



MICHAEL LASKY

Why PR professionals need to grasp the potential liability for pay equity claims

Pay equity is not just an important topic in the upcoming presidential election. It is also the subject of new regulation. Last week, the U.S. Equal Employment Opportunity Commission said that starting in March 2018, it will collect summary employee salary and incentive compensation data for all employers who employ more than 100 staffers. Companies with fewer than 100 employees will also be required to submit this data if they are federal contractors or subcontractors.

According to the EEOC, this data will “improve investigations of possible pay discrimination which remains a contributing factor to the persistent wage gap” between men and women in similar positions. The EEOC also announced it will use this pay data to assess complaint of discrimination, focus agency investigations, identify existing pay disparities, and will not disclose data for a specific employer. Instead, it will only publish larger aggregated data that “fully protects employer confidentiality and employee privacy.”

More information about the revised EEO-1 report, including the new Fact Sheet for Small Business form, and a question and answer document are available on [EEOC's website](#). Even before the EEOC begins collecting this data, a number of leading companies (including Amazon, American Airlines, Johnson & Johnson, and PepsiCo) have voluntarily signed the White House' Equal Pay Pledge, by which employers agree to review their pay statics annually in an effort to reduce the gender pay gap.

It is only relatively recently that the public relations industry has been getting acclimated to the new [Department of Labor overtime regulations that become effective on December 1](#). Now, however, there looms a much more important source of potential liability to public relations firms with more than 100 employees. It is called pay equity. Pay equality is a particularly important topic for public relations because a 2015 PR/Bloom Gross & Associates Salary Survey revealed the continuing disparity between male and female salaries in the PR industry. This is especially true for professionals with [more than five years of experience](#).

Paying women less than men for the same work has been illegal in the U.S. for more than 50 years since the enactment of the Equal Pay Act of 1963 and Civil Rights Act of 1964. Even before the EEOC's announcement last week, nine states (including California, Massachusetts, and New York) have enacted equal pay laws providing broader protection for existing federal laws.

The Massachusetts law, for example, which goes into effect on January 1, 2018, prohibits employers from discriminating in the payment of wages and benefits based on gender, and specifically, by paying an employee less than another employee of a different gender for comparable work. In addition, employers considering applicants who will work in these states may not ask the applicants or their current or former employers about the applicants' com-

pensation history before the employer has made a written offer of employment, including compensation, to the applicant.

Exceptions to the Massachusetts act's requirement of equal pay for comparable work include situations in which pay is different due to:

1. A bona fide system that rewards seniority, which shall not be reduced by leave due to pregnancy or protected family and medical leave.
2. A bona fide merit system.
3. A bona fide system that measures earnings by quantity or quality of production or sales.
4. Different geographic locations.
5. Different requirements in education, training, or experience reasonably related to the job and consistent with business necessity.
6. Work-related travel requirements.

Even before the EEOC begins the data collection in March 2018, all employers, including public relations firms, can be subject to an unequal pay claim based on gender. Because of this, firms should reduce the risk of these claims by proactively analyzing total annual compensation to men and women in similar positions to:

- Identify if there are pay disparities;
- Determine whether such differences are the result of legitimate factors such as seniority, merit, quality or amount of work; and if so,
- Make certain that such non-discriminatory factors are well documented.

Management and HR professionals at public relations firms should undertake the process with experienced legal counsel to ensure that attorney client privilege is maintained. Given the heightened attention that states and the federal government are devoting to eliminate the gender pay gap, a privileged review and analysis will help identify and correct potential issues. It will also reduce potential claims. ●

Michael Lasky is a senior partner at the law firm of Davis & Gilbert, where he leads the PR practice group and co-chairs the litigation department. He can be reached at mlasky@dglaw.com.