



Pay Equity: The Global and Domestic Push To Bridge the Gap

Insights

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It is no secret that pay inequity has plagued the United States and abroad for as long as women have been in the workforce. Although the U.S. and other countries have had laws on the books, in many cases for decades, prohibiting discrimination against women with respect to pay, the issue remains. On average, women still make 20 percent less than men performing the same work. Pay inequity has resulted in a growing number of lawsuits against employers on a worldwide basis, often leading to sky-high defense costs, and hefty damage awards.

The issue has gained global attention. Now the United States and numerous countries are enacting more expansive and stringent laws targeting pay inequity. This blog post will provide an overview of some of the recent laws enacted in several U.S. states, as well as highlights from some international laws. It will also provide employers with proactive tips for improving compliance and reducing risk.

Highlights of Recent Pay Equity Legislation in the United States

California has one of the toughest equal pay laws in the country. The California Fair Pay Act, enacted in January 2016, expanded existing laws. The law strictly prohibits employers from paying men more than women for “substantially similar” work, taking into account skill, effort, and responsibility, unless the employer can justify the pay gap by a factor other than gender. Examples of legally accepted reasons for pay differences are the existence of a seniority system, merit system, or a system which measures earnings according to quality or quantity of production. Additionally, California employers may not prohibit employees from disclosing or discussing their own wages with others. The law further prohibits employers from inquiring into an applicant’s compensation history until an offer has been made. Significantly, in 2017, the California law was expanded to cover compensation differences between different races and ethnicities.

Maryland, following suit, passed the Equal Pay for Equal Work Act in 2016. It also provides that employers cannot prohibit employees from discussing their pay with fellow employees. The law further protects individuals who identify as a different gender from pay inequality.

Similarly, also in 2016, New York enacted the Achieve Pay Equity Law, which amended its existing equal pay law. Under the new law, employers are prohibited from discriminating based upon sex for “equal work” and must now justify any gender pay differentials. The law also limits the reasons employers can use to explain any differences to “bona fide” factors other than sex, such as a reason

that is job-related and consistent with business necessity or, like California, factors such as a seniority or merit system. New York employers should take care to comply with the law as violations can result in triple damages. New York City has also passed a separate law banning employers from inquiring as to compensation history, which is believed to perpetuate the wage gap, which just took effect on October 31.

This year, Delaware enacted a law to address the gender pay gap which also bans employers from asking job applicants about their pay history prior to extending an offer. However, employers are not prohibited from discussing or negotiating salary expectations. Likewise, Massachusetts and Oregon also enacted legislation which bans salary history inquiries. In addition, legislation in both states has created an affirmative defense if the employer can demonstrate that it: (1) has completed a self-evaluation of its pay practices that is reasonable in scope; and (2) has made reasonable progress toward eliminating pay inequality within three years of the commencement of legal action.

Highlights Recent Pay Equity Legislation Abroad

Employers must not only keep abreast of recent domestic legislation on pay equity, but multinational employers must also be aware of recent international legislation as well. Countries including Iceland, the U.K., Germany, Portugal, France, Belgium, Sweden, Norway, Denmark, and Austria, to name a few, have all recently enacted pay equity laws. For example, Iceland has been at the forefront of international countries requiring that employers pay men and women the same for the same work and requires that employers with over 25 employees certify every three years that their pay practices comply with the law.

Germany has also passed pay equity law through its Pay Transparency Act which provides information rights for employees relevant to pay structures and implements specific review and reporting procedures pursuant to the German Commercial Code. Belgium and France adopted laws requiring employers with over 50 employees to conduct a comparative pay equity analysis and, if the analysis finds that women earn less than men, the employer must establish an action plan to remedy the pay difference.

Similarly, Portugal enacted a law that requires employers to annually collect information regarding working conditions and compensation and submit the information to labor inspection authorities for review. The U.K. also introduced pay equity law which requires employers with 250 or more employees to publish on their websites an annual report on gender pay disparities.

Tips for Improving Compliance and Reducing Risk

In light of the national and international focus on pay equity and the surge of new legislation, it is critical that employers take steps to attempt to ensure compliance and reduce risk. Domestic and international employers should consider proactively doing the following:

- Provide regular education to managers and human resource personnel as to the relevant legislation in effect and legal requirements;

- Conduct confidential and attorney-client privileged annual internal audits of the organization to determine pay inequities;
- Implement action plans to address pay inequities;
- Review hiring procedures to eliminate inquiries pertaining to compensation history; and
- Review criteria for determining wages, salaries, merit pay increases, bonuses, and other compensation for compliance.

As pay equity legislation continues its global growth, it is imperative for employers to invest the time and resources into considering steps in order to improve compliance, promote productivity, and reduce risk.

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