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General Counsel Employment Law Report

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April 2nd was Recognized as Equal Pay Day

Why April 2nd? Because on average, it would take a woman until April 2nd to earn what her male counterpart earned as of the prior year end. Said differently, on average, it takes a woman 15 months to earn what a man makes in 12 months.

Anyone who reads the news today will see articles about equal pay. Equal pay will be all over social media. If you're taking the time to read this report, you're well aware that the momentum around equal pay isn't limited to one day or one state. Equal pay has been a hot topic for women, activists, lawmakers, and lawyers for the past few years. And, the momentum isn't slowing. More and more states are adopting state-specific equal pay laws and the federal Paycheck Fairness Act (which would eliminate the nearly all-encompassing "any other factor other than sex" from the permissible basis for differences in pay – in fact, the language of the federal Act closely mirrors the language of Massachusetts' Equal Pay Act) is likely to have enough votes in the house and may have enough votes in the senate.

I would suggest that while equal pay is on the minds of a lot of people, it's a topic that's still taking a back seat with a group of people that I care a whole lot about: employers. It's not that I think employers don't care. I think they genuinely believe that equal pay exists in their organization. Because of this belief (and because of the million other priorities on their desks) employers aren't taking steps to proactively review their current pay practices to ensure compliance with the law. And, as I wrote a few months ago, this is a really risky approach. For an employer in Massachusetts, for example, performing an internal audit of pay practices can not only identify areas of pay disparities but can also afford protection from liability of claims of equal pay violations for a period of three years! Today, on Equal Pay Day, I again encourage employers to be the devil's advocate: to ask what would happen if Sue or Bob filed an equal pay claim; to explain to others that the only REAL way to know what's going on in the organization is to take a REAL look at the pay practices of the organization.

For you Massachusetts employers, I'll give you one more reason to think about gender equity: the Massachusetts Pay Transparency and Pipeline Advancement Act. This Act, which is proposed and not yet law "would require all companies with more than 100 employees to report the gender and race of employees holding specific management titles, and require the Office of Labor and Workforce Development to post data. This legislation would also establish a fund to provide professional development services to employees who observe a disparity between the overall and their employer's ratio, in order to help improve their employer's rating."^{*} [_](#)

ICE Just Conducted Its Biggest Work Site Raid In a Decade, How Do You Feel About Your I-9's?

ICE's Homeland Security Investigations division recently raided CVE Technology Group, arresting 280 employees of the technology repair company. Acting on a tip, ICE had requested to review I-9 forms and documentation as part of an audit to determine whether the company knowingly hired unauthorized workers. ICE remains very active, and all employers should consider the steps they can – and cannot – take to avoid a raid.

The Immigration Reform and Control Act of 1986 (IRCA) was established to prevent individuals who are not eligible to work in the United States from performing work. The IRCA requires employers to complete an I-9 form for each employee within three days of hire. USCIS provides a [handbook](#) for employers, outlining the steps for completing the Form I-9; and, as we discussed previously, there are simple steps all employers can take to ensure they are complying with the IRCA.

However, it is also important to remember that employer cannot discriminate against employees and applicants on the basis of their citizenship. I-9's and I-9 audits must be administered in a non-discriminatory way. In 2015, Abercrombie and Fitch was forced to settle a case following allegations the company discriminated against non-U.S. citizens by requiring non-U.S. citizens to provide specific documentation indicating immigration status, while not requiring the same of U.S. citizens. Mandating that non-U.S. citizens produce a green card, as Abercrombie allegedly did, during the Form I-9 process is considered hiring discrimination under federal law. The law prohibits employers from demanding specific documents from anyone, regardless of citizenship status.

Another common I-9 error that can lead to a discrimination claim is requiring an employee who has a List A document, such as a Lawful Permanent Resident Card (a/k/a "Green Card"), to also provide some other documentation such as a social security card as well. Because a Lawful Permanent Resident Card is a List A document, no other documentation can be required.

To avoid a discrimination claim, employers should consider the following tips:

- Never selectively audit I-9's based on a belief an employee may not be legally authorized to work in the U.S. I-9 audits should be conducted randomly. Consider starting with a few, if you find errors, a full audit may be in order.
- The U.S. Department of Labor, in coordination with other departments, issued guidance to employers for properly completing I-9 audits. The joint [guidance](#) provides employers with information regarding the scope and purpose of audits; considerations before conducting internal audits; details regarding how to correct errors, omissions or other deficiencies found on Forms I-9 and how to cure deficiencies related to E-Verify queries; and guidance regarding the anti-discrimination mandate.

Still unsure of your I-9 practices? Give us a shout – we can help.



General Counsel's Office Hours

Special Member Benefit



All CCHRA members in good standing will have the special benefit of being able to call Attorney Michael E. Foley, in his role as the CCHRA General Counsel, to obtain his guidance on employment law compliance issues and corresponding HR-related risk management during his CCHRA GC Office Hours – **at no cost**.

[Click here](#) for the description of the role of the CCHRA General Counsel. As General Counsel, Mike will be available within his virtual and gratis office hours for all CCHRA members from 2 pm to 3 pm on the first and third Tuesday of each month. The guidance Mike provides during his office hours will cover all issues that arise within the broad spectrum of the employment relationship to help CCHRA members achieve compliance with the extensive regulations that govern their workplace and to better understand best employment practices.

Issues related to the Internal Revenue Code/the Internal Revenue Service or ERISA-related issues will not be covered under this arrangement, nor will the interpretation, editing or drafting of documents. The office hours will be limited to providing guidance on employment law questions and corresponding HR-related risk management that can be answered in one telephone conversation. Mike can be reached during his CCHRA General Counsel Office Hours at 508-548-4888.

Mike Foley has been representing employers, small and large, for-profit and not-for-profit within all industry sectors and in all matters of labor and employment law for over 30 years. He draws on the breadth of his experience to offer employers an uncommon approach and practical solutions. [Click here](#) for Mike's bio.