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People Feature

New Laws Force Shops to Scrutinize Pay Practices for Men, Women

By Clare Trapasso January 19, 2016

New laws in New York and California aimed at closing the pay gap between men and women could boost the bottom lines for female fund workers and cause shops to reexamine their pay practices.

The recent state legislation tightens existing federal legislation to ensure that companies are compensating women with equivalent experience and skills working in the same, or in some cases substantially similar, roles as much as their male coworkers. And employers that don’t comply leave themselves vulnerable to lawsuits and financial penalties, warn employment lawyers.

The laws went into effect on Jan. 1 in California and today in New York. Similar laws are pending in more than a dozen states, including Massachusetts.

Even if companies believe their hiring practices already adhere to the letter of the law, they must be vigilant, says Joanne Cleaver, president of **Wilson-Taylor Associates**, a Chicago-based communications consultancy. “Unless you’re doing analysis to confirm that your pay policies are translating to pay equity you cannot be sure you’re actually compliant.”

Routine internal compensation audits can help ensure that practices are in fact fair, she says. Companies should also determine compensation for new hires based on their skills and experience, and not factor in their previous salary. This ensures that pay discrimination from a previous employer does not affect a woman in her new job, too.

Nationally, working women overall earned just 79% of what men did in 2014, according to a report by the **American Association of University Women**. The report analyzed **U.S Bureau of Labor Statistics** and **U.S. Census Bureau data**.

In Washington, D.C., the pay gap was the smallest with women earning 90% of what males did. New York and Hawaii came in second and third at 87% and 86%, respectively, according to the association. Women in California made 84% of what male state residents did.

In New York, all workers are now permitted to share their compensation with one another. Previously, companies could prohibit managers and those who supervise others from telling their colleagues what they earn.

And as of this week, pay for employees who share the same title and work out of the same location must be consistent unless companies can prove “there is a business reason that’s job related that justifies the difference in pay,” says Susan Gross Sholinsky, a New York–based employment attorney at **Epstein Becker & Green**.

To ensure compliance, employers in the state should take a close look at how employees are being compensated and determine how to remedy any discrepancies or document legitimate business reasons for the differences if they want to avoid being dragged into court.

Under the new law, it is acceptable to have a pay discrepancy if one employee has stronger credentials than another, says Tony Dulgerian, an employment attorney at **Nixon Peabody**. An employer also could pay new hires more to incent them to join the firm, provided each new employee receives a similar bump, he says. But the burden to justify the decisions falls squarely on the employer, he says.

Those that fail to provide justification could be forced to pay plaintiffs lost wages, plus up to three times that amount in damages.

In California, the law that took effect at the start of the year enables employees to sue if they’re not receiving equal pay for doing work similar to that done by their counterparts of the opposite gender, regardless of where the company or the worker’s peers are based, say employment attorneys.

That means a woman working out of a more affordable part of the Golden State could potentially sue her employer for paying more to a man in a locale with higher living costs, even if they don’t have the same job title, says Jeff Polsky, a San Francisco–based employment attorney at **Fox Rothschild**.

Californians are also now eligible to recoup double the lost wages under the new law, he says. But they must have equivalent work experience and skills as their more highly paid colleagues and be performing substantially similar roles.

Polsky notes that the definition of “substantially similar” work remains vague, and will therefore likely lead to an uptick in lawsuits.

Women often earn less than men because some choose lower-paying positions and/or industries, says Ariane Hegewisch, a study director at the **Institute for Women’s Policy Research**, a Washington, D.C.-based nonprofit.

They also don’t always negotiate as hard for higher salaries and raises as their male peers. And if they do, women are often perceived as aggressive, she says.

Often female workers’ pay “stalls” when they choose to work part-time or on flexible schedules while raising children or taking care of family members, says Wilson-Taylor's Cleaver. When these women go back to working full-time, they therefore often earn 10% to 15% less than their peers.

“There’s a tendency to blame [the pay gap] on women,” she says, particularly those who are afraid to negotiate for higher paychecks. But that is changing, she says. “Women are [now] asking, 'How does my employer handle pay equity decisions?'"