

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY  
DIVISION OF LABOR AND EMPLOYMENT LAW**

**FIELD OPERATIONS MANUAL**

**CHAPTER THREE EQUAL PAY**

This document is part of the latest version of the Virginia Department of Labor and Industry Division of Labor and Employment Law's Field Operations Manual. This document supersedes any and all previous editions.

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### 3.00, Equal Pay Irrespective of Sex

#### A. Coverage

The Virginia Equal Pay Irrespective of Sex Act is set forth in § 40.1-28.6 of the Code of Virginia. The Act makes the requirements of equal pay for equal work applicable to private industry employees not covered by the federal Fair Labor Standards Act of 1938, as amended. Please refer to the Virginia Minimum Wage Act portion of this manual for clarification of federal coverage under FLSA.

#### B. Summary of Act

The Act's substantive provisions and requirements are substantially the same as the federal Equal Pay Act. It prohibits discrimination between men and women with regard to their pay and fringe benefits, including pensions. Employers providing retirement benefits to their workers must pay equal benefits to male and female retired workers even though the cost to the employer of funding the program may be greater for one sex than the other. Employees of either sex must receive the same pay for performing jobs which require equal skill, effort, and responsibility, and which are performed under similar responsibility. The Act provides protection for equal pay only, not any other discriminatory charge.

Different wages and fringe benefits may be paid by an employer under the Act only in support of one of the following systems:

1. Seniority system;
2. Merit system;
3. System paying wages based on quantity or quality of production; or
4. A differential pay system based on any other factor other than sex.

The federal Equal Pay Act is administered and enforced by the Equal Employment Opportunity Commission (EEOC).

#### C. Case Assignment

1. Before accepting a claim under this section, have the inquirer contact the federal Equal Employment Opportunity Commission to determine if the employer comes within the purview of the federal Fair Labor Standards Act of 1938.
2. Regional or Central Office receives complaint for alleged differential in pay because of sex.
3. Claims must be in writing and must provide sufficient information to

indicate an alleged violation.

C. Investigation

1. Interviews complainant.
2. Interviews employer.
3. Interviews co-workers/witnesses if necessary.
4. Reviews job descriptions of employees.
5. Reviews employer's promotional pay policies.
6. Reviews any other policy employer may have such as one relating to seniority, pay increases and/or payment systems based on quantity or quality of work performed.
7. Collects and documents all facts and data to support validity of claim; calculates the amount of wages due claimant based on the difference between what the claimant received and what other employees of opposite sex received for same work performance.

D. Informal Resolution

Representative will attempt informal resolution:

1. Discuss findings and determination with employer.
2. Inform employer:
  - (1) Wage differential is due and must be paid immediately; also, must cease any other existing or future wage discrepancies.
  - (2) Employee(s) will be advised to seek restitution of wages.
  - (3) Employee will also be advised that he or she may seek damages equating to two times the amount of wages owed.

E. Employer Refuses to Comply

Representative should advise the employee of the following:

1. DOLI does not have the authority to pursue collection of the moneys owed through the courts.

2. The employee may institute his/her own action in the appropriate general district or circuit court.
3. The employee must institute a court action within two years of the date the wage discrepancy was noted and documented.