

# Workers Often Unaware of Right to File Complaint

■ By Annie M. Kelley

EMPLOYEES ARE OFTEN NOT AWARE OF THE RIGHT TO file an internal or external complaint against an employer, or may struggle over whether to even complain of suspected gender discrimination for fear of retaliation. Similarly, employers do not usually set out to have discriminatory policies or practices, but a lack of knowledge of the law can result in Equal Pay Act (EPA) liability without realizing it.

The Women's Rights & Labor and Employment Law Committees hosted a discussion surrounding the Equal Pay Act and gender discrimination on April 2.

Panelists Wanda Flowers, Tracey E. Diamond and Christine shared their experience on topics including negotiating employment contracts, pursuing remedies for violations of the Equal Pay Act and litigating claims for gender discrimination involving unequal pay.

Flowers explained that on a basic level, the EPA statute provides that an employer cannot pay employees differently based on gender for essentially equal work, under the same working conditions. The statute protects employees from wage discrimination on the basis of gender. Starkly different from bringing a Title VII gender discrimination claim, the EPA has no intent requirement. The EPA imposes strict liability on employers, even unintentionally, for wage discrimination on the basis of

gender.

Title VII gender discrimination can be a bit tougher to prove, as the McDonald Douglas inference of discrimination or a mixed motive defense involves a burden shifting, which ultimately rests with the plaintiff. Generally when an employee has a claim under the EPA, they have a Title VII claim as well, and both claims may be simultaneously filed. Title VII has requisite number of employees (15). If, for example, a person works for a small firm, they may not have a claim under Title VII, but could still bring a corresponding claim under the EPA or Pennsylvania Human Relations Act.

A major problem for employees, or potential plaintiffs in a gender discrimination suit, is that it is often difficult for an employee to learn that they are receiving unequal pay. There are laws that protect the rights to communicate employee pay, bonuses and benefits, but this is not usual water cooler discussion, nor do employers tend to communicate employees' salaries. Diamond, who counsels employers, noted that when reviewing employee handbooks, she makes sure there is no language that could discourage sharing such information.



### Podcast Spotlight

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Use your QR code reader to link directly to this resource.



All panelists stressed the importance of employee outreach to teach and learn the rights of employees. It is also important for an employee who thinks they may have a claim to memorialize things in writing. For instance, an email from an employee to an employer stating "I recently raised concerns about my compensation package, and now I have a bad review," is good documentation to have while still on the job. Oral complaints are still protected, but it is good for a client to protect rights and preserve claims of discrimination or unequal pay as much as possible.

Employees should remember to always conduct themselves properly and make sure they're doing what needs to be done on the job. If a possible gender discrimination issue comes up, employers will be more supportive of a productive employee than an insubordinate one. The bottom line is to be an effective employee, speak up if something is wrong, and to file a formal complaint.


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