



. What is the “essential job functions” defense?

Under the “essential job functions” defense, a contractor can defend against a claim of discrimination by showing that it took adverse action against an employee because the employee (a) had access to the compensation information of other employees or applicants as part of his or her essential job duties and (b) disclosed that compensation information to individuals who did not otherwise have access to it.

However, even employees who have access to compensation information as part of their essential job functions may discuss, disclose, or inquire about compensation in some instances. For example, they can:

- Discuss or disclose the pay of applicants or employees in response to a formal complaint or charge; as a part of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer; or in accordance with the contractor’s legal duty to furnish information.
- Discuss their own pay with other employees.