Equal Pay Day 2018

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Did you know that, on average, women in the United States earn 80 cents for every dollar earned by men? The gender pay gap affects women of all ages, races, industries and education levels (note: the gender pay gap is compounded by other forms of discrimination; women of color, LGBTQ+ women, disabled women, and mothers all experience wider pay gaps on average). Pay inequity harms not only women, but also the families that rely on their income, the communities in which they live, and the economy overall.

This is why Equal Pay Day – taking place this year on April 10, 2018 – was created. This date symbolizes how far women, on average, must work into the new year to earn what men earned in the previous year. Originally launched in 1996 by the National Committee on Pay Equity, Equal Pay Day has become a widely recognized public awareness day that illustrates the gap between men's and women's wages. Wigdor LLP aims to help close that gap.

What Causes the Gender Pay Gap?

The gender pay gap is a complex and multidimensional issue. In fact, research suggests that roughly one-third of the pay gap in the United States has yet to be explained. Nevertheless, studies have shown there are several contributing factors to the gender pay gap, including:

- Occupational "choice": traditionally male-dominated positions tend to pay better than traditionally female-dominated ones (job decisions are often shaped by gender discrimination and societal norms, and women on average are paid less than men even when working in the same occupation.)
- Explicit or implicit gender discrimination in hiring and wage practices;
- Sexual harassment, which often causes women to change jobs – sometimes to a job of lower quality or pay;
- Discrimination against mothers, expecting mothers or women who may become pregnant, based on the false belief that motherhood makes a woman less productive on the job;
- Women are less likely to negotiate salaries than men, in large part because women are often treated less favorably than men when they attempt to negotiate;
- Many employers base salary decisions on an employee's salary history, which contributes to a growing wage gap over a woman's lifetime; and
- Current federal and state equal pay laws in the United States have been ineffective at eliminating the pay gap.

Equal Pay Laws in the United States: Equal Pay for Equal Work

The Equal Pay Act of 1963 was the first piece of legislation in the United States mandating equal compensation for employees working within the same establishment – and under similar working conditions – whose jobs require "equal skill, effort, and responsibility." When the Equal Pay Act passed,

women on average earned just 60 cents on the dollar compared to men. The Equal Pay Act was enacted as an amendment to the Fair Labor Standards Act of 1938, which regulates wage and hour laws, such as minimum wage and overtime requirements, and also child labor. The U.S. Supreme Court handed down its first decision under the Equal Pay Act in *Corning Glass Works v. Brennan,* 417 U.S. 188 (1974), finding that the factory in question had violated the law by hiring only men for the higher-paid night shifts.

Title VII of the Civil Rights Act of 1964 also prohibits wage discrimination on the basis of sex, race, color, religion, and national origin.

While the gender pay gap has shrunk considerably since the Equal Pay Act was signed into law, equal pay activists have argued that this is primarily due to increases in female employment rates, and that the Equal Pay Act has been largely ineffective in closing the gender pay gap because it includes vague language that makes it difficult for women to prove that they are paid less than male counterparts on the basis of sex. Specifically, employers can justify pay gaps between men and women under the Equal Pay Act on the basis of, among other criteria, "factors other than sex." This defense was successfully used in *Kouba v. Allstate Insurance Co.* 691 F.2d 873 (9th Cir. 1982), wherein Allstate used salary history as a "factor other than sex" to justify paying women less than men. That decision has been cited by courts as recently as April 2017 in *Rizo v. Yovino*, No. 16-15372 (9th Cir. 2017).

However, the tide may be turning for female employees. On April 9, 2018, the Ninth Circuit overturned its own decision in *Rizo*, stating in a groundbreaking en banc ruling that salary history is not a legitimate "factor other than sex" that would justify an employer paying female employees less than male employees under the Equal Pay Act.

The Paycheck Fairness Act

Sponsored by U.S. Senator Patty Murray (D-WA) and U.S. Representative Rosa DeLauro (D-CT), the proposed Paycheck Fairness Act aims to strengthen the country's equal pay laws by providing women with the necessary tools to assert their right to equal pay for equal work. The key provisions of the Paycheck Fairness Act are as follows:

- Clarifies key definitions of the Equal Pay Act to remove ambiguity in how to apply to law;
- Protects employees against retaliation for discussing salaries with colleagues, or for inquiring about an employer's wage practices;
- Prohibits employers from requiring salary history information during interviews and the hiring process;
- Strengthens remedies for claims filed under the Equal Pay Act by providing the same remedies as those available to plaintiffs who file race-based wage discrimination claims under Title VII;
- Updates the class action provisions of the Equal Pay Act, making it easier for plaintiffs to participate in class action lawsuits;
- Enhances oversight and enforcement of equal pay laws by requiring the Department of Labor and the Equal Employment Opportunity Commission to collect and publish data that will help combat discrimination; and
- Creates a grant program providing negotiating skills training to girls and women.

Wigdor LLP is committed to fighting back against unequal pay, glass ceilings, sexual harassment and

overall gender discrimination in the workplace. The Firm has represented numerous victims of gender discrimination and unequal pay at some of the world's largest and most well-known employers.

If you believe you have been subjected to unequal pay on the basis of sex, or any other form of unlawful workplace discrimination, call (212) 257-6800 today to speak to an attorney who can advise you of your legal rights.