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Why Everyone Is Talking About Pay Equity

Pay equity has been a hot topic. Besides the continued focus on gender inequality driven by the #MeToo movement—the effects of which are still rippling through the nation—the high-profile pay equity lawsuit brought by the U.S. women's soccer team also has dominated headlines in recent months. Federal and state law on the topic continues to evolve.

In March of this year, some 28 female soccer players took the U.S. Soccer Federation to court, alleging they were consistently paid less than their male counterparts even though their performance has been superior. Then they won the 2019 World Cup. Public sentiment and corporate sponsors rallied to their cause. In August, the parties reportedly engaged in secret mediation sessions in New York City, but these sessions failed in dramatic fashion. The women's team accused the U.S. Soccer Federation of being determined "to perpetuate fundamentally discriminatory workplace conditions and behavior," and the U.S. Soccer Federation accused the women's team of taking an unduly aggressive stance and "presenting misleading information to the public." It seems unlikely the conflict will be resolved anytime soon.

Increasing pressure to close the gap in pay between men and women has translated into a complicated patchwork of legislation at both the state and federal levels. In 2019, at least 11 states have enacted or will soon enact new pay equity legislation, each with different requirements and effects. On July 10, for example, Governor Andrew Cuomo signed legislation significantly expanding the protections of New York's Pay Equity Law. Alabama, Maine, Nebraska and Maryland also have implemented or will implement similar pay equity laws before the end of 2019, joining states like California, Connecticut, Hawaii, Illinois, New Jersey, Oregon, Vermont, Washington, and Wyoming, each of which has enacted new pay equity laws since 2017. At last count, 49 of the 50 states—all but Mississippi—have some form of pay equity law on their books. And that doesn't take into account pay equity measures cities and counties have enacted in recent years

The new state and local laws often feature a ban on salary history questions in job applications, designed to disrupt the perpetuation of lower salaries for women and minorities. Some also expand the classes of protected workers by including categories other than gender, such as gender identity or marital status. A few states go even further, like New York and New Jersey, whose pay equity laws require equal pay among all protected groups, including age, race, creed, color, national origin, sexual orientation, and several other classifications. Several state laws, including New York's new law and those of New Jersey and California, also expand the scope of workers for measuring pay equity. Instead of requiring equal pay for "equal" work, those states require equal pay for "substantially similar" work, considering such things as skill, effort, responsibility, and, in some cases, working conditions. As such, employers should now analyze groupings or classes of similar jobs, rather than individual positions and titles, to ensure pay is equal among protected groups. (See "Mind the Gap: How to Navigate Pay Disparity and Comply With Equal Pay Requirements" for tips on conducting audits.)

Meanwhile, at the federal level, proposed bills to strengthen the Equal Pay Act of 1963 have stalled. The Paycheck Fairness Act, first introduced in the 1990s and offered again in the House in January, would, among other things, require employers to prove that wage discrepancies are tied to legitimate business qualifications and not to gender. It also would enable employees alleging gender pay bias to sue for compensatory (emotional distress) and punitive damages. While the bill cleared the House in March, it has stalled in the Senate. Interestingly, however, pay equity legislation tied to sports recently has made headway in both the Senate and the House. Bills proposed in July would require equal pay for all Olympic and amateur athletes. In addition, the Senate has introduced a proposal that would prevent federal funds from being used toward the 2026 World Cup (which the United States is set to host, along with Canada and Mexico) until the U.S. Soccer Federation agrees to pay the men's and women's national teams equally.

Compliance with the continually evolving legal landscape of pay equity can be challenging. States continue to lead the charge in enacting new and more stringent pay equity measures, some with stiff penalties for employer violations. For employers with operations in multiple states, it may make sense to examine the broadest pay equity statutes in the jurisdictions in which they operate and ensure their employment practices comply with those laws. For all employers, an audit of current pay rates and practices can be an effective tool in uncovering potential issues. As the national women's soccer team has made clear, there is no time left for employers to kick this issue down the road.

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