

## Jury Finds Against Female Physician's Unequal Pay Claims

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A federal jury in Iowa has rejected Equal Pay Act claims by a female physician alleging she was paid less than her male colleagues in the same network for performing substantially equal work under the same compensation formula. *Bertroche v. Mercy Physician Assoc., Inc.*, No. 1:18-cv-00059 (N.D. Iowa Nov. 13, 2019).

The jury also found the physician network that employed her did not breach her employment agreement. After a six-day trial, the federal jury deliberated for less than three hours before delivering a complete defense verdict.

Plaintiff, Sharon Bertroche, M.D., worked as a family practice physician at Mercy for more than 20 years. During approximately the same period, three male physicians worked for the same network under the same form of employment agreement. All agreements required the same primary care physician duties under the same compensation system. Bertroche claimed that, although primary care physicians performed the same basic job duties, Mercy paid female physicians less than male physicians for substantially equal work in violation of the Equal Pay Act.

While acknowledging that each physician received a different amount of total compensation, Mercy argued that those differences were based on the specific practice of the physician at issue. Each physician was treated as a "profit center" and the contract formula was not applied differently between male and female physicians. Mercy paid physicians under a system that measured earnings by production quantity and quality based on physician revenue cost and profits. Some physicians maximized profitability by seeing more patients and delegating duties to nursing staff.

On a motion for summary judgment, the trial court denied Mercy's request for dismissal, but decertified the case as a collective action. Two other female physicians, Gina Perri and Arleen Zahn-Hauser, who opted into the case after it was removed to federal court were permitted to proceed to trial on their Equal Pay Act and state law claims. But the trial court held each of their cases required separate inquiries on issues such as whether they received the same staffing support and revenue as the male doctors at issue. The trials for Perri and Zahn-Hauser are scheduled to take place next year.

In her trial, Bertroche conceded that all doctors were paid under the same formula and that their pay varied based on the services they performed and the way they ran their practice. Defense counsel argued the salaries of physicians who were performing services under the same formula applicable to

Bertroche varied. Some female doctors made significantly more and some male doctors made less. The jury concluded that there was no violation of the Equal Pay Act.

Physician compensation systems continue to be vulnerable to litigation. Even a system based on a contractual formula can be subject to claims of differential treatment based on a protected status under the law. The healthcare industry has paid attention to [recent reports on physician pay](#), and many employers are now performing [attorney-client privileged pay equity audits](#) to assess liabilities and take a proactive approach to these types of claims. Contact Jackson Lewis with any questions about privileged pay audits, pay policies, or pay equity training.

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