

## **EQUAL PAY FOR EQUAL PLAY: U.S. NATIONAL WOMEN'S SOCCER TEAM'S FIGHT FOR EQUAL PAY PARALLELS EQUAL PAY INITIATIVES ACROSS THE COUNTRY**

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On March 30, 2016, the U.S. Women's National Soccer Team ("Women's Team") captured headlines when five of its members filed a Wage Discrimination Complaint against the U.S. Soccer Federation with the Equal Employment Opportunity Commission ("EEOC"), the federal agency that enforces federal anti-discrimination laws such as Title VII of the Civil Rights Act of 1964 and the Equal Pay Act.

The Complaint alleges that despite the success of the Women's Team, which includes four Olympic championships and three World Cup titles (including the heralded 2015 World Cup title over Japan), the Women's Team is paid significantly less than the U.S. Men's National Soccer Team ("Men's Team"), which has never won a World Cup and advanced to the World Cup Quarter Finals just once in the last three decades. In particular, the following figures underscore the pay disparity between the Women's and Men's Teams:

- Compensation for each World Cup Victory: Women's Team \$30,000 v. Men's Team \$68,370
- Earnings for winning World Cup: Women's Team \$2 million (2015) v. German Men's Team \$9 million (2014)
- Maximum compensation for winning 20 matches/year: Women's Team \$99,000 v. Men's Team \$263,320
- Women's Team generated \$20 million more in revenue than the Men's Team in 2015
- Projected Net Profits in 2017: Women's Team \$5 million v. Men's Team \$1 million loss

The Women's Team is not alone in their fight for equal pay; rather, federal and state efforts to adopt or strengthen their current equal pay laws and regulations have intensified across the Country in the past year. At the federal level, the EEOC has listed equal pay as one of its top priorities in its Strategic Enforcement Plan for 2013-2016. The EEOC has made clear that it will target compensation systems and pay practices that discriminate based on gender and will encourage the use of directed investigations and Commissioner Charges to facilitate enforcement of the Equal Pay Act. The EEOC has also teamed with the National Committee on Pay Equity, a coalition of women's and civil rights organizations, to recognize Equal Pay Day as part of a public awareness campaign to highlight the pay disparities between men and women. Equal Pay Day this year was April 12, 2016, which signifies how late into the year women must work to earn the same amount that men did the year prior.

A number of states have also either passed or have pending legislation to strengthen their existing equal pay laws. The new California Fair Pay Act ("CAFPA"), which took effect on January 1, 2016, prohibits employers from paying lower wages to employees of the opposite sex for "substantially similar work," unless certain, specific exceptions exist. One of the highlights of the CAFPA is that it imposes an affirmative burden of proof on employers, instead of employees, to justify a pay disparity. The CAFPA is expected to lead to an increase in lawsuits alleging violations of the law, including both individual claims and class actions.

New York also recently strengthened its equal pay laws, passing of the Achieve Equity Pay Bill ("NYAEP") which became effective on January 19, 2016. Like the federal Equal Pay Act, the NYAEP requires employers to provide equal pay to men and women in the "same establishment" for equal work. However, the NYAEP includes an extremely broad definition of "same establishment" to include workplaces in the "same geographic region" rather than just the employee's workplace. Additionally, the NYAEP increases the amount of liquidated damages that may be awarded under New York Labor Law for failure to pay wages and a violation of the equal pay law from 100% of the wages owed to 300% in the case of a willful violation.

New Jersey, whose equal pay law is already one of the strictest in the Country, also has pending legislation that would significantly strengthen its robust equal pay protections. The New Jersey Senate recently passed a new bill (S992) ("NJ Bill") in an effort to narrow the gender pay gap. The NJ Bill would enhance unequal pay claims under the

New Jersey Law Against Discrimination and extend the statute of limitations for those claims. The NJ Bill would prohibit unequal pay for jobs that are “substantially similar” in work in terms of skill, effort, and responsibility unless the employer can demonstrate a seniority or merit system in place or, establish five specified factors to justify that its decision was lawful. The NJ Bill’s most notable component will be to extend the back pay period to include the entire, continuous period in which a pay differential violation is found instead of the two-year limitation period contained in the Equal Pay Act.

In addition to California, New York and New Jersey, all but four states have enacted some form of equal pay protection. Alabama, Mississippi, South Carolina and Utah remain those states that stand alone without specific equal pay protections. Other states, including Massachusetts, also have pending legislation to improve their equal pay protections.

Equal pay will continue to be a hot button issue for the EEOC and similar state agencies, as well as plaintiffs’ attorneys, as highlighted by the Women’s Team’s EEOC Complaint and legislative efforts across the Country. Employers should pay close attention to any developments in the laws of the states where they operate to ensure they comply with those laws and any new developments. Employers should also re-evaluate their existing pay practices and equal pay policies to ensure they comply with all applicable laws. Employers should also train their managers and human resources professionals on these issues which will impact compensation decision in which they are involved.



**Ryan Carlson** focuses his practice on the representation of management in employment litigation matters under state and federal law, with an emphasis in defending claims of wrongful discharge, discrimination, harassment, retaliation, wage and hour violations and whistle-blowing. He represents clients in federal and state courts and administrative proceedings in New Jersey and New York, including the Equal Employment Opportunity Commission, similar state agencies and the Department of Labor. Ryan also counsels employers regarding compliance issues and litigation avoidance, as well as for handbooks, separation agreements and policy drafting.

