



Review Your Compensation Policies and Procedures

After the recent passage of the Lily Ledbetter Fair Pay Act, employers have been cautioned to carefully review their compensation policies and procedures to ensure that they meet all the legal requirements.

On the heels of this act, which allows employees to file compensation discrimination claims retroactive to 2007, employers have been dealt another potentially devastating blow to their business. In *Drum v. Leeson Electric Corporation*, 2009 WL 1350737 (Eighth Circuit May 15, 2009), the Court of Appeals ruled that a female human resources manager could proceed with her sexual discrimination claims for unequal pay because the employer failed to satisfy its burden of proving that the plaintiff had been paid at a below-market rate for reasons other than her gender.

Drum v. Leeson Electric Corporation

Plaintiff Tammy Drum filed claims under the Equal Pay Act, Title VII of the Civil Rights Act of 1964 and the Missouri Human Rights Act after her employer, Leeson Electric Corporation, hired a male replacement human resources manager at a higher salary than Drum had received in her fifteen years with the company. As Leeson's human resources

manager, Drum was salaried at \$42,500, while her male replacement negotiated a salary of \$62,500, the market rate for the position at the time.

Though Drum initially lost her claim when the District Court granted summary judgment in favor of Leeson, the Eighth Circuit reversed the decision, finding that the plaintiff had satisfied her burden to prove that the defendant paid Drum lower wages than a male employee performing the same work. In response to Drum's claim of unequal pay, Leeson argued that it had hired the most qualified candidate at the accepted market rate.

In rejecting Leeson's argument, the court held that simply showing that the employer had to pay a male employee a higher market rate did not sufficiently explain why the employer had previously paid its female employee at a rate that was substantially below the market rate for the same job. In fact, the court further cautioned that an employer could not legitimize paying a female employee at a below-market rate by relying

on her prior salaries, unless the employer could demonstrate that her prior salaries were based on a factor other than gender, which Leeson failed to do.

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Read more about the Lily Ledbetter Fair Pay Act in the *towPartners Advisor*, Summer 09.

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How Does the Drum Case Impact the Towing Industry?

Towing operation owners, like other employers, should tread very carefully when negotiating salaries for new and existing employees. When determining the salary of a job candidate, employers should review the salary history of employees who held the same position. As an employer, the burden is on you to justify a salary differential between male and female employees performing the same work, for reasons other than gender. As the court in this case specifically articulated, it is simply not enough that one employee is a better negotiator than another. You may point to the market as one factor which influenced a salary differential but when making salary decisions, document other distinctions between the candidates, such as education, skill set, job knowledge and experience.

Protect Yourself Before Litigation Begins.

The towing industry can protect itself further from liability by proactively establishing pay ranges for the positions, including a list of objective reasons for potentially paying an employee outside of that established range.