

Management Alert



Equal Pay Day 2018: Introducing Seyfarth's *Trends and Developments in Pay Equity Litigation Report* and the *2nd 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 [2018 Trends and Developments in Pay Equity Litigation Report](#) and the [2nd Annual 50-State Pay Equity Desktop Reference](#).

Yesterday, April 10, 2018, was Equal Pay Day. While there are limitations of the statistic that underlies the event, there seems to be no limit to the focus on pay equity. To help understand the legal landscape as it stands today, the Seyfarth Pay Equity Group is pleased to share two guides to help enhance your compliance efforts: the [2018 Trends and Developments in Pay Equity Litigation Report](#) and the [2nd Annual 50-State Pay Equity Desktop Reference](#).

As we reflect on Equal Pay Day this year, and think ahead to the future, certain trends emerge:

- **Amped-Up Pay Laws:** While California, New York, and Massachusetts led the way in adopting stricter state pay equity laws, other states, including Maryland and Oregon, soon followed suit. The trend continues into 2018 with New Jersey and Washington passing similarly onerous laws in recent weeks. Laws banning employers from asking candidates for employment about prior salary is another trend. Laws have been enacted in nine jurisdictions and several other states are considering similar salary history bans. The [2nd Annual 50-State Pay Equity Desktop Reference](#) outlines these changes.
- **Litigation Uptick:** Not surprisingly, concurrent with these new laws and developments, the Seyfarth Pay Equity Group has 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 firms in the 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 [Trends and Developments in Pay Equity Litigation Report](#) outlines these cases and trends.
- **Federal Circuit Split on Pay Factors:** Recent cases demonstrate that [Federal circuit courts are split](#) on whether prior salary can be used as a factor that justifies differences in pay under the federal Equal Pay Act. Just yesterday, the [Ninth Circuit changed course](#) in an *en banc* decision, and held that an employee's prior salary does not constitute a "factor other than sex" upon which a wage differential may be based under the statutory "catchall" exception in the federal Equal Pay Act. The [Trends and Developments in Pay Equity Litigation Report](#) has up-to-date information on this circuit split and the new *Rizo* decision. Stay tuned to see this in the Supreme Court.

- **A Push Towards Greater Transparency and More Structure:** The benefit to having more defined pay structures and being more transparent about pay is that it often helps demystify what has long been thought to be a taboo topic. Structure also provides an opportunity to reassure employees about their pay, if they are paid in line with their peers, and helps employers identify any concerns that may have been unintentionally overlooked. Lastly, 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.

All of the members of the Pay Equity Group look forward to working with you and partnering with you in navigating these issues in 2018 and beyond. We hope you find the guides useful in this journey.

[Christine Hendrickson](#) and [Annette Tyman](#) co-chair Seyfarth's Pay Equity Group. For 20 years, Seyfarth's Pay Equity Group has led the legal industry in fair pay analysis, thought leadership, and client advocacy.

For more information, please contact [Christine Hendrickson](#) at chendrickson@seyfarth.com, or [Annette Tyman](#) at atyman@seyfarth.com.

www.seyfarth.com

Attorney Advertising. This Management Alert 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 Management Alert | April 11, 2018

©2018 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.