



# U.S. Women's Soccer Scores First Goal In Their Pay Equity Battle

Insights

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A California federal judge today granted the U.S. Women's National Team an early victory in their pay equity battle against the U.S. Soccer Federation (the Federation), granting class certification to a group of players who want to collectively assert their gender-related legal claims. While Judge Gary Klausner's order is just the first of several hurdles the women's team will have to overcome in order to successfully challenge the pay structure that they allege favors the men's team, it is an important milestone in any class action.

## Background

On March 8 of this year – International Women's Day – all 28 members of the U.S. Women's National Soccer Team (USWNT) filed a federal gender discrimination class action lawsuit against the U.S. Soccer Federation in the Central District of California. Among the named class representatives was Alex Morgan, the team captain.

The Federation employs both the men's and the women's national teams. The lawsuit claims that it discriminates by paying the women less than their male counterparts and “by denying them at least equal playing, training, and travel conditions; equal promotion of their games; equal support and development for their games; and other terms and conditions of employment equal to the Men's National Team.”

## Today's Ruling

Those who wish to challenge an alleged workplace wrong on a class basis need to first prove to the court that a class or collective action is the proper way to bring the claim. To proceed, they must meet four tests:

1. **Numerosity:** The USWNT said they wanted to bring the claim on behalf of all current players (the current roster consists of 25 players) and all players who have been included on the team since 2015 (which totals about 50 players). The court said that it didn't believe a group of 25 plaintiffs was so large that it would be have been presumptively impractical for them to each individually bring claims against the Federation. However, the judge looked to the specific facts of the case and determined that judicial economy would best be served by considering the claims on a class basis “especially given that the proposed members of the [class] seek the same relief and raise the same legal issues.”

2. **Commonality:** The women's team next argued that there were common questions of law or fact that supported a class designation. The Federation did not dispute this element, acknowledging that the questions presented related to a system-wide practice and policy that affected all of the putative class members.
3. **Typicality:** The Federation also did not dispute that the claims of the class representatives are typical of the class of players they sought to represent. Legally, the USWNT did not need to prove that they are identical in nature, but simply that the alleged injuries claimed by the class representatives are similar to those alleged by the entire class, and whether those alleged injuries arose in the same manner.
4. **Adequacy:** The team argued that the class representatives, which included senior players on the team like star captain Alex Morgan, would fairly and adequately protect the interests of the entire class. The Federation pointed out that the class representatives were so senior in comparison to other younger players that they may prioritize money and an overall outcome that is more favorable to them than to junior players. But the court rejected this argument as "merely speculative" and not evidence of an actual conflict between the class representatives and the entire class.

The Federation also tried to argue that the claim should not proceed at all because there was evidence in the record that some of the members of the women's team, including the named class representative, "made significantly more money than the highest-paid men's national team player." The court dismissed this argument. "Defendant's argument presupposes that there can be no discrimination under Title VII or the Equal Pay Act where a female employee's total annual compensation exceeds that of similarly situated males, regardless or whether the female employee receives a lower rate of pay than her male comparators," the judge said. To rule that way, he continued, could yield an "absurd" result. "This would mean that an employer who pays a woman \$10 per hour and a man \$20 per hour would not violate the law as long as the woman negated the obvious disparity by working twice as many hours."

### **What's Next?**

"This is a historic step forward in the struggle to achieve equal pay," said representatives for the USWNT following the ruling. No doubt this ruling will bolster their spirits as they proceed with this litigation. While this might not be as impactful of a ruling as in cases where classes of tens of thousands of employees are certified, it is still an important step.

Trial is currently set to begin on May 5, 2020. Before that date, we would expect to see the Federation file further motions in an attempt to have the case dismissed outright or limited in some other way. Or, it is possible that the two sides will hammer out a mediated settlement to resolve the dispute short of trial. In any event, we will monitor proceedings and provide updates as warranted.

### ***Related People***

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Pay Equity