

Pay Equity Issues & Insights Blog



Back To The Drawing Board: California Court Rejects Pay Equity Claims Against Google, Holding That Class Of “All Women Employed By Google In California” Is “Overbroad”

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Seyfarth Synopsis: A California court recently rejected sweeping pay equity class allegations against Google, holding that the plaintiffs had failed to plead a common policy or practice that would tie together claims of wage discrimination on behalf of “all women employed by Google in California.” Plaintiffs are – for now – sent back to the drawing board. Only time will tell whether they can allege enough support to salvage their massive class, or if they will be forced to narrow their case to account for the variations in Google’s workforce.

On December 4, 2017, the California Superior Court overseeing the high-profile pay equity class action against Google issued an order dismissing the plaintiffs’ complaint and striking their class allegations. This is an important decision because it identifies a fundamental pleading issue that will need to be litigated – defining an ascertainable class in pay equity class actions.

Background

Plaintiffs filed a complaint against Google on September 14, 2017, bringing a claim under the California Equal Pay Act and alleging that Google discriminates against its women employees by systematically paying them lower compensation than their male peers for performing substantially similar work under similar working conditions. The complaint also alleged that Google assigned and kept women in job ladders and levels with lower compensation ceilings and advancement opportunities than those to which men with similar skills, experience, and duties were assigned, and that Google promoted fewer women, and promoted them more slowly, than similarly-qualified men.

Google moved to dismiss the Complaint and to strike its class allegations on the grounds that plaintiffs failed to adequately allege a well-defined community of interest. In particular, Google argued that the plaintiffs had failed to allege any common state-wide policies or practices that apply to every member of the class – all women employed by Google in California from the lowest-level hourly positions to top-ranking executives. It also argued that plaintiffs had alleged their claims under the “substantially similar work” legal standard even though that standard was not in effect until after plaintiffs separated from employment with Google.

The Court's Holding

With respect to the deficiencies in plaintiffs' class allegations, the California Superior Court held that plaintiffs failed to allege facts demonstrating an ascertainable class. The Court recognized that class certification can be denied if the proposed class definition provides no means by which class members who have claims can be identified from those who do not. Plaintiffs' proposed class was defined simply as "all women employed by Google in California." The Court held that this definition was not sufficient to distinguish between those employees who have valid claims from those who do not.

Plaintiffs alleged that Google implemented a uniform policy of paying all female employees less than their male counterparts. They also argued that their complaint pleaded evidence in the form of a September 2015 analysis conducted by the United States Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP"), which had performed a compliance review of Google's Mountain View headquarters and allegedly found systemic compensation disparities against women across the entire workforce. The complaint alleges that the OFCCP's analysis showed six to seven standard deviations between pay for men and women in nearly every job classification in 2015.

The California Court held that this was not enough for plaintiffs to meet their pleading obligations under California's Equal Pay Act, pointing out that the allegations relating to the OFCCP study were "vague" in that they did not specify the job classifications the study pertained to, or other details about the study, such as whether it compared men who perform substantially similar work under similar working conditions. Moreover, the Court held that the complaint failed to plead a "community of interest," i.e., (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. In particular, the Court held that plaintiffs' failure to plead a common policy or course of conduct affecting all women employees meant that they had failed to meet the commonality requirement and the typicality requirement.

With respect to the complaint's deficiencies on the merits, the Court held that plaintiffs had failed to state an Equal Pay Act claim under the standard in effect while they worked for Google. Effective on January 1, 2016, California's Fair Pay Act amended California's Labor Code section 1197.5 to add the "substantially similar" legal standard. Plaintiffs had alleged that they performed "substantially equal or similar work", but not "equal work" as required by the Labor Code before the amendment took effect. Because the plaintiffs terminated their employment with Google before the amendment's effective date, the Court held they had failed to adequately allege a claim under the legal standard then in effect.

The Court granted Google's motions to dismiss and to strike class allegations – but also granted plaintiffs leave to amend the complaint within 30 days.

Key Takeaways

The fatal flaw in plaintiffs' class definition was that it made no distinction among employees by job position. It is hard to imagine how such a broad class definition could be workable for any employer when the relevant legal standard requires specific comparisons by job title and expertise. But it seems especially problematic when applied to a tech industry giant like Google, which has a dizzying array of products that require a diverse set of skills to produce and operate.

It may be that plaintiffs will try to salvage their complaint by narrowing the scope of the class and/or breaking it up into various subclasses that take account of different job titles and categories. But they could also choose to bring the same broad class definition again, supplementing their complaint with additional allegations in an effort to tie the entire class together. This decision is important because it identifies this issue – defining an ascertainable class in pay equity class actions – as a fundamental pleading requirement that future plaintiffs will have to account for if they want to bring similarly massive class actions against companies in the tech industry and beyond.

As always, Seyfarth Shaw is tracking this emerging area of law closely, and we will continue to update you regarding any developments. We are also available to answer any questions employers may have regarding this or any other development in pay equity litigation. For more information, please contact any member of Seyfarth's Pay Equity Group, including, [Matt Gagnon](mailto:mgagnon@seyfarth.com) at mgagnon@seyfarth.com, [Christine Hendrickson](mailto:chendrickson@seyfarth.com) at chendrickson@seyfarth.com, [Kristina Launey](mailto:klauney@seyfarth.com) at klauney@seyfarth.com, [Annette Tyman](mailto:atyman@seyfarth.com) at atyman@seyfarth.com, or [Jeffrey Wortman](mailto:jwortman@seyfarth.com) at jwortman@seyfarth.com

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