



# Pay Equity: What Employers Need to Know

Presented by  
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- We will email you the recording and slides within 24 hours
  - Please participate in our polls
  - We may get to a few questions submitted via Q&A, but due to audience size we will not be able to get to most
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# Agenda

- Federal Pay Equity Law
- State Pay Equity Laws
- Auditing for Compliance
- Best Practices

# The Equal Pay Act of 1963

## No Unequal Pay Based on Sex

- Employees must be paid equally for equal work on jobs that require substantially equal skill, effort, and responsibility, and which are performed under similar working conditions in the same establishment
- **Applies to employers of any size**





## Skill

What's needed to do the job,  
not the skills possessed





## Effort

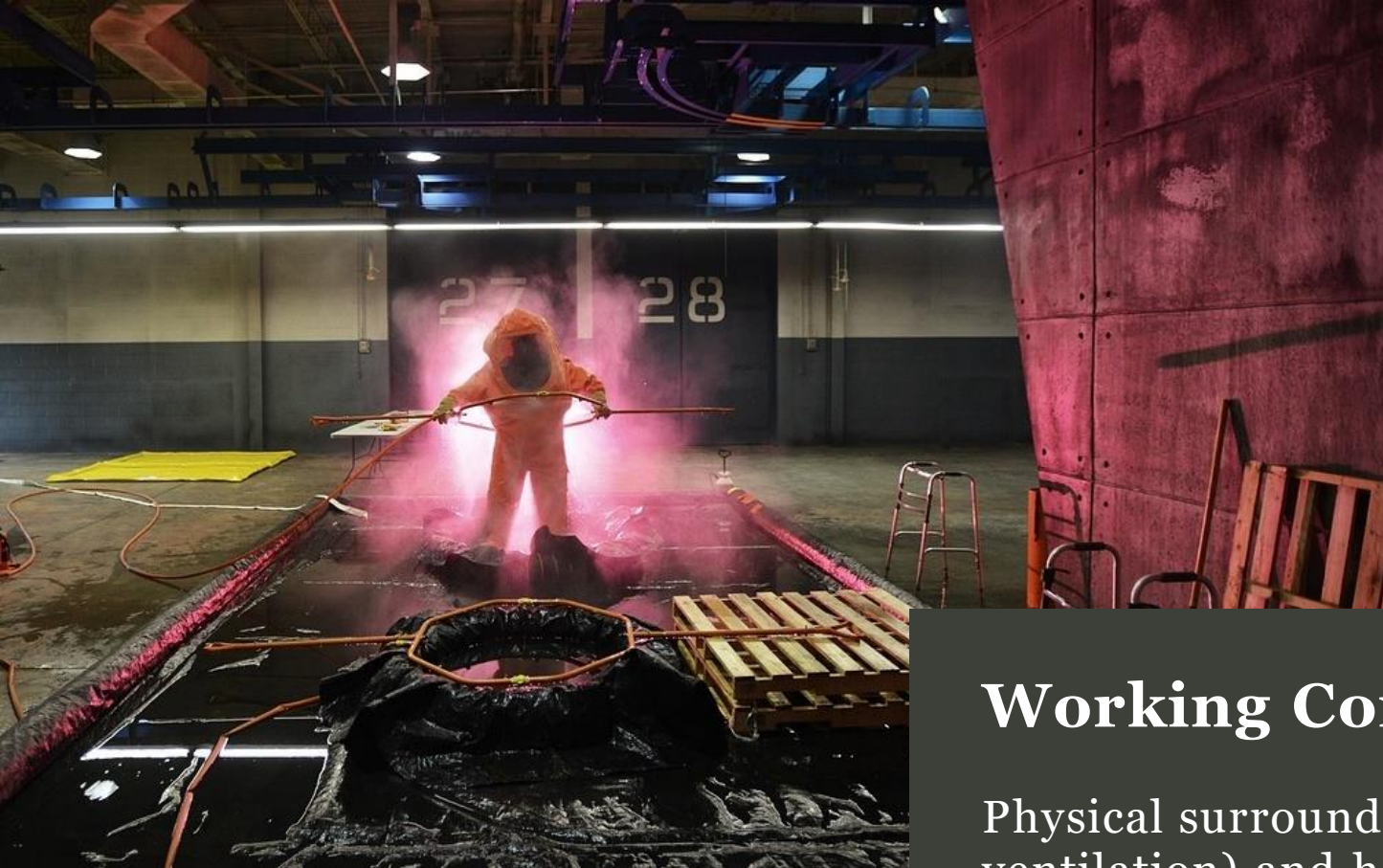
Physical or mental exertion  
required



# Responsibility

Individual contributions and  
management responsibilities





## Working Conditions

Physical surroundings (heat, ventilation) and hazards



# Establishment

Physical place of business and operations



## Acceptable Reasons for a Pay Differential

1. A seniority system
2. A merit system
3. A system which measures earnings by quantity or quality of production
4. Any other factor other than sex

## Any Factor Other Than Sex

9<sup>th</sup> Circuit: Factors must be **job-related**, such as experience, skills and abilities, and education.

- Not past salary history
- Probably not negotiating skill
- Almost certainly not market factors

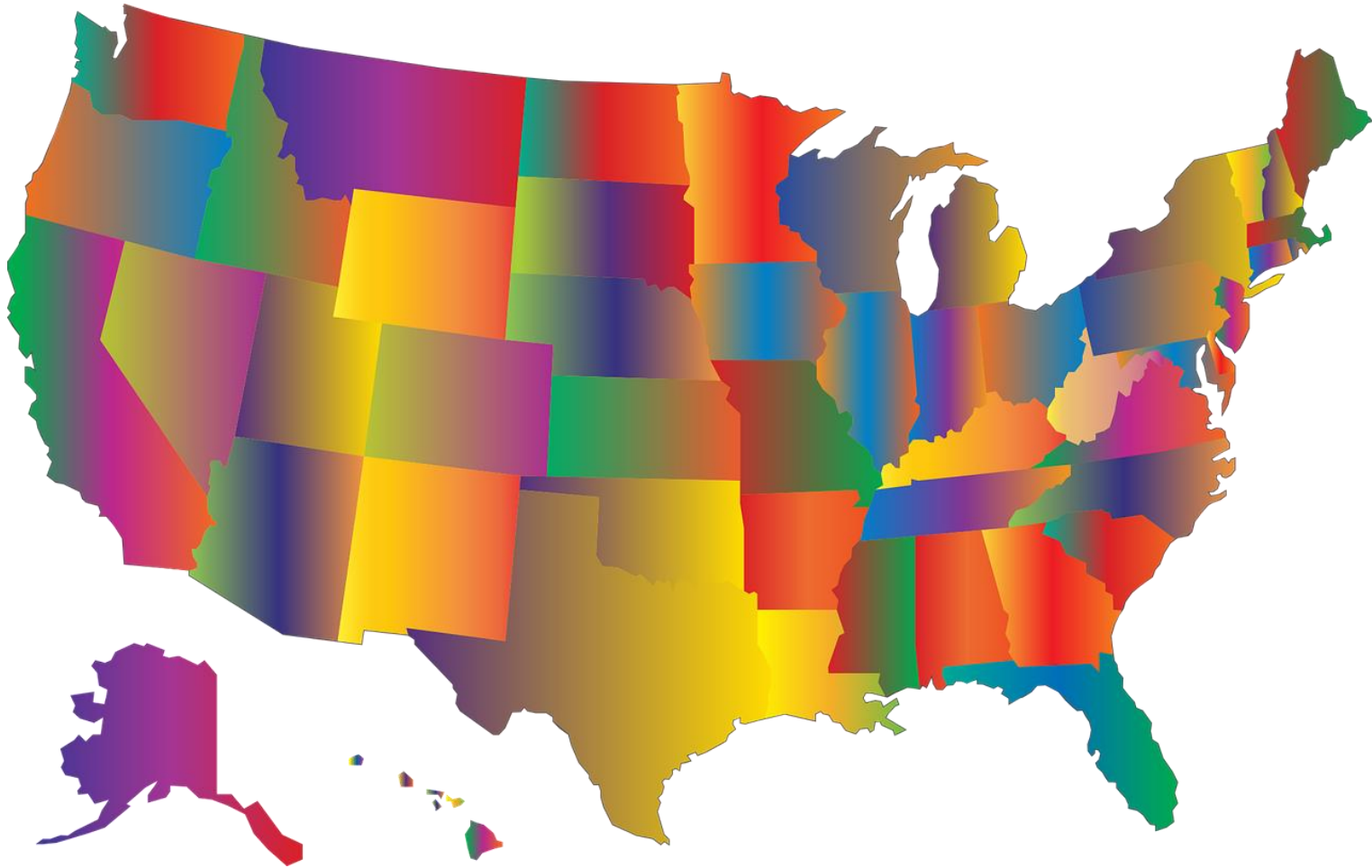


# Legal Bric-a-Brac

- Wages cannot be reduced to come into compliance with the law
- Employees can sue directly, without going through a government agency
- Two-year statute of limitations (or three if willful)
- No compensatory or punitive damages
- Successful plaintiffs get doubled back pay, attorney's fees, and a raise to bring their pay up to the amount made by employees of another sex

# State Laws: A Cooling Trend







## California's Law

Requires equal pay for those who do “substantially similar work” when viewed as a composite of skill, effort, and responsibility, under similar working conditions.

Applies to sex, race, and ethnicity.



## CA: Reasons for Differences

Reasons for unequal pay must be *reasonable* and explain the *entire difference*. Allowable explanations:

1. Seniority;
2. Merit;
3. A system that measures production; or
4. A bona fide factor other than sex, race, or ethnicity

Salary history is specifically excluded.

A person in a white shirt is seen from behind, looking out over a city skyline. In the foreground, there are several tall palm trees. The city skyline in the background features various skyscrapers under a hazy sky.

## CA: Bona Fide Factors Other Than Sex, Race, or Ethnicity

Potentially education, training, or experience

But if challenged, the employer must prove the factor is:

- Not derived from a factor based on sex, race, or ethnicity,
- Job related, *and*
- Consistent with a business necessity



## CA: Salary Discussions and Inquiries Allowed

Employees may discuss their wages and the wages of other employees.

They may also inquire about others' wages, whether asking the person directly or asking management. But there is *no obligation* for employers or employees to provide this information.

This includes anti-retaliation provisions.





## CA: Salary History Ban

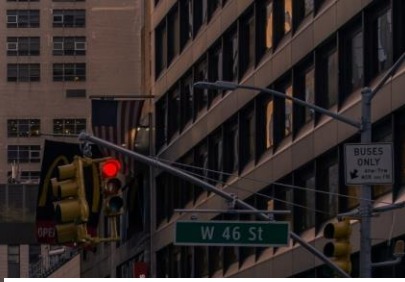
- Can't ask about past salary history.
- Can't decide whether to offer someone a job based on past salary.
- Can't use it as an explanation for differences in pay, even if asked back when it was legal or if the applicant volunteered the information.





## CA: Pay Scale Disclosure

- Must provide a pay scale upon an applicant's reasonable request.
- Reasonable request = after completion of an initial interview.



## New York's Law

It is unlawful for an employer to pay an employee less than an employee of another protected class for substantially similar work, when viewed as a combination of skill, effort, and responsibility and when performed under similar working conditions in the same establishment.



## NY: Reasons for Differences

Differentials in pay may be based on:

1. A seniority system;
2. A merit system;
3. A system which measures earnings by quantity or quality of production; or
4. A bona fide factor other than a protected class, such as education, training, or experience.

## NY: Bona Fide Factors

A bona fide factor is:

- Not based on or derived from a factor related to a protected class
- Job-related
- Consistent with business necessity





## NY: Salary Discussions Allowed

Employers cannot stop employees from disclosing their wages to other workers or require agreements with employees that stop them from disclosing their wages.





## NY: Salary History Ban

Employers, may not inquire about the wage or salary history of an applicant. Even if wage information is volunteered, it may not be used to screen an applicant in or out of the running and it may not be used as a factor in determining how much to offer or pay the applicant at any time during employment.





## Texas's (lack of) Law

- “Equal Work, Equal Pay” law protects female public employees
- The Texas Labor Code, Chapter 21 on employment discrimination protects against non-hiring, termination, or discrimination . . . in connection with compensation or the terms, conditions, or privileges of employment.



## Salary Discussions

- Even when there is no state law, the NLRA still applies
- Employees must be allowed to discuss the terms and conditions of their employment (though correctly classified supervisors can be prevented from doing so)

# Poll Question

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**Do you negotiate salary with candidates?**

# Auditing for Compliance



## Step 1

Organize employees into comparable *job groups* based on required skill, effort, and responsibility.





## Step 2

Determine *total yearly compensation* for each employee within a group.



# Total Yearly Compensation

- **Hourly wages or salary**
- **Benefits**  
*(health and disability insurance, 401k, commuter reimbursements)*
- **Paid time off in any form**  
*(PTO, vacation, sick days, personal leave, holidays)*
- **Bonuses**  
*(both discretionary and non-discretionary)*
- **Regular perks**  
*(company car, paid parking, reward packages)*

## Step 3

When you find differences, see if you can *explain why they exist*, using only the reasons available to you.



# Reasons for a Differential: Easy



Job is in a location with a **higher cost of living**



Job requires **travel**



Job explicitly requires **more hours**



Job involves **hazardous conditions**

# Reasons for a Differential: Easy With Consistency



A **seniority** system



A **merit** system



A system measuring **quantity**

Note the word *system*.

# Reasons for a Differential: Moderate to Hard



## **Training**

*(when applicable and necessary)*



## **Education**

*(when applicable and necessary)*



## **Experience**

*(when applicable and necessary)*



## **A system measuring quality**

*(again, note the word **system**)*



Civil Engineers	Hours	Years Here	Total Exp.	Education	Skill	Effort	Total Comp.
Karen S., PE	45	10	15	B.S., Cal Berkeley		Onsite Work	75,000
John D., PE	40	8	15	B.S., Portland State	+ Env		75,500
Erin K., PE	40	4	8	M.S., Oregon State			65,000
Howard J.	40	1	5	M.S., MIT			65,000

## Poll Question

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If you offer increases based on merit, seniority, quantity and/or quality, are your **systems** for doing so documented?

# Best Practices



## Create Pay Bands for Job Groups

- Not too wide (I like 20%)
- Have a system within each pay band
- Adjust the pay band (and actual pay) for each job group based on market factors – *not just your offers to prospective employees*

Aside from limiting liability, **fair** and **explainable** systems are good for morale.



## Eliminate Negotiation

- Makes your job easier
- Salary negotiation skills aren't job-related
- Market factors aren't job-related
- Remember that all benefits count

Feel free to tell candidates why you don't negotiate – this is going to become common.





## Be Consistent and Transparent

- Consistency is key – stakes are high!
- Decisions should be defensible with allowed factors using the same rubric for every employee
- Share your systems, or be prepared to if asked



## Q & A