Melissa Goodman in HR Executive on California Pay Equity Ruling

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HR Executive quoted Haynes Boone Partner Melissa Goodman on a recent decision from the 9th U.S. Circuit Court of Appeals that employers can't take workers' past compensation into account when setting current pay.

The court based its ruling on the Equal Pay Act in a case involving a California math consultant who sued after discovering that male colleagues with less experience were hired at higher salaries, *HR Executive* reported.

The report quoted Goodman, a partner in Haynes Boone's Labor and Employment Practice Group, saying that organizations should take a closer look at other variables besides past compensation:

"As part of an individualized assessment, employers should inquire in more detail about the applicant's education, job experience, skill set, ability and prior performance; factors the Ninth Circuit considered to be legitimate explanations and 'not based on sex.' "

Employers would be able to point to these factors to show why an employee was paid more or less than a colleague, says Goodman.

"I think HR professionals should implement salary ranges for positions. And they will need to better understand the positions for which they are hiring, the qualifications needed and market salary trends," she continues, adding that HR should also be involved in the hiring process to ensure "consistent application in evaluating qualifications, setting salaries and justifying pay differences."

This ruling, while only germane to employers in the Ninth Circuit — which covers Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington — should ultimately help employers take another step toward achieving pay equity, says Goodman. At least theoretically.

"Even though the ruling only applies in the Ninth Circuit, other states often follow legal developments there. In fact, four states [California, Delaware, Massachusetts, and Oregon] currently prohibit employers from asking an applicant's salary."

In the wake of this decision, Ninth Circuit employers cannot justify a new hire's salary based on his or her prior earnings. This means that employers must perform "an individualized assessment of each new hire's salary and arguably even salary increases for current employees," says Goodman, adding that employers should generally have salary ranges for various positions and then assess a new hire's qualifications to determine a specific salary. ...

Excerpted from *HR Executive*. To read the full article, click here.