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A BRIEF INTRODUCTION TO THE EQUAL PAY ACT

Many working women wake up every day to tend to their families and go to work. Sometimes, these women perform equally or even better than their male co-workers yet get frustrated because their employers compensate the male co-workers better; they sometimes promote male workers despite the fact that a woman in the group is much better suited to hold the superior position. Education, experience, productivity, efficiency and effectiveness certainly do and must play a significant role in compensation; yet the fact that an employee is a woman must not be a consideration when setting compensation. That is plainly wrong and retrograde, particularly considering the proclamation of equality in our current society.

“[E]quality of rights under the law shall not be denied or abridged by the United States or any State on account of sex.” This phrase is nothing less than the Equal Rights Amendment to the Constitution and was originally written in 1923 by Alice Paul, the women’s rights activist whose efforts led to the adoption of the nineteenth amendment granting women the right to vote. However, the States of the country considered to be the host of the American Dream, have not engraved these words into the Constitution of the United States despite the fact that Congress has sent it to the States for ratification on numerous occasions since 1972. Some advances in the search and implementation of solutions to inequality, specifically pay inequality, have been made yet these have proven to fall short in light of the prevalent pay gap that still exists in corporate America.

The need for equal pay is a part of our need to treat each human being the same without considering race, religion, gender, origin and sexual preference. In that sense, fair labor standards and equal pay are civil rights and not isolated economic issues that only affect the workplace. But, what exactly is equal pay, where did it come from, what have we done and what should you do?

The Equal Pay Act (EPA), which is part of the Fair Labor Standards Act, was enacted into Law in June, 1963. President Kennedy and the then elected

Congress understood that unequal pay for the same work was wrong. As such, the EPA “prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions.” The EPA intends to fulfill the aspiration of equal pay for equal work and reduce the gender pay gap. Many states have adopted statutes that resemble the EPA yet others have lagged behind even though international organizations already recognize the need to address and correct the situation.

Even though the pay gap has decreased since 1963, women still make about 77% of what men make. This, unfortunately, is a global injustice. In fact, according to a 2013 report by the Organization for Economic Cooperation and Development (OECD), the range of gender pay gap among the top 25 industrialized countries is from 6.1% to 28.7%.

Today, and despite all the fanfare about equality, corporate America still discriminates against women and minorities when it comes down to pay. This behavior clearly violates the provisions of the Equal Pay Act, namely that:

“[n]o employer...shall discriminate.....between employees on the basis of sex by paying wages to employees...at a rate less than the rate at which he pays wages to employees of the opposite sex....for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex”....29 U.S.C. §206(d)(1).

If you believe that you are a victim of unequal pay and that your employer discriminates against you in regards to pay, you may take one of several routes. First, check your company's employee handbook to find out whether there's a policy on pay equity and obtain as much information as you possibly and legally can about your company's pay structure. Also, find out where you should file an internal complaint regarding your pay and follow the guidelines to do so. This is protected activity, which means that your employer can not take any adverse employment action against you for your inquiry. If nothing happens or if the input you receive does not seem adequate, then you may file a charge with the government.

Second, you may file a charge with the Equal Employment Opportunity Commission (EEOC). However, even though the EPA is administered and enforced by the EEOC, it is very difficult for that Commission to monitor and intervene in all cases due to lack of sufficient resources; it has very competent and professional staff but the cases in corporate America are simply too many. If you file your charge and do not hear back from the EEOC or 180 days have lapsed then you need to decide whether to engage an attorney, which is an alternative that you also have from the very beginning of your processes.

Your attorney may represent you in federal or state court or may be able to go through a mediation or arbitration process. The attorney will, more likely than not, try to bring a class action against the employer if the fact pattern calls for doing so. Note that, unlike other Title VII claims, under the Equal Pay Act you may file a complaint in court without filing a charge with the EEOC and without receiving permission from the Commission to file a complaint

Keep in mind that we are here to help; thus, should you have questions or comments about this article, please contact JP Navarro via e-mail at jpnavarro@nacpr.net.

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