.gov/eeoc/publications/brochure-equal\\_pay\\_and\\_ledbetter\\_act.cfm](http://www.eeoc.gov/eeoc/publications/brochure-equal_pay_and_ledbetter_act.cfm)