

# Employment Law Notes

September 2004

## EQUAL PAY ACT

### Improper Use of Salary Survey Exposes Employer to Equal Pay Act Claim

*The Washington Court of Appeals ruled that an employer who used a statewide salary survey to justify paying a female manager less than certain male managers was not entitled to have an Equal Pay Act suit against it dismissed, because the employer failed to show that it used the survey properly.*

#### Legal Background

Washington's Equal Pay Act, RCW 49.12.175, forbids employers to pay female employees less than similarly employed males. Both the Washington act and its federal counterpart, 29 USC §206(d), provide an exception for pay differentials which are based on a "factor other than sex," such as market forces of supply and demand.

#### The Case

Paula Hudon is the Director of Child Nutrition for West Valley School District in Yakima. For 10 years, she and the male directors of the other two departments (transportation and maintenance) were paid exactly the same wage. In 1996 Mr. Ferring, the director of the maintenance department, threatened to quit unless he got a substantial raise. The District granted him a raise of about 23% but gave no raise to Ms. Hudon or the other director. Over time, the disparity between the salaries of Hudon and Ferring increased, and Hudon's salary also fell behind that of the other male director. Hudon sued.

The District asked the trial judge to summarily dismiss Hudon's suit before trial on grounds that the

District based her wages on an annual statewide salary survey published by the Washington Association of School Administrators. The District also argued that Ferring was a valuable employee and it had to give him a raise or else risk losing him. The District argued that the survey and need to keep Ferring were "factors other than sex" permitted under the Equal Pay Act. The trial judge agreed and dismissed the case. Hudon appealed.

The Court of Appeals reversed, noting that even if the survey had been used to set Hudon's salary, the District did not establish that it used the survey to set Ferring's salary. As for Ferring's threat to quit, the appeals court said that although market forces can be a permissible "factor other than sex," the District had not established that it used any market data to set Ferring's salary, and without that, his threat was irrelevant.

The case is *Hudon v. West Valley School District No. 208*, decided September 2, 2004 by Div. III of the Washington Court of Appeals and available at [www.dehnlaw.com](http://www.dehnlaw.com).

#### Lessons learned

The District failed to do its homework before it adjusted the salaries of its directors. A survey provides legal protection only if it is used in setting compensation for all comparable positions. If a valuable employee threatens to quit unless he gets a raise, research the market before you react, and most important, document it. ✍

© 2004 by Kenneth Dehn.

*Employment Law Notes* is published to inform clients and friends about recent developments in employment law. It is not a substitute for legal advice.