



Multi-Million-Dollar Settlement in New York Pay Equity Case

Insights

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In an amount sure to catch the attention of corporate general counsel – as well as raise their blood pressure – a class of sales representatives for an international pharmaceutical company recently settled their Equal Pay Act (EPA) and Title VII gender pay discrimination collective and class claims for four million dollars (*Barrett v. Forest Laboratories, Inc.*, 12-cv-05224 (S.D.N.Y.)). Despite the multi-million-dollar settlement amount announced on October 6, 2017, the employer still avoided substantial risk, as the total potential recovery was estimated at over 10 million dollars.

This case has taken a long and winding road from its inception in July 2012, over five years ago. The key battle was over whether the plaintiffs could conditionally certify a nationwide collective action under the EPA, which allowed them to send out notice of the lawsuit to potential class members soliciting them to join the case. The plaintiffs succeeded in meeting the standard of being “similarly situated” to the rest of the nationwide class by showing that:

- The named plaintiffs worked the similar jobs, despite working for various periods in different parts of the country;
- Sales representatives operated under the same corporate standards governing skills requirements, work type, and training; and
- The company maintained centralized standards for initial base pay and raises.

Moreover, the named plaintiffs presented a list of male comparators who had less or equal seniority, but who were being paid more.

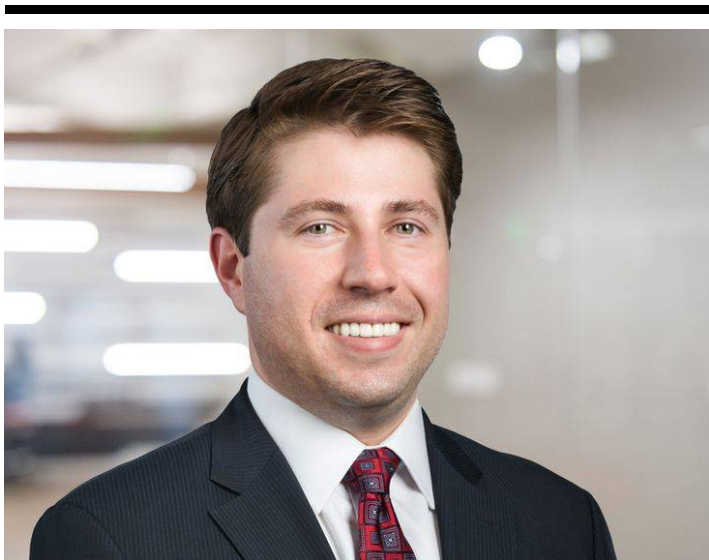
The history of this litigation demonstrates how quickly the pay equity claims of a few can become the (much more expensive) pay equity claims of many. After the court conditionally certified the class in September 2015, notice was sent out to over 2,000 putative class members, resulting in over 350 opting in to join the lawsuit. The settlement of the Title VII claims on a class-wide basis will result in notice of the settlement being sent to approximately 3,200 potential class members.

For New York employers, potential liability for pay equity claims will only increase as a result of New York’s Achieve Pay Equity Act (APEA), which became effective January 19, 2016. New York’s pay equity law used to mirror the federal EPA, but the APEA made significant employee-friendly changes to New York law, both in how employees can prove liability and in the amount of liability itself. The APFA lowers the bar for employees to prove gender discrimination in pay disparity by

recent. The APEA lowers the bar for employees to prove gender discrimination in pay disparity by altering how employers can justify any gaps in pay between male and female employees. Moreover, liability under the APEA is now equal to the difference in salary between the employee and comparator of the opposite sex, plus **300%** liquidated damages (compared to only 100% liquidated damages under the EPA and the previous New York law), thus turning small differences in pay into much larger potential liability. Additionally, New York law has a six-year statute of limitations for APEA claims, compared to two or three years under the EPA. This means that six years after the APEA's effective date, a long-tenured employee (or a class of them) can recover six years' worth of increased damages.

The new laws, multiple recent cases, and, now, the *Barrett v. Forest Laboratories, Inc.* multi-million-dollar settlement, underscore the importance of employers taking proactive steps to deal with pay equity issues. This is especially true for employers in New York and other states with stringent pay equity laws, such as California, Massachusetts, Maryland, and others. Once a lawsuit is filed, it may already be too late to avoid significant class-wide liability. At the very least, you should conduct an audit of employee pay to determine whether there are any pay gaps between male and female and employees. If you find any gaps, you should examine whether you can justify those gaps under applicable law, or if you need to make corrections. Moreover, you should examine your policies related to starting pay, increases, and bonuses to make sure these policies aren't negatively impacting a certain gender. Ultimately, by getting out in front of these issues, you can take steps to avoid becoming the subject of the next headline dealing with a multi-million-dollar pay equity settlement.

Related People



Seth D. Kaufman
Partner
212.899.9975
Email

Service Focus

Pay Equity