Lawyers Suing Lawyers: Spate of Pay Equity Litigation Brought By Female Partners Against Their Firms

Insights
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Call it ironic, but even providers of legal services are targets for pay equity litigation. Case in point: a $300 million dollar class action lawsuit filed against a labor and employment law firm in the U.S. District Court for the Northern District of California. A female non-equity shareholder at Ogletree Deakins alleges in her January 12, 2018 complaint that male non-equity shareholders earn more, receive more business development and networking opportunities, and get more credit for the business that they originate than their female counterparts. In addition to its pay discrimination claims, the lawsuit alleges causes of action for gender discrimination and retaliation. The plaintiff seeks $100 million for underpayment, $100 million for compensatory damages, and $100 million in punitive damages. Additionally, she has filed a separate declaratory relief action alleging that the arbitration agreement that Ogletree circulated to its employees via email is not enforceable against her because she did not sign it.

The Ogletree litigation is one of several cases filed against large law firms recently that allege that less-deserving male partners outearned their female colleagues. In May 2017, a female partner from Proskauer Rose brought a lawsuit against the firm to the tune of $50 million in the U.S. District Court for the District of Columbia. Similarly, in August 2016, a female partner with Chadbourne & Parke brought a complaint that makes similar allegations and seeks $100 million in damages. Two more female partners subsequently joined as plaintiffs in the claim. Proskauer Rose represents Chadbourne in the litigation.

California law is particularly unfavorable toward employers in the equal pay realm as is evidenced by the fact that the damages sought in the Ogletree action far surpass the demands set forth in the Proskauer and Chadbourne complaints. California law requires employers to pay the same wages to workers who perform substantially similar work unless the pay differential can be justified by a legitimate factor other than gender, such as education or training. Aggrieved employees can recover any differential in their pay plus liquidated damages, attorneys' fees, and costs. Claims that are brought on behalf of a class of employees exponentially increases this liability.

Moreover, California now takes an even more aggressive stance toward pay equity issues with AB 168, which prohibits employers from seeking or relying on an applicant's salary history. AB 1209 ended up in the governor's veto pile and was a near-miss for employers: it would have required employers with 500 or more employees to report the salary gap between male and female

employees to the Secretary of State for public posting. Employers can expect AB 1209 to resurrect itself in the coming years.

The flood of pay equity litigation that large law firms have been facing is a signal to the professional services sector as a whole. Pay equity litigation targets employers of all types and sizes. Prudent employers in all industries (and especially those with employees in California) should engage their employment counsel to conduct a privileged audit to ensure that all employees who perform substantially similar work are paid equally. Additionally, employers should consider implementing arbitration agreements where permitted, provide employees with physical copies of the agreements to sign, and implement procedures to verify that the agreements are in fact signed.

Service Focus

Pay Equity and Transparency