

Eighth Circuit: Business – Judgment Jury Instruction Is Inappropriate For Claim Under Equal Pay Act

2 min read

Jun 7, 2012

The Eighth Circuit has issued a decision which serves as a clear reminder to employees that the federal Equal Pay Act is a strict liability statute. Basically, this means that an employer may not be able to avoid liability by simply articulating a non-discriminatory reason for its actions, as it could in a Title VII discrimination claim. Rather, when a female employee shows that she was paid less than a male employee for the same work, the employer can avoid liability under the Act only by affirmatively proving that it had a justification for the disparity in pay.

This was highlighted in the June 6, 2012 decision in *Bauer v. Curators of the University of Missouri*, No. 11-2758 (8th Cir. June 6, 2012), which involved a female nurse's claim that she was paid less than a male coworker who performed similar nursing work under similar conditions. The nurse brought her claim under the Equal Pay Act (EPA), which makes employers liable for paying any male more than a female for the same work unless the employer can show that the disparity is justified by a factor other than sex. At the conclusion of the jury trial, the court — over the nurse's objections — gave the jury a business-judgment instruction: "You may not return a verdict for the plaintiff just because you might disagree with the defendant's decision or believe it to be harsh or unreasonable." The jury subsequently found against the nurse. She appealed, arguing that the business-judgment instruction given to the jury was not appropriate for her strict liability claim under the EPA, and that she therefore deserved a new trial.

The Eighth Circuit agreed with the nurse that the business instruction had no place in an EPA claim. The panel emphasized the distinction between Title VII and the EPA, plainly stating that "the laws differ." Specifically, the panel noted, Title VII places the burden of persuasion on the plaintiff, requiring him or her to prove intentional discrimination. Thus, in Title VII cases, an employer may "escape liability merely by articulating a legitimate non-discriminatory reason" for its action, however, in an EPA case, on the other hand, the burden of persuasion is with the employer. Once the employee shows that the employer paid males more than females for the same work, the onus is on the employer to "prove that the pay differential was based on a factor other than sex." In other words, "[a]n employer under the EPA carries the burden of persuasion and must prove an affirmative defense; a Title VII

defendant need only articulate a defense.” As a result, the panel found, “[t]he business judgement instruction should not be given in an EPA case.”

This case should be a reminder to all employers that the Equal Pay Act is a strict liability statute, and the employer has the burden of affirmatively proving that its decision to pay a female less than a male for the same work was justified. If it does not, it loses. This makes EPA claims much more difficult to defend, and much more problematic for employers. All employers should, therefore, review their pay structures to ensure compliance with the law.

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Topics

Gender Discrimination, EPA, Equal Pay Act