PLUNKETT COONEY

Employers Beware of the Equal Pay Act!

April 29, 2013

Most employers are aware that a disparate wage claim can be brought under state and federal civil rights laws if an employee in a protected status is paid a lower wage than another who is not in the protected status but who is similarly situated.

However, as one employer just learned, potential claims under the Equal Pay Act (EPA), 29USC 206 (d), may not be so obvious. In the case of *Kienzle v General Motors*, a judge in the U. S. District Court for the Eastern District of Michigan recently denied the employer's motion to dismiss where the female plaintiff's "salary was discounted based on her part-time status…" even though "her net salary in dollar terms was higher than some other [male] employees paid on a full-time basis."

The EPA amended the Fair Labor Standards Act in 1963. It prohibits employers from paying an employee wages at a rate that is less than it pays to an employee of the opposite sex "for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." Excepted from the prohibition are disparities that result from a seniority or merit system, a system that measures earnings by quantity or quality of production, or some other factor other than sex.

The court noted that the "term 'rate' in the statute refers to any relevant base against which a wage is paid" such as hourly, weekly, annually or even piece work. And, the term "wages" refers to all forms of compensation, including holiday pay, overtime pay, etc. Therefore, an employee can establish a violation of the EPA if she can show the employer pays her less compensation than male counterparts however that compensation is measured. It does not require, as General Motors argued, a strict comparison of the hourly rate or any other "chronological" basis.

In *Kienzle*, the plaintiff was classified as a level seven *part-time* salaried employee. Her salary was discounted based on her part-time status. When she was upgraded from 24 hours a week to 32 hours per week, she received a 33 percent raise. However, whenever she worked in excess of 32 hours, she was ineligible for additional pay, unlike the full-time salaried engineers she supervised who were eligible, and often approved for, overtime pay when they exceeded their regular 40 hours.

In October 2009, the plaintiff asked if her position could be upgraded to full-time because she was often asked to work full-time hours anyhow. The request was denied until January 2010. At issue was the period during which her salary was discounted based on her part-time status.

General Motors argued that the EPA applies only to differences in the hourly rate of pay and not the number of hours worked. The company relied on two decisions that found no violation based on the

© 2026 Plunkett Cooney, PC

denial of opportunity to work overtime. The court found the decisions distinguishable because the issue in this case was not overtime, but "the failure to pay regular or overtime wages for hours actually worked in excess of an employee's regular schedule, or in excess of the statutory 40-hour-per-week limit."

In *Kienzle*, the full-time male salaried employees who reported to the plaintiff were eligible for extra pay when they exceeded 40 hours, whereas the plaintiff was not eligible when she exceeded her regularly scheduled hours. While General Motors argued that the plaintiff and her full-time male peers were not similarly situated, the court disagreed, indicating that this argument "merely restates the charge." The plaintiff was paid less than her male full-time peers because General Motors subjected her to a part-time proration while still demanding on occasion that she work full-time hours.

General Motors also argued that the plaintiff could not compare herself to the full-time level seven male engineers she supervised because she proved she had more responsibility. However, the court disagreed, noting that this argument only succeeds if the higher paying job had greater responsibility. However, the argument fails in this situation because the position, having greater responsibilities, is the one that was paid less. Therefore, General Motors' motion to dismiss the EPA claim was denied.

Employers should be cautious of EPA violations because, as is illustrated in *Kienzle*, they are not always obvious. EPA violations can also occur when two *different* positions require the performance of equal skill, effort, and responsibility, and are performed under similar working conditions (such as a female housekeeper and a male janitor). Violations can also occur when a successor or predecessor of the opposite sex is paid more than the plaintiff employee. Thus, to ensure compliance with the EPA, employers need to compare different classifications and positions over time.

If you need assistance with wage issues, including those under the EPA, feel free to contact the author or another Plunkett Cooney employment law attorney for guidance.

Rapid Reports are distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to Theresa Smith Lloyd or any other members of the practice group. The brevity of this update prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. *Copyright © 2013. All rights reserved PLUNKETT COONEY, P. C.*

© 2026 Plunkett Cooney, PC