



Equal Pay Enforcement – What’s Next?

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ecent actions and publications by the U.S. Equal Employment Opportunity Commission (“EEOC”) and state employment law enforcement agencies show that one of the next frontiers in employment law enforcement is equal pay enforcement—and agencies are combining forces to target employers



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more efficiently. Moreover, it appears that these agencies are not necessarily going to wait for a current or former employee to complain about unequal pay or discrimination; they are positioning themselves

to take proactive, independent measures. Since one of the last experiences we want our clients to endure is responding to an agency audit or investigation, this article will discuss the increasing focus on pay equity by federal and state agencies, and will offer guidance for helping clients prepare for potential scrutiny.

It is clear that equal pay enforcement is on the agendas both of federal employment law enforcement agencies and the Oregon Bureau of Labor and Industries (“BOLI”). Gender pay equity has been a flagship issue of the Obama Administration since 2008, highlighted by the Lilly Ledbetter Fair Pay Act,¹ the creation of the National Equal Pay Task Force² (“Task Force”), and the proposed Paycheck Fairness Act. Recently, the National Partnership for Women and Families released an unprecedented analysis of 2011 U.S. Census Bureau data by the National Part-

nership for Women and Families. The NPWF analysis, which reveals that the gender-based wage gap affects women in 97 percent of congressional districts in the country, including Oregon,³ continues to stimulate federal agency dedication to investigating and eradicating gender-based pay disparities. In Oregon, BOLI Commissioner Brad Avakian and the Oregon Council on Civil Rights (“OCCR”)⁴ are working to develop a statewide approach to addressing pay disparity.

What’s Happening Locally?

Reportedly, in Oregon, the median pay for a woman working full-time is \$36,027 per year, while the median yearly pay for a man is \$45,976, which equates to women receiving 78 cents for every dollar paid to men. Nationally, women working full-time are paid 77 cents for every dollar paid to men. Women of color experience even greater disparities.

Spurred by the U.S. Census Bureau data, Avakian and the OCCR are developing a statewide plan to fight pay disparity and ultimately ensure equal pay for equal work throughout Oregon. The OCCR has been researching pay equity models and laws from around the world—including Canada, Sweden, and Switzerland—and has hosted community forums. By the end of April 2013, OCCR is expected to make its recommendations for a state plan that can serve as a model for other jurisdictions throughout the nation.

What’s Happening Nationally?

The EEOC’s 2013-2016 Strategic Enforcement Plan⁵ (“SEP”) directs the EEOC to pursue a coordinated approach to en-

sure “consistent and integrated enforcement” throughout the private, public (state and local government employers) and federal sectors over which the agency has jurisdiction. The SEP identified six national priorities, one of which was enforcing equal pay laws.

The EEOC is redoubling its efforts to target compensation systems and practices that discriminate based on gender through integrated enforcement, both internally within the EEOC⁶ and externally, with the Department of Justice, Department of Labor, and Fair Employment Practices Agencies such as BOLI, Tribal Employment Rights Organizations, and private lawyers. The EEOC will continue to focus on training enforcement personnel from other agencies on compensation discrimination laws and will continue its joint efforts through the Task Force. These efforts build on the November 2011 Memorandum of Understanding between the EEOC and the Office of Federal Contract Compliance Programs (“OFCCP”) to streamline information-sharing and improve coordinated enforcement efforts.

Since January 2010, the EEOC has recovered more than \$62.5 million through administrative enforcement for gender-based wage discrimination and has filed five unequal pay cases. While the number of cases filed is relatively low, based on the SEP there is widespread belief that the EEOC will place increased attention on systemic investigations related to equal pay, which can be initiated as “directed investigations” without the requirement of a discrimination charge being filed against the employer.

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