



New Jersey Civil Service Commission

APPENDIX A: A BASIC GUIDE TO SELF-EVALUATIONS FOR PUBLIC SECTOR EMPLOYERS

The Civil Service rules, as set forth in N.J.A.C. 4A, et seq, were enacted to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services consistent with N.J.S.A. 11A:1-2. However, as a result of the Diane B. Allen Equal Pay Act, Appointing Authorities must consider new standards when setting salaries for certain new State employees such as new Senior Executive Service (“SES”) and/or Unclassified employees, and during certain promotions. Additionally, employers may wish to undertake a proactive self-evaluation to identify and correct instances of pay disparity prior to receiving an official complaint. The information provided below is intended only as general guidance and does not constitute legal advice.

NOTE: The *Compensation Worksheet Form for No-Range Titles* is to be used only for employees in no-range titles. Employees in career service titles are paid pursuant to the Civil Service System which is considered a bona fide merit/seniority system under the Diane B. Allen Equal Pay Act. Similarly, employees in unionized titles covered by a collective bargaining agreement (“CBA”) that bases salary on a bona fide seniority and/or merit system do not need to be included in the self-evaluation.

SELF-EVALUATIONS

Employers should undertake a self-evaluation to identify and address any possible pay disparities under the Diane B. Allen Equal Pay Act. Employers should ensure that the self-evaluation is reasonable in scope and detailed based on the individual circumstances of the Appointing Authority.

NOTE: A self-evaluation is a tool that may be used by employers to identify and correct instances of pay disparity prior to receiving an official complaint. It is not, in and of itself, an affirmative defense to a claim brought under the Diane B. Allen Equal Pay Act. Affirmative defenses recognized under the Diane B. Allen Equal Pay Act are noted in step 4.

Below are steps that employers should consider undertaking as part of a comprehensive self-evaluation; however, the complexity of the analysis required will vary depending on the size, make-up, and resources of each Appointing Authority. The steps outlined below are intended only as a general guide.

Step 1: Gather Relevant Information

Gather data and other information necessary to performing a thorough self-evaluation. Such information includes, but is not limited to, the following for each current and former employee in a no-range title¹ for the past year:

1. Name/employee ID
2. Gender
3. Age and/or birth year
4. Race
5. Ethnicity
6. Primary work location
7. Work type (full-time, part-time, temporary, etc.)
8. Exempt/non-exempt status
9. Date(s) of hire
10. Job title
11. Job duties performed
12. Job code/range/band
13. Date in most recent job code/range/band
14. Division/unit scope
15. Job function/family
16. Supervisor
17. Performance rating(s)
18. Highest level of relevant education
19. Relevant license(s), certification(s), etc.
20. Pay type (hourly, salary, etc.)
21. Annualized salary or hourly rate
22. Shift differential
23. Bonus eligibility
24. Eligible benefit plans/programs
25. Bonus paid, if applicable
26. Hours worked/type (regular, OT, etc.)
27. Total compensation

Step 2: Identify Comparable Jobs

Utilizing a composite of skill, effort, and responsibility for the job duties performed, identify which positions within the organization are comparable. As noted previously, consideration of these factors is based on the work actually performed and not based on the job title or official job description. While job titles may be useful, they alone do not determine comparability. Similarly, do not assume that jobs in different divisions and/or unit scopes are not comparable. In addition, consider working conditions, which includes the physical surroundings, hazards encountered, and the time of day that the work is performed.

Step 3: Calculate Salaries and Identify Membership in one or more Protected Class

Within each comparable job group identified in Step 2, calculate the salary for each employee and identify his/her membership in one or more protected classes as defined by the New Jersey Law Against Discrimination.

Step 4: Assess Whether Differences in Pay Are Justified Under the Diane B. Allen Equal Pay Act

As noted previously, the Diane B. Allen Equal Pay Act permits wage differentials pursuant to a seniority system, a merit system, or if all five of the following are true:

- The differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, such as training, education or experience, or the quantity or quality of production;

¹ As noted above, NJ State employees in Career Service titles that are covered by the Civil Service System and employees in unionized titles covered by a CBA that bases pay on a bona fide merit and/or seniority system should not be included in the self-evaluation.

- The factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class;
- Each of the factors is applied reasonably;
- One or more of the factors account for the entire wage differential; and
- The factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor shall not be based on a legitimate business necessity if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing a wage differential.

Using the analysis from Step 3, indicate whether any of the pay disparities is permissible based on these five factors.

Step 5: Remediate Any Pay Disparities

Employers should take steps to remediate, in a timely fashion, any differentials in pay for members of a protected class performing substantially similar work as individuals who are not members of a protected class, where the pay disparity is not justified under Step 4. Be mindful that when remediating pay disparities, the employer cannot reduce an employee's pay to correct a pay disparity. Instead, the pay of the lower paid employee(s) must be increased.

Step 6: Adjust Compensation Practices

Employers who identify pay differentials between employees who are members of a protected class and employees who are not members of the protected class should attempt to determine the reason(s) for such differentials and take steps to prevent them in the future.

The Diane B. Allen Equal Pay Act states that employers must justify different rates of compensation for substantially similar work. Therefore, it is recommended that Appointing Authorities utilize the form in Appendix B titled *Compensation Worksheet Form for No-Range Titles* when hiring an individual into a job title that is designated no-range. In this instance, the comparable employee(s) are incumbent workers and/or other new hires who are performing substantially similar work but were hired at a different salary rate than the new employee.

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