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The EEOC's Focus on Equal Pay and the Health Care Industry Finally Comes to a Crossroad

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Earlier this year, acting EEOC chair Victoria Lipnic made clear that the agency would continue its focus on equal pay cases, calling them a main "priority." Lipnic has voiced her concern regarding the "occupational segregation" issue, where women and racial minorities fill predominately lower-paying jobs, and her belief that unless the government forces employers to analyze and adjust their compensation systems to address pay disparities, employers will not do it on their own. This echoes the EEOC's updated Strategic Enforcement Plan that was issued at the end of last year, where equal pay was identified as one of the six areas that the agency intended to pursue over the next five years. Meanwhile, the agency has made clear that the health care industry in general is an industry of focus, where 20 lawsuits against health care providers have been filed by the agency in the last four months. These two areas of focus met at an intersection in late August when the EEOC filed suit against Denton County, Texas, on behalf of a female physician employee of the County's Health Department.

A primary care clinician with the County Health Department is responsible for providing medical care to patients in county clinics and at the county jail. Dr. Martha Storrie was hired to the primary care clinician position in October 2008, and Dr. Marty Buchanan was hired to the same position in August 2015. Despite the fact that the two performed the same work requiring the same skill, effort, and responsibility in the same working conditions, and the fact that Dr. Storrie had been practicing medicine for more than 20 years, Dr. Buchanan was paid a starting salary that was at least \$34,000 more than what Dr. Storrie was paid. This pay discrepancy apparently was not uncommon, as several other male physicians in the same position at the Health Department were compensated more than Dr. Storrie.

Dr. Storrie brought the pay discrepancy issue to the attention of the director of public health. The County Health Department does not use a set schedule of salaries, and thus starting physician salaries are within the "sole discretion" of the director of public health. The director of public health, however, refused to remedy or otherwise raise Dr. Storrie's lower wages. Rather, after making her request for equal pay, Dr. Storrie was removed from the County's health offices by vote, purportedly based on a comment she made to a patient regarding her health. After filing the lawsuit, Robert A. Canino, the Regional Attorney representing the EEOC, issued a press release stating: "In the health care field, just as in any other job market, the best medicine for employers ailing from poor pay practices is to remedy gender-based pay disparities that have been premised on outdated sex stereotypes."

Physician compensation can be both a risky and delicate issue. It is standard in the medical industry for physician salaries to be negotiated on a case-by-case basis, rather than based solely on productivity or revenue. This random, and often unregulated, practice generally means that it has become commonplace for physicians with the same specialty, at the same facility, to be paid drastically different salaries based on differences in education, residency, and fellowship training. When you add to the mix the fact that the medical industry is also suffering from a dearth of physicians right now, forcing practices and facilities to pay significant premiums to fill current vacancies, you have a recipe for an equal pay disaster.

Just like employers in other industries, employers in the health care industry need to analyze and reconsider their physician compensation policies and whether those policies satisfy equal pay requirements. While the law

allows for employers to pay different salaries to employees in the same position based on seniority or merit, it is ultimately the employer's burden to prove that it relied on one of the acceptable factors in deciding to pay one employee a lower salary than another employee who is performing the same tasks.