

COURT PERMITS UNEQUAL PAY COLLECTIVE ACTION TO PROCEED: WHAT SCHOOLS CAN DO TO PROACTIVELY AVOID WAGE BIAS LITIGATION

Insights
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A group of female teachers in Pennsylvania were recently given the green light by a federal court judge to proceed with their wage bias lawsuit as a collective action, which should provide schools across the country incentive to make sure their own pay equity houses are in order. On August 24, U.S. District Judge Michael M. Baylson granted Dawn Marinello's motion for final certification in her case pending in the Eastern District of Pennsylvania filed against her employer, Central Bucks School District. Marinello filed her lawsuit against the school district in June 2021, alleging that it violated the Equal Pay Act by paying its female teachers less than their male counterparts. Specifically, she alleges that the School District correctly credited its male teachers for their years of education and experience when determining and calculating their salaries but failed to do so for the female teachers – in some cases doing providing credit to male teachers for experience and education they did not have. What does your school need to know about this case in order to avoid a similar fate?

Court Allows Pay Equity Lawsuit to Expand into Costly Collective Action

Marinello recently filed a motion for final certification seeking class certification so that she could proceed with her claim as a collective action. She identified 26 male teachers who she claims were paid at a higher level on the salary scale than their prior experience and education level warranted. At an evidentiary hearing conducted on June 18, she and seven other female teachers testified that they were

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paid at a lower level on the salary scale than either their prior experience or education level merited.

Judge Baylson found that “the testimony given at the evidentiary record made clear that Plaintiff established, by a preponderance of the evidence, that several women were similarly situated to Plaintiff in that they were also female educators, employed by the District, who were subjected to the same District Salary Schedules, and who all received inaccurate placements on their respective school year’s Salary Schedule which resulted in their underpayment.”

In ruling that final certification of Marinello’s class was proper, the court also found that “the 26 male educators were also inaccurately placed on the Salary Schedules, but their placements yielded overpayment not underpayment.”

As a result, Marinello’s action is permitted to proceed as a collective action. The group of plaintiffs will be expanded to include “all women teachers employed by the District from 2000 through the present who have been subject to compensation under the District’s applicable Salary Schedules who were treated less favorably than male teachers employed by the District from 2000 through the present with respect to compensation under the applicable Salary Schedules.” All such teachers will be permitted to opt into the lawsuit, which will likely lead to a costly and lengthy litigation.

What Does the Law Say?

The Equal Pay Act (EPA) requires that employers provide their male and female employees equal pay for equal work. In order for work to be considered “equal” or “substantially equal” under the EPA, courts must conduct an analysis of whether the performance of the work requires equal skill, education, responsibility, and effort, and whether it is performed under similar working conditions.

‘Payment’ is broadly defined under the EPA and “generally includes all payments made to or on behalf of an employee as remuneration for employment,” inclusive of all “compensation, including salary profit sharing, expense account, monthly minimum, bonus, uniform cleaning allowance, hotel accommodations, use of company car, gasoline allowance, or some other name.” There are very few permissible exceptions to the this requirement.

In addition to the EPA, many state legislatures have enacted their own pay equity legislation. Certain statutes afford even greater pay equity protections than the EPA, including limitations on the exceptions by which employees performing similar work may be paid differently. Other states statutes include pay transparency and anti-retaliation provisions as well.

What Should You Do?

In light of these numerous statutory requirements and the rise of equal pay litigation, pay equity is a very important topic for employers to be mindful of. You should take proactive measures to provide equal pay and opportunity for all employees, regardless of sex.

One important step you can take is to conduct a pay equity audit – best done in coordination with your legal counsel. By internally evaluating compensation data for employees in comparable jobs and analyzing whether there are any discrepancies between the compensation of male and female employees whose job performance is similar, you might able to identify issues to be corrected. If any disparities are identified, you should consider whether the variance is justified under the law. If the difference in pay is not defensible, you should consider taking steps to remediate the unequal pay.

Moving forward, you should continue to ensure compliance with the changing pay equity laws and be mindful of pay practices, consciously striving to eliminate any gender pay gaps.

Conclusion

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Education Practice Group](#) or [Pay Equity Practice Group](#).