



Employers Take Heed: The EEOC Is Cracking Down On Pay Discrimination

Insights

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Equal pay for equal work is a hot topic for employers. In the last few years, several states have passed equal pay laws, while the Equal Employment Opportunity Commission (EEOC) is paying more attention to equal pay issues on the federal level as reflected in recent enforcement actions. Just last month, the EEOC filed two gender-based pay discrimination suits in Maryland federal court, alleging in one suit that a security company compensated male guards at a higher rate than women and in a second suit that an asset dealer paid a female manager less than her male subordinates. The agency's increased attention on employers' equal pay obligations should serve as a wakeup call to employers to ensure that their pay practices pass muster.

The Lawsuits

In *EEOC v. Davis & Davis Enterprise, Inc., T/A All Security Group Company*, the EEOC alleges that a Baltimore-based employer, Davis & Davis, paid its male security guard employees more to work at concert events than their female counterparts. In its complaint, the agency details work performed at various concert events by 11 female security guards, who were paid on a flat-fee basis by the defendant, typically \$72 per event. In contrast, according to the complaint, male guards working the same events were consistently paid a higher flat rate, usually around \$100 per event.

The EEOC also asserts that all of the guards performed "equal work, involving equal skill, effort, and responsibility, under similar working conditions," which included "wandering concert attendees; inspecting purses and bags; and managing crowd control at entrances and down at the stage." The complaint includes claims against Davis & Davis for sex discrimination under Title VII and for violation of the Equal Pay Act.

In *EEOC v. Asset Strategies International, Inc.*, the agency alleges that asset dealer Asset Strategies, which specializes in "precious metals, foreign currency, and rare tangible assets," paid a client relations manager less than two non-management male employees. According to the EEOC, Rockville-based Asset Strategies hired former employee Teri Lee as a Preferred Client Relations Representative in May 2015 at an annual salary of \$32,000 and increased her salary to \$35,000 within six months.

In April 2016, Asset Strategies promoted her to Assistant Preferred Client Relations Manager and added administrative, training, and supervisory duties for up to eight people to her sales duties. The company increased Lee's salary initially to \$40,000 a year, and her manager promised her an

increase to \$45,000 if she performed well. Despite what she considers to be excellent performance on her part, she only received a \$3,000 raise in May 2017.

Meanwhile, according to the complaint, the company hired two male Preferred Client Relations Representatives between March 2016 and June 2017 at annual salaries of \$45,000 and \$55,000. Lee trained both representatives, neither had prior experience selling the assets sold by Asset Strategies, and Lee's position required greater skill, effort, and responsibility. Based on those allegations, the EEOC argues that Asset Strategies' decision to pay Lee lower wages than male employees violates the Equal Pay Act.

Takeaways

All employers should be on notice that the EEOC is paying more attention to equal pay issues. It is now devoting resources to suing employers in cases where businesses have seemingly failed to meet their obligation to pay male and female employees comparable wages when performing equal work under similar work conditions (or, in the case of Asset Strategies, purportedly paying a female employee lower wages than male employees to perform more demanding work).

In some states, employers have additional obligations. For example, Maryland employers are also covered by the Maryland Equal Pay for Equal Work law, which prohibits pay discrimination on the basis of sex or gender identity, and also prohibits employers from providing "less favorable employment opportunities" to employees because of sex or gender identity. Numerous other states have expanded their own pay equity laws to cover race and ethnicity, or even to protect all categories included in the state non-discrimination laws. Penalties under various federal and state laws can be substantial.

Further, employers will soon need to turn over pay data and hours worked information in the new Component 2 portion of the EEO-1 report by September 30, 2019. The information contained in these filings may also provide more grounds for the EEOC to increase its enforcement activity.

Fortunately, employers can take steps now to minimize risk and ensure their employees are being paid fairly and in compliance with applicable laws. Key steps include:

1. Partner with counsel to conduct a proactive pay equity audit of your workforce to ensure legal compliance (working with counsel will ensure that the work is conducted under attorney-client privilege and is not discoverable in litigation).
2. Train Human Resources personnel, managers, and supervisors regarding equal pay laws that govern your workforce.
3. Modify company policies and practices as needed to ensure compliance with applicable federal and state laws.

Taking action now to ensure legal compliance with equal pay laws will stand you in better stead should a disgruntled employee file a charge or suit. If you have questions about how to ensure that

your pay practices comply with federal or state law, contact your Fisher Phillips attorney or any member of the Pay Equity Practice Group.

For more information, contact the author at MScheele@fisherphillips.com or 301.951.1577.

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