

Equal Pay Executive Orders Affect Federal Contractors

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On April 8, 2014, President Obama signed two **Executive Orders** affecting **federal government contractors**. The signing was timed to coincide with National Equal Pay Day, the day that symbolizes how far into the next year women must work to earn what men earned the previous year. According to the Washington Post, the President's actions were part of a Democratic effort to focus on gender pay gap issues and motivate women to vote in the midterm congressional elections.

One Executive Order prohibits retaliation against employees who discuss pay with co-workers. The White House maintains that the order will encourage **pay transparency** and provide workers an additional mechanism for discovering violations of equal pay laws. The other, more controversial Executive Order directs the U.S. **Department of Labor** (DOL) to promulgate administrative regulations requiring federal contractors to provide compensation data based on sex and race. DOL will use the data to conduct more targeted enforcement against federal contractors with regard to compliance with equal pay laws.

Generally, employees are entitled to equal pay for equal work within the same establishment, regardless of race, color, religion, gender, national origin, age, or disability. Prior to the Lilly Ledbetter Fair Pay Act of 2009, the Equal Pay Act of 1963 was the best known equal pay law. It amended the Fair Labor Standards Act (FLSA) and became one of the landmark federal discrimination laws. The Equal pay Act prohibits employers from discriminating on the basis of gender by paying unequal wages to men and women working essentially the same jobs. The jobs do not have to be exactly the same, just substantially equal.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces the Equal Pay Act of 1963. The agency also enforces following anti-discrimination acts, which function as equal pay laws when applicable:

- Civil Rights Act of 1964, Title VII
- Age Discrimination in Employment Act
- Americans with Disability Act, Title I
- Lilly Ledbetter Fair Pay Act

When determining whether employers are complying with equal pay laws, the EEOC and the courts consider, among other factors, the skills, effort, and responsibility required to do the job. They also consider the working conditions in which the job is performed. However, equal pay for equal work applies only to similar jobs within the same establishment. An establishment may be one or more physical places of business, depending on whether the employer hires centrally or separately for each location. Additionally, all of the laws that enforce equal pay allow certain exceptions.

Although President Obama's Executive Orders apply only to federal contractors, all employers should be aware of the emerging emphasis on equal pay. If you have questions about whether your business is compliant, contact a legal professional for advice.



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