

2.24 WAGE DISPARITY UNDER THE NJLAD (Approved 5/91)

1. Substantially Equal Jobs

Plaintiff has asserted that her¹ employer violated the [NJLAD/Equal Pay Act] by paying her lower wage than those paid to men for equal work.

[Charge where applicable: The Equal Pay Act states:

No employer having employees subject to any provision of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work.²

In order to establish an initial case of wage discrimination under the Equal Pay Act, a woman must show that:

- a. The work she did was substantially equal to that performed by male employees; and**
- b. She received a different rate of pay for this substantially equal work.]**

¹Note that the EPA applies only to wage disparity as between the sexes. *See Grigoletti v. Ortho Pharmaceutical Corp.*, 118 N.J. 89, 100 (1990).

²29 U.S.C. ' 206(d)(1).

I charge you that substantially equal work is defined by the same statute as work “on jobs the performance of which requires equal skill, effort and responsibility an which are performed under similar working conditions.”³

If a plaintiff establishes these two elements by a preponderance of the evidence, the defendant employer has the burden of proving by a preponderance of the evidence that the wage disparity is the result of one of four facts:

- a. A *bona fide* seniority system, or
- b. a merit system, or
- c. a system that measures earnings by quantity or quality of production, or
- d. a differential based on any factor other than sex.

If defendant proves one of these factors by a preponderance of the evidence, you must find in favor of defendant.⁴

³See *Brobst v. Columbus Services International*, 824 F. 2d 271, 174 (3d Cir. 1987), citing *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974), citing 29 U.S.A. §206(d)(1).

⁴The *McDonnell-Douglas* methodology is not utilized in an EPA claim or in an NJLAD claim based on substantially equal jobs. See *Grigoletti* at 100-110.

2. Similar Jobs⁵

In order to establish an initial case of wage disparity or discrimination, a plaintiff must show that:

- a. He/She is a member of a protected class;
- b. his/her job was similar to the job of other persons who were not members of a protected class⁶; and
- c. he/she received lower wages than the persons who were not members of a protected class.

It is plaintiff's burden to prove each of these three elements by a preponderance of the evidence.

⁵For a discussion of the differences between the proofs required in a Title VII (and by implication, on NJLAD) based wage disparity claim and those required in a Equal Pay Act Claim, see *Grigoletti v. Ortho Pharmaceutical Corp.*, 118 N.J. 89, 100-110 (1990).

⁶This charge applies to claims of "similar jobs"; the charge relating to the EPA applies to claims of "substantially equal" jobs.