

1984

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Recommended Citation

Mary L. Heen, *A Review of Federal Court Decisions Under Title VII of the Civil Rights Act of 1964*, in *Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities* (Helen Remick, ed., Temple University Press 1984).

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A Review of Federal Court Decisions under Title VII of the Civil Rights Act of 1964

MARY HEEN

The *Gunther* Decision

The federal equal pay statute, the Equal Pay Act of 1963, offers an effective means of remedying sex-based wage discrimination where men and women perform the same work. By its terms, however, it can do little to resolve the pervasive problem of wage discrimination in sex-segregated jobs, where men and women perform different work.¹ In attempting to develop, under existing federal antidiscrimination statutes, the expanded concept of equal pay for work of equal value, or comparable worth, it has been necessary to rely on Title VII of the Civil Rights Act of 1964, which prohibits all forms of employment discrimination on the basis of race, color, national origin, religion, or sex.² Nevertheless, until recently federal courts

1. Equal Pay Act of 1963, Pub. L. 88-38, 77 Stat. 56, 29 U.S.C. § 206(d). For a comprehensive review of the problem of wage discrimination and job segregation, see the National Academy of Sciences report to the Equal Employment Opportunity Commission: Donald J. Treiman and Heidi I. Hartman, eds., *Women, Work and Wages: Equal Pay for Jobs of Equal Value* (Washington, D.C.: National Academy Press 1981). See also Committee on Post Office and Civil Service, House of Representatives, Joint Hearings before the Subcommittees on Human Resources, Civil Service, Compensation and Employee Benefits, *Pay Equity: Equal Pay for Work of Comparable Value*, 97th Cong., 2d Sess., Parts I and II, Serial no. 97-53 (Washington, D.C.: U.S. Government Printing Office 1983).

2. Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 255, 2 July 1964, see 42 U.S.C. § 2000e, *et seq.* For a pre-*Gunther* discussion of expanding the concept of wage discrimination under Title VII, see generally, e.g., Ruth Blumrosen, "Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964," *University of Michigan Journal of Law Reform* 12 (1979): 397; Cynthia E. Gitt and Marjorie Gelb, "Beyond the Equal Pay Act: Expanding Wage Differential Protections under Title VII," *Loyola University Law Journal* 8 (1977): 723; but see also E. Robert Livernash, ed., *Comparable Worth: Issues and Alternatives* (Washington, D.C.: Equal Employment Advisory Council, 1980); Bruce A. Nelson, Edward M. Opton, and Thomas E. Wilson, "Wage Discrimination and the Comparable Worth Theory in Perspective," *University of Michigan Journal of Law Reform* 13 (1980): 231.

were divided on the issue of whether Title VII's prohibition against discrimination in "compensation" is broader in scope than the Equal Pay Act.

In *County of Washington v. Gunther*, decided in 1981, the United States Supreme Court resolved the threshold legal issue of whether sex-based wage discrimination claims can be brought under Title VII without satisfying the equal work standard of the Equal Pay Act. In a significant but narrowly written opinion, the Supreme Court ruled that compensation discrimination claims brought under Title VII are not restricted to claims for equal pay for "substantially equal" work.³ The Court recognized that Title VII represents a more comprehensive attack on discrimination than the Equal Pay Act, and that Title VII should be broadly interpreted as prohibiting the "entire spectrum" of practices that result in sex-based employment discrimination.

The *Gunther* decision represents a crucial first step toward development of the concept of comparable worth as a means of achieving pay equity through litigation. *Gunther* establishes that women may challenge systematic sex-based wage discrimination under Title VII without the necessity of showing that the employer has hired male workers at higher wages to perform substantially equal work. This means that litigation is not foreclosed when women are underpaid in jobs that are different from men's jobs. Title VII thus provides a potentially significant means of combatting the problem of the undervaluation of "women's work" in traditionally female occupations. Although many difficult issues remain to be resolved by the lower courts as post-*Gunther* pay equity litigation progresses, Title VII and the Equal Pay Act provide a legal framework for further development and resolution of such claims.

The Factual Background

Alberta Gunther worked as a guard in an Oregon county jail. The jail had a men's section and a women's section, and the guards were likewise segregated by sex. The duties of the male and female guards were similar, except that the female guards were responsible for fewer prisoners and, unlike the male guards, were required to perform clerical work. The female guards were paid substantially lower wages than the male guards.

Alberta Gunther and three of her co-workers filed a Title VII sex-discrimination case in federal district court against the county. They claimed that they were paid unequal wages for work "substantially equal" to that performed by male guards and, alternatively, that even if the jobs were not substantially equal, part of the pay differential was attributable to intentional sex discrimination.

3. *County of Washington v. Gunther*, 452 U.S. 967 (1981). Justice Brennan wrote the opinion of the Court, joined by Justices White, Marshall, Blackmun, and Stevens. Justice Rehnquist wrote a dissenting opinion joined by Chief Justice Burger and Justices Stewart and Powell.