

## The Why of Conducting Equal Pay Audits

I have written various blogs and articles about pay equity issues and action plans that employers should implement. The following court opinion ([Lenzi v. Systemax, Inc](#)) issued by the Second Circuit on December 6, 2019 brings into focus another aspect that must be evaluated.

### Court Ruling (Non-legal Summary)

In this decision, the Second Circuit held that an employee does not have to actually demonstrate that she received less compensation for the same work in order to win in an unequal pay claim. Under this opinion, she only has to prove that the employer discriminated against her because of her gender. The court did not require her to actually prove that a member of the opposite sex actually earned more for an equal job. This effectively means that employees do not actually have to bring claims under the Equal Pay Act that requires that they prove unequal pay for substantially the same work. This case provides a roadmap to actually obtaining relief in an equal pay claim under the Civil Rights Act without having to do a single calculation.

This decision states that employees can make claims of unfair pay practices based on all of the protected classes under certain provisions of the Civil Rights Act, including gender, race, religion, ethnicity, and national origin. The damages that could be assessed include lost wages, benefits, and counsel fees. A recovery can include several years of unequal pay. On top of this is the opportunity to recover double or triple damages.

### Impact for Employers

Clearly, conducting equal pay audits would be a logical first step. This will identify pay disparities prior to claims being assessed. Now, with the above ruling, the examination should extend to include records that would illustrate evidence of unequal advancement. The audits could compare various levels in the company breaking down various classes. If the subsequent hierarchy within a company demonstrates an adverse mix compared to the prior levels, then it would be a good place for employers to review their promotion standards and/or identify the reasons for certain promotions.

We have started to encourage our clients to adopt an internal compensation committee to strategically centralize compensation, promotion decisions, and related support to assist in minimizing, if not completely, eliminating biases. Tools can be created to not only track these matters but also create and enforce the use of certain objective standards for pay and even providing input into how performance evaluations are completed.



### WHAT'S DINKIN THINKIN

*Insight from Cowden President/CEO Elliot N. Dinkin covering a variety of topics including compensation, benefits, retirement, management, sales, and marketing.*

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