

Equal Pay Act of 1963

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The Equal Pay Act of 1963 is a United States federal law amending the Fair Labor Standards Act, aimed at abolishing wage disparity based on sex (see Gender pay gap). It was signed into law on June 10, 1963 by John F. Kennedy as part of his New Frontier Program.^[1] In passing the bill, Congress stated that sex discrimination:^[2]

- depresses wages and living standards for employees necessary for their health and efficiency;
- prevents the maximum utilization of the available labor resources
- tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
- burdens commerce and the free flow of goods in commerce; and
- constitutes an unfair method of competition.

The law provides (in part) that:

No employer having employees subject to any provisions of this section [section 206 of title 29 of the United States Code] shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment 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 [. . . .]^[2]

Equal Pay Act of 1963



Colloquial acronym(s) EPA
Enacted by the 88th United States Congress

Citations

Public Law Pub. L. No. 88-38
Stat. 77 Stat. 56

Codification

Act(s) amended Fair Labor Standards Act
Title(s) amended 29
U.S.C. section(s) amended 206

Legislative history

- **Signed into law by President John F. Kennedy on June 10, 1963**

Contents

- 1 Background
- 2 Congressional intent
 - 2.1 Congress' consideration of economic consequences
- 3 Impact
- 4 See also
- 5 Notes

Background

In 1963, Congress passed the Equal Pay Act^[3] ("EPA" or the "Act")^[4] as an amendment to the Fair Labor Standards Act,^[5] to "prohibit discrimination on account of sex in the payment of wages by employers." Congress included within the text of the EPA a clear and concise policy statement and briefly described the problems it was intended to remedy. The clear statement of congressional intent and policy guiding the EPA's enactment indicate the Congressional desire to fashion a broad remedial framework to protect employees from wage discrimination on the basis of sex. The Supreme Court has expressly recognized the view that the EPA must be broadly construed to achieve Congress' goal of remedying sexual discrimination. Congress passed the EPA out of "concern for the weaker bargaining position of women" to provide a remedy to discriminatory wage structures that reflect "an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman."^[6] The EPA protects both men and women. It also protects administrative, professional and executive employees who are exempt under the Fair Labor Standards Act.



American Association of University Women members with President John F. Kennedy as he signs the Equal Pay Act into law

The EPA, Section 206(d)(1) (http://finduslaw.com/equal_pay_act_of_1963_epa_29_u_s_code_chapter_8_206_d), prohibits "employer[s] ... [from] discriminat[ing] ... on the basis of sex by paying wages to employees [...] at a rate less than the rate [paid] to employees of the opposite sex [...] for equal work on jobs [requiring] equal skill, effort, and responsibility, and which are performed under similar working conditions[.]" To establish a prima facie case under the EPA, an employee must show that:

1. different wages are paid to employees of the opposite sex;
2. the employees perform substantially equal work on jobs requiring equal skill, effort and responsibility; and
3. the jobs are performed under similar working conditions.^[7]

The EPA provides that the employer may not pay lower wages to employees of one gender than it pays to employees of the other gender employees within the same establishment for equal work at jobs that require equal skill, effort and responsibility, and that are performed under similar working conditions.

It is important to note that the EPA does not contain any intent requirement within the statutory language. Liability under the EPA is established by meeting the three elements of the prima facie case, regardless of the intention of the employer. As such, the EPA imposes strict liability on employers who engage in wage discrimination on the basis of gender.

Once a plaintiff meets their heavy burden and establishes a prima facie case of gender discrimination under the EPA, then the defendant may only avoid liability by proving the existence of one of four statutory affirmative defenses.^[8] The EPA's four affirmative defenses allows unequal pay for equal work when the wages are set "pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) ... any other factor other than sex[.]"

Congressional intent

Upon its initial enactment, the EPA was "the first step towards an adjustment of balance in pay for women."^[9]

As a part of the FLSA, the EPA was subject to the scope and exceptions of covered employees and employers contained within that act.^[10] On the floor of the House of Representatives, many Representatives voiced their concern that the EPA should act as the starting point for establishing pay parity for women. Subsequent to the enactment of the EPA, congress undertook two actions which broadened the scope of federal protection against wage discrimination on the basis of sex.

First, the same 88th Congress enacted Title VII of the Civil Rights Act of 1964.^[11] By including sex as an element protected from discrimination, Title VII expanded the protection of women from employment discrimination, to include almost all employees working for employers with fifteen or more employees.^[12] Foreseeing the potential conflict between the administration of two statutes with overlapping restrictions, Congress included the Bennett Amendment in Title VII, which incorporates the EPA's four affirmative defenses into Title VII.^[13]

Second, Congress expanded the EPA's coverage to professionals and other white collar employees.^[14] For the first nine years of the EPA, the requirement of equal pay for equal work did not extend to persons employed in an executive, administrative or professional capacity, or as an outside salesman. Therefore, the EPA exempted white collar women from the protection of equal pay for equal work. In 1972, Congress enacted the Educational Amendment of 1972, which amended the FLSA to expand the coverage of the EPA to these employees, by excluding the EPA from the professional workers exemption of the FLSA.

Congress' consideration of economic consequences

The Congress did not ignore the EPA's economic consequences on the salaries and employment opportunities for both men and women.^[15] First, as an amendment of the FLSA, the EPA is part of the same legislative structure that houses the federal minimum wage laws.^[16] The EPA acts as a wage equalizer between men and women for equal jobs, and has the potential of acting as a price floor on the salaries of men or women for particular jobs.^[17] As such, the EPA has the potential of causing some of the same problems observed by minimum wage laws: unemployment, and additional discrimination.^[18] Second, Several Representatives voiced their concerns that the negative impact of setting price floors on the wages paid to women would reduce the availability of jobs for women.^[19] With the possible side effects of the Act noted on the Congressional record, the Act passed with little opposition, and no indication that any of the four affirmative defenses were intended to remedy or limit its negative consequences.

Impact

According to the Bureau of Labor Statistics, women's salaries vis-à-vis men's have risen dramatically since the EPA's enactment, from 62% of men's earnings in 1979 to 80% in 2004.^[20] Nonetheless, the EPA's equal pay for equal work goals have not been completely achieved, as demonstrated by the BLS data and Congressional findings within the text of the proposed Paycheck Fairness Act.^[21]

Senator Hillary Rodham Clinton first introduced the "Paycheck Fairness Act" on April 20, 2005, which, among other provisions, proposes to amend the EPA's fourth affirmative defense to permit only bona fide factors other than sex that are job-related or serve a legitimate business interest.^[22] Representative Rosa DeLauro first introduced an identical bill in the House of Representatives on the same day.^[23] On January 29, 2009, President Barack Obama signed into law the Lilly Ledbetter Fair Pay Act, which overturned the holding of a Supreme Court case, *Ledbetter v. Goodyear*, regarding the applicable statute of limitations. This bill, providing that each gender-unequal paycheck is a new violation of the law, was the first signing of the Obama Presidency and came

almost forty-five years after the Equal Pay Act.

However, a 2007 Department of Labor study^[24] cautioned against overzealous application of the EPA without closer examination of possible reasons for pay discrepancies. This study notes, for example, that men as a group earn higher wages in part because men dominate blue collar jobs, which are more likely to require cash payments for overtime work; in contrast, women comprise over half of the salaried white collar management workforce that is often exempted from overtime laws.^[25] In summary, the study stated:

Although additional research in this area is clearly needed, this study leads to the unambiguous conclusion that the differences in the compensation of men and women are the result of a multitude of factors and that the raw wage gap should not be used as the basis to justify corrective action. Indeed, there may be nothing to correct. The differences in raw wages may be almost entirely the result of the individual choices being made by both male and female workers.

See also

- Gender pay gap
- Economic inequality
- Equal pay for equal work
- Civil Rights Act of 1964
- Equal Pay Act 1970, the United Kingdom legislation which was influenced by the Act

Notes

1. ↑ "The Equal Pay Act Turns 40" (//web.archive.org/web/20120626131413/http://archive.eeoc.gov/epa/anniversary/epa-40.html). U.S. Equal Employment Opportunity Commission. Archived from the original (http://archive.eeoc.gov/epa/anniversary/epa-40.htm) on June 26, 2012.
2. ↑ ^{*a*} ^{*b*} "Equal Pay Act of 1963" (http://www.eeoc.gov/eeoc/history/35th/thelaw/epa.html). U.S. Equal Employment Opportunity Commission.
3. ↑ "Federal Employment And Labor Laws / Equal Pay Act of 1963 - EPA - 29 U.S. Code Chapter 8 § 206(d)" (http://finduslaw.com/equal_pay_act_of_1963_epa_29_u_s_code_chapter_8_206_d).
4. ↑ Pub. L. No. 88-38, 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d) (http://www.law.cornell.edu/uscode/29/206(d).html)).
5. ↑ 29 U.S.C. et seq.html § 201, et seq (http://www.law.cornell.edu/uscode/29/201).
6. ↑ *Corning Glass Works v. Brennan*, 417 U.S. 188, 208 (1974)("The Equal Pay Act is broadly remedial, and it should be construed and applied so as to fulfill the underlying purposes which Congress sought to achieve.").
7. ↑ See *Corning Glass Works v. Brennan*, 417 U.S. 188, 203 fn. 24 (stating that jobs need to be substantially equal fall within the EPA); *Fallon v. State of Illinois*, 882 F.2d 1206, 1208 (7th Cir. 1989)(enumerating the elements of a prima facie case under the EPA).
8. ↑ See *Corning Glass Works v. Brennan*, 417 U.S. 188, 196 (1974); *Miranda v. B & B Cash Grocery Store*, 975 F.2d 1518, 1526 (11th Cir. 1992)
9. ↑ 109 Cong.Rec. 9193 (1963) (Rep. Frances P. Bolton).
10. ↑ See 29 U.S.C. § 201 et seq. (2006); 109 Cong.Rec. 9193 (1963) (Rep. St. George) ("All of the [FLSA] exemptions apply; and this is very noteworthy, agriculture, hotels, motels, restaurants, and laundry are excluded . Also all professional, managerial, and administrative personnel[.]")
11. ↑ Pub. L. No. 88-352, §§701-718, 78 Stat. 241, 253-66 (codified as amended at 42 U.S.C. §§2000e to 2000e-17 (2006)). Title VII prohibits employers from "discriminate[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals...sex...." 42 U.S.C. §2000e-2(a).
12. ↑ See 42 U.S.C. §§2000e(b) (2006).

13. ^ See 42 U.S.C. § 2000e-2(h) (2006) (“It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of [the EPA].”). Senator Bennett proposed his amendment to ensure that in the event of conflicts between Title VII and the EPA, “the provisions of the [EPA] shall not be nullified.” 110 Cong. Rec. 13647 (1964) (statement of Sen. Bennett). The Supreme Court interpreted the Bennett Amendment as incorporating only the EPA’s four affirmative defenses into Title VII sex discrimination claims. *County of Washington v. Gunther*, 452 U.S. 161, 171 (1981). It is important to note that the prima facie case of sex discrimination under Title VII is different from the EPA. For example, Title VII requires intent to discriminate on the basis of sex, and does not require that a plaintiff prove job equality or identify a male comparator. See *Gunther*, 452 U.S. at 164, 178. For a discussion of the differences between Title VII and EPA claims, see Peter Avery, Comment, *The Diluted Equal Pay Act*, 56 RUTGERS L. REV. 849, 852 (Spring 2004). For a comprehensive list of specific differences between Title VII and the EPA, see Ana M. Perez-Arrieta, Comment, *Defenses to Sex-Based Wage Discrimination Claims at Educational Institutions: Exploring “Equal Work” and “Any Other Factor Other Than Sex” in the Faculty Context*, 31 J.C. & U.L. 393, 397 n. 36 (2005).
14. ^ See Education Amendments of 1972, Pub. L. No. 92-318, § 906(b) (1), 86 Stat. 235, 375 (codified as amended at 29 U.S.C. § 213(a) (1) (2006)) (removing operation of FLSA exemption of professional employees from EPA).
15. ^ "I am not so sure that the [EPA] in the long run is going to benefit the women employees[.] It is highly probable that the employers may find it advantageous to employ men in positions now filled by women. Certainly, they would feel inclined to do so in marginal instances where the labor market is plentiful. In other words, it is highly probable that the passage of [the EPA] would result in less employment for women." 109 Cong.Rec. 9203 (1963) (Rep. Colmer); *Id.* at 9205 (Rep. Findley) (“I think we need to consider some of the possible side effects of [the EPA] and go into the whole proposal for equal pay for women with our eyes open, realizing it may possibly bar women from some job opportunities.”); *Id.* at 9208 (Rep. Goodell) (“I think many women advocating this legislation recognize that in some instances the women are going to lose their jobs because an employer has to pay women the same price he [SIC] pays men. In many other cases, women will just not be hired.”).
16. ^ See 29 U.S.C. § 201, et seq.; 29 C.F.R. 1620.1 (2006).
17. ^ The act’s consequence as a price floor is only a potential under the EPA, because an employee must establish that a member of the opposite sex receives a higher salary for equal work. Therefore, if an employer chooses to hire only men, or only women for a particular job, there is no potential for a pay disparity between genders for the performance of equal jobs. In the case an employer chooses to hire only men to perform a specific job, a woman may have a cause of action for intentional gender discrimination under Title VII.
18. ^ *See, e.g.*, Thomas Sowell, BASIC ECONOMICS 163-69 (2004) (explaining the effects of federal minimum wage laws including increased unemployment and the decreased cost of discrimination).
19. ^ *See, e.g.*, 109 Cong.Rec. 9193 (1963) (Rep. Colmer).
20. ^ BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, REPORT 985, WOMEN IN THE LABOR FORCE: A DATABOOK 1 (2005)
21. ^ *Id.*; Paycheck Fairness Act, S.841 109th Cong. § 2(2) (2005) (“Even today, women earn significantly lower pay than men for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.”).
22. ^ Paycheck Fairness Act, S.841 109th Cong. (2005) (Sponsored by Senator Hillary Clinton).
23. ^ Paycheck Fairness Act, H.R. 1687 109th Cong. (2005) (Sponsored by Representative Rosa DeLauro).
24. ^ <http://www.consad.com/content/reports/Gender%20Wage%20Gap%20Final%20Report.pdf>

25. ^ http://www.whitehouse.gov/sites/default/files/rss_viewer/Women_in_America.pdf pp. 33

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