

When Paying Less Can Cost You More: Pay Inequality

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What do three New York City lawyers, the Queen of England, a preschool teacher, a service center manager and a township accountant all have in common? Here's a hint: we are fast-approaching the April 4 date that symbolically marks how much longer full-time female workers need to work in order to equal the pay earned by their male counterparts the year before. The answer to the question of course, is that each of the "employees" listed above play starring roles in the midst of a female-led drama of pay discrimination and inequality claims. (Ok, it isn't the Queen herself, but an actress who plays her on a television series, and who learned she'd been paid significantly less than the male actor playing the supporting role of Prince Philip, the mere Duke of Edinburgh). Each of the others (and many more like them) is a plaintiff, and sometimes a winner, in the quest for equal pay. Census Bureau and Labor Department data that gives a broad overview of the pay among all full-time, year-round workers shows women earn approximately 80 cents for every dollar earned by a man. While that gap narrows when things like education, type of work, experience and seniority are taken into account, no one's claiming that things are even approaching equality. In fact, the gap widens significantly (54-63 percent) among African American and Hispanic workers. And even where progress is made (among Asian female workers, for instance), the Institute for Women's Policy Research estimates that wage parity will not be reached until 2059 in the U.S. overall, and not until sometime in 2100 in some states. We can all probably agree that significant pay discrepancies that have nothing to do with skill and other objective factors are unfair. What might not be as apparent, is that the "fix" pursued by female employees, i.e., lawsuits, can end up costing employers a lot more in the long run. A recent settlement that is particularly breathtaking is the Chadbourne & Parke law firm settlement of \$3.1 million approved by a federal court in New York last week in favor of three former female attorneys who accused the firm of having a "boys' club" culture that condoned paying women less than men. The settlement was precipitated by a ruling that would have required the firm to disclose the personal email accounts of six male defendants. The good news for employers is that there is a less costly "fix" in the nature of pay audits, disparate impact and other internal analysis of pay practices. But a word to the wise — the effort can be filled with legal landmines for the inexperienced. Before undertaking any strategic review of pay practices, consult with experienced legal counsel who will help not only with the substance, but will make best efforts to protect the review as privileged.

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