



Take Two: Pay Equity Plaintiffs Attempt To Resurrect Class Action Against Google

Insights

1.05.18

A group of former Google employees just filed an amended complaint in California federal court in an attempt to breathe new life into their equal pay class action lawsuit, which had been dismissed in December for failing to sufficiently allege facts demonstrating an ascertainable class. The pay equity world will now have its collective eyes on Google to see how the company responds, and to follow the latest chapter in one of the most high-profile pay equity claims ever filed.

Although the court dismissed the claims on December 6, 2017, the court granted plaintiffs 30 days to amend their complaint to correct the defects identified by the court. On January 3, 2018, plaintiffs did just that. In an effort to cure the deficiencies noted in the court's order, their amended complaint provides additional detail regarding the job positions of the putative class members, Google's compensation structure, and how employees are placed on levels that dictate promotional opportunities and impact earnings potential.

There are three notable amendments to pay special attention to:

- **The amended complaint provides more details about the putative class members and the uniform policies for hiring, promotions, and compensation**

A key to a successful equal pay class action is to demonstrate that there are consistent, uniform policies or practices that apply to all members of the putative class. The original complaint defined the class too broadly—as “all women employed by Google in California”—while only setting forth conclusory allegations as to the uniform policy of Google paying all female employees less than male employees for substantially equal or similar work. To fix this, the amended complaint includes more detail about the specific job categories of women who are members of the putative class and the uniform policy that is applied to compensation decisions for all putative class members.

Specifically, to show that there is a specific group of people who have similar claims against Google as the named plaintiffs, the amended complaint details 29 different positions at Google, narrowed into six specific categories: Software Engineers, Software Managers, Engineers, Program Managers, Sales, and Early Childhood Education. Interestingly, the four named plaintiffs do not fall into all of these categories.

Plaintiffs also inserted factual allegations regarding “Google’s Centralized Decision Making and Uniform Policies.” These allegations explain in greater detail the centralized policies maintained by Google for determining compensation, including for setting initial pay, raises, bonuses, and company equity. The amended complaint describes the internal process of assigning all jobs to a job family, job level, and job code which are used for compensation decisions. The allegations concerning each of the individually named plaintiffs also specifically address their job levels and its effect on each woman’s compensation.

These amendments just may be enough to demonstrate the existence of a common policy or practice that applied to all putative class members.

- **It raises issues with the company’s reliance on salary history for setting compensation**

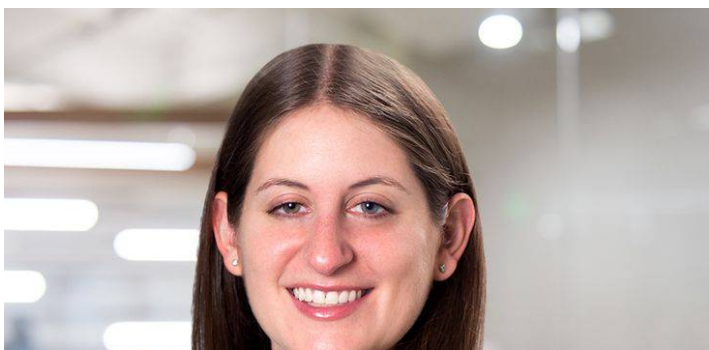
A new argument advanced in the amended complaint is that Google improperly considers new hires’ prior compensation in determining what compensation level to place that new hire. This amendment is likely in response to California’s new law (which went into effect January 1, 2018) prohibiting employers from seeking or relying upon the salary history of applicants for employment. While this law does not have a retroactive effect on compensation decisions that were made prior to the effective date, the rationale behind the law will likely be used to support the equal pay claims advanced in this litigation.

- **It adds an additional plaintiff**

The amended complaint includes as a plaintiff a fourth former Google employee, Heidi Lamar. According to the amended complaint, Ms. Lamar was employed as a preschool and infant/toddler teacher at Google’s Children Center, where she and other female teachers were placed into levels where they received less compensation than the male teachers. By adding Ms. Lamar as a named plaintiff, plaintiffs are looking to include approximately 147 female teachers as part of the class.

The ball is now in Google’s court. The company could decide to file another motion to dismiss, or respond to the amended complaint with an answer, which would lead to discovery and the exchange of information. We will continue to monitor this case closely and post about future developments.

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