

Pay Equity

Understanding Your Rights & Legal Resources

If you are concerned about pay equity, this tip sheet can help you understand your legal rights, help you collect the information you need, and help you determine 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, Blind 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 than men with comparable qualifications.
- Pay disparities also arise in awards of bonuses and stock options, where differences may be even larger than salary disparities.
- Annual reviews and pay raises may exacerbate or create pay differences. Sometimes this is caused by evaluation systems that disadvantage women.



Christine E. Webber
Partner

202.408.4600
cwebber@cohenmilstein.com



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 can be a helpful tool. For example, [AnitaB.org](https://www.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. See [How Salesforce Closed the Pay Gap Between Men and Women](#) (Wired/Oct. 15, 2019) and [How to Fix Gender Inequality at Your Company, From the HR Exec Who Helped Close Salesforce's Pay Gap](#) (Inc./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.
- Requires that you file a charge with the EEOC or parallel state agency as a first step before you can go to court.
- 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.
- 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 you have 300 days to file your charge.

Equal Pay Act Protections

- The federal Equal Pay Act (EPA) prohibits paying employees of different sexes 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, and some have provisions with stronger worker protections than the federal EPA.



Know Your Rights

Individual & Class Actions

- Each type of claim can be pursued by an individual on behalf of herself, or on behalf of herself and a class of other “similarly situated” women.
- Class action lawsuits focus on an employer’s pattern of compensating women less. Relief can include not just money damages for members of the class, but also changes to the system going forward, such as an overhaul of the policies for deciding compensation.
- Individual cases focus on the individual bringing the suit. Courts may exclude evidence related to how others were treated, even when claims are similar; relief can include money damages, but not any system-wide change.

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 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.
- 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.
 - As of May 15, 2022, New York City requires job postings to list salary ranges.
 - Beginning January 1, 2023, California and Washington state also require job postings to list salary ranges.
 - Beginning September 17, 2023, New York state also requires job postings to list salary ranges.
 - Several other states have laws that require disclosure of wages, salary range or rate of pay upon request, including Connecticut, Maryland, Nevada and Rhode Island.
- 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](#)



Know Your Rights

Prohibitions on using Prior Salary to Set Pay

- Just as important as making sure you have the 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.
- Some states prohibit employers from taking adverse action against an applicant who refuses to disclose their pay history. 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 or Restrictions on Discussing Prior Pay:** See Workplace Fairness: [Salary History Disclosure #2](#); see also: [States with Salary History Bans](#).
 - States with bans include: Alabama; Colorado; Connecticut; Delaware; Hawaii; Illinois; Maryland; Massachusetts; Missouri; Nevada; New Jersey; New York; Oregon; Puerto Rico; Rhode Island; Vermont; Washington. Additional states and localities prohibit government employers from asking about salary history.

Legal Resources

- How to [file an EEOC charge](#).
- 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](#).
 - **Cohen Milstein Sellers & Toll PLLC:** We work specifically in class actions, including gender pay discrimination. We would be happy to consult with you. Visit our [website](#).

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Civil Rights & Employment Team



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202.408.4600

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