

IMPACT OF NEW GENDER PAY EQUALITY LAWS



Despite the Equal Pay Act of 1963, which requires that men and women in the same workplace be given equal pay for equal work, the "gender gap" is still very real.

In 2014, the typical woman working full-time all year in the United States earned only 79 percent of what the typical man earned working full-time all year. The pay gap is even greater for African-American and Latina women, with African-American women earning 64 cents and Latina women earning 56 cents for every dollar earned by a white non-Hispanic man. New laws on the Federal and State levels address the persistent disparity in pay.

What is the impact to your business and your career?

FEDERAL LAW ADDRESSES THE GENDER PAY GAP

The very first bill that President Obama signed into law was the Lilly Ledbetter Fair Pay Act.

“So in signing this bill today, I intend to send a clear message: That making our economy work means making sure it works for everyone. That there are no second class citizens in our workplaces, and that it’s not just unfair and illegal – but bad for

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business – to pay someone less because of their gender, age, race, ethnicity, religion or disability. And that justice isn’t about some abstract legal theory, or footnote in a casebook – it’s about how our laws affect the daily realities of people’s lives: their ability to make a living and care for their families and achieve their goals,” stated President Obama.

The 2009 Lilly Ledbetter Fair Pay Act was enacted to address the Supreme Court ruling that sided with Ledbetter’s employer.

Her gender discrimination case overturned 40 years of precedent in discrimination cases. The law clarifies that pay discrimination can occur when a pay decision is made, when an employee is subject to that decision, or at any time that an employee is injured by it. The law insures that unfair pay complaints can be filed within 180 days of a discriminatory paycheck – and that 180 days resets after each paycheck is issued.

CALIFORNIA GOES FURTHER WITH NATION’S TOUGHEST LAWS

California took a major step in January 2016 toward closing the lingering wage gap between men and women, as Gov. Jerry Brown signed one of the toughest pay equity laws in the nation.

Other states like New York, Nebraska, Maryland, and Massachusetts have passed similar laws this year.

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MAJOR CHANGES WITH THE CALIFORNIA FAIR PAY ACT

1. Employee comparison based on location – Employees can be compared even if they do not work at the same establishment, meaning an employee’s pay may be compared to the pay of other employees who work hundreds of miles apart.

2. Employee comparison based on responsibility – Employees can be compared even if they do not hold the “same” or “equal” job titles. The new law requires only a showing that the employees are engaged in “substantially” similar work, skill, effort, and responsibilities performed under similar conditions.

3. Pay transparency – Employers may not prohibit employees from disclosing or discussing their own wages or the wages of others, or from aiding or encouraging other employees to exercise their rights under the law.

4. Records retention – The Fair Pay Act extends an employer’s obligation to maintain records of wages and pay rates, job classifications, and other terms of employment from two to three years.

5. Enforcement – The law creates an additional private right of action—this one with a one-year statute of limitations - for employees who allege they have been discharged, discriminated, or retaliated against for engaging in any conduct protected by the statute. These employees may seek reinstatement and reimbursement for lost wages and benefits, interest, and “appropriate equitable relief.”

IMPACT ON EMPLOYERS

Given the significant emphasis on pay equity issues from multiple sources, employers are

well advised to take a close look at their compensation policies and practices. Conducting a compensation analysis and determining any necessary remediation is not for the inexperienced.

Although you may provide a good working environment, you may not be able to afford to be without Employment Practices Liability Insurance (EPLI).

THE FACTS ON EMPLOYEE-RELATED LAWSUITS ARE STARTLING

One in twelve federal court cases are employment-related. The average 2013 settlement was \$173,000 (excludes defense costs). Juries awarded over \$1 million in 12% of employment-related cases. With the average law firm charging \$300 per hour (or more) to defend a case, even a baseless claim could cost tens of thousands to defend. Cases with merit could cripple a business for years.

Claim Scenario: An employee sued a company for national origin discrimination in violation of Title VII, which prohibits employment discrimination based on race, color, religion, sex and national origin. The employee alleged that he was wrongfully terminated when he complained to his supervisors that coworkers had made disparaging remarks relating to his ethnic background. The plaintiff was awarded \$250,000 in damages.

HOW CAN YOUR COMPANY REDUCE THE CHANCE OF FACING A GENDER-BASED DISCRIMINATION IN PAY PRACTICE LAWSUITS?

- Conduct a statistical pay-equity analysis. Document how much men and women earn in the same positions.
- Understand why there are pay differences. Know why there are differences between employees in the same job. Document legitimate reasons for the pay difference, such as tenure, experience or skills. Be prepared to explain them.
- Implement a pay equity process – Establish a company-wide process in which lower-paid women are brought up to the same salary level as their male counterparts.
- Have written anti-discrimination policies. Distribute the policies company-wide and make sure that everyone understands them.
- Establish specific criteria for compensation decision-making. Include criteria such as education, years of experience, required skills, etc.
- Educate employees. Design and implement programs on topics such as employment discrimination laws and equal employment opportunity obligations.
- Thoroughly investigate complaints of inequity in pay and promotions.
- Purchase adequate Employment Practices Liability Insurance (EPLI). EPLI covers employers from claims made by workers who sue their employer for violating their legal rights as employees. EPLI provides coverage for defense (usually up to the limit of insurance) and damages (not punitive) arising out of a lawsuit alleging gender-based pay discrimination and failure to promote.

Many carriers offer Employment Practices Hotlines that provide services from employment lawyers to bring you the total program of prevention and protection.

Even the smallest employee dispute can turn into expensive litigation. Spurred by federal legislation, monetary awards for employment-related claims - for harassment, discrimination, wrongful termination, retaliation, defamation, unfair hiring practices, and other workplace torts - are steadily rising, with no end in sight. Employment-related claims can have a serious financial impact on the bottom line.

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IMPACT ON EMPLOYEES

Workers are legally entitled to equal employment opportunities, including the right to earn a paycheck that is free from unlawful bias, and in many cases, the right to discuss their pay with colleagues.

Men and women must be paid equal wages if they perform substantially the same work under the Equal Pay Act:

"Equal pay" refers to more than just your paycheck. Under the Equal Pay Act, all employers must provide employees within the same establishment whose jobs require substantially equal skill, effort and responsibility, and are performed under similar working conditions "equal pay." Equal pay includes equal: salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses and benefits. Unequal compensation cannot be justified unless the employer shows that the pay differential is based on a fair seniority, merit or incentive system, or a factor other than sex.

Your employer may not legally discriminate against you on the basis of your race, color, religion, sex, national origin, age (over 40), disability, or genetic information in any aspect of employment, including compensation, hours and benefits.

If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.

An individual alleging a violation of the EPA may go directly to court and is not required to file an EEOC charge beforehand. The time limit for filing an EPA charge with the EEOC and the time limit for going to court are the same: within two years of the alleged unlawful compensation practice or, in the case of a willful violation, within three years. The filing of an EEOC charge under the EPA does not extend the time frame for going to court.

If you have received an unfair paycheck within the last 180 days, you can file a discrimination charge with the EEOC.

For more information on Employment Practices Liability Insurance, contact:

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Created in association with Athena

*Athena is a 501(c)(6) business organization based in San Diego. Athena specializes in professional development for women in STEM. Offerings include programs, mentoring, workshops, and the annual Pinnacle Industry Awards and scholarships for women in STEM (through the Athena Foundation).

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