

**2.31 WAGE DISPARITY UNDER THE EQUAL PAY ACT**  
**[29 U.S.C. § 206(D)(1)] (Approved 5/91)**

Plaintiff has asserted that her<sup>1</sup> employer violated the Equal Pay Act by paying her lower wage than those paid to men for equal work. 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.<sup>2</sup>

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

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

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

<sup>2</sup>29 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 required equal skill, effort and responsibility and which are performed under similar working conditions.”<sup>3</sup>

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 factors:

1. a seniority system, or
2. a merit system, or
3. a system that measure earnings by quantity and quality of production,  
or
4. a differential based on any factor other than sex.

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

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<sup>3</sup>See *Brobst v. Columbus Services International*, 824 F.2d 271 - 274 (3d Cir. 1987), citing *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974), citing 29 U.S.C. § 206(d)(1).

<sup>4</sup>Note that the burden of proof and the elements of proof under the EPA is different than the elements of proof under the NJLAD. See *Grigoletti* at 100 - 110. There is no shifting of the burdens akin to the *McDonnell - Douglas* methodology.