

Electronic Alert

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USWNT Settlement: A Reminder for Oregon Employers to Keep Their Head in the Game

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Last month, the U.S. Women’s National Team (USWNT) scored a major victory when it settled its lawsuit against the U.S. Soccer Federation for \$24 million. The lawsuit, which drew national attention, alleged in part that the players on the Women’s National Team were paid less than their male counterparts on the Men’s National Team in violation of the Equal Pay Act.

The Equal Pay Act is a federal law that protects against wage discrimination on the basis of sex and requires equal pay for equal work. In 2017, the Oregon legislature passed a similar law, the Oregon Equal Pay Act of 2017. The law prohibits employers from paying employees in comparable jobs different compensation based on a protected class. Unlike the federal law, Oregon’s Equal Pay Act extends pay equity protections to all protected classes, not just sex.

The federal Equal Pay Act allows employers to pay employees differently where the difference is based on a “factor other than sex.” Oregon’s law is more strict, in that it allows employers to pay employees who perform work of comparable character differently *only* if all of the difference is based on one or more of the law’s bona fide factors.

Oregon’s law also contains an equal pay analysis safe harbor provision for employers. An equal pay analysis is simply an evaluation process employers undertake to assess and correct wage disparities among employees who perform work of comparable character. These analyses can be used by employers as an affirmative defense against an award of compensatory and punitive damages if the employer can show that within three years of an employee’s pay equity claim, they conducted a good-faith equal pay analysis and made reasonable and substantial progress toward eliminating wage differentials.

The USWNT’s settlement comes roughly three years after Oregon’s Equal Pay Act went into effect on January 1, 2019. Thus, it serves as a convenient reminder for employers that if it has been more than three years since their last equal pay analysis, it is time for another.

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