



## Second Time's The Charm: Court OKs Revised Pay Equity Class Action Against Google

Insights

4.03.18

A California state court just breathed new life into a class action lawsuit against Google that could have a significant impact on pay equity claims across the country. The March 27, 2018 ruling gave the stamp of approval to an amended complaint filed by former female Google employees alleging unequal pay practices. The court ruled that the amendments, which focused on Google's supposed uniform pay practices, were sufficient to meet the pleading standard and state a cause of action for a class-wide unequal pay claim.

### How Did We Get Here?

By way of background, three former Google employees filed a class action lawsuit in September 2017 alleging violations of the California Equal Pay Act and other state laws, claiming that they—along with other female employees in California—had been wronged in terms of their compensation and advancement opportunities at the company. The lawsuit followed a highly publicized audit by the U.S. Department of Labor's Office of Federal Compliance Programs (OFCCP) that alleged it had uncovered gender pay disparities at Google. In December 2017, the court dismissed the complaint for failure to state a claim.

However, in January 2018, the former employees filed an amended pleading in an attempt to cure those deficiencies. The amendments detailed the uniform compensation and promotion policies and practices which allegedly disadvantage women. In response to the amended pleading, Google made an application to dismiss (known as demurrer): (1) the class allegations on behalf of Google employees who did not fall into the same categories of "Covered Positions" as the named plaintiffs; and (2) the class-wide intentional discrimination claims.

### Court: Second Bite At The Apple Permitted

In last week's order, the court outright rejected Google's arguments for dismissal, determining that the amended pleading stated facts sufficient to proceed on those two aspects of the lawsuit. In doing so, the court relied heavily upon the allegations in the amended pleading describing in detail Google's uniform policies on hiring, promotions, and compensation.

**Covered Positions:** With respect to the categories of plaintiffs for the class, the court found it immaterial that the named plaintiffs did not belong to all six of the enumerated categories of plaintiffs in the class. This is because the named plaintiffs "allege[d] a numerous and ascertainable class with a well-defined community of interest, as well as a pattern or practice of gender

discrimination across all Covered Positions in Google.” Thus, the court ruled that the plaintiffs’ claims were typical of all members of the class, regardless of which category of Covered Positions the named plaintiffs fell under.

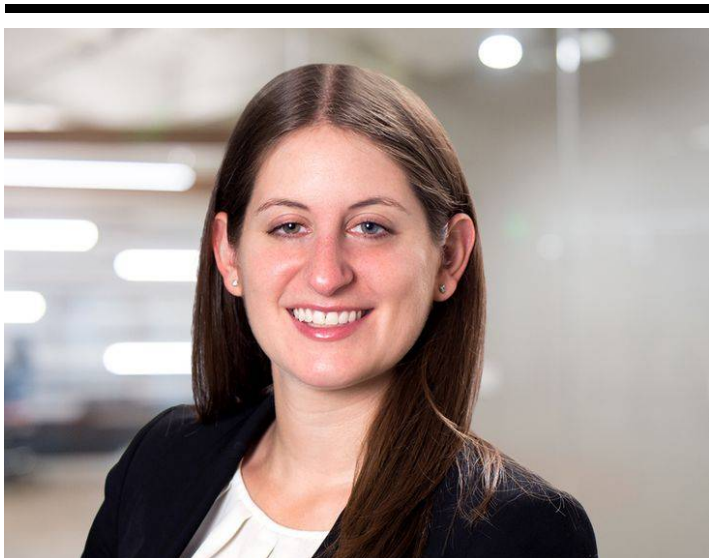
***Intentional Discrimination:*** For similar reasons, the court ruled that plaintiffs’ intentional discrimination claim was sufficient to survive dismissal. The court rejected Google’s argument that the claims of intentional discrimination were based on individual, unique experiences rather than derived from a company-wide policy or practice that could form the basis of a class claim. Instead, the court accepted plaintiffs’ allegations in the amended complaint that Google’s policy was to consider prior salary history and stereotypes about women when setting initial compensation for all employees, and, therefore concluded that the claims of intentional discrimination were not unique to plaintiffs.

### **Conclusion: Uniform Practice And Policy Allegations Sufficient To Support Claim**

By merely alleging that there exists a company-wide policy with respect to setting compensation that applies to virtually all female employees throughout the company, these plaintiffs were able to survive their first hurdle of proceeding on a class-wide basis. Now, Google must file an answer to the amended complaint and the parties will likely proceed with discovery and the exchange of information.

While this decision does not necessarily mean that the class action will be certified, it signals that the question of whether a uniform policy or practice exists is significant in determining whether equal pay claims can proceed on a class basis. We will provide an update on further legal developments in this case.

### ***Related People***



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