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Wage Issues–Are You Compliant?

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Two recent decisions address wage issues under two different laws that were amendments to the Fair Labor Standards Act – the Equal Pay Act (EPA) and the Portal to Portal Act (PTPA). Are you in compliance of both laws? Let's see!

The EPA prohibits employers from discriminating on the basis of sex in the payment of wages. Unlike the state and federal civil rights laws, which require proof of "similarly situated" employees (i.e., in the same job classification) being treated differently, the EPA prohibits paying an employee less than someone of the opposite sex for "work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions…." Thus, a comparison of wages between different job classifications can support a claim! The EPA only permits disparate wages based on seniority, merit, education, experience, or another factor (other than sex) such as quality or quantity of production.

Recently, in *Andrews v Moore Electrical Service, Inc.*, the U.S. District Court for the Western District of Michigan denied the employer's motion to dismiss the case in which the plaintiff compared her wages as a purchasing agent to both her male predecessor and male successor. While the plaintiff received $600 a week during her employment, the male employees each received over $900 a week.

The court emphasized that the duties performed by each did not need to be identical to support her claim and insubstantial or minor differences in the degree or amount of skill, effort or responsibility would not "render the equal pay standard inapplicable." Therefore, whether additional or different duties demonstrate that the jobs being compared are not substantially equivalent will depend on such factors as the amount of time spent performing the distinguishing duties and the required level of skill, effort or responsibility of those duties. The court found 80 percent of the duties performed by plaintiff and the male employees were the same and denied the employer's motion to dismiss. The court, recognizing that factors such as experience may be an affirmative defense, held that the plaintiff was only required to show that the jobs, not the individuals holding the positions, were comparable.

As a result of this ruling, employers should regularly compare the salaries of jobs of equal skill, effort and responsibility that are performed under similar working conditions. Further, when hiring replacements, employers should consider the salaries that have been paid to prior incumbents of the position. Any distinction in wages should be based on a permissible factor, and not sex.

In *IBP, Inc. v Alvarez,* the U.S. Supreme Court took a look at compensable time under the Portal to Portal Act (PTPA). As employers are aware, the Fair Labor Standards Act addresses such issues as minimum wage, hours worked and overtime pay. However, the PTPA excludes from the definition of "hours worked," under the Fair Labor Standards Act, time spent traveling to and from the work site and "activities which are preliminary or postliminary" to the employee's principle work activities.

In 1955, the Supreme Court held that time spent donning and doffing **specialized protective gear** just before and after regular work and time spent showering to remove toxic materials were integral and indispensable parts of the principle activities and, therefore, compensable under the Fair Labor Standards Act. The court distinguished such activities from changing clothes and cleaning up under normal circumstances, which are excluded from "hours worked" by the PTPA.

The current issue before the court was whether walking time to and from the work site after donning and before doffing the protective gear is compensable. While the employer argued it was not, the Supreme Court disagreed. The court held that the locker room where the employee changes into special protective gear is the place where the principle work activity and workday begins and ends. Thus, the employer must pay wages for all time spent putting on the protective gear and **traveling from** the locker room to the place where the actual work is performed, and **traveling back** to the locker room, showering and/or removing the protective equipment at the end of the day. The locker room where special protective gear is put on and taken off is part of the principle work site where the workday begins and ends. The only good news for employers is that they still do not have to pay employees for time spent **waiting** to put on the protective equipment!

If you need further information concerning the cases above or require assistance complying with the wage laws, please contact your Plunkett & Cooney attorney directly, or in the alternative, Plunkett & Cooney's Labor & Employment Law Practice Group Leader, Theresa Smith Lloyd at (248) 901-4005.

For a complete copy of the Equal Pay Act (EPA), click here. For a complete copy of the Portal to Portal Act (PTPA), click here.

