

# Pay Equity

## TIP SHEET

## Understanding Your Rights & Legal Resources

If you are concerned about pay equity, this tip sheet can help you collect the information you need, provide an overview of your legal rights, and tell you where to turn for additional assistance.

### Things to Look For

**Pay Comparisons:** Learn what others with comparable experience and jobs in your company are being paid. Glass Door, PayScale.com and other salary review websites may provide information reported by current or former employees. New job postings at your company may also list salary ranges. Information from peers at other companies can also be useful.

**How Is Pay Set at Your Company:** Learn how pay is set at your company. What factors are used in setting starting pay? Do they reflect what's important in performing the job? When can pay be adjusted? What factors are considered in making adjustments? Who controls decision-making?

## Be Aware:

- Pay differences may arise at time of hire. Sometimes a new employer may base their salary offer on your last salary – that's a red flag.
- Pay differences at time of hire may also be caused by slotting women into lower-level positions at hire than men with comparable qualifications.
- Pay disparities also arise in awards of bonuses and stock options, where differences may be even larger than with salary.
- Annual reviews and pay raises may exacerbate or create pay differences. Sometimes pay raises are based on evaluation systems that may disadvantage women.

## Informal Steps to Take

- Collect as much information as you can about pay ranges in your company and industry.
- Ask your manager about benchmarks for your compensation in your annual review
- Seek assistance from your work sponsors to correct any pay disparities impacting you.
- Learn how best to negotiate for what you want. While equal pay should not depend on negotiation, it's one of the tools you may find helpful. For example, [AnitaB.org](#), a non-profit organization that helps women in the tech sector, offers salary negotiation workshops.
- Encourage employers to conduct rigorous pay equity audits and make changes based on the results. Salesforce, for example, has been recognized as a leader in that respect, as cited by *Wired*, "[How Salesforce Closed the Pay Gap Between Men and Women,](#)" (Oct. 15, 2019) and *Inc.*, "[How to Fix Gender Inequality at Your Company, From the HR Exec Who Helped Close Salesforce's Pay Gap,](#)" (Sept. 12, 2019).

## Know Your Rights

### Title VII Protections

- Prohibits discrimination in every aspect of employment, including compensation, on many grounds including sex, race, religion. Other statutes cover age discrimination or disability discrimination.
- Some claims require proof of intent to discriminate, while others require only identification of a specific practice that appears neutral, but which disproportionately disadvantages women, and cannot be justified.

- Requires that you file a charge with the EEOC or parallel state agency as a first step before you can go to court.
- The deadline to file a charge can be as short as 180 days from the discriminatory event, but you have 300 days when your state or local municipality has an enforcement agency that enforces a parallel state law against discrimination. Thus, in most states, including California, Washington, Illinois, New York, Massachusetts, and Texas you have 300 days to file your charge.

## **Equal Pay Act Protections**

- The federal Equal Pay Act (EPA) prohibits paying employees of different sex differently if they do equal work on jobs which require equal skill, effort, and responsibility, in the same establishment. (Pay differentials based on productivity, seniority, merit, or other job-related factor other than sex are permitted.) No proof of intent to discriminate is required.
- You must file an EPA case in court within two years of the paycheck challenged, or in three years if a willful violation is proved.
- Many states have their own equal pay statutes, which often have provisions better than the federal Equal Pay Act.

## **Individual & Class Actions**

- Each of these claims can be pursued by an individual on behalf of herself, or by one or a few women on behalf of a class of “similarly situated” women.
- Class actions focus on an employer’s pattern of compensating women less. Relief includes changes to the system, how compensation will be decided going forward, in addition to money for the class
- Individual cases focus on the individual plaintiff; courts may exclude evidence of how others were similarly affected; relief is usually money, but no change in system.

## **Sharing Salary Information – Important Protections**

- Many employers prohibit or discourage employees from sharing salary information with each other. It's important to know your right to discuss pay information with your colleagues.
- Some states explicitly forbid employers from prohibiting employees from discussing their wages with other employees, including in Massachusetts, New York, Illinois, California and Washington.
- These state's laws prohibit employers from retaliating against an employee for disclosing the employee's own wages or inquiring about or discussing the wages

of another employee, as long as they do not reveal information about others that they obtained because of particular job responsibilities, such as in HR.

- Even better, some states now require employers to provide information about the salary range for jobs.
  - Colorado was the first, requiring that both internal and external job postings list the salary range.
  - Washington just adopted a similar provision that takes effect January 1, 2023, but already has on the books a law requiring that such information be provided to any applicant who requests it, as does California.
  - Beginning May 15, 2022, New York City also requires job postings to list salary ranges
- Federal law offers some protections for discussing pay with co-workers but excludes managers. Enforcement is not as robust and proceeds through the National Labor Relations Board. See:
  - [National Labor Relations Board – Your Right to Discuss Wages](#)
  - [National Labor Relations Board – Investigated Charges](#)

## Prohibitions on Using Prior Salary to Set Pay

- Just as important as making sure you have information you need about salary, is making sure your prospective employer does not use information about your prior salary to offer you a lower pay rate than it would otherwise at your new job.
- The legal trend has been for courts to find that employers cannot rely upon prior pay in defending a claim of pay discrimination. See *Rizo v. Yovino*, 950 F.3d 1217 (9th Cir. 2020) (*en banc*); *Aldrich v. Randolph Central School District*, 963 F.2d 520, 525 (2d Cir. 1992).
- Many states, including Illinois and New York, specifically prohibit employers from asking applicants to disclose their salary history. Some also prohibit relying on prior salary even if disclosed voluntarily. For example:
  - **California:** Employers cannot rely on or ask for prior salary in deciding whether to make an offer or what salary to offer. If the applicant does disclose their salary history voluntarily and without prompting, the employer may not rely on that information in determining the applicant's salary.
  - **Massachusetts:** The law prohibits employers from asking either an applicant or their prior employer about prior pay or requiring that an applicant's prior pay meet any particular criteria. Even if prior pay is volunteered, the employer cannot rely upon such prior pay as a defense to an equal pay claim.

- **Complete List of State Bans:** See [HR Drive Salary History Bans: A Running List of States and Localities That Have Outlawed Pay History Questions](#)

## Legal Resources

- **How to file an EEOC charge:** <https://www.eeoc.gov/how-file-charge-employment-discrimination>
- If possible, consult with an attorney first, before filing a charge with the EEOC.
  - **Local Bar Association:** Many local bar associations have referral services that may connect you with attorneys
  - **National Employment Lawyers Association (NELA):** NELA is the largest professional organization for lawyers who represent employees in employment disputes, you can search their directory here: <https://exchange.nela.org/memberdirectory/findalawyer>
  - **Cohen Milstein Sellers & Toll PLLC:** We work specifically in class action, including gender pay discrimination class actions. We would be happy to consult with you: <https://www.cohenmilstein.com/contact>

## About the author:



### Christine E. Webber

t: 202 408 4600

f: 202 408 4699

[cwebber@cohenmilstein.com](mailto:cwebber@cohenmilstein.com)

**Christine E. Webber**, Co-Chair

**Cohen Milstein Sellers & Toll PLLC**

**Civil Rights & Employment Practice**

Christine E. Webber is the Co-Chair of Cohen Milstein's Civil Rights & Employment practice. She represents victims of discrimination and wage and hour violations in class and collective actions in federal courts throughout the United States. She is admitted practice law in the District of Columbia and Illinois.

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