

PUBLICATION

Going for the Goal and the Gold - the Quest for Equal Pay

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In late March 2016, five star players on the U.S. women's national soccer team filed a complaint with the EEOC, alleging that they are paid 40% less than the U.S. men's national soccer team. The women's U.S. soccer team is currently ranked number one in the world and have won three World Cup championships (including in 2015) and four Olympic golds . . . and let's just be kind and say the men's team is not quite as successful. The women's team even generates more revenue - \$20 million more than the men's team in 2015, yet the apparent pay disparity still exists. This claim comes at a key time when the issue of equal pay is making headlines and has become a hot-button issue in the presidential race.

Most employers are all too familiar with federal minimum wage and overtime, and the potential for staggering verdicts when those requirements are not followed. But these five female soccer stars have brought their claim under a lesser-known federal wage law, the Equal Pay Act ("EPA"). The EPA prohibits employers from paying an employee at a rate less than that paid to an employee of the opposite sex for performing equal work.

To have a claim under the EPA, employees must show that the employer pays different wages to opposite sexes for equal work on jobs with equal skill, effort and responsibility, and similar working conditions. The jobs need not be identical to be considered "equal work." Whether a job is substantially equal is determined on a case-by-case basis and by an overall comparison of the work. Unlike the typical discrimination claim, proof of discriminatory intent is not required to establish a pay disparity claim under the EPA.

To prevail on an EPA case, the employer must prove that the wage differential is justified through: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) any factor other than sex.

Although employers are concerned about compliance with the federal overtime requirements, equal pay issues are often overlooked. It is a good practice to have an audit conducted on wage discrepancies, particularly when such discrepancies show a pattern of women making less than males for similar work.