**4.13 Equal Pay Act – 29 U.S.C. §§ 206(d)(1) and (3)**

In this case, [name of plaintiff] claims that [name of defendant] violated a federal law called the Equal Pay Act. This law is designed to prevent sex-based wage discrimination by employers.

To succeed on [his/her] claim, [name of plaintiff] must prove the following four facts by a preponderance of the evidence:

First: [Name of defendant] is an employer;

Second: [Name of defendant] has employed [name of plaintiff] and a [male/female] employee in jobs requiring substantially equal skill, effort, and responsibility;

Third: The two jobs are performed under similar working conditions.

Fourth: [Name of defendant] paid [name of plaintiff] a lower wage than the similarly situated [male/female] employee.

[In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.]

[The parties have agreed that [name of defendant] is an employer subject to the Equal Pay Act’s provisions. You should consider that a proven fact.]

For the second element, you must consider whether [name of plaintiff]’s job required substantially equal skill, effort, and responsibility as the [male/female] employee’s job. You should compare the jobs – not the individual employees holding those jobs. The two jobs do not have to be identical. Rather, the law requires proof that the two jobs be “substantially equal” in skill, effort, and responsibility. Insignificant or trivial differences can be disregarded. The important comparison is the two jobs’ actual work or performance requirements – not the job titles, classifications, or descriptions.

To decide whether the jobs require substantially equal “skill,” you should consider factors such as the level of education, experience, training, and ability required to perform the two jobs.

Remember – you are comparing jobs, not employees, so the fact that the [male/female] employee has a qualification that [name of plaintiff] does not have is only relevant if that qualification is necessary for the [male/female] employee’s job.

To decide whether the jobs require substantially equal “effort,” you should compare the amount of physical and mental exertion needed to perform each job. You should weigh duties that result in mental or physical fatigue and emotional stress, or factors that alleviate fatigue and stress, to assess the relative effort involved. Equal effort does not mean that employees must use effort in the same way. If there is no real difference in the amount or degree of effort it takes to perform each job, the jobs require equal effort. But if one job requires additional tasks that take more time and effort, the two jobs do not require substantially equal effort.

To decide whether the jobs involve substantially equal “responsibility,” you should consider the degree of accountability that each job requires. You may consider factors such as:

 whether the employees are expected to direct or supervise the work of others;

 whether the employees are authorized to represent [name of defendant] in dealing with customers, suppliers, or other third parties; and

 the potential consequences to [name of defendant] of inadequate or improper performance of the jobs [, which may include possible damage to valuable equipment, possible loss of business or productivity, and the possibility of incurring legal liability to third parties].

For the third element, [name of plaintiff] must prove that the jobs are performed under similar working conditions. Note that the test here is whether the working conditions are “similar” – they do not need to be substantially equal. To decide whether relative working conditions are similar, you should consider the physical surroundings or the environment in which the work is performed, including the elements to which employees may be exposed. You should also consider travel requirements as well as any work hazards, including the frequency and severity of any risks of injury.

For the fourth element, [name of plaintiff] must prove that [name of defendant] paid [him/her] a lower wage than [his/her] [male/female] counterpart. To determine this, you should consider all forms of compensation including wages, salary, profit sharing, expense accounts, monthly minimums, bonuses, uniform-cleaning allowances, hotel accommodations, use of a company car, gasoline allowances, and fringe benefits.

[**Including Affirmative Defense:** If you find that [name of plaintiff] has proved each element [he/she] must prove, you must decide whether [name of defendant] has established [his/her/its] affirmative defense.

To establish [his/her/its] affirmative defense, [name of defendant] must prove by a preponderance of the evidence that the difference in the amount of pay between the jobs was not because of [name of plaintiff]’s sex but was the result of a [seniority system/merit system/system measuring earnings by quantity or quality of production/describe factor other than sex upon which [name of defendant] relies].

[Name of plaintiff] claims that the difference in pay was not the result of a [seniority system/merit system/system measuring earnings by quantity or quality of production/describe factor other than sex upon which [name of defendant] relies] and that [name of defendant]’s reason for the difference is only an excuse for paying higher wages to [men/women] for equal work.

If you find that [name of defendant] has established its affirmative defense, your verdict must be in favor of [name of defendant], and you will not decide the issue of [name of plaintiff]’s damages. But if you find that [name of defendant] has not established its affirmative defense, you must decide the damages issue.]

[**Without Affirmative Defense:** If you find that [name of plaintiff] has proved each element [he/she] must prove, you must decide the issue of [his/her] compensatory damages.]

When considering the issue of [name of plaintiff]’s compensatory damages, you should determine what amount, if any, has been proven by [name of plaintiff] by a preponderance of the evidence as full, just and reasonable compensation for all of [name of plaintiff]’s damages, no more and no less. Compensatory damages are not allowed as a punishment and must not be imposed or increased to penalize [name of defendant]. Also, compensatory damages must not be based on speculation or guesswork.

You should consider the following element of damage, to the extent you find that [name of plaintiff] has proved it by a preponderance of the evidence, and no others: the amount of [name of plaintiff]’s lost compensation. [Name of plaintiff]’s lost compensation is the difference between the amount [name of defendant] should have paid [name of plaintiff] and the amount [name of defendant] actually paid [name of plaintiff]. Put another way, [name of plaintiff]’s lost compensation is the difference between [name of plaintiff]’s compensation and the [average] compensation of the [male/female] employee[s] in [a] substantially equal job[s].

[Name of plaintiff] is entitled to recover lost compensation from the date of your verdict back to no more than two years before [he/she] filed this lawsuit on [date of complaint] [, unless you find that [name of defendant] “willfully violated” the Equal Pay Act].

[If [name of defendant] knew that [his/her/its] conduct violated the law, or acted in reckless disregard of that fact, then [his/her/its] conduct was willful. If [name of defendant] did not know, or knew only that the law was potentially applicable, and did not act in reckless disregard about whether the law prohibited [his/her/its] conduct, [his/her/its] conduct was not willful. If you find that [name of defendant] willfully violated the Equal Pay Act, then [name of plaintiff] is entitled to recover lost compensation from the date of your verdict back to no more than three years before [he/she] filed this lawsuit.]

**Special Interrogatories To The Jury**

**Do you find from a preponderance of the evidence:**

 That [name of plaintiff] and a member, or members, of the opposite sex have been employed by [name of defendant] in jobs requiring substantially equal skill, effort, and responsibility?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

 That the two jobs are performed under similar working conditions?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

 That [name of plaintiff] was paid a lower wage than a member of the opposite sex doing equal work?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

[ That the differential in pay between the two jobs was the result of a [seniority system/merit system/system measuring earnings by quantity or quality of production/describe factor other than gender upon which [name of defendant] relies]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “No,” go to the next question.]

[ That [name of defendant] either knew or showed reckless disregard for whether [his/her/its] conduct was prohibited by the Equal Pay Act?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 That [name of plaintiff] should be awarded damages for lost compensation?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,”

in what amount? $\_\_\_\_\_\_\_\_\_\_\_\_\_

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_