REPORT OF THE

EQUAL PAY ACT SUBCOMMITTEE
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I. INTRODUCTION

The equal pay provisions of the Fair Labor Standards Act, 29 U.S.C. § 206(d) ("Equal Pay Act" or "EPA"), require an employer to provide equal pay for men and women who perform equal work within an "establishment," unless the difference is based on a factor other than sex. Because the EPA is part of the Fair Labor Standards Act ("FLSA"), the FLSA procedural rules apply to EPA claims.

To establish a *prima facie* case, a plaintiff must demonstrate that (1) the employer pays different wages to employees of the opposite sex; (2) the employees perform equal work on jobs requiring equal skill, effort, and responsibility; and (3) the jobs are performed under similar working conditions. Corning Glass Works v. Brennan, 417 U.S. 188 (1974). If a *prima facie* case is established, the burden shifts to the employer to prove that the wage differential is justified by a preponderance of the evidence under one of four affirmative defenses: (1) a seniority system; (2) a merit system; (3) a system pegging earnings to quality or quantity of production; or (4) any factor other than sex. 29 U.S.C. §206(d)(1)(i)-(iv).

Equal Pay Act claims are often combined with Title VII claims of sex discrimination in compensation. However, courts have found different essential elements and standards of proof for the two statutory claims.

II. THE EQUAL PAY ACT'S COVERAGE

Marburger v. Upper Hanover Township, 2002 WL 193033 (E.D. Pa. February 4, 2002).

Plaintiff was hired by the Town Board to serve as the Township Treasurer/Assistant Secretary. After assuming some additional duties plaintiff claimed she was denied a pay increase because of her gender. The Court dismissed her Equal Pay Act claim for lack of subject matter jurisdiction; the plaintiff was not an "employee" within the meaning of the EPA. Id. at *9.

The Court evaluated plaintiff's status under both 29 U.S.C. § 203(e)(2)(C) and the Fair Labor Standards Act. Under 29 U.S.C. § 203(e)(2)(C), plaintiff was not an employee because she was appointed and could be removed by the Board at will, the terms of her employment were set by the Board, and she was not subject to the civil service laws of the township. Id. at *5. Plaintiff was also not an employee under the FLSA. The Court considered seven factors: (1) was plaintiff appointed by the Township Board of Supervisors; (2) was the Board active in her selection or did it merely concur; (3) did plaintiff serve at the pleasure of the Board; (4) who supervised plaintiff; (5) were plaintiff's daily responsibilities more administrative or more substantive; (6) to what extent did the public judge the Board by plaintiff's performance; and (7) to what extent did Plaintiff participate in policy or legislative formulation and implementation. Id. at *5-9. The Court concluded that plaintiff was a personal staff member to the Board, serving

in a legislative and policymaking capacity, and was therefore not an "employee." Id. at *9.

King v. Marriot International, Inc., 195 F. Supp. 2d 720 (D. Md. March 29, 2002).

Plaintiff, after being terminated, filed *inter alia*, an Equal Pay Act claim against defendant. Defendant filed a motion to dismiss plaintiff's equal pay claim under the Montgomery County Human Rights Act because it was "substantially similar" to her claim under the EPA and, therefore, precluded under a separate county statute prohibiting a complaint from being "reprocessed." The Court rejected this argument, noting that the County code only precluded a complaint from being "reprocessed" under the county's administrative procedure once it had been filed as a state or federal claim. Id. at 725. The County code did not restrict the claim because a similar claim has been filed under federal law. Id. at 726. The Court also found that claims under both federal and state law were appropriate because the available remedies differed. Id.

Monk v. Stuart M. Perry, 2002 WL 1397018 (W.D. Va. June 13, 2002).

Plaintiff filed *pro se* an Equal Pay Act claim alleging that she earned less for doing the same work as male employees. Plaintiff worked as a dump truck driver for defendant since September 1996. In January 2000, defendant allegedly gave higher raises to male truck drivers than to plaintiff.

Defendant moved to dismiss for failure to state a claim. Id. at *5. The District Court denied defendant's motion by reading the plaintiff's complaint liberally. Id. Because plaintiff filed *pro se,* her statement that defendant told her she "got what [she] was supposed to get" when she complained about her lower raise was sufficient to satisfy the requirements of notice pleading. Id.

Fayson v. Kaleida Health, Inc., 2002 WL 31194559 (W.D.N.Y. September 18, 2002).

Plaintiff, an African American female, filed suit against her employer and supervisor claiming violations of the Equal Pay Act. Defendants moved for and were granted summary judgment because the statute of limitations had run on some of the claims. Id. at *3, *5. In regard to the timely-filed claims, summary judgment was also granted because plaintiff failed to create a *prima facie* case. Id. at *9.

Plaintiff's untimely-filed claims were dismissed because the Court held that the continuing violation doctrine was inapplicable to an EPA claim because a continuing violation involves a series of discrete individual wrongs rather than a single and indivisible course of wrongful action. Id. at *3-4.

The remaining claims against the supervisor did not withstand summary judgment because a supervisor cannot be held individually liable unless the supervisor controls significant functions of the business or determines salaries and makes hiring

decisions. Id. at *4, *citing* Bonner v. Guccione, 1997 WL 362311 at *13 (S.D.N.Y. 1997). The supervisor was able to present evidence that he only makes recommendations with respect to raises and promotions and has no final decision-making authority. Plaintiff was unable to counter this assertion and, therefore, no genuine issue of material fact was present. Id. at *5.

Plaintiff's remaining claims against her employer were dismissed because the plaintiff was unable to show that she performed equal work on jobs requiring equal skill. The Court reaffirmed that under the EPA job content is important, not job title or description. Id. at *9. Plaintiff focused on job title and qualifications instead of actual job duties. Because no evidence was brought forth showing that plaintiff performed equal work on jobs requiring equal skill, effort, and responsibility as other employees, summary judgment was granted. Id.

Bernstein v. The Mony Group Inc., 228 F. Supp. 2d 415 (S.D.N.Y. October 17, 2002).

Plaintiff filed suit alleging violation of the Equal Pay Act. The defendant moved to dismiss the claim because it was not pled with sufficient specificity. The Court dismissed because the complaint failed to detail the time periods and the positions at which plaintiff received lower wages and, therefore, the complaint failed to provide "fair notice" to defendants of their claims under the EPA. Id. at 420.

Brusseau v. Iona College, 2002 WL 1933733 (S.D.N.Y. August 21, 2002). Reconsideration denied by Brusseau v. Iona College, 2002 WL 31014841 (S.D.N.Y. September 6, 2002).

Plaintiff, former women's college basketball coach, sued defendants alleging violations of the EPA. Defendants filed a motion to dismiss because the complaint failed to state a claim. Specifically, defendants said that the allegations of unequal pay were conclusory and too general. The Court denied because a complaint may not be dismissed for legal insufficiency unless the plaintiff clearly could not prove any facts giving rise to the complaint. Id. at *1. In addition, the Court said in discrimination cases, an amended complaint is valid as long as it gives "fair notice" of the plaintiff's discrimination claim. Id. *citing* Swierkiewicz v. Sorema, 922 S.Ct. 922 (2002).

Hankins v. Deluxe Corporation, et al., 2002 WL 31527705 (D. Kan. October 18, 2002).

Plaintiffs alleged that defendants violated the Equal Pay Act and Title VII of the Civil Rights Act. Plaintiff began working for Defendant Deluxe Financial Services in approximately July 1999, at its facility in Lenexa, Kansas. Defendant Deluxe Corporation is the parent company of Deluxe Financial Services. Two Defendants, Deluxe Corporation and Deluxe Check Printers moved to dismiss. Deluxe Check Printers claimed that prior to July 1999 they changed their name to Deluxe Corporation, succeeded all assets and liabilities to Deluxe Corporation and, therefore, argue that its

corporate status was no longer in existence. Deluxe Corporation claimed that it was not plaintiff's employer, but merely the parent company of the plaintiff's employer.

The Court denied the motions. Id. at *1. Whether an entity controlled the key aspects of plaintiff's work and whether plaintiff was employed by both entities were factual questions for the jury. Id. In addition, the Court held that because discovery had not taken place yet it was improper to determine whether Deluxe Check Printers lacked the capacity to be sued. Id.

Shieldkret v. Park Place Entertainment Corp, 2002 WL 91621 (S.D.N.Y. January 23, 2002).

Plaintiff, a marketing employee for a corporation owning and operating casinos, alleged that she was being paid less than male employees doing substantially the same work. Plaintiff and defendants both moved for summary judgment. The Court denied plaintiff's motion, but granted defendant's motion in part and denied in part. Id. at *1.

The Court denied part of defendant's motion because genuine issues of fact existed as to whether Plaintiff was doing substantially the same work as the male employees. Id. at *4. Plaintiff's work consisted of "telemarketing, booking reservations, 'comping' players and acting as a liaison between the company and its customers." See Id. at *1. One of the males was alleged to have also been involved with collections work and higher-level marketing work and the other two were alleged to have more customer development duties. Id. at *3-4. The Court also found that even if plaintiff was doing similar work as the first male, legitimate business reasons other than sex may have existed to explain the difference in their salaries. Id. at *3.

However, the Court did grant summary judgment for one defendant because that entity had never "employed" the plaintiff within the meaning of the EPA. Id. at *4-5. The defendant did not meet all four factors of the "economic reality" test adopted by the Second Circuit for determining who is an employer under the EPA. Id. at *4. Under this test, "an employer is one that has the power to: (1) hire and fire the employees; (2) supervise and control employee work schedules or conditions of employment; (3) determine the rate and method of payment; and (4) maintain employment records." See Id.

Hauschild v. United States, 53 Fed. Cl. 134 (August 2, 2002).

Plaintiff, a civilian male hired to teach on an Air Force base, filed suit claiming that he was paid less than Ms. Lewis, a female employee who performed similar work. The government claimed that any disparity in pay could be attributed to a merit system.

Plaintiff filed for summary judgment on the issue of whether he performed the same work under the same conditions as Ms. Lewis. The Court denied this motion because both parties submitted affidavits containing conflicting job titles and job descriptions. Id. at 138. In addition, the defendants submitted a desk audit that

concluded plaintiff was not working at the level required for an increase in pay. Id. Based on these genuine issues of material fact, the Court found summary judgment inappropriate.

The defendant filed for summary judgment claiming that any disparity in pay was the result of a merit system. The Court agreed with the defendant that Air Force promotions are contingent upon a candidate completing the minimum time-in-grade requirement before being eligible for promotion to a higher pay grade. Id. at 42. However, this argument was of little benefit to the defendant because it only explained the pay disparity for the time period prior to plaintiff meeting the time-in-grade requirement. Id. In addition, the defendant's claim that Ms. Lewis, as a senior employee, was eligible for the promotion was not relevant to the ultimate question of whether plaintiff was unjustly not promoted. Id. Ultimately, summary judgment for the defendant was denied because the defendant was unable to prove how the seniority or merit system justified the fact that after plaintiff became eligible for the increased pay grade he was paid less than Ms. Lewis for equal work. Id.

Lastly, the Court held that the EPA's provision awarding attorney's fees does not apply to *pro se* litigants, even if the litigant is an attorney. Id. at 146. The Court found that fee-shifting statutes are intended to provide adequate incentive for private attorneys to take these cases, and thus, a paying attorney-client relationship is assumed in the statute. Id.

III. COURT ENFORCEMENT

A. Arbitration

Beletsis v. Credit Suisse First Boston Corp., 2002 WL 2031610 (S.D.N.Y. September 4, 2002).

Plaintiff was terminated on March 1, 2000. Shortly after, she filed suit alleging violations of several employment related civil rights statutes including the Equal Pay Act. Defendant moved to stay the proceeding and compel arbitration because pursuant to an Employee Dispute Resolution Program plaintiff could not sue in federal court. The Court agreed with defendant. Id. at *3. In holding that the parties agreed to arbitrate, the Court relied on accepted principles of contract law. Id. The plaintiff entered into a contract free from fraud or other wrongful acts and the plain unambiguous language of the signed agreement evidenced an objective manifestation of assent. Id.

B. Employees of the States

Siler-Khodr v. Univ. of Texas Health Science Center San Antonio, 292 F. 3d 221 (5th Cir. May 16, 2002). Certiorari denied by University of Texas Health Science Center, San Antonio v. Siler-Khodr, 123 S.Ct. 614 (December 16, 2002).

In Siler-Khodr, the Fifth Circuit affirmed, without discussion, an EPA judgment from the District Court for the Western District of Texas. The Fifth Circuit also denied the Defendant's Petition For a Rehearing En Banc. Id. at 221-222.

Two Fifth Circuit judges dissented from the denial of rehearing. Id. at 222. They disagree with the majority's decision that application of the EPA to a state university does not violate the Eleventh Amendment, stating that this decision runs counter to the Supreme Court's jurisprudence in two ways. Id. First, Congress almost certainly relied on its Commerce Clause powers in enacting the EPA and did not indicate that it intended to invoke its powers under Section 5 of the Fourteenth Amendment. Id. Second, even if Congress did use its Section 5 powers, the judges argued that the EPA fails the "congruence and proportionality" test. Id. They also noted that the Supreme Court has vacated and remanded two circuit court decisions upholding the EPA since its holding setting the limits on Congress' Section 5 powers. Id. at 222-223 *citing* Kimel v. Fla. Bd. of Regents, 528 U.S. 62 (2000).

C. Employees of the Federal Government

Kenyon v. O'Neill, 2002 WL 1811909 (N.D. Tex. August 5, 2002).

Plaintiff, a federal agency employee, filed suit alleging violation of several discrimination statutes including the Equal Pay Act. Defendants moved to dismiss because the plaintiff failed to exhaust administrative remedies. The plaintiff filed his grievance under a specific union agreement that mandated a three-step process. Under that agreement any adverse decision rendered in step 3 must be appealed to binding arbitration. Plaintiff completed steps 1, 2, and 3, but did not appeal to arbitration. The Court held that under the terms of the agreement plaintiff failed to exhaust his administrative remedies. Id. at *1. As a result, the District Court did not have jurisdiction to consider the case on the merits.

IV. THE *PRIMA FACIE* CASE

A. Different Wages to Employees of the Opposite Sex

Stewart v. The Crosswalks Television Network, 2002 WL 265162 (S.D.N.Y. February 25, 2002).

Plaintiffs were fourteen former and current employees of defendant. Defendant's motion to dismiss was granted with respect to thirteen of the fourteen cases. Id. at *7. The only plaintiff to survive summary judgment alleged that she was paid less than male employees for performing similar work under similar conditions. Id. In contrast, twelve of the thirteen dismissed plaintiffs were male and failed to allege that any females were being paid higher wages for the same work. Id. Lastly, one plaintiff had his or her claim dismissed because he or she did not specify a gender. Id.

Cole v. TCI Media Services, 35 Fed. Appx. 342, 2002 WL 530195 (9th Cir. April 8, 2002). Certiorari denied by TCI Media Services v. Cole, 123 S. Ct. 477 November 4, 2002.

Plaintiffs challenged the District Court's dismissal of their Equal Pay Act claim. The Ninth Circuit sustained the dismissal because plaintiffs failed to present evidence showing the employer paid higher wages to male employees performing substantially equal work. Id. at *2.

Markel v. Bd. of Regents of the Univ. of Wisconsin System, 276 F. 3d 906 (7th Cir. January 3, 2002).

Plaintiff, an employee of the university's marketing team, claimed that she was being paid less than male co-workers doing the same job. Plaintiff was hired on a nine-month contract and her job duties included developing web-based services for sales to health care organizations.

The Seventh Circuit upheld the District Court's grant of defendant's summary judgment motion because one of the male co-workers was a consultant who did not receive benefits and no evidence was presented showing he did the same work as plaintiff. Id. at 909. In addition, the other male marketing team employee with the same job title as plaintiff had been employed by the university longer and had formerly been a program director, justifying his higher rate of pay. Id.

Marting v. Crawford & Co., 2002 WL 1072244 (N.D. Ill. May 28, 2002).

Defendant, a provider of insurance related services, hired plaintiff as a Casualty Adjuster I and promoted her through several positions up to Casualty General Adjuster. Plaintiff then filed an Equal Pay Act claim against defendant for paying her less than another male adjuster.

The District Court granted defendant summary judgment because plaintiff failed to establish a *prima facie* claim. Id. at *3. Plaintiff could not prove that any male employee was paid more. She admitted that she made more than any male adjuster employed with defendant and she presented no evidence that her male comparator's base salary was higher than hers. In addition, she did not dispute that she earned considerably more than her male counterpart when bonuses were included. Id.

Sharma v. City of Detroit, 35 Fed. Appx. 400, 2002 WL 1001024 (6th Cir. May 15, 2002).

Plaintiffs filed an Equal Pay Act claim *pro se* against the City of Detroit. Plaintiffs sought relief from a City policy which granted paid lunch time to employees in one office while denying paid lunch time to employees in another office. The District Court granted defendant's motion to dismiss for failure to state a claim. Id. at 401.

The Sixth Circuit affirmed the District Court's decision because plaintiffs did not allege that the denial of paid lunch time was based on gender discrimination. Id. Furthermore, disparity in pay based on work location is not prohibited under the EPA. Id.

Georgen-Saad v. Texas Mutual Insurance Co., 195 F. Supp. 2d 853 (W.D. Tex. April 11, 2002).

Plaintiff was hired as Senior Vice President of Finance in 1994 and resigned a little over two years later. The District Court dismissed her Equal Pay Act claim because she was unable to establish a *prima facie* case. Id. at 857-858.

Plaintiff compared her salary to other male senior vice presidents, but the Court held that she could not use those individuals to establish an EPA claim. Id. Businesses should be free to make the "complex remuneration decisions" needed to recruit and hire for high-level executive positions. Id. Because plaintiff held a high-level executive position she could not use others with similar job titles for comparison in the same way that workers performing "commodity-like work" could. Id.

Kidd v. MBNA American Bank, 224 F. Supp. 2d 807 (D. Del. September 30, 2002).

Defendant moved for summary judgment claiming the plaintiff could not identify a single male employee who was paid more than plaintiff for equal work. The Court agreed and granted defendant's motion for summary judgment for failure to create a *prima facie* case. Id. at 814.

B. Equal Work on Jobs Requiring Equal Skill, Effort, and Responsibility

Ferroni v. Teamsters, Chauffeurs & Warehousemen Local No. 222, 297 F. 3d 1146 (10th Cir. 2002)

Anita Ferroni was employed by Teamsters Local No. 222 from February 1996 until she was laid-off in January 1999. She was initially hired as an organizer, but began to assume duties of a business agent in 1996. She was promoted to a "business agent" in 1998. Ferroni continued to perform the duties of both an organizer and a business agent until her employment ended. Three men were hired as business agents in 1996 and 1997, after Ferroni was hired. Ferroni claimed that she performed the same work as those three men, was paid less, and was laid-off on the basis of her sex. The District Court granted summary judgment on all claims, including the Equal Pay Act claim.

The Tenth Circuit considered whether Ferroni's work as a business agent was equal to the work of the male business agents. The Tenth Circuit repeated an earlier holding: "like" or "comparable" work does not satisfy the standard, and "[i]t is not sufficient that some aspects of the two jobs were the same." Ferroni, 297 F. 3d at 1149 *quoting* Nulf v. Int'l Paper Co., 656 F. 2d 553, 560 (10th Cir. 1981). The Tenth Circuit

observed that after her promotion in 1998, Ferroni was paid the same as the male organizers based on the tier wage system the Local Union had instituted. Thus, the dispute concerned whether Ferroni was performing the same work as the three males before her promotion to business agent. The Tenth Circuit found, as the District Court found, the Ferroni produced no evidence to show that her combination of work as an organizer and business agent was substantially equal to the duties performed by the male business agents. Thus, the Tenth Circuit ruled that she failed to state a *prima facie* case under the Equal Pay Act.

Mowery v. Rite Aid Corp., 40 Fed. Appx. 926, 2002 WL 16083 (6th Cir. July 17, 2002) (per curiam).

Debra Mowery worked as a pharmacist in a Rite Aid store and claimed that she was paid less than comparable male employees in violation of the Equal Pay Act. Mowery claimed two sets of comparables. The first comparable was the one male who worked in the same store where she worked. Rite Aid successfully offered an affirmative defense that he received more pay as part of a buy-out of his store when Rite Aid purchased the store. Thus, the District Court concluded that the defendant prevailed on an affirmative defense of a factor other than sex. The Sixth Circuit affirmed the District Court's holding as to the affirmative defense.

The Sixth Circuit, however, reversed the District Court as two comparables working in other stores. The Sixth Circuit concluded that Mowery presented enough evidence that the pharmacists in other stores performed the same duties as she. The Sixth Circuit, however, did not address whether Mowery and the male pharmacist in the other store worked in the same "establishment" as is required under the Equal Pay Act.

Gu v. Boston Police Department, 312 F. 3d 6 (1st Cir. December 2, 2002).

Two female plaintiffs filed suit against their employer alleging violations of the federal and Massachusetts' Equal Pay Act. Plaintiffs claimed they were paid less than men performing comparable work. The District Court dismissed for failure to establish a *prima facie* case. On appeal the First Circuit agreed. Id. at 9.

The Circuit Court found that plaintiffs did not perform equal work. Id. at 16. Specifically, their jobs differed from the male co-workers in that one male co-worker was the department's Geographic Information System expert and his job entailed testifying in that capacity. In addition, that male also had managerial responsibilities that exceeded the plaintiffs'. Id. The other male coworker's job was different in that he also had highly technical skills, managed databases, and trained other employees in database management. Id. Ultimately, the Court found plaintiffs' claims unsubstantiated and conclusory. Id.

Conti v. Universal Enterprises, 40 Fed. Appx. 926, 2002 WL 16083 (6th Cir. July 17, 2002).

Female benefits administrator brought suit against her former employer claiming violations of the Equal Pay Act. The District Court granted defendant's summary judgment motion because the plaintiff failed to produce a *prima facie* case, and even if she did, defendant produced evidence showing that the disparity was based on a factor other than sex. Id. at 693. Plaintiff appealed this ruling claiming that she demonstrated that five similarly situated males were paid more and she produced indirect evidence showing the disparity was based on gender. Id. at 696.

The Sixth Circuit rejected plaintiff's claims. Id. at 696-697. The Court found the plaintiff's claims of comparable jobs too conclusory and lacking evidence. Plaintiff only presented evidence showing that the men held comparable titles, but she presented no evidence regarding specific job duties. Id. at 697. Furthermore, the Court held that plaintiff's inability to depose one of the male co-workers did not permit an inference that plaintiff was paid less than the co-worker because of gender. Id. In addition, the evidence regarding job duties that was presented showed that the males performed entirely different job duties. Id. In light of these findings, the Circuit Court held that plaintiff failed to create a *prima facie* case. Id.

Fink v. Winnebago County Sheriff, 2002 WL 221603 (N.D. Ill. February 12, 2002).

Plaintiff was hired as a licensed practical nurse at the county jail; a position which required her to achieve and maintain security clearance. She was discharged after she lost that clearance for allegedly compromising the security and safety of the jail. Id. at *4. Plaintiff then filed an Equal Pay Act claim alleging that defendant paid her less than comparable male workers. Id. at *8.

The Court dismissed for failure to establish a *prima facie* case. Id. Plaintiff could not show she did "equal work" because she was a licensed practical nurse and her male counterparts were a registered nurse and a physician's assistant. The Court found that both of the males' positions require more formal training, more responsibilities, and more duties than a licensed practical nurse. Id.

Swihart v. Pactiv Corp., 187 F. Supp. 2d 18 (D. Conn. February 13, 2002).

Plaintiff was originally hired by defendant either as a temporary worker who was later offered a permanent position or as the replacement for a former worker who had been in charge of human resources. Some dispute remained about plaintiff's initial status, but plaintiff's duties included discussing the salaries and potential raises for at least two other employees with the manager of the plant. Plaintiff was later discharged, allegedly as part of a cost-reduction effort. Plaintiff claimed, *inter alia*, that defendant had violated the Equal Pay Act by paying her less than the male employee she was replacing. Id. at 24-25.

The Court denied defendant's motion for summary judgment because a genuine issue of fact remained as to whether plaintiff's skills, experience, and responsibilities were the same as the former employee's. Id. at 25. Resolution of that issue depended

on the factual circumstance of plaintiff's job and the job of the former male employee. The Court held that such an issue was inappropriate to resolve through summary judgment. Id.

Hunt v. Nebraska Public Power Dist., 282 F. 3d 1021 (8th Cir. March 11, 2002).

Plaintiff worked as a clerk for defendant, a power company, which generates, distributes, and sells electricity. Plaintiff started as a part-time clerk and was promoted to full-time general clerk I. Id. at 1024. When plaintiff's supervisor retired, plaintiff was assigned some of those duties but was not promoted and did not receive an increase in salary. Id. at 1024-1025. The jury found for plaintiff, but the District Court vacated the jury verdict, holding that plaintiff had failed to show that her work was substantially equal to that of her former supervisor. Id. at 1028.

The Eighth Circuit reversed the District Court and reinstated the jury verdict. Id. at 1031. The Court stressed the high standard for overturning a jury verdict and found that it was not unreasonable for a jury to have found that plaintiff was performing substantially equal work as her former supervisor. Id. at 1029-1030. This determination is a factual inquiry and "insubstantial or minor" differences in job duties will not suffice to defeat the plaintiff's *prima facie* case. Id. at 1030-1031.

Fincher v. City of Dallas, 2002 WL 441395 (N.D. Tex. March 18, 2002).

Plaintiff was hired by defendant's City Auditor Office as an Auditor 55. She was to remain on probationary status for six months. Her duties included conducting an audit of the Love Field Airport. On the Love Field Airport audit, plaintiff also served as auditor-in-charge, but she did not receive Interim Assignment Pay. Interim Assignment Pay is special compensation for full-time post-probation employees performing another employee's duties on a short-term basis. Id. at *1. Before completing her probationary period, plaintiff resigned from her position and filed an EPA claim.

The District Court granted summary judgment to defendant because plaintiff failed to establish a *prima facie* case. Id. at *7. Plaintiff failed to show that she was in a position requiring equal skill, effort, and responsibility because her predecessors had licenses that plaintiff lacked and her predecessor performed all the job duties of an Auditor 56, not an Auditor 55. Id.

Wright v. Milton Paper Co., 2002 WL 482536 (E.D.N.Y. March 26, 2002).

Plaintiff filed an Equal Pay Act claim against her former employer. She compared her work and salary to three male paper purchasers at Milton. The Court granted defendant's motion for summary judgment holding that the plaintiff failed to establish a *prima facie* case. Id. at *10. Plaintiff could not show that she was similarly situated to the men because they performed different functions and had far more experience than plaintiff. Id.

Bliss v. Rochester City School Dist., 196 F. Supp. 2d 314 (W.D.N.Y. March 28, 2002).

The District Court consolidated three complaints filed against largely the same defendants. Only one plaintiff raised an Equal Pay Act claim against the school district. That plaintiff, a teacher, claimed she was paid less than other "tech teachers." Id. at 341.

The District Court granted summary judgment to the defendant because plaintiff failed to show her position was "substantially equal" to any male teacher receiving higher pay. Id. Plaintiff introduced no evidence as to the salaries, job titles, or job duties of any male teacher and the plaintiff also failed to introduce any evidence of her own compensation. Id. Finally, plaintiff made no argument that she intends to discover such evidence. Id.

Alford v. Cosmyl, Inc., 2002 WL 745627 (M.D. Ga. April 20, 2002).

Defendant, a manufacturer of cosmetic beauty products, employed the plaintiffs in the production department. In September 1998, plaintiffs had been promoted to first shift crew leaders with supervisory duties. Id. at *1. In October 1998, defendant's production manager resigned and plaintiffs were promoted to assume his job duties. Id. at *2. A male set-up mechanic was also promoted and given supervisory duties similar to those of plaintiffs, but was paid significantly more. Plaintiffs were terminated in March 1999 and subsequently filed, *inter alia*, an Equal Pay Act claim against defendant. Id. at *2-3.

The District Court denied defendant's motion for summary judgment. Id. at *9. Sufficient evidence was presented to allow a reasonable jury to conclude the jobs were equal. Id. Plaintiffs alleged that they all had joint responsibility for production supervision, all had the same job duties, all supervised line workers and set-up mechanics, and all coordinated with managers to ensure production. Id. Defendant claimed that the man was paid twice as much as plaintiffs based on his training as a mechanic set-up supervisor, but plaintiffs alleged that even if he had this training, he was not using it in his job duties. Id.

Gallo v. Advocate Health Care, 2002 WL 1160957 (N.D. Ill. May 23, 2002).

Plaintiff, a medical doctor, was employed by defendant as Director of In-Patient Services. Plaintiff was paid significantly less than other Directors employed by defendant and she did not receive any increases in salary during her four years of employment. Male directors received salary increases. Id. at *1-3. Plaintiff filed an Equal Pay Act claim after she was terminated.

The Court denied defendant's motion for summary judgment, holding that material issues of fact existed regarding whether plaintiff did the same work as the male

Directors and whether the pay differential was due to gender discrimination or differing levels of responsibilities. Id. at *5.

Lewis v. State of Oklahoma ex rel. Bd. of Regents for Tulsa Community College, 2002 WL 1316810 (10th Cir. June 18, 2002).

Defendant, a community college, employed plaintiff from 1989 until July 1998 as a Clerk and then as an Assistant in the Veteran Services Department. Plaintiff alleged a violation of the Equal Pay Act because her male co-worker was an assistant in the same department.

Plaintiff claimed her work was "substantially equal" to that of her male co-worker, but the District Court granted defendant's motion to dismiss because plaintiff could not defeat defendant's affirmative defense. Id. at *8. Defendant said the pay disparity was due to: (1) the male working as an Assistant longer than Plaintiff; and (2) Defendant had a policy of not granting a raise upon promotion if the employee was already earning more than the minimum for the new position. Id. at *4-5 (discussed in context of Title VII equal pay claim).

The Tenth Circuit affirmed the District Court's grant of summary judgment on different grounds. Id. at *9. The Circuit Court found that plaintiff had failed to establish a *prima facie* case under the EPA because she failed to demonstrate that she did "substantially equal" work during the time period when she was a clerk. Id. While plaintiff was a clerk, she trained her male comparator, often had to correct his work, and was held equally accountable for his errors. Id. The Court held that this work was insufficient to show that her work was substantially equal to his; the primary duties of a clerk involve processing paperwork, while the primary duties of an assistant involve counseling students. Id. Performing only 'some functions' of another position is not enough to make plaintiff's work as a clerk substantially equal to the male's assistant work. Id.

The Tenth Circuit also found that defendant had established the affirmative defenses of both seniority and legitimate "factors other than sex" to explain the pay difference. Id.

Horney v. Westfield Gage Co., 2002 WL 1434094 (D. Mass. June 20, 2002).

Plaintiff filed an Equal Pay Act claim against her former employer, a manufacturer. Id. at *6. A jury awarded plaintiff damages of $8,140. Id.

Defendant appealed claiming that plaintiff had not established a *prima facie* case and that defendant had sustained its burden of proof for an affirmative defense. Id. at *17. The District Court affirmed the jury verdict on both grounds. Id. First, the Court held that the jury could reasonably have compared both plaintiff's initial position and her subsequent promotion to the position of inspector to other jobs within defendant's operations. Id. at *18-19. The male employees in these jobs were similarly situated,

but earning more. Id. The jury could also have reasonably compared plaintiff's inspector position to male inspectors who were compensated at a higher rate than plaintiff. Id. at *19.

The Court also rejected defendant's argument of an affirmative defense. Id. Defendant alleged that any pay disparity was due to "factors other than sex." The jury was specifically instructed to consider this issue and decided that the evidence did not support the defense. Id. The Court refused to revise the jury's judgment on a factual issue. Id.

Heap v. County of Schenectady, 214 F. Supp. 2d 263 (N.D.N.Y. August 13, 2002).

Plaintiff, an assistant personal administrator, brought suit claiming she was paid less than male coworkers. The Court granted defendant's motions for summary judgment because the plaintiff could not identify any male coworkers with "substantially similar" jobs that were paid more. Id. at 271. The Court rejected plaintiffs claim that the personal administrator's job was "substantially similar" to an assistant personal administrator because the former had additional duties such as bearing ultimate responsibility for the management of the department as well as for the supervision of employees within that department, including the plaintiff. Id.

Kozlowski et. al. v. Fry, 2002 WL 31906469 (N.D. Ill. December 30, 2002).

Female Attorney Supervisors in the Cook County Public Defender's Office filed this complaint against Defendant Fry, The Public Defender of Cook County. The 15 female supervisory attorneys alleged employment and wage discrimination. Salary levels for Attorney Supervisors range from the lowest grade (D1) to the highest (D11). Supervisors at a particular grade earn the same salary. To increase grades, one must be selected or promoted to fill a vacant supervisory attorney position at a higher grade or get a grade "reclassification" which requires Fry's approval. Fry decides which grade a person is assigned when filling vacant positions.

The Defendants' motion for summary judgment was denied for several reasons. Id. at *19-20. First, the Court found that attorney supervisors perform similar functions and have similar responsibilities from division to division. Id. at *19. Therefore, a reasonable jury could determine that plaintiffs and three male co-workers shared a "common core" of supervisory functions and law practice. Id. The Court acknowledged that departments were different, the type of law being practiced was different, and the client population was different, but the proper test is whether the duties are "substantially similar" — not identical. Id. at *20. Second, the Court accepted plaintiffs' argument that they were performing work similar to male supervisors, yet their grade level designations were lower. The Court held that "job titles or classifications are irrelevant in finding wage discrimination." See id. Third, the Court found that defendants did not set forth an adequate reason other than sex for the salary discrepancies. Id. Defendants argued that the males had higher seniority, but plaintiffs

were able to show that two male supervisors with no supervisory experience were paid more than women with longer tenure as supervisors.

Leslie Lewis v. State of Oklahoma, 2002 WL 1316810 (10th Cir. June 18, 2002).

Plaintiff Lewis was employed by Tulsa Community College (TCC) from 1989 to 1998. She worked as a clerk and then in 1997 was promoted to an assistant. In bringing this suit, Lewis compares herself with a male assistant named Willis. Lewis alleged discrimination in regards to her wage, working conditions, and retaliatory discharge for her efforts to secure equal pay. When Lewis was promoted her salary remained unchanged. At that time, Lewis was earning more as a clerk than the entry level salary for an assistant, but this was still less than Willis.

The Tenth Circuit affirmed the District Court's grant of defendant's summary judgment motion in regard to the Equal Pay Act claims. Id. at *9. The Court analyzed two different time periods—when Lewis worked as a clerk and when she was promoted to assistant. Lewis failed to establish a *prima facie* case for the time she worked as a clerk because she did not demonstrate that her work was "substantially equal" to that of Willis. Id. Lewis claimed that she trained Willis in certain tasks and held some duties similar to that of an assistant, but "performing only 'some functions' of another position is insufficient to support" and EPA claim. See id. With regard to her work as an assistant, the Court assumed as did the District Court that Lewis could establish a *prima facie* case. Defendant asserted that the pay disparity was due to two factors: (1) Willis was hired in the position several years prior to Lewis' promotion; and (2) Defendant had a policy of not increasing employees' salaries upon promotion if they are already higher than the entry level salary for the new position. Hence the Court ruled that defendant had carried its burden of showing that the pay disparity resulted both from seniority in the position and a factor other than sex and, therefore, affirmed summary judgment for the defendant.

Fayson v. Kaleida Health, Inc., 2002 WL 31194559 (W.D.N.Y. September 18, 2002).

For case summary see Section II.

Shieldkret v. Park Place Entertainment Corp, 2002 WL 91621 (S.D.N.Y. January 23, 2002).

For case summary see Section II.

C. Similar Working Conditions

No cases.

V. DEFENSES

A. Seniority System

Sullivan v. Delphi Automotive Systems Corp., 198 F. Supp. 2d 952 (S.D. Ohio April 30, 2002).

Plaintiff claimed defendant violated the Equal Pay Act by paying her less for doing the same work as a male co-worker. Plaintiff was employed with defendant from 1983 until 2001 in increasingly responsible managerial positions. Her male co-worker also worked in managerial positions.

The District Court granted defendant's motion for summary judgment because the disparity in pay was due to a seniority system, not plaintiff's gender. Id. at 963. The male had been employed by defendant for 33 years, 13 years as a seventh-level supervisor, compared to plaintiff's 18 and six years, respectively. Id. The male, therefore, had more years in which to receive annual raises and any disparity in pay flowed from these additional years of seniority. Id.

Lewis v. State of Oklahoma ex rel. Bd. of Regents for Tulsa Community College, 2002 WL 1316810 (10th Cir. June 18, 2002).

For case summary see Section IV(B).

Kozlowski et. al. v. Fry, 2002 WL 31906469 (N.D.Ill. December 30, 2002).

For case summary see Section IV(B).

Leslie Lewis v. State of Oklahoma, 2002 WL 1316810 (10th Cir. June 18, 2002).

For case summary see Section IV(B).

B. Merit System

Hauschild v. United States, 53 Fed. Cl. 134 (August 2, 2002).

For case summary see Section II.

C. System Pegging Earnings to Quality or Quantity of Production

Velez v. QVC, Inc., 227 F. Supp. 2d 384 (E.D. Penn. September 27, 2002).

Plaintiffs, former television hosts, brought suit alleging violations of several federal and state employment discrimination laws. Three of these plaintiffs alleged violations of the Equal Pay Act. On defendant's motion for summary judgment, one

plaintiff's claims were dismissed because the statute of limitations had run, but two plaintiff's claims survived summary judgment.

One of those plaintiffs, Ms. Owens, filed an EPA claim because a male co-worker received higher raises. The male was hired two months prior to Owens and worked at a lower salary for three years. However, because of higher raises, during the last two years the male earned five thousand and then twelve thousand dollars more than Owens. Defendant claimed the male's raises were based on superior job performance. Defendant pointed to the fact that Owens was eventually terminated for poor job performance. Owens countered that she had positive performance review for four consecutive years. Her last review was negative only because she was being forced out to make room for a minority woman. The Court found that this factual dispute was sufficiently unclear as to deny defendant's motion for summary judgment. Id. at 421.

The other plaintiff, Ms. Tucker, claimed an EPA violation because within six months of her hiring the show hired three male hosts who each received a substantially higher starting salary than Ms. Tucker. In its summary judgment motion, the defendant claimed two gender neutral reasons for the disparity. First, the males had more experience than Ms. Tucker and second, two of the male's starting salaries were higher because they had to be enticed from a higher-paying geographical area to move to West Chester, Pennsylvania to take the position. The Court rejected both of these arguments saying a rational jury could find to the contrary. Id. The defendants did not provide any statistical evidence as to the average salaries in the cities in which the male hosts came from and the differences in experience between the three males and Ms. Tucker were not clear enough to demonstrate that the defendants' reasons were true. Id.

D. Factors Other Than Sex

Betts v. State, 2002 WL 340799 (S.D. Iowa February 25, 2002).

Plaintiff, a male, claimed that he was denied the same starting rate of pay as his female counterparts. The District Court granted defendant's summary judgment motion. Id. at *10.

Plaintiff was hired as an environmental specialist and paid the base salary. The female counterpart was hired at a higher starting salary. Plaintiff claimed that this was discriminatory as they both held graduate degrees and he allegedly had more experience than the female. Id. at *8. The Court, however, held that because the two employees were hired by different supervisors, the difference in starting pay could be explained as legitimate business judgments by the two supervisors. Id. at *9. The Court also criticized plaintiff's attempt to selectively compare his salary with only one other specialist when a number of male specialists had a higher starting salary than either the plaintiff or the female specialist to whom plaintiff compared himself. Id. at *8.

Plaintiff also tried to claim that defendant had a general policy to discriminate against white males. He based this claim on statements made in favor of hiring more women and minorities at an orientation session. Id. at *10. The Court found the statements did not support plaintiff's claim of discrimination in the hiring-salary decisions. Id.

Weldon v. Great White North Distribution Services, 197 F. Supp. 2d 893 (E.D. Mich. March 29, 2002).

Plaintiff was hired by defendant as a sales representative. She received an annual salary and sales commissions. Plaintiff and defendant later executed an employment contract that named the plaintiff as the Canadian Sales Director and established her compensation. Plaintiff was terminated when the facility she worked at was closed by defendant. Plaintiff sued defendant for an Equal Pay Act violation, *inter alia*, alleging that defendant paid her significantly less than male sales representatives and held her to different standards and rules. Id. at 898.

The District Court granted summary judgment for defendant on the EPA claim because the difference in salary was based on a factor other than sex. Id. at 903. The Court found that plaintiff's compensation was based on her employment contract, which was negotiated by plaintiff and took her preferences about compensation into account. Id.

Hammock v. Nexcel Synthetics, Inc., 201 F. Supp. 2d 1180 (N.D. Ala. May 13, 2002).

Plaintiff held a number of positions with defendant, a manufacturing company that produces synthetic yarn products. She started as a quality control operator in 1990 and finished as a night shift plant manager when she was terminated in October, 2000. Plaintiff filed an Equal Pay Act claim alleging that defendant paid her substantially less than male supervisors performing the same job duties. Id. at 1187.

The District Court granted defendant's motion for summary judgment and dismissed Plaintiff's EPA claim. Id. at 1189. Defendant alleged as an affirmative defense that the disparity in pay was based on levels of experience, education, and/or predicted/planned advancement between plaintiff and her male co-workers. Id. at 1188. Plaintiff did not attack the truth of the reasons defendant gave for the pay difference, but merely attacked the wisdom of the decisions that were made. Id. The Court held that such an attack was insufficient to defeat the defendant's affirmative defense, and therefore, did not consider whether plaintiff had established a *prima facie* case. Id. at 1189.

Wyant v. Burlington Northern Santa Fe Railroad, R.C., 2002 WL 1312068 (N.D. Ala. June 5, 2002).

Plaintiff worked her way up from the position of clerk to Trainmaster during her 29 years of employment with defendant. In 1999, plaintiff allegedly violated defendant's sexual harassment policy and was terminated. After her termination, plaintiff filed an Equal Pay Act claim against defendant, her former immediate supervisor, and the foreman whom she was alleged to have sexually harassed. Id. at *1.

The Court found that while there was no dispute that plaintiff was paid less as a Trainmaster than her male counterpart, the defendant successfully presented a non-discriminatory reason for the pay disparity. The male had superior experience combined with a prior salary history. Id. Plaintiff introduced no evidence to show that this explanation was merely pretextual. Id. at *24. The District Court granted defendant's motion for summary judgment.

Vazin v. Tennessee State Univ., 2002 WL 1316404 (6th Cir. June 14, 2002). Certiorari denied by Vazin v. Tennessee State Univ., 2003 WL 98123 (January 13, 2003).

Plaintiff was a temporary, non-tenured professor hired by defendant in its Computer Science Department. In 1998, plaintiff applied for a tenure track position in the same department. This position required a master's degree in computer science, which plaintiff did not have. Plaintiff was not selected for the position and subsequently filed suit against defendant claiming various forms of discrimination including violations of the Equal Pay Act. The District Court granted summary judgment for defendant on all claims. Id at *1.

The Sixth Circuit affirmed the District Court's ruling. Id. The defendant successfully established that any disparity in pay was based on a "factor other than sex." Id. Plaintiff's female comparator had a higher salary based on her superior educational qualifications. Id.

Murray v. World Savings Bank, 215 F. Supp. 2d 1316 (S.D. Fla. August 7, 2002).

Female plaintiff, an underwriting manager, sued her former employer because she was paid less than three similarly situated males. Defendant claimed the pay discrepancy was based in part on the fact that all three men had experience in management, banking, and/or appraisals. Plaintiff claimed this was a pretext for discrimination because an underwriting manager does not perform appraisals or manage other employees. The Court granted defendant's motion for summary judgment because whether or not an underwriting manager should have appraisal or management experience and whether or not it was fair to pay one who had that experience more was not an issue for the Court to decide. Id. at 1321. In addition, defendant's policies stated that salary may be based upon experience making defendant's reasoning legitimate and gender neutral. Id.

Bates v. H & H Charters, Inc., 2002 WL 31740523 (D. Or. October 11, 2002).

Plaintiff filed suit claiming that she was paid less as an automobile sales manager than her male counterparts. Defendant filed a summary judgment motion claiming that sales managers' pay schedules were negotiated on an individual basis; the plaintiff did not bargain as well as her male counterparts. The Court denied defendant's motion because several material facts remained in dispute. Id. at *4. Defendant admitted that he "pretty much" set the pay plan and he told plaintiff, "this is your pay plan" indicating no negotiation period. See id. at *3. The Court also noted that all four male sales managers' contracts were identical except for the names and dates. A reasonable jury could infer from this that the contracts were not negotiated on an individual basis. Id. at *4.

Pettiford v. North Carolina Department of Health and Human Services, 228 F. Supp. 2d 677 (M.D.N.C. July 22, 2002).

Plaintiff filed suit alleging that three males holding the same position received more pay for equal work. Defendant moved for summary judgment claiming gender neutral reasons existed for the pay discrepancy. The Court granted defendant's motion. Id. at 688-689. Two of the three males were paid more because they had been working in that specific position longer and had received raises during that time. Id. The third male laterally transferred to that position. Because of the lateral transfer he was entitled to retain his salary from his former position. Id. These gender neutral explanations created a valid affirmative defense and the Court granted defendant's motion for summary judgment.

Sharma v. City of Detroit, 35 Fed. Appx. 400, 2002 WL 1001024 (6th Cir. May 15, 2002).

For case summary see Section IV(A).

Lewis v. State of Oklahoma ex rel. Bd. of Regents for Tulsa Community College, 2002 WL 1316810 (10th Cir. June 18, 2002).

For case summary see Section IV(B).

Horney v. Westfield Gage Co., 2002 WL 1434094 (D. Mass. June 20, 2002).

For case summary see Section IV(B).

Velez v. QVC, Inc., 227 F. Supp. 2d 384 (E.D. Penn. September 27, 2002).

For case summary see Section V(C).

Markel v. Bd. of Regents of the Univ. of Wisconsin System, 276 F. 3d 906 (7th Cir. January 3, 2002).

For case summary see Section IV(A).

VI. STATUTE OF LIMITATIONS

Woodruff v. Mineta, 215 F. Supp. 2d 135 (D.D.C. August 7, 2002).

Federal employee brought suit against the Department of Transportation claiming an Equal Pay Act and other civil rights violations. Defendant filed a motion to dismiss the EPA claim because the statute of limitations is two years after the cause of action accrues or three years if the offending conduct was willful. The Court granted defendants motion to dismiss because the complaint was untimely. Id. at 139. The last offending act took place on August 4, 1998, but the complaint was not filed until September 14, 2001.

Rallins v. The Ohio State Univ., 191 F. Supp. 2d 920 (S.D. Ohio Jan. 25, 2002).

Plaintiff, the former head coach of the women's track team at The Ohio State University claimed, *inter alia*, that she had been paid less than comparable male coaches. Defendants moved for summary judgment. Id. at 922.

The District Court granted summary judgment because the claim was time-barred. Id. at 931. Under the EPA, a claim must have been brought within two years after the cause of action accrued. In Rallins, the Court found that the cause of action accrued at the regular payday following the time period for which unequal wages were claimed. Id. Plaintiff's last day of employment was September 12, 1994, but she did not file her EPA claim until April 28, 1997, two years and seven months later. Id.

Gonzales v. American Family Life Assurance Co., 202 F. Supp. 2d 1373 (M.D. Ga. February 8, 2002).

Plaintiff claimed a violation of the Equal Pay Act because she assumed additional duties with the understanding that she would also receive additional compensation. Defendant moved to have the EPA claim dismissed as time-barred. Id. at 1382.

The EPA provides that an action must be filed within two years after the date the cause of action accrued. Id. Plaintiff did not file her EPA claim until eight years after her cause of action would have accrued. Id. The District Court dismissed the EPA claim for failure to file within the statute of limitations. Id.

Augustus v. MSG Metro Channel, 217 F. Supp. 2d 458 (S.D.N.Y. August 27, 2002).

Plaintiff brought this suit *pro se* against her former employer, Metro Channels, for violations of Title VII. The magistrate judge refused to hear her later arguments invoking the Equal Pay Act because the judge claimed the three year statute of limitations had run. Id. at 463. The District Court disagreed. Id. The Plaintiff never included an Equal Pay Act claim in her complaint and did not move to amend her complaint to add the Equal Pay Act claim, but the District Court overlooked this and held

that courts must make reasonable allowances to protect *pro se* litigants from an inadvertent forfeiture of rights due to lack of legal training. Id. The Court noted that the plaintiff, after discovering facts giving rise to an EPA claim, argued before the magistrate that the disparity in pay was a clear violation of the EPA and attached copies of this argument to her papers in opposition to defendant's summary judgment motion. The District Court construed these actions as a motion to amend the complaint to add an EPA claim. Id. The Court further ruled that this amended complaint would relate back to the original complaint because the factual predicates of the EPA claim are arguably the same as those underpinning the Title VII claim. Id. The original complaint had been filed less than 2 years after plaintiff received her last pay check, making the amended complaint timely under the EPA.

Lassiter v. Massachusetts Bay Transportation Authority, 2002 WL 1858761 (D. Mass. July 30, 2002).

Plaintiff, an African-American female, sued defendant after the two year statute of limitations had run, but before the three years for willful violations had expired. Defendant moved for dismissal because the claim did not specifically aver that the defendant's actions were willful. The Court denied defendant's motion because facts in the compliant reasonably supported the inference that defendant's actions were willful. Id. at *3. For example, the plaintiff was paid at a rate of eight dollars per hour while her white male co-workers were paid twelve dollars per hour for identical work. In addition, several incidences of racial and sexual harassment contributed to the Court finding an inference of willfulness. Id.

Inglis v. Buena Vista University, 2002 WL 31818192 (N.D. Iowa December 16, 2002).

The plaintiffs, current and former female professors at Buena Vista University, allege that they were paid less than similarly situated males. Due to a faculty compensation study, defendant suspended all individualized pay increases to faculty members from 1998 to 2001. In July of 1999, the previous compensation system was eliminated. Plaintiffs did not challenge the current compensation system, but instead claimed discrimination under the previous compensation plan. Defendant argued that the claims were untimely. The plaintiffs countered that the claims included a pattern and practice of discriminatory conduct and were timely because the practice extended into the limitations period.

The Court held that the claims were outside the limitations periods by following the Supreme Court's precedent in National R.R. Passenger Corp v. Morgan, 122 S.Ct. 2061 (2002), and distinguishing between discrete acts of discrimination and a hostile work environment. Id. at *10. Discrete acts occur on a particular day and start the clock running. In contrast, hostile acts do not take place once on a particular day but over a period of time. Equitable tolling rules still apply. Construing the facts in the light most favorable to the plaintiffs, the Court held that Defendants discriminated against the plaintiffs when it hired them at starting salaries less than similarly situated male

employees, when it awarded merit increases tainted by discrimination, and throughout the time it maintained that discriminatory pay structure. Id. at *15. But, defendant suspended that structure at the end of 1997. Therefore, there was no pattern or practice of maintaining a discriminatory pay structure in existence during the limitations period and plaintiffs' pattern or practice claims were untimely.

Fayson v. Kaleida Health, Inc., 2002 WL 31194559 (W.D.N.Y. September 18, 2002).

For case summary see Section II.

VII. DAMAGES

Rinaldi v. World Book, Inc., 2002 WL 172449 (N.D. Ill. February 4, 2002).

Plaintiffs, Rinaldi and Hicks, filed a motion to amend the amount and types of damages awarded to them. The jury found the defendant liable on both Title VII and EPA claims, but only awarded actual damages for lost severance pay under the EPA claims. Id. at *1. The District Court amended to include actual damages under both claims, but only allowed recovery of one award because the award represented lost severance pay and were identical amounts. ($73,600 for Rinaldi and $60,000 for Hicks). Id.

Plaintiffs also sought to add liquidated damages as authorized by the EPA. Id. at *2. These damages are "considered compensation to the employee for the delay in receiving wages caused by the employer's violation of the EPA." Id. The District Court allowed the addition of liquidation damages, stating that they are not punitive damages and are awarded as a matter of course in EPA claims. Id.

VIII. ADMINISTRATIVE ACTION

No action.

