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Equal Pay

The law prohibits employers from paying you less because of your sex or gender. This type of treatment is a form of sex discrimination. Your employer is also prohibited from punishing you for discussing or disclosing rates of pay with your colleagues, and, depending on where you work, an employer may be prohibited from asking about or relying on your prior salary to set your new salary.



We still are not paid equally. And if you believe that it's a myth, do the math. Unequal pay hurts women. It hurts their families. And it hurts us all. You and I have to continue fighting for equal pay for equal work. I get up each day with that on my mind, because I need to make a difference."

– Lilly Ledbetter,
Plaintiff in *Ledbetter v. Goodyear Tire & Rubber Co.*,
which resulted in Congress passing the Lilly
Ledbetter Fair Pay Act of 2009

What Qualifies as Unequal Pay?

You should never be paid less because you are a woman. Receiving lower pay based on your sex or gender is a form of sex discrimination. All too often, however, women are paid less than their male colleagues doing similar work, and they are often unaware of this fact because workers are discouraged from sharing or discussing salaries. Moreover, since women have historically made less money, women often start new positions at a lower salary and with less bargaining power than their male peers when negotiating their new salary. This trend further depresses salaries for women.

There are various ways in which an employer may engage in discriminatory pay practices.

Below are a few of many examples:

- Your employer pays you less than your male colleague
- because you (like many women) were paid less in your past job and your employer asked about your prior salary and used that salary as a basis to set your new salary when hiring you.
- Although you have the same title and job responsibilities as your male colleague, your employer pays him more, claiming he has more experience, even though you know that he previously worked in a different field and had less relevant experience than you do. Or, your employer pays him more telling you, "He has a family to support."
- Your employer gives your male coworker, who has the same title, a raise but decides not to give you a raise, despite your similar years of experience, because you took parental leave or worked part-time to care for a child. Your employer may even say, "Let's wait to talk about raises until you have come back full-time."

Who is Protected by the Law?

Federal law prohibits all employers from engaging in pay discrimination based on gender.²⁴ New York State law prohibits employers from engaging in pay discrimination based on gender. NYS law now also prohibits pay discrimination based on any other protected characteristic.²⁵

NYC: In New York City, pay discrimination is illegal as a form of gender discrimination under the New York City Human Rights Law, which covers both private and government employees who work for employers with **4 or more employees**.²⁶

What are My Legal Rights?

Equal Pay

Under federal and state laws, you can bring an equal pay complaint as well as a sex discrimination complaint. Under the equal pay laws (unlike the anti-discrimination laws) you do not need to prove that your employer intentionally discriminated against you on the basis of your sex or gender.

Covered employers are prohibited from paying you a lower rate of pay than a male colleague if you are doing substantially equal work (under federal law) or substantially similar work (under New York State law) taking into account skill, effort, and responsibility on jobs performed under similar working conditions.²⁷ Protections cover all forms of compensation including salary, overtime pay, bonuses, stock options, profit sharing, life insurance, and other benefits.

Your employer can still pay you a different rate based on factors such as seniority, merit, quantity or quality of production, or a "bona fide factor other than sex, such as education, training, or experience," which are job-related.²⁸ If your employer raises

one of these factors as a defense, be sure to do your own assessment of your education, training, or experience. You may be able to raise factors that your employer was not considering. Additionally, if your employer claims that your lower pay is based on a "bona fide factor other than sex," they must demonstrate that the factor is not based on a sex-based differential, is job-related, and is consistent with business necessity.

Even if they prove this, you can still win, if you can show that the practice has a disproportionate impact on the basis of your sex, that your employer could have served the same purpose without causing that impact, and that your employer refused to adopt such an alternative practice.²⁹ Your employer may be responsible for correcting the pay differential and may be responsible for additional damages if it violates the law.

DISCUSSING SALARIES: In New York State, employers are also prohibited from stopping or preventing you from asking about, discussing, or disclosing pay with your co-workers and cannot punish you for doing so.

Requesting or Relying Upon Prior Salary

Because women have been paid less, on average, than men over time, various localities and now New York State have passed laws that limit an employer's ability to ask and/or rely upon applicants' salary history during the hiring process. The purpose of these laws is to stop the cycle of inequality from continuing by preventing employers from relying on prior salary disparities to set applicants' future salaries.

As of January 6, 2020, if you are applying for a job in New York State, regardless of the size of your employer, it is illegal for an employer to ask you how much you were paid in your prior positions during the hiring process or to rely upon your salary history to determine your salary during the hiring process.³⁰ Keep in mind, that certain exceptions may apply based on your employment status, contract, or collective bargaining agreement.

An employer can still ask you about your expectations regarding salary and benefits. While you should not be prompted, you are permitted to voluntarily disclose your prior salary, which can then be taken into account by an employer.

If asked about your salary history, you can report the violation to your local fair employment agency. During the hiring process, if you are asked an impermissible question about your salary history, you can try to reframe the conversation by discussing your salary expectations based on the requirements and responsibilities of the job, noting that they differ from your prior work, and ask questions about the salary range set for the position.

NYC: For more information, visit: <https://www1.nyc.gov/site/cchr/media/salary-history-frequently-asked-questions.page>.

Note that certain localities, including New York City, Westchester County, Suffolk County, and Albany County passed their own salary history laws, which may include stronger protections.

RETALIATION: It is illegal for an employer to engage in "retaliation" (to punish you) for reporting pay discrimination, sharing salary information, filing a complaint or lawsuit, or participating in an investigation. In other words, your employer is prohibited from firing you, demoting you, suspending you, cutting your pay or work hours, assigning you more difficult work duties, or starting to issue poor performance evaluations to punish you for reporting discrimination. Retaliation can also include more intensive or critical supervision, surveillance, or bad-mouthing you to other employees.

Note that even though retaliation is illegal, your employer may still do it. Retaliation is a separate offense from pay discrimination. Therefore, even if a court determines that there was no pay discrimination, if an employer retaliated against you, they have violated the law and may be required to pay you damages and attorneys' fees.

Keep in mind that you can still be subject to discipline or penalized for poor performance or breaking legitimate workplace rules insofar as your employer's actions are not based on your sex or gender.



What Can I Do to Assert My Rights?

If you have concerns or believe that your rights have been violated, there are various actions you can take to advocate for yourself. In addition to the general guidance in Section 1, consider the following:

SPEAK TO YOUR CO-WORKERS: Because many employers have historically relied on job applicants' salary history to set the salary for a new position and because men have historically been paid more, on average, than women, you may be making less than your male colleagues. If you have concerns that you are being paid less than a male colleague who is doing the same or similar type of work, one option is to ask your co-worker about his salary. Note that your co-worker is not obligated to disclose this information and may choose not to do so. Also be aware that while employers are legally prohibited from retaliating against you for speaking to your coworkers about salary, this does not mean that your employer will follow the law. Your employer may still engage in retaliation.

ADVOCATE FOR YOURSELF: Many women often assume they will be rewarded based on merit and hard work and are well into their careers before they realize that their colleagues (often men) received raises because they actively requested them. If you believe that you deserve a raise, speak with your supervisor and request one. Be prepared to discuss the work that you do, your responsibilities, accomplishments, skills, performance, the ways in which you have excelled, and the value you bring to the workplace.

NOTIFY YOUR EMPLOYER AND REQUEST THAT THE PAY DIFFERENTIAL BE CORRECTED: If you learn that you are being paid less than a male co-worker and you don't think there is a valid rationale for the pay differential, then you should speak to your supervisor and request that it be corrected. Before doing so, try to get as much information as you can about your male co-worker's past experience, your titles, classifications, and the responsibilities and skills required in your job description.

Speaking to your employer about pay discrimination can be difficult, but it can be easier if you are prepared. During this conversation, you will want to highlight that you do equal work, have equal responsibilities, work under substantially similar conditions, and that you have equivalent or complementary skills and experience compared to your male colleague(s). Be prepared to provide some of the following information:

- Explain that you discovered you were being paid less than your male colleague even though you both perform equal work.
- Explain how your job duties and responsibilities are the same when compared to your male colleague's job duties and responsibilities.
- Highlight your skills and experience and ways in which they are superior, equivalent, or complementary to your male colleague's experience.
- If it is helpful, raise your job performance and highlight ways in which you have excelled in the position.

Depending on the nature of the pay discrimination, you may want to do the following:

- Ask your employer to raise your pay so it is equal to your male colleague's pay by the next pay period.
- Ask your employer to correct the pay disparity retroactively, meaning that they pay you the difference of what you should have been earning going back to when the pay disparity began.
- If your employer refuses to correct the situation, ask them to provide their rationale for why they think the pay differential is fair (preferably in writing).
- If your employer refuses to correct the situation, find out if there is an appeal process or equal opportunity office with which you can file a complaint.

DOCUMENT ANY COMPLAINTS: Keep a record of your request by putting it in writing as an email or a formal complaint. You should also try and get a response from your employer that is in writing. This record can serve as written evidence if you decide to file a discrimination complaint or lawsuit. Take notes about your verbal conversations so that you have a record of what was said during these conversations.

NOTE: When you tell your employer the above, remember, you are **automatically** protected under the law. This means that it is illegal for your employer to fire you, discipline you, cut your hours, cut your pay, or do anything negative to your employment because you requested equal pay or inquired about it. If your employer does take any of the above actions, it has violated the law. While retaliation is illegal, your employer may still do it. You may have to take administrative or legal action to protect your rights. If your employer fails to correct the problem, you may be entitled to additional damages if you decide to challenge the pay discrimination in court.

FILE A LAWSUIT OR AN ADMINISTRATIVE COMPLAINT ABOUT UNEQUAL PAY: If you feel like you were subjected to pay discrimination, you can file a state or federal lawsuit under the state and federal equal pay laws. If you also want to file an employment discrimination claim under Title VII, you will first need to file a discrimination complaint with the federal Equal Employment Opportunity Commission (EEOC).

You can also file a formal administrative complaint with: the New York State Department of Labor (<https://labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>), the New York State Division of Human Rights (<https://dhr.ny.gov/contact-us>), the EEOC (<https://www.eeoc.gov/employees/charge.cfm>), or your local fair employment agency.

NOTE: You should consult a lawyer or legal services organization to get guidance on how and where to file your complaint because there are often complex considerations involved and you often must file quickly in order to comply with applicable reporting deadlines. For example, if you file your complaint with one of the agencies above, you may not be able to file with others **and** you may not be able to file a lawsuit later on.

FILING A NYC COMPLAINT TO CHALLENGE A SALARY HISTORY REQUEST: If you work for an employer in New York City who improperly inquired about or relied upon your prior salary in setting your salary, you can file a complaint with the NYC Commission on Human Rights, which has the authority to impose fines on employers or award compensatory damages. Visit: <https://www1.nyc.gov/site/cchr/about/contact-us.page>.