



# Not so Happily Ever After? Disney's Gender Discrimination Lawsuit Based on the Equal Pay Act

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On April 2, 2019, two long-time female employees of the Walt Disney Company brought a class action lawsuit against the company on behalf of themselves and all others similarly situated in the Superior Court of the State of California, Los Angeles County. The lawsuit specifically alleges Disney's violation of, among other things, the California Equal Pay Act.

## Gender Pay Gap Alleged in Lawsuit Against Disney

The two employees allege that "[w]hen it comes to paying women fairly, The Walt Disney Company, nearing its 100th year, is woefully behind times" and that women were paid far less than men for the same work. Specifically, plaintiff LaRonda Rasmussen, who was hired by Disney in 2008 as a Senior Financial Analyst, states that her annual salary was approximately \$26,000 less than her male counterparts and nearly \$50,000 less than the male Senior Managers at the company who were performing the same duties as her. The lawsuit alleges that when Rasmussen complained to Disney's Human Resources department about the pay disparity, Disney HR informed her that the pay gap "was not due to gender." Similarly, plaintiff Karen Moore, who is a Senior Copyright Admin Administrator and a 23-year employee of Disney, alleges that she was denied advancement opportunities and was paid less than male employees who were performing the same or substantially similar work as her.

Approximately three months after the commencement of the lawsuit, four women joined the class action lawsuit alleging pay disparity at the company on the basis of gender. One of the four new plaintiffs, Enny Joo, has been employed by Disney since 1998 and alleges that she was denied promotions since 2000. Despite her stellar work performance, substantiated by her excellent performance reviews and praise from her supervisors, Joo was told to spend a year "proving" herself when she complained about her unfair treatment to her supervisors.

Another plaintiff, Ginia Eady-Marshall, is a 15-year employee of Disney Music Publishing. Eady-Marshall alleges that while she performed the same duties as a male Director, Eady-Marshall was given a lower title and was paid \$25,000 less than the low end of the range for her title.

When Eady-Marshall raised such issues to Disney's HR and requested a raise as well as a change in her title, Disney told Eady-Marshall that such request "was not warranted."

Since July 2019, four more female plaintiffs have joined the lawsuit, increasing the number of plaintiffs to ten. Although all ten plaintiffs hold various positions from different segments of the company (such as the Disney's music label, Disney Music Publishing, Disney Pictures, and so forth), they all allege one thing: that Disney compensates women less than their male counterparts, denies women advancement opportunities, and places women in lower job titles as compared to male employees performing the same duties.

## State Laws Augment the Equal Pay Act

The facts alleged in the lawsuit against Disney are becoming increasingly common, and similar lawsuits have likely been encouraged in the wake of the claims of the U.S. women's national soccer team, whose team members chanted "Equal pay, Equal pay" after winning the World Cup in July 2019. More states and local jurisdictions are enacting equal pay laws that provide protections in excess of the federal Equal Pay Act, signed over 55 years ago by President John F. Kennedy. The Equal Pay Act was one of the first federal laws addressing gender discrimination and was enacted even before Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating on the basis of "race, color, religion, sex, or national origin." The Equal Pay Act aimed to eliminate pay discrimination on the basis of gender.

To augment the protections afforded under the Equal Pay Act, more states and local jurisdictions are passing laws to remedy pay gaps on their own. For instance, the California Equal Pay Act expands the federal Equal Pay Act's protections to include race and ethnicity as protected categories in addition to sex. Moreover, the California Equal Pay Act does not require a comparator to perform work on the same shift or time, or even at the same geographic location, but rather the determination is based upon whether the comparator performed "substantially similar work" when viewed as a composite of skill, effort, and responsibility. This is distinct from the federal Equal Pay

Act, which makes a comparator determination based on skill, effort, responsibility, working conditions, and establishment. According to the Equal Employment Opportunity Commission (EEOC), which enforces the Equal Pay Act, an establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business. Thus, an employee in California has a wider pool of employees to pick as a comparator for purposes of establishing his or her claim under the California Equal Pay Act, and employers must analyze pay disparity on a broader basis.

Additionally, while the federal Equal Pay Act provides certain exemptions based on (1) a seniority system, (2) a merit system, (3) a system which measures earnings by quantity or quality of production, or (4) a differential based on any other factors other than sex, the California Equal Pay Act places the burden on the employer to show that such exemptions applied and that it applied such exemptions reasonably and that such exemptions account for the entire difference in wages. The California law also differs from the federal law in that it does not require an employee to exhaust administrative remedies and allows an employee to bring an action directly in court rather than an administrative agency.

### Employer Considerations in Response to Equal Pay Statutes and Lawsuits

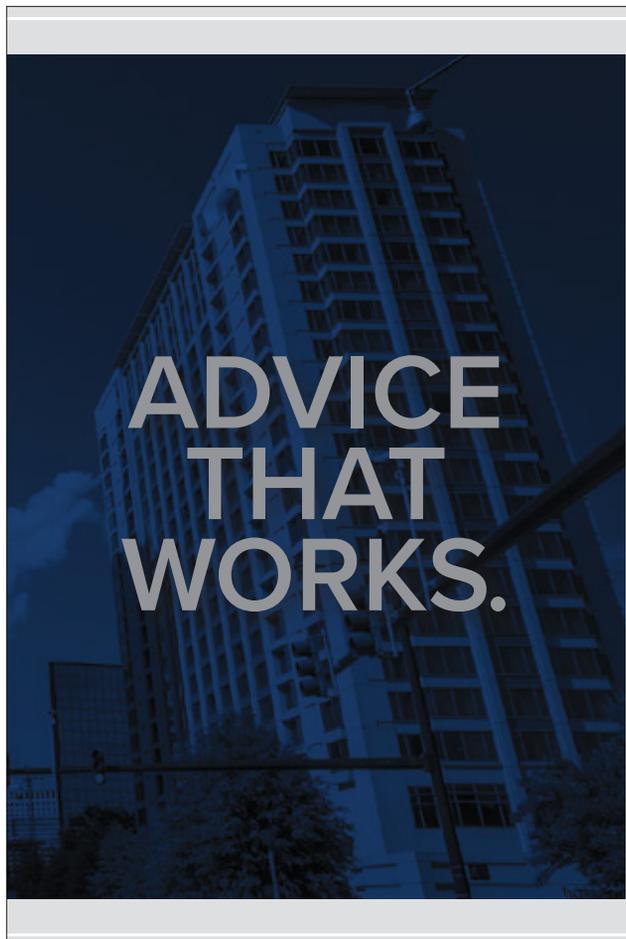
As shown above, state and local equal pay acts are enhancing protections from the federal Equal Pay Act in a variety of ways. Based on this trend as well as the lawsuits such as this one against Disney, employers should consider the following key takeaways:

- check all state and local law requirements regarding equal pay laws and do not assume the federal Equal Pay Act is the only law that applies;
- ensure that the salary determination is only based upon an employee's skill, effort, and responsibility; and
- ensure that male and female employees (as well as employees of different races and ethnicities in California) performing substantially similar work are paid equally.

Disney categorically denies all allegations and states that the lawsuit is meritless. Furthermore, Disney is opposing plaintiffs' efforts to classify this action as a class action. The lawsuit is ongoing, and a hearing on Disney's attempt to halt plaintiffs' class action efforts is scheduled on December 11, 2019. The outcome of this lawsuit against Disney could resolve crucial pay disparity questions such as whether the title of an employee will be considered in making determination under applicable equal pay acts. Employers should closely watch this lawsuit and be prepared to undertake their own pay disparity analyses to avoid similar lawsuits.



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