

# BATTLE OF THE SEXES: PAY EQUALITY & WAGE DISCRIMINATION FROM BOTH PERSPECTIVES

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## **EQUAL PAY CLAIMS: THE GOVERNING LAWS**

- **Federal Equal Pay Act: Equal Pay Act of 1963**
- **Iowa Civil Rights Act: Iowa Code section 216.6A**

## 3 ELEMENTS OF EQUAL PAY ACT CLAIM

- Employer is subject to Act
- Employer paid or pays one member of the opposite sex a higher wage for equal work
- Employee who was paid the higher wage works at the same “establishment” and performs work of equal skill, effort, and responsibility under similar conditions

# **ELEMENT ONE: EMPLOYER IS SUBJECT TO ACT**

- **Federal: Commerce inquiry: Applies to executive, administrative, and professional employees who may otherwise be exempt under FLSA; also covers state and local government employees unless exempt under FLSA**
- **State: Any employer who regularly employs four or more individuals**

## **ELEMENT TWO:**

# **OPPOSITE SEX IS PAID HIGHER WAGE FOR EQUAL WORK**

- **Protected Class**
  - Federal: Opposite sex
  - State: age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability
- **Higher Wage**
  - All forms of pay covered: salary, overtime, bonus, stock options, profit sharing, life insurance, vacation, holiday pay, gas allowance, travel expenses

## ELEMENT THREE: PERFORMS EQUAL WORK

- **Equal Work**
  - “Knowingly permit equal work.”
  - **Skill:** experience, ability, education, and training required to perform job
  - **Effort:** amount of physical or mental exertion
  - **Responsibility:** degree of accountability to perform job
  - **Working Conditions:** physical surroundings and hazards
  - **Same Establishment:** distinct separate place of business

## AFFIRMATIVE DEFENSE

- Seniority System
- Merit System
- System measuring quality or quantity of production
- Factor other than sex
  - Experience
  - Prior salary
  - Education
  - Skills employer deems useful
  - Proven ability to generate higher revenue

## A HISTORY LESSON ON EQUAL PAY CLAIMS

*Corning Glass Works v. Brennan*, 417 U.S. 188 (1974)

- market forces theory



## PROPOSED LEGISLATION

### Paycheck Fairness Act:

- **Strike “any other factor other than sex” and insert “a bona fide factor other than sex, such as education, training, or experience”**
- **Additional showing that factor is not based upon or derived from sex-based differential; is job related with position in question; and is consistent with business necessity**

## PROPOSED DOL EEO-1 RULES

- Proposed change for 2017
- Report W-2 earnings for 12-month period
- 12 pay bands
- Express stated purpose is to identify discriminatory pay practices

## BRINGING A CLAIM

### Federal

- **Statute of Limitations**
  - 2 years of alleged unlawful compensation practice
  - Willful violation = 3 years
- **Administrative Exhaustion**
  - None required

### State

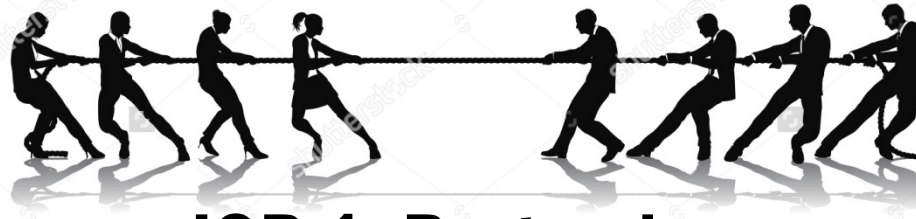
- **Administrative Exhaustion: within 300 days of last discriminatory paycheck**

## BRINGING A CLAIM

*Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007)

- *Lilly Ledbetter Act*
  - Practice that is unlawful occurs each time compensation is paid pursuant to discriminatory compensation decision or other practice
- *Dindinger v. Allsteel*, 860 N.W.2d 557 (Iowa 2015)

## BATTLE OF THE SEXES: ROUND ONE



### JOB 1: Bartender

**Requirements: Ability to lift 40 lbs; 18 years of age**

**Eligible Candidates:**

**Ben: 4 years of experience working as an attorney for local law firm Chase, Ambulance & Sue; Harvard Law Degree**

**Katie: High School Diploma; 3 years of experience working as a server for a corporate chain: Garden of Olives**

## BATTLE OF THE SEXES: ROUND TWO

### JOB 2: Director

Existing female Director paid \$90,000/year

Top candidate to fill a new position is male and currently makes \$95,000/year

Employer offers \$100,000 to lure male candidate because there has been difficulty filling the position



# BATTLE OF THE SEXES: ROUND THREE

## JOB 3: CFO

Retiring male with MBA and 35 years of experience paid \$225,000 with bonus of up to 15%

Replacement female is one semester from completing MBA and has 12 years of experience

Replacement female paid \$205,000 with bonus of up to 10%



# QUESTIONS?



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