

## Equal Pay

The Equal Pay Act (EPA) requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Actual job content (not job titles, position descriptions, or grade) determines whether jobs are substantially equal. Specifically, the jobs must require substantially equal skill, effort, responsibility, and be performed under similar working conditions within the same establishment. Once an employee establishes a prima facie case under the EPA (by showing she or he is paid less than a man or woman performing the same work), the burden of proof switches to the agency to establish an “affirmative defense” for the unequal pay. An agency can only escape liability for unequal pay when the pay differentials are based on one of the four following defenses: seniority, merit, quantity or quality of production, or a factor other than sex. To successfully assert the “factor other than sex” defense, the agency must offer “a gender-neutral factor, applied consistently” that is “related to job requirements or otherwise is beneficial to the employer’s business.” An agency must show that the factor is related to job requirements or otherwise is beneficial to the agency’s business. The EEOC

has held that an agency’s determination of a position’s classification is an insufficient defense to an EPA claim. Additionally, job classification systems qualify as a “factor other than sex” only if the systems accurately reflect job duties and/or employee qualifications. If you think an agency is paying you less than a member of the opposite sex for the same work, you might want to request a desk audit as well as file an EEO complaint. The attorneys at Tully Rinckey PLLC can assist you in choosing the best strategy for getting the pay you deserve. Tully Rinckey, PLLC can represent clients at every stage of the federal government’s EEO process, from initial EEO counselor contact all the way through appeals in federal court. Call 703-525-4700 today for a consultation on your issue.