

Blog Post

# #EqualPayMeToo

June 6, 2018

The #MeToo movement not only has highlighted harassment in the workplace; it also has prompted courts and lawmakers to take a closer look at pay equity.

The EEOC warned employers about “[e]nsuring equal pay protections for all workers” when it identified this area as one of its priorities in its Strategic Enforcement Plan for Fiscal Years 2017-2021, and it is following that warning with enforcement actions. Last month, the EEOC entered into a \$2.66 million settlement with the University of Denver’s Sturm College of Law following allegations that female law professors were paid less than their male counterparts. The settlement required the law school to, among other things, revise its EEO and discrimination policies, hire an independent labor economist to conduct an annual pay equity study, and hire an independent consultant to evaluate the law school’s compliance with its EEO policies and recommend modifications to the law school faculty compensation’s system as necessary. And in March of this year, a North Carolina federal court approved the Family Dollar Store’s bid to end a lengthy lawsuit by approving a \$45 million settlement that the company reached with female store managers who alleged that the company had paid them less than similarly situated male store managers.

In the same vein, the Eleventh Circuit Court of Appeals (the federal appellate court for Alabama,

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Florida, and Georgia) revived a case alleging violations of the Equal Pay Act and Title VII (sex discrimination for unequal pay), stating that a jury could well find that sex motivated the pay disparity. The plaintiff in the case offered documents and testimony showing her salary was, for a few years, below the minimum for employees in her position, and was consistently below the midpoint. She also presented statistical evidence that women at the company received “thousands of dollars less than men’s pay for the same jobs.” The human resources manager reported pay disparity findings to one of the general managers, but the disparity was not addressed. The trial court granted summary judgment in favor of the employer, but the Eleventh Circuit reversed, noting that the plaintiff offered sufficient evidence that her employer paid different wages to male employees for “equal work on jobs requiring equal skill, effort, and responsibility and which [we]re performed under similar working conditions.” The company identified prior salary and prior work experience as non-discriminatory reasons for the pay disparity, but the court said that was not enough. Noting the employer has a heavy burden of proof, the Eleventh Circuit said that the female plaintiff offered sufficient evidence from which a jury could find that sex “was a motivating factor for the pay disparity,” and therefore the case could proceed to trial.

The gender pay gap has proved a persistent problem, with frequently cited research showing that U.S. women on average earn only 80 cents per each dollar earned by men. The numbers are even worse for minority women: black women earn 63 cents per dollar and Hispanic women earn 54 cents per dollar compared to white, non-Hispanic men.

As a result of the continuing pay gap even in the face of existing federal law, state and local lawmakers have implemented and proposed a patchwork of pay equity laws, not all of which are consistent. Indeed, more than 40 state and local jurisdictions have enacted or introduced bills last year related to

closing the gender pay gap. For example, the Massachusetts Pay Equity Act, scheduled to take effect on July 1, makes it illegal for employers to pay men and women different rates for “comparable work.” Oregon’s Equal Pay Law, scheduled to take effect in January 2019, requires employers to reward “work of comparable character” equally, regardless not only of sex, but also race, color, religion, sexual orientation, national origin, marital status, veteran status, disability or age.

Employers therefore should be mindful of not only federal law, but also state and local laws addressing pay equity. Employers may want to take a proactive approach and consider conducting pay equity audits, reviewing and updating EEO and compensation policies to reflect the most current applicable equal pay laws, and consulting counsel immediately when equal pay complaints are reported to ensure that they are appropriately addressed.

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