

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN SPRING 2019

Equal Pay – How Do We Fare Today?

Two important events occurred this month – Equal Pay Day (April 2) and Tax Day (April 15.) While the latter may be in your rearview mirror, Equal Pay Day and **expanding equal pay law obligations for employers** require a continued focus on earning levels, benefits and comparisons.

Equal Pay Day

Equal Pay Day is the annual symbolic day dedicated to raising awareness of the gender pay gap. **April 2** was the date for **2019** in the United States - it **symbolizes how far into the year women must work to earn what men earned in the previous year**. The exact day differs by country and year (last year it was April 10, a slight improvement.)

Bottom line, **women are still getting paid only 80 cents on average for every dollar a man makes** – a trend that's expected to continue through the 23rd century. Some say that women may have to wait 200+ years before the pay gap is bridged for 2 reasons: 1) artificial intelligence is replacing some jobs traditionally held by women (think customer service, telemarketing) and 2) finding affordable child care is a challenge. 54% of men negotiate their salaries, compared to only 7% of women, per a recent survey.

The **cumulative effect of the wage gap** is astounding. Based on today's wage gap, women earn \$406,760 less than men over the course of a 40-year career, according to the National Women's Law Center. The **gap is more severe for minorities**. Latinas earn \$1,135,440 less than men, and black women receive only \$946,120 over that period.

On paper, employers seem to be responding. Companies have been adopting **salary transparency** policies. Several states (but not Illinois) ban employers from asking potential hires about past earnings. Many employers are now required to report pay data categorized by gender and other categories.¹

Yet, **women continue to face workplace obstacles** like fewer promotions, less support and implicit bias. They may experience pregnancy discrimination, exclusion and sexual harassment. Speaking of Tax Day, **Microsoft** announced on April 15 that it is revamping its HR practices, after an **employee email chain complaining about gender discrimination and harassment** spread through the company.

Data suggests that these workplace adversities and dissatisfaction may have pushed female workers to **start their own businesses**. A recent study found 70 percent of male executives were happy with their

¹ Last year, a federal judge reinstated the EEOC's 2016 EEO-1 pay data reporting requirement that had been withdrawn. EEOC proposes that employers with 100 or more employees **submit pay data broken down by race, gender and ethnicity** by September 30, 2019. The deadline awaits court approval, but **employers should begin collecting all required pay data** information in anticipation of future reporting (W-2s and time records are a good start.) Some states have added similar reporting requirements.

pay, compared to only 57 percent of female executives. In the sales industry, 53 percent of men are satisfied, but only 37 percent of women.

In addition, **the MeToo movement has given women** (half of the labor force) a **voice in demanding more respect and change on workplace issues**. Pending legislation like the Fair Pay Act, which addresses unequal pay between female-dominated jobs equivalent to male-dominated jobs, and the Pay Equity for All Act, prohibiting the use of prior salary history in the hire process, are waiting for congressional action. The gender pay gap proves that voting matters, at both the national and local levels. Meanwhile, current and new equal pay laws provide protection.

Equal Pay Act

The federal Equal Pay Act, signed by President John F. Kennedy in 1963 (EPA), amended the Fair Labor Standards Act to mandate equal pay for equal work by men and women. It requires that employers give **equal pay for equal work regardless of gender**. The jobs need not be identical, but they must be substantially equal based on job duties (not titles.)

The law **covers all forms of pay**, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, and **benefits** such as life insurance, vacation and holiday pay, and expense reimbursement. Importantly, an employer can't fix an inequity by reducing the wages of either sex to equalize their pay. Individuals have 2 years to file an EPA charge with the EEOC or court, or 3 years for willful violations.

Title VII

Title VII of the Civil Rights Act of 1964 also makes it illegal to discriminate based on sex in pay and benefits. An individual may have both an EPA claim and a Title VII claim. Title VII claims must be filed with the EEOC within 300 days of the discriminatory act before filing in court. The EEOC looks at whether both **jobs require the same skill, effort and responsibility**.

Lilly Ledbetter Fair Pay Act of 2009

The Lilly Ledbetter Fair Pay Act of 2009 benefits employees, making **each paycheck with discriminatory compensation a separate federal violation that restarts the filing clock**, regardless of when the discrimination first began, which increases the cost and risk to employers. Discriminatory paychecks include those based on decisions about base pay or wages, job classifications, career ladder or promotion, tenure or raise denials.

Illinois Expands Equal Pay Act of 2003

Since 2003, Illinois has banned employers from paying an employee less than they pay another employee of the opposite sex for the same or substantially similar work requiring equal skill, effort, and responsibility, performed under **similar working conditions for the same employer in the same county**. On 1/1/19, the Illinois law extended coverage beyond sex to African American employees. (A few states like California and New Jersey extended their laws to race generally.)

In addition to differential pay, it is **illegal to discharge or otherwise discriminate** against any individual for inquiring about, disclosing, or discussing any employee's wages, aiding or encouraging any person to exercise rights under the Act, of filing a charge or participating in a proceeding under the Act.

However, pay differential is permitted based on:

- A seniority system
- Location of workplaces in different counties
- A merit system
- Any other factor other than sex or race
- A system that measures earnings by quantity or quality of production
- Any other factor that does not constitute unlawful discrimination under the Illinois Human Rights Act

U.S. Women's Soccer Team Files Gender Discrimination Lawsuit

On March 8, 2019, 28 members of the U.S. Women's Soccer Team sued the United States Soccer Federation under EPA and Title VII. They allege discrimination affecting their paychecks, as well as where they play, how often, and related travel, medical treatment, coaching, and training. The team, which has made the United States a three-time world champion and a four-time Olympic gold medalist, describes "institutionalized gender discrimination" that has "existed for years."

Google's "Reverse" Pay Gap

Google studies its own compensation annually to ensure wage equity among women and minority groups. The results for 2018 were probably not what it was expecting. Google found it was **underpaying more men than women** for doing similar jobs. Google responded by paying almost 11,000 employees an extra \$9.7 million to offset the underpaid wages. The study did not cover potential wage adjustments along racial lines, although the majority of the workforce is white and Asian.

Announcements

FIESTA NIGHT!!! Please join me at Career Resource Center's annual fundraiser: **May 2, 6-8:30, North Shore Distillery!** Featuring food from Taco Vida, craft cocktails, raffle prizes and tours. Click [HERE!](#) to buy tickets.

- ✓ *Career Resource Center is here for you! I am a proud CRC Board member, a nonprofit celebrating almost 30 years of success. We are here for newly RIF'd employees, graduates, individuals returning to the workforce, those seeking a change of employment or career, and employees who need a boost in their career transition search. Stop by for a tour, try out a workshop, or join for a year. Volunteers and donors always welcome too!*
careerresourcecenter.org
- ✓ *Besides reviewing and modifying pay and benefits to achieve equity, employers should be reviewing and updating policies/handbooks to comply with 2019 law changes, including expense reimbursement, nursing mothers' breaks, military leave and required language for harassment and accommodations policies.*
- ✓ *Please join the free panel webinar I will be participating in on May 15 (noon CST): **Business Strategy Webinar: Key Trends in the Businesses of Law and Accounting.** Register after May 1 at www.mantrameetings.com*
- ✓ *I represent employers and employees in legal workplace matters, compliance, contracts, training, and dispute resolution. I can often answer a question quickly.*

This bulletin is an advertisement intended to provide clients and others with general information and is not intended to provide specific legal advice or opinions. Employers and workers seeking assistance with topics addressed in this bulletin or other workplace issues should contact Lori Goldstein at (847) 624-6640 or lori.a.goldstein@gmail.com. Please visit my website www.lorigoldsteinlaw.com for more information about the Law Office of Lori A. Goldstein, LLC. © 2019 Lori A. Goldstein