

APRIL 2023

Complying with the

EQUAL PAY ACT

EMPLOYER CHECKLIST

Compensation

This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, state or local standards. Consult your legal counsel to address possible compliance requirements.



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The Equal Pay Act (EPA) is one of several federal laws that aim to protect employees from discrimination in the workplace. This law applies to all employers, regardless of their organization's size. The EPA, which amends the Fair Labor Standards Act, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions.

This checklist provides an overview of the EPA's key requirements and outlines critical steps for complying with the law. It is intended to be a guide, and employers may need to take additional steps to comply with the EPA depending on the facts of a specific situation. Employers should also be aware that compliance with the EPA may not guard them against liability under other federal anti-discrimination laws. If employers have compliance concerns, they should seek local legal counsel. Employers should also check that they are in compliance with any applicable state and local pay equity laws.

EPA Requirements	Complete
<p>Determine which roles are the same or substantially similar and ensure they receive equal pay.</p> <p>Equal pay is required for roles that are the same or substantially similar, even if the job titles differ. Minor differences in skill, effort or responsibility could still mean the roles are considered substantially similar. This means employers should be aware of a job's content and ensure that those performing substantially similar job duties, regardless of their job titles, are receiving equal compensation. The EPA assesses the following components in making a judgment on substantial similarity:</p> <ul style="list-style-type: none"> ▪ Skill—The experience, ability, education and training required to perform the job, not what skills the individual employees may have. ▪ Effort—The amount of physical or mental exertion that is needed to perform the position. ▪ Responsibility—The degree of accountability required in performing the job. ▪ Working conditions—The physical surroundings, such as temperature, fumes and ventilation, and hazards. ▪ Establishment—This refers to a distinct physical place of business rather than an entire business consisting of several places of business. However, in some cases, physically separate places of business can be treated as one establishment. 	<input type="checkbox"/>
<p>Review all forms of compensation, not just salary.</p> <p>The EPA extends to all forms of compensation, so employers should conduct a comprehensive review of total employee compensation to ensure compliance. Employers should review salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, benefits and any other form of compensation they may offer.</p>	<input type="checkbox"/>
<p>Correct any identified pay disparities.</p> <p>If there are unjustified pay disparities, adjust the pay of the lower-paid employee(s). Employers cannot reduce any employee's pay when correcting a disparity.</p>	<input type="checkbox"/>

Ensuring EPA Compliance	Complete
<p>Ensure that justified pay disparities are within a qualified exception to avoid liability.</p> <p>Some pay disparities may occur for reasons that are justified under the EPA. However, employers should consider a correction if they notice a disparity that is not justified by one of the following exceptions,</p> <ul style="list-style-type: none"> ▪ A seniority system that rewards employees based on length of employment ▪ A merit system that rewards employees for exceptional job performance ▪ An incentive system that pays employees based on the quality of their work or the amount of work they perform ▪ Another factor related to job performance or business operations, such as paying a shift differential to workers on less popular shifts 	<input type="checkbox"/>
<p>Gather employee pay data.</p> <p>Collect employee pay data to determine which employees are being paid to perform the same or substantially similar work and see where pay gaps may be present. Obtaining this data can help employers see where issues lie and allow them to address any issues that may arise more proactively. Employers should consider collecting the following from each employee when gathering data:</p> <ul style="list-style-type: none"> ▪ Job title or category ▪ Hire date ▪ Gender ▪ Other protected class identifiers (i.e., race, ethnicity, disability status) ▪ Job location ▪ Resume and employment application ▪ Years of experience in the relevant field and industry ▪ Job-related education and credentials ▪ Total hours worked over the past 52 weeks ▪ Total compensation data (i.e., salary, overtime pay, bonuses, stock options) 	<input type="checkbox"/>
<p>Use the same criteria when hiring.</p> <p>Ensure that the hiring criteria for job positions are consistent. For example, if criteria such as education, previous salary and experience are relevant when hiring for a position, those criteria should apply to all employees performing a substantially similar role, regardless of gender.</p>	<input type="checkbox"/>
<p>Evaluate all of the company’s jobs and their purposes.</p> <p>Look at every job in the company and determine its purpose. Analyze each job’s essential functions, conditions under which it is performed, and the skills, education, knowledge and abilities required for its performance.</p>	<input type="checkbox"/>

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Ensuring EPA Compliance	Complete
<p>Review all job descriptions for accuracy.</p> <p>Inspect all job descriptions to ensure that the duties they state are actually performed in the role. Determine if the employee in the role is required to perform all listed duties or if removing a particular duty would fundamentally change the position.</p>	<input type="checkbox"/>
<p>Audit compensation structures.</p> <p>Review pay structures for the roles within the organization. Further, review starting pay, merit increases and promotions for pay gaps to ensure that any pay differences for the same or substantially similar work are founded on reasons other than an employee's sex.</p>	<input type="checkbox"/>
<p>Consider addressing the following in a written pay policy:</p> <ul style="list-style-type: none"> ▪ Explain base salary, education and experience required for roles and how those correlate to compensation. ▪ Describe the circumstances in which extraordinary qualifications or performance can allow for increased pay. ▪ Create salary ranges and explain under what circumstances they can be altered. 	<input type="checkbox"/>
<p>Utilize employee performance reports.</p> <p>Analyze employee performance reports to assess whether employees are completing the same work for varying compensation. For example, two employees could have varying educations and, thus, different compensation packages. However, if they perform substantially similar work, the other person's increased education may not warrant the pay disparity between the two.</p>	<input type="checkbox"/>
<p>Implement remediation policies and procedures.</p> <p>In the event a pay discrepancy is identified, employers should have a remediation plan in place to be able to fix the issue quickly. This plan might include protocols on when and how the identified disparities will be addressed and to determine whether legal counsel will be used.</p>	<input type="checkbox"/>

Use this checklist as a guide when reviewing your company's compliance with the EPA. For assistance, contact Strategic Services Group.