



## FEDERAL COURT CASTS DOUBT ON THE USE OF SALARY HISTORY IN PAY DECISIONS

by Jessica L. MacKeigan

It has been over fifty-five years since the passage of the Equal Pay Act. However, numerous sources report that the gender pay gap still persists and employers continue to grapple with this issue when making compensation decisions in light of the ever-changing legal landscape.

The Equal Pay Act requires employers to pay men and women equal pay for equal work. The only exception is for gender-neutral, permissible criteria such as seniority, experience, work performance, or “any other factor other than sex.” It has long been the case that an employee’s salary history was one such “other factor” that employers could safely rely upon in making compensation decisions. Yet, that is beginning to change.

In April 2018, the Court of Appeals for the Ninth Circuit, which covers California and other western states, held that basing a woman’s salary on her past earnings is itself discriminatory and perpetuates unequal pay. In so ruling, the Ninth Circuit expanded the holdings of the Tenth and Eleventh Circuits, which previously held that employers could not base salary decisions on salary history alone, but instead needed additional permissible factors. These decisions, along with the fact that several

states and cities across the country including Delaware and Pittsburgh, have banned employers from asking job candidates about their salary history and indicates that the law may be changing in order to address gender pay disparity. The Court of Appeals for the Sixth Circuit, which covers Ohio, has not yet ruled on this issue.

In light of this growing trend, Wegman Law is encouraging our clients to reevaluate their employee pay policies and practices and make any needed changes to ensure fair and equitable compensation within their workplaces—irrespective of individual employees’ former salary histories. Wegman Law can assist employers with rewriting their pay policies and conducting pay audits to identify potential pay differences and determining whether those differences are justifiable under the current legal framework.

*For more information on this topic, or if you have questions about your workplace policies and procedures, please contact David R. Knowles [drknowles@wegmanlaw.com](mailto:drknowles@wegmanlaw.com) or Jessica L. MacKeigan at [jlmackeigan@wegmanlaw.com](mailto:jlmackeigan@wegmanlaw.com).*

## BUSINESS UPDATE: Supreme Court Decision Expands Applicability of State Sales Taxes

by Martin L. Kerr

The United States Supreme Court recently issued a decision in *South Dakota v. Wayfair, Inc.* which will drastically change the applicability and imposition of sales taxes throughout the United States.

Prior to this decision, States could not enforce sales taxes against a business unless that business had a physical presence in the State. However, in *Wayfair*, the Court decided that while a business must have a significant connection to a State in order for it to impose sales taxes, a significant economic presence is enough to satisfy this requirement—and a physical connection is not necessary. This means that a State may now impose sales taxes on businesses that are not physically present in the State, if those businesses have a significant economic presence in the State. A business may have a significant economic presence in

a State through numerous ways, including selling products online or otherwise offering services to residents of that State.

Since this decision was issued on June 21, 2018, fifteen States have already passed laws in accordance with it, with more States to follow. Going forward, businesses which engage in any business operations across state lines should ensure that they are complying with these new sales tax laws, or risk incurring significant consequences.

*For more information on these laws or any other compliance or business-related needs for your business, please contact Martin L. Kerr at [mlkerr@wegmanlaw.com](mailto:mlkerr@wegmanlaw.com).*

## Notable News

**Lesley A. Weigand** will be speaking at the Ohio State Bar Association's Midwest Labor and Employment Law Seminar which takes place on October 11-12, 2018 in Columbus, Ohio. Lesley will be giving a presentation on the taxation of employment settlements and the impact of the Weinstein provision on settlements.

**Jay R. Carson** is running for state office as the District 13 Representative to the Ohio House of Representative. District 13 encompasses parts of Lakewood and Cleveland. Jay has gained significant legislative experience by serving as a legislative aide to the Ohio General Assembly, through his work for the Cuyahoga County Workforce Investment Board and Lakewood Civil Service Commission, and through his representation of clients in government-related matters.

On May 23, 2018, Wegman Law's **WAVE (Women Achieving Victory Everyday)** group hosted Dr. Francoise Adan, the Endowed Connor Chair of Integrative Medicine at University Hospitals, for a discussion on managing stress and building resilience. The event was well-attended and marked the largest attendance for a WAVE event so far. Stay tuned for information regarding future WAVE events.

## #MeToo Lunch and Learn with Wegman Law

As the #MeToo movement sweeps the nation, Wegman Law realizes that you may have questions or concerns regarding how sexual harassment, discrimination, and similar issues could affect your business. To help you answer these questions and provide solutions, Wegman Law has created a complimentary lunch & learn program which covers pertinent issues relating to sexual discrimination and harassment, and also gives you information on protecting yourself and your business. Our attorneys will come to your offices to provide this free lunchtime program to your team, and Wegman Law will provide the lunch!

**Peter A. Hessler** and **Aaron A. Hessler** presented at the Future Lutheran Administrators – Midwest Educators (FLAME) Conference on June 19, 2018 in Ann Arbor, Michigan. Their presentation consisted of an overview of key legal issues facing Lutheran Schools in the current social and political climate.

**Peter A. Holdsworth** and **Jay R. Carson** obtained a preliminary injunction enforcing a noncompete agreement against an international competitor for a manufacturing client in the U.S. Northern District of Ohio.

**Jay R. Carson** and Dr. Michael Baranowski, Associate Professor of Political Science at Northern Kentucky University, will be presenting at the Northern District of Ohio Chapter, Federal Bar Association 2018 State of the Court Luncheon on October 9, 2018. Jay and Dr. Baranowski will be speaking about the political process in the federal judiciary.

**Rachel E. Lyons** recently secured a temporary restraining order on behalf of the beneficiaries to a trust and thereby protected the assets of the trust from being further depleted by the now erstwhile trustee. The matter is now in mediation as Rachel seeks to recover as much of the former assets as possible.



For more information, or to schedule a Lunch & Learn, please contact Angela M. Lavin, Esq. at (216) 642-3342 or [amlavin@wegmanlaw.com](mailto:amlavin@wegmanlaw.com)