

Practice Areas

Labor and Employment

Affirmative Action Plans and OFCCP Compliance
EEOC/Agency Class Investigation and Litigation Defense
Discrimination Defense
Trials and Arbitrations
Diversity, Equity & Inclusion Initiatives
FLSA/Wage-and-Hour Defense
Corporate Immigration Law
California Employment Law
Executive Agreements and Severance
Labor Management Relations
Leave of Absence and Disability Advice/Defense
Non-Compete and Trade Secret Litigation
Pay Equity Advice and Defense
Pre-Hire Testing and Background Check Advice/Defense
Preventive Employment Counseling
Reductions in Force
Whistleblower/False Claims Act Defense
Workplace Investigations
Industry Focus: Health Care
Industry Focus: Manufacturing
Industry Focus: Retail
Industry Focus: Restaurants
Industry Focus: Tech
Industry Focus: Higher Education

Current Landscape of Equal Pay

Recent high-profile legislation, regulation, litigation, media attention, and shareholder focus on pay equity are all leading employers to reexamine their compensation practices. With dramatic changes to the pay equity environment with the arrival of the Biden administration and in the wake of the #MeToo movement, employers need to ensure that their compensation practices have kept pace. State law changes—led by California, New York, Colorado and Oregon—not only make it easier for employees to find comparators to support claims of unequal pay, but also remove employer defenses and increase potential penalties and damages. The EEOC has undertaken new efforts to investigate equal pay issues. At the same time, federal and state courts have overturned precedents under the federal Equal Pay Act, facilitating employee lawsuits while further eroding employers' ability to defend against such claims. Plaintiffs' firms have been quick to take advantage of this environment, launching nationwide pay equity class actions against employers; asserting claims under the new state statutes; leveraging the media; and coordinating claims with activist shareholder groups.

Let NJL Help You Assess and Reduce Risk

Employers need to audit their pay practices to comply with the new environment and to avoid or prepare for potential claims. Nilan Johnson Lewis' Pay Equity Team assists employers in compliance and risk reduction in several ways:

- We conduct national, regional, and statewide pay equity audits to allow employers to identify areas of risk in their workforce
- We help employers review their pay practices to adjust to new state and federal requirements, including assessing job families to determine which jobs can be considered "substantially similar" under new California, New York, Oregon, and other states' standards
- We assist employers in efforts to comply with state and municipal pay transparency requirements
- We work with employers on a proactive basis to identify relevant factors the employer should consider when determining compensation—and factors that are no longer permissible under federal and state law
- We offer suggestions for permissible remediation, either enterprise-wide or in specific organizational or functional areas, to address pay gaps
- We assist employers with the timing and messaging of remediation to minimize workplace disruption and alarm
- We conduct root-cause analyses to identify pay practices that may be creating structural pay disparities

and recommend changes to reduce or eliminate risk without compromising the employer's ability to compete for and retain talent

- We advise and represent employers dealing with activist investors and shareholder groups raising concerns about pay equity
- We defend individual and class action pay equity charges and litigation under the federal EPA, the California Equal Pay Act, and various other state statutes across the country