



Nike Workers May Pursue Class Sex Discrimination Claims, Court Confirms

Insights

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An Oregon federal court judge just denied Nike's motion to dismiss a class action on behalf of 500 or more of its current and former female employees alleging sex discrimination in pay.

Nike had asked the court to dismiss class and collective claims, arguing that the members of the proposed class were too broad and disparate to establish that they sustained the same harm, which is necessary to proceed as a class action. Nike had asserted that the case "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."

Earlier this year, we reported that a federal magistrate judge issued findings and a recommendation that Nike's motion to dismiss be denied. Neither party objected to the magistrate's recommendation, so it was adopted by Judge Marco Hernandez on May 20 without further comment.

The case was brought by four female executives alleging that women are paid less than men with substantially equal job duties. They claim that Nike contributes to and perpetuates sex-based pay disparities through policies and practices, including the use of prior salary to set compensation and a rating and ranking system that caused class members to receive lower ratings than males—leading to lower compensation and fewer opportunities for promotion. They contend that Nike channels women into less valuable job position and assignments, intentionally discriminates against them, and maintains a work environment hostile to women. The judge agreed that the showing made by the women was sufficient for the current stage of the proceedings, and permitted the case to go forward. We'll continue to monitor this pivotal piece of litigation and will update our readers with further developments.

Policies and practices are the fodder for class action claims. The practice of using past salary to set compensation is coming under increasing scrutiny. The Equal Employment Opportunity Commission takes the position that the use of prior salary history to set pay perpetuates past pay discrimination against women, while an increasing number of states have adopted legislation barring the practice. The women note in their allegations that around May 2018, Nike stated it would cease collecting candidate salary history. Employers who collect and use such information would be wise to reconsider the practice and to conduct a pay audit (under the attorney-client privilege) to determine if their pay practices can withstand legal scrutiny.

Related People



Susan M. Schaecher

Senior Counsel

303.218.3650

[Email](#)

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