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# EEOC Starts Pilot Program to Ensure EPA Compliance

June 8, 2012
*The Bulletin Newsletter - Special EEOC Edition*

Between its audit initiative and looming "guidance," recent activity at the Equal Employment Opportunity Commission (EEOC) spells trouble for employers.

The EEOC has developed and implemented a pilot program in Chicago, New York and Phoenix to audit employer compliance under the Equal Pay Act (EPA). 29 USC 206(d). The EPA, signed into law by President John F. Kennedy in 1963, amends the Fair Labor Standards Act and prohibits discrimination in wages based on sex.

EPA violations may be found in two circumstances. First, when there is wage disparity based on sex between two current employees. Second, after a comparison of wages between successors and predecessors who hold positions that require equal skill, effort and responsibility and who have similar working conditions reveals a disparity. An example may be a current female housekeeper who earns less than a former male janitor, and the disparity cannot be explained by a factor other than sex. Despite the law's nearly 50-year existence, women have not obtained parity in wages.

Thus far, the EEOC has conducted only a handful of audits, including a major national retailer. However, this program is expected to expand since reliance on employee complaints to remedy violations may be an ineffective means of enforcement given that most employees are unaware of co-workers' wage rates.

While many employers have a policy prohibiting employees from discussing their salaries with co-workers, such policies are unlawful. Bottom line, employers would be wise to periodically review the accuracy of job descriptions, salary ranges and wage rates. The review should include not only current, but former employees, to ensure parity over time between similar positions.

Once the guidance is published, courts will decide whether the EEOC's position on the issue is correct. Unfortunately, even when courts have consistently disagreed with the EEOC's guidance, it is not eager to withdraw the guidance (i.e., courts have consistently held that pre-dispute binding arbitration agreements are permissible under federal civil rights laws, but the EEOC has not changed its position that such agreements are unlawful).

If you need assistance auditing your company's salary practices or determining whether to disqualify an applicant or employee from consideration for a position, please feel free to contact the author or your Plunkett Cooney attorney.

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