



## EQUAL PAY ENFORCEMENT continued from page 4

*National Interagency Cooperation.* The SEP's focus on equal pay and interagency coordination is particularly noteworthy given its established working relationships with the DOL's Wage and Hour Division and Women's Bureau, and with the OFCCP. As of the spring of 2012, the EEOC trained 1,492 enforcement personnel from federal, state, and local agencies on "techniques for investigating and analyzing violations of compensation discrimination laws," and reportedly conducted over 70 joint outreach events with Task Force member agencies, including the OFCCP, DOJ, DOL, and Office of Personnel Management.

*EEOC Directed Investigations.* In SEP Section IV-B, "Strategic Enforcement Terms," the commission encourages district offices to use directed investigations to facilitate enforcement under the Equal Pay Act. The EEOC launched an Equal Pay Act Directed Investigation Pilot Project last year, and at least three EEOC district offices are actively participating in it. Through directed investigations, the EEOC does not need to wait for a charge of discrimination to be filed. This means that our clients may see the EEOC attempting to investigate their pay practices even where no charge has been filed.

Since the outset of the pilot program, the goal of directed investigations was to be non-adversarial. Regardless, our clients should be prepared for increased scrutiny regarding wage data and compensation plans in the coming years.

### Helping Our Clients Prepare for an Unanticipated Visit from the EEOC

No employer wants to find itself explaining its pay practices to an enforcement agency. Although we do not know how the EEOC will identify employers for investigation, we can guide our clients in reviewing their compensation programs. The vast majority of pay disparities are unintentional, resulting from the lack

of compensation controls and reviews. Since many employers go years without thoroughly reviewing their compensation programs, the increasing focus on pay equity provides a good opportunity to do just that. Of course, the process is time-consuming, and clients generally do not want to take the time to evaluate their compensation structures; however, the process and the resulting documentation will prepare employers for any investigation, audit, or potential discrimination claim. Following are a few basic steps our clients can take:

- Review pay practices using quantitative tools, paying close attention to discrepancies between men and women (and other protected classes) in similar positions. If our clients cannot explain any discrepancies through solid documentation, they should consider making some changes in appropriate areas.
- Review or create a comprehensive pay philosophy. A well-defined pay philosophy can help establish fair and non-discriminatory pay practices.
- Review or create a formal pay structure or compensation controls. From a pay equity standpoint, these will set the parameters and controls that will ensure fair pay between jobs and incumbents. Depending on the base pay system, further pay equity controls can be integrated into the base pay system.

### Conclusion

Pay disparities are often unintentional. Disparities tend to occur from a lack of compensation review and oversight. Market geography and economic conditions also have a direct impact on pay results, and in general, differences in education and experience are legitimate bases for starting salary variances. Even though unequal pay may be an unintentional consequence, equal pay enforce-

ment is a priority for the EEOC and federal employment law enforcement agencies, and for BOLI.

Unearthing unequal pay practices can be relatively easy, or complex. It may be as obvious as a clear pattern of paying equally qualified women less than men in the same position. Or it may be a practice of unintentional discrimination against a protected class in territory assignments so that no matter how well the protected class member performs, he or she will never have the same earnings opportunities as his or her non-protected-class counterparts.

Right now, we have an excellent opportunity to have a conversation with our clients about their compensation structures, and to educate and counsel them so they are prepared for what appears to lie ahead. Later this spring, perhaps we will have OCCR's recommendations to BOLI to evaluate as well.

### Endnotes

- 1 See [http://www.eeoc.gov/laws/statutes/epa\\_ledbetter.cfm](http://www.eeoc.gov/laws/statutes/epa_ledbetter.cfm)
- 2 See [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/lequal\\_pay\\_task\\_force.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/lequal_pay_task_force.pdf)
- 3 See <http://www.nationalpartnership.org/site/News2?page=NewsArticle&id=35814>
- 4 The OCCR is appointed by Avakian under ORS 659A.815 to advise him on issues related to education and enforcement of civil rights in Oregon.
- 5 The EEOC's Strategic Enforcement Plan FY 2013 - 2016 can be found at [www.eeoc.gov/eeoc/plan/sep.cfm](http://www.eeoc.gov/eeoc/plan/sep.cfm)
- 6 Tools and strategies identified in the SEP include investigations, litigation, federal sector oversight and adjudication, policy development, research, outreach, education, and collaboration and coordination among staff, offices, and program areas.