



Lessons You Can Learn From the Chadbourne Litigation and Ensuing Discovery Disputes

Insights

11.20.17

When you combine an increased social awareness of pay disparity issues with an influx of new pay equity legislation at the state and local level, it's no surprise that lawsuits involving large and high-profile employers are popping up in the headlines on almost a daily basis. Regardless of the size of your organization, you shouldn't be surprised if your employees begin asking questions about their pay, challenging your compensation practices, or even file a lawsuit.

One of the lawsuits garnering significant media attention is a challenge filed by former partners of the law firm Chadbourne & Parke LLP (now part of Norton Rose Fullbright), currently pending in the Southern District of New York. In the lawsuit, initially filed August 31, 2016 and subsequently amended, Plaintiffs Kerrie Campbell, Jaroslawa Johnson, and Mary Yelenick brought a class and collective action against Chadbourne and certain male partners alleging that the firm discriminates against female partners with regard to pay and power, in violation of Title VII, the Equal Pay Act, and related state laws.

The litigation has been contentious and highly publicized—with Chadbourne expelling lead plaintiff Campbell out of the partnership after the lawsuit was filed, several public appearances by Campbell bringing media attention to the compensation dispute, and a counterclaim filed by the law firm alleging that Campbell breached her fiduciary duties as a partner to the firm.

On June 14, 2017, Judge J. Paul Oetken denied several pending motions: (1) Chadbourne's motion for summary judgment and motion to dismiss the class and collective allegations; (2) Campbell's motion to dismiss the counterclaims filed against her; and (3) the plaintiffs' motion for conditional certification of an Equal Pay Act collective action.

Judge Oetken ruled that resolution of each motion relies on whether the plaintiffs—partners of the law firm—are considered “employees” for purposes of the Equal Pay Act and Title VII, thereby entitling them to bring claims under these federal statutes. As a result, the court ordered limited discovery on this issue.

The limited discovery phase has also proved itself to be contentious. On October 16, Magistrate Judge Barbara Moses ordered that Chadbourne produce certain documents related to its compensation decisions. She also ordered the firm to produce documents relating to the role of the members of the partnership in influencing the management of the firm, including internal

communications “to, from, among or between” Management Committee members related to the operations of the general partnership and the influence partners have over the management of the firm. The judge also required Chadbourne to produce documents concerning the determination of partner compensation.

On November 7, the parties submitted a joint letter to Judge Moses regarding e-discovery issues, including requests to search personal email accounts of the Chadbourne partners for responsive communications, the breadth of the e-discovery search terms, and the relevant records custodians for the search. At a conference on November 9, Judge Moses ordered that the personal email accounts be searched.

The outcome of the discovery disputes in this case will certainly set the tone for discovery in other pay equity lawsuits. Based on the decisions rendered so far, it is clear that an organization’s internal compensation practices and decisions are fair game for plaintiffs, and an employer may be compelled to disclose volumes of sensitive, confidential, and proprietary information pertaining to its compensation structure and business practices, such as organizational structure, promotional opportunities, and performance evaluations.

Regardless of the size of your organization, it is important to be proactive and reexamine your compensation practices before they are put in the spotlight as the result of an employee complaint or lawsuit:

Review and update your policies and practices on compensation. Make sure your policies are consistent with the evolving landscape of pay equity laws and are designed to provide equal pay for equal work.

- Document all compensation decisions. Ensure that performance reviews are conducted, documented, and maintained. If there is a reason why employees performing equal work are compensated differently, it should be clearly justified in writing.
- Train decision-makers, including human resources employees and managers, on your compensation policies. Ensure that compensation policies are implemented consistently and fairly.
- Consider conducting a privileged pay audit with the help of your employment attorneys.

Fisher Phillips’ Pay Equity Practice Group will continue to monitor this lawsuit and keep you informed of interesting developments. If you have questions, feel free to reach out to any member of our [Pay Equity Practice Group](#) or your regular Fisher Phillips attorney.

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