



# Quarterly

Your Keys to *Compliance*



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## Compensation Discrimination in Employment

Compensation discrimination in employment is prohibited by the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Title I of the Americans with Disabilities Act of 1990, all enforced by the U.S. Equal Employment Opportunity Commission. Collectively, these statutes require employers to compensate employees without regard to race, color, religion, sex, national origin, age, or disability.

The laws against compensation discrimination include all payments made to or on behalf of an employee. All forms of compensation are covered, including 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, and benefits.

### Equal Pay Act

The Equal Pay Act requires that men and women be given equal pay for

equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal. Specifically, the EPA provides:

Employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. Each of these factors is summarized below:

**Skill** - Measured by factors such as the experience, ability, education, and training required to perform the job. The key issue is what skills are required for the job, not what skills the individual employees may have.

**Effort** - The amount of physical or mental exertion needed to perform the job.

**Responsibility** - The degree of accountability required in performing the job.

**Working Conditions** - This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation, and (2) hazards

**Establishment** - An establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business. However, in some circumstances, physically separate places of business should be treated as one establishment.

## Medicare Secondary Payer Rules and Group Health Plans

Faced with higher premiums and a perception of increased benefits under Medicare, some employers are attempting to shift older workers off of their Group Health Plan and onto Medicare. Employers should be aware of the restrictions placed upon them in regards to individuals eligible for Medicare and the potentially serious consequences of this practice.

Federal Law requires that employers offer to their employees age 65 or over the same coverage offered to employees under age 65. If the employer offers health care coverage to spouses, the same coverage must be offered regardless of age. This equal-benefit rule applies to coverage offered to full-time and part-time employees, or retirees.

Employers with 20 or more employees are required to offer the same (primary) coverage to their age 65 or over employees and the age 65 or over spouses of employees of any age that they offer to younger employees and spouses. This requirement is met if an employer has 20 or more full-time and/or part time employees for each working day in each of 20 or more calendar weeks in the current or preceding year. Where an employer does not have 20 or more employees in the preceding year, the employer is required to offer their employees and spouses age 65 or over, primary coverage when they have had 20 or more employees on each working day of 20 calendar weeks of the current year. The employer is then required to offer primary coverage for the



*Medicare Continued...*

remainder of that year and throughout the following year, even if the number of employees subsequently drops below 20.

Medicare beneficiaries are free to reject employer plan coverage, in which case they retain Medicare as their primary coverage. When Medicare is the primary payer, employers cannot offer such employees or their spouses a plan that supplements services covered by Medicare. An employer offering an enticement to move employees from their health plan and onto Medicare would be violating Medicare Secondary Payer rules.

Medicare Secondary Payer rules apply equally regardless of how an individual receives Medicare benefits, whether it be through traditional Medicare, a Medicare Advantage Plan or another Medicare Health Plan.

Group Health Plans which violate these rules are subject to recovery of claims plus penalties and interest. These amounts will most likely not be paid by the insurance company if the employer discouraged the employee from enrolling in the Group Health Plan or provided an incentive not to do so such as paying for Medicare supplement coverage.

*For more information on these or other Compliance Issues, contact your Lyons Companies Compliance Check Specialist at 302-658-5508.*

*Compensation Discrimination Continued...*

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. It is the employer's burden to prove that these factors apply.

In correcting a pay differential, no employee's pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.

**Title VII, ADEA, and ADA**

Title VII, the ADEA, and the ADA prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, or disability. Unlike the EPA, there is no requirement under Title VII, the ADEA, or the ADA that the employee's job be substantially equal to that of a higher paid person outside the employee's protected class, nor do these statutes require the employees to work in the same establishment. The basic theories of disparate treatment and adverse impact generally apply to compensation discrimination claims under these statutes.

Employers should evaluate their compensation systems to ensure that the compensation of employees is based on nondiscriminatory factors. Employers also should evaluate practices that may indirectly depress the compensation of employees in protected classes. For example, employers should make sure that promotion decisions, performance appraisal systems, and procedures for assigning work are non-discriminatory.

Information on training, information for small businesses, and other information can be found on the EEOC's Internet web site at [www.eeoc.gov](http://www.eeoc.gov).

