

# Pay Equity Issues & Insights Blog



## Equal Pay Day 2019: Introducing Seyfarth's Developments in Pay Equity Litigation Report and the 3rd Annual 50-State Pay Equity Desktop Reference

By Christine Hendrickson and Annette Tyman

**Seyfarth Synopsis:** *Seyfarth's Pay Equity Group is pleased to release two reference guides: the [2019 Developments in Pay Equity Litigation Report](#) and the [3rd Annual 50-State Pay Equity Desktop Reference](#).*

Today, April 2, 2019, is Equal Pay Day. As we reflect on the developments in equal pay laws and litigation in the past year, we continue to see a legal landscape that is rapidly evolving.

As our colleague, Camille Olson, [testified](#) in February on the Paycheck Fairness Act (H.R. 7) before the U.S. House Education & Labor Committee's Subcommittee on Civil Rights and Human Services and the Subcommittee on Workforce Protections, which passed out of the U.S. House of Representatives last week, equal pay is an area of the law where employers have led "by proactively evaluating and modifying their pay practices, policies, and procedures, through voluntary compensation reviews and implementing educational programs to ensure compliance with the law." We are proud to partner with you in these efforts.

Looking back at 2018 and forward to 2019 and beyond, we see four key trends:

- **A Push Towards Even Greater Transparency:** In 2019, we are seeing employers even more willing to be transparent about pay and an increased appetite for additional data and metrics. Specifically, we are seeing additional requests for not just "pay gap" information but information about [median pay and unadjusted pays statistics](#). Employers are weighing [voluntary](#) or mandatory ([like in the U.K.](#)) disclosures about pay. This raises additional concerns and, at the same time, provides additional opportunities. We expect this trend to continue. We discussed this on our [webinar today](#), and we look forward to sharing more information about the how employers can evaluate if they have a pay gap or a gap in the data that explains how employees are paid. Watch this space.
- **The Possibility of Pay Data Collection by the EEOC:** On March 4, 2019, the U.S. District for the District of Columbia issued an [opinion](#) vacating a stay of the EEOC's collection of pay data as part of the EEO-1 Report filing. The pay data collection requirement was indefinitely stayed by Office of Management and Budget ("OMB") in part because of questions around the EEOC's burden estimates. The National Women's Law Center and the Labor Counsel for Latin American Advancement filed suit challenging OMB's decision. We are [now waiting for clarification](#) from EEOC of the timeline by which employers with more than 100 employees must provide pay data and hours worked for all employees. The impact of this development on the employer community cannot be understated and we are closely following these developments and will be in touch with guidance, if and when the EEO-1 pay data collection is required.

- **The Continued Passage of New, More Stringent Pay Laws:** Since the beginning of 2018, we saw new equal pay laws passed in Illinois, New Jersey, and Washington state. Laws banning employers from asking candidates for employment about prior salary continues to be another trend. Salary history ban laws have been enacted in 7 states, 1 territory, and 7 cities, and several other counties and states are considering similar salary history bans. The [3rd Annual 50-State Pay Equity Desktop Reference](#) outlines these changes at the state-level.
- **More Litigation:** Not surprisingly, concurrent with these new laws and developments, the Seyfarth Pay Equity and Complex Litigation Groups have seen an increased interest by the plaintiff's bar in litigation under the federal Equal Pay Act and analogous state laws. The primary targets for this new wave of litigation have been the health, legal and tech industries. Those cases are already generating new and intriguing law that has the potential to reshape the landscape of pay equity litigation, including whether and how those claims can be maintained as collective or class actions. The 2019 edition of the [Developments in Pay Equity Litigation Report](#) outlines these cases and trends.

All of the members of the Pay Equity Group look forward to working with you and partnering with you in navigating these issues in 2019.

If you would like additional information, please contact [Christine Hendrickson](#) at [chendrickson@seyfarth.com](mailto:chendrickson@seyfarth.com), or [Annette Tyman](#) at [atyman@seyfarth.com](mailto:atyman@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

Seyfarth Shaw LLP Pay Equity Group | April 2, 2019

©2019 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome. #16-3329 R1