

Employee Benefit ■ Plan Review

Leveling the Playing Field: Lessons Employers Can Learn from U.S. Women’s Soccer \$24 Million Settlement of Equal Pay Dispute

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In what is being portrayed as a significant victory for women in sports, the U.S. Women’s National Soccer Team (“USWNT”) announced a \$24 million settlement of a class action equal pay action against the U.S. Soccer Federation (“USSF”). The settlement comes almost three years after the *Morgan v. United States Soccer Federation* gender discrimination claim was filed in March 2019. The lawsuit and settlement provide important lessons for all employers when it comes to pay equity and the increasing press for parity in women’s sports.

OFF THE PITCH: LAWSUIT FOCUSED ON PAY DISPARITIES

The lawsuit, which included notable athletes from the 2019 World Cup winning team like Megan Rapinoe, Carli Lloyd and Alex Morgan, was brought under the Equal Pay Act (“EPA”) and Title VII of the Civil Rights Act of 1964 alleging institutionalized gender discrimination in the form of unequal pay and working conditions. The complaint alleged that USSF discriminated against the USWNT by “paying them less than members of the MNT for substantially equal work and by denying them at least equal playing, training and travel conditions . . . and other terms and conditions of employment.”

The subject of the *Morgan* lawsuit focused on the disparity of the bonus structure between the women’s and men’s teams, which was established by the USSF. Under the structure, the USWNT had the opportunity to earn substantially lower bonuses than the men’s national team for the same accomplishments. For example, making the World Cup team would net a men’s player \$67,000, whereas a player making the women’s team would net just \$37,500.

ATHLETES REACH THEIR GOOOOAAAALLLL! \$24 MILLION SETTLEMENT REACHED

One of the reasons the settlement is so significant is that the USWNT had suffered some significant legal setbacks in court. The lowest moment for the athletes came in May 2020 when U.S. District Judge Gary Klausner granted the USSF’s motion for summary judgment dismissing equal pay claims. That decision appeared to eliminate any hope of an eventual victory. But the USWNT appealed the decision and reached a final settlement of the equal pay claims after years of litigation and negotiation.

According to the press release, the settlement includes a \$24 million settlement fund of which \$22 million will go to the class of athletes in the form of back pay and \$2 million is set aside

for future charitable efforts related to women's and girls' soccer.

The agreement also is conditioned on a new collective bargaining agreement in which the USSF has committed to providing equal pay rates for the women's and men's national teams. The latter is considered the true achievement for the plaintiffs as it changes the future for women's soccer by guaranteeing equality in compensation. Vocal leader Megan Rapinoe described the settlement as "a monumental win for women's sports and women's soccer in particular."

COSTS ABOVE AND BEYOND THE SETTLEMENT

Notwithstanding the notoriety of the \$24 million settlement, resolution of the lawsuit does not address another significant issue at play – the disparity in cash awards available to the men's and women's teams as those awards are established at the discretion of the soccer world's governing body, FIFA. In 2019, the World Cup championship title for the women's team awarded \$30 million in comparison to the \$400 million awarded to the men's champion. Based upon news reports of the settlement with USSF, the women's World Cup team is expected to continue to pressure FIFA for parity in pay, which means there may be a lot of action between now and the next World Cup games in 2023.

An issue that is easily overlooked in settlements such as these is defense costs. Attorneys' fees for defense of the case are reported to have exceeded \$9 million. Without question, equal pay litigation is on the rise and defense costs can be crippling. This harsh reality is not confined to soccer but is a challenge facing

employers throughout the country. What is more, the stakes are increasing dramatically as robust pay equity laws have been acted in many of the most litigious states in the nation. What can employers do to protect themselves?

ACTION ITEMS TO ENSURE COMPLIANCE WITH PAY EQUITY LAWS

The settlement with the USWNT reached the front page of many media outlets, and debate about pay parity will likely continue into 2023. This will spur employees, government officials and plaintiffs' attorneys to scrutinize pay practices at workplaces across the country. As pay equity litigation continues, employers should take the following steps to ensure their own workplace pay policies are not deserving of a red card:

1. *Evaluate Compensation Data to Identify Pay Disparities:* An audit of pay practices is an indispensable first step in any compliance effort. Review your compensation policies and pay determinations to ensure organizational decisions are properly documented. Identify differences in pay across gender and other classifications. Make adjustments or be able and ready to justify any disparities based on legitimate factors such as location, education or training.
2. *Implement Pay Practices Designed to Comply with the Increasing Demands of New Laws and Regulations:* Pay equity laws are complex, exacting and vary by state. They can carry substantial penalties.

Train management level employees, HR staff and compliance experts who are responsible for determining and monitoring employee compensation and ensure they understand the mandates of the federal EPA and applicable state and local laws.

3. *Educate and Train Managers:* Failure to comply with pay equity laws can be costly and defense costs alone can be exorbitant. Often the best defense is a good offense – and organizations can do a lot to protect themselves by understanding the law. This is especially true in pay equity where there are significant differences between federal and state law. Moreover, recent legislation mandating pay transparency and posting requirements impose significant obligations on companies.

CONCLUSION

Now is the time for employers to understand the pay equity laws and train their managers and HR professionals. Failure to comply with these requirements could see even the most well-intentioned employer facing a costly penalty kick. 🚫

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