Demystifying Equal Pay

US Equal Pay Act & California Fair Pay Act

Equal pay has been in the news often in recent months. Everyone from presidential candidates to Pope Francis and Jennifer Lawrence have been calling for pay equality. But what does it mean? And, what does it mean for you, an employer?

The US Equal Pay Act was passed in 1963, but wage growth for women as been stagnant since the 1980s. In 2013, women in California earned a median of 84 cents for every dollar earned by a man. Federally the number was 79 cents for every dollar earned by a man. The problem is even worse for most women of color: African American and Latina women in California made a median of just 64 cents and 44 cents, respectively, for every dollar earned by white men. California has the worst Latina gender wage gap in the nation.

In order to help close the gap, the White House recently proposed increasing reporting to the EEOC. Employers will now have to report "W-2 earnings" and work hours for all employees on the EEO-1 reports starting in 2017. The EEOC and OFCCP will use this pay data for targeted systemic pay investigations. The EEOC will publish pay data by industry and geography for employers to "benchmark" against.

California recently weighed in on the issue by passing the California Fair Pay Act. This Act differs from the Federal Equal Pay Act in the following ways:

- Broadens the bands of comparison of positions:
    - **Federal:** Pay must be equal among employees in the same position
    - **California:** Pay must be equal among "substantially similar" employees when viewed as a composite of skill, effort, and responsibility
- Broadens the geography:
    - Federal: Pay must be equal among employees in the same position in the same location
    - California: Compares employees across locations
- Employers in California must explain "entire wage differentials," meaning total compensation, not just base pay.
- Employers in California will also be on the hook for attorneys' fees for prevailing plaintiffs.

As an employer, how can you protect yourself against possible investigations and actions from the EEOC or California State?

Conduct a Pay Analysis

1. Establish privilege- important that all data and findings be done under the umbrella of attorney-client privilege.
2. Decide groupings for analysis
3. Gather data to explain pay differences. Data to gather includes:
    a. Date of hire
    b. Date in position
    c. Time in grade
    d. Department
    e. Prior experience
    f. Education
    g. Salary at previous employer
    h. Starting salary
4. If necessary, make equity adjustments

All this political and media exposure has led to the White House developing the "White House Equal Pay Pledge." As of June 2016, 28 companies including Amazon, American Airlines, Dow Chemical, Gap Inc., Johnson & Johnson have signed the pledge. Signatories pledge to conduct annual pay analysis across their entire workforce. The White House is seeking to achieve pay equality and pay transparency with public commitments from Corporate America.

Employers should develop the following best practices:

- Require supervisors and managers, who make decisions about compensation, to document the reasons employees are paid what they are paid
- Create job descriptions, detail the skill required and responsibility given
- Document seniority, merit, quantity and/or quality of work
- Train supervisors and managers about the new law.

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