

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
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Employment Law Corner: Pay Equity

What does it mean?

One of the most important topics in the gender equality space is equal pay. Advocates differ on what it means but as far as the federal law is concerned, it means equal pay for equal work.

You may wonder, if there is a federal law on equal pay, then why are people still talking about it?

Turns out the federal law offers some protections but just doesn't go far enough to rectify the problem. Women, especially women of color, still make less than men. We'll give you the rundown of expectations and obligations under Federal and State equal pay laws.

Federal v. State:

Under Federal law, three laws come into play: The Equal Pay Act (passed in 1963), the Lilly Ledbetter Fair Pay Act (passed in 2009), and Title VII (passed in 1964). All these laws were a great start, but as far as implementation, they created a very loose standard that many employers can get around. The law requires equal pay for equal work and if there is a difference in pay, as long as the reason isn't based on gender, it is permissible. The word "equal" does not require that the jobs be identical, only that they are substantially equal. The EEOC looks at whether both jobs require the same skill, effort, and responsibility.

To put it in plain English, if the reason you are paying two employees differently is because one likes Star Trek and the other likes Star Wars, that would be legal.

Because of this loose standard, states have come up with their own equal pay acts to strengthen the definitions around "equal work" and to limit the defenses for a violation. Currently, only North Carolina hasn't passed their own state specific Equal Pay Law. Every other state has stronger definitions and fewer defenses than federal law. Let's look at what those are.

Helpful Definitions:

Comparable Work: Many states have changed the definition of equal pay for equal work to equal pay for comparable work. This broadens the groups that employers look at in figuring out whether there is a difference in pay. Comparable work under most statutes means the position requires substantially similar skill, effort and responsibility and is performed under similar working conditions. The addition here is “under similar working conditions.” For example, entry level positions in a company might be grouped together depending on their tasks and how it meets up with the definition within the law.

Defenses: Federal law uses “any factor other than sex.” State laws state that the only reason for the difference can be seniority, merit system, quantity or quality of work, geographic location, or education, training, or experience. If the reason for a pay disparity doesn’t fall into one of those categories, it’s a violation of the law. Some of these defenses are less or Depending on the specific state law, there may be more or fewer defenses so be sure to look at your respective state(s).

Pay History: Most states include a prohibition on requesting pay history from an applicant until after an offer is made as a part of their equal pay law. The laws look to remove salary information from the offer to prevent the wage gap from continuing.

Pay Secrecy: Under the NLRA it is already a violation to prohibit employees from talking about their wages. In most states, their equal pay laws have addressed this issue as well. You cannot prohibit employees from discussing wages with one another, which applies to all employees-- exempt, non-exempt, supervisors and non-supervisors.

What You Should Do:

If you’ve already created a pay grade system within your organization, great! Take another look at it and ensure that the jobs are grouped according to comparable work rather than equal work. The next step is to look at the employee’s pay based on gender to determine if there are any inequities. You may be surprised at what you find with this analysis.

If you haven’t created a pay grade system, we highly recommend doing so. This is a fantastic way to begin organizing your pay system and avoiding equal pay issues.

We can help!

We have **two great services** that will address pay inequality issues and provide the level of service you need:

Turnkey Pay Equity Audit Service: This Audit Services provides a thorough evaluation of your current pay scale, grades, ranges and differentials and will include a report of the analysis, recommendations, and opinion, to create any available affirmative defense under state-specific or federal rule.

Affirmative Defense Audit & Report Service: This Audit Service provides an analysis and recommendation report based on your self-audit assessment of wage differentials to create any available affirmative defense under state-specific law.

Our services have been drafted and refined based on client needs over the years. They are fixed fee and we do the heavy lifting on compliance. You do not have to keep up with state, federal and even local regulations because we do.

Who We Are:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That is easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **Foley & Foley PC attorneys specialize in Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com).**

Meet Wendy Hansen

Wendy brings a broad range of employment law skills to our team. She is the Practice Leader of the Employment Counsel On-Call Triage Service which services thousands of clients across the country. She has experience in handling a variety of questions and claims in employment law, including: FMLA, ADA, FLSA, criminal background checks, medical marijuana, wrongful termination, and harassment.

Wendy is the firm's Organizational Restructure and Reduction in Force Practice Leader and the FMLA and State-Specific Leave Law subject matter expert. She is also the lead for the firm's Education and Training Practice and has hosted and conducted hundreds of webinars for clients, covering topics and trainings for HR personnel, supervisors and mid-level managers; and standard employees.

For more info, check out her bio **here!**



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