



Nike Can't Just Do It – Court Denies Company's Request To Dismiss Pay Equity Class Action

Insights

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An Oregon federal court just shot down Nike Inc.'s request to dismiss a pay equity class action claim fronted by four current and former Nike executives. In her February 26 ruling, a federal magistrate judge recommended that the case should proceed, as it adequately presented allegations that the company employed systemic practices that damaged all female employees. The ruling presents a stark reminder to all employers of the dangers of pay gaps while reinforcing the need to engage in critical compensation self-audits (with your counsel's assistance).

Summary Of Claim

The case was filed by four female executives: Heather Hender, a current senior process engineer; Sara Johnston, a former intermediate business systems analyst; Kelly Cahill, a former director and senior producer; and Lindsay Elizabeth, a former apparel designer. Their complaint alleges a whole host of allegations against Nike, centering on gender disparities in pay. For example:

Pay Disparities

They claim Nike engaged in systemic sex discrimination by paying them less than male employees with substantially equal job duties. They allege that Nike's annual salary increases and bonuses are disproportionately allocated to male employees.

Salary History

They allege that Nike has contributed to and perpetuated sex-based pay disparities through common policies, patterns, and practices, such as using salary history to establish salaries and compensation band levels. They admit that Nike announced in May 2018 that it would eliminate the collection of candidate salary history during its hiring process, but allege that the prior collection of such data caused women to receive lower starting salaries.

Annual Performance Standards

They claim that Nike's annual performance evaluation process is flawed because the ratings assigned to each employee force only a limited number of employees at the company headquarters into the top two levels. This, they claim, causes women to receive lower ratings than male colleagues.

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Their August 2018 lawsuit, however, doesn't just focus on their own experiences. They claim that 500 or more women have been harmed by Nike's practices. And it is the breadth of that class action allegation that Nike decided to attack with an early motion to dismiss.

Legal Analysis And Decision

Nike asked the court to dismiss the class action allegations as too broad, contending that the proposed class "weaves together thousands of women in hundreds of different job classifications and departments (and across various salary bands and levels), each with different duties, qualifications and experience." Their main argument at this early stage of the litigation centered around the fact that the plaintiffs could not establish they had all sustained the same harm—a necessary component to any class action.

But Magistrate Judge Jolie Russo disagreed, saying that the plaintiffs had alleged collective harm to the entire proposed class. "The allegations that defendant's systemic practices and policies discriminate across all job descriptions against women, at this stage, plausibly alleges that the purported collective members are similarly situated to the named plaintiffs," she said.

What's Next? And What Does This Mean For You?

This is just the first step in what could be a long and winding road for any piece of class litigation. And it may resolve, without any further clarification, important legal standards, just as the Boston Symphony Orchestra just [settled a pay equity claim](#) brought against it by its top flutist. If the case does continue, the next step could be a determination about class certification after the parties have engaged in a thorough discovery process. Any written published opinion by the judge would be of great interest to employers across the country as it could shed light on how today's courts are treating the issue of salary history as it relates to alleged pay discrimination.

The lesson for employers is simple—you cannot stick your head in the sand when it comes to your pay practices and how they relate to gender (and other protected categories). If you do, you could find yourself on the receiving end of a class action lawsuit such as this one. The first step is to contact your legal counsel and undergo a privileged pay audit to make sure that your compensation system would withstand legal scrutiny, and establish any corrective measures should you determine that adjustments need to be made.

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