

## MVP: Orrick's Erin Connell

By **Amanda Ottaway**

*Law360 (September 7, 2021, 4:40 PM EDT)* -- Erin Connell of Orrick Herrington & Sutcliffe LLP's employment law and litigation practice helped computer technology giant Oracle defeat a sweeping \$400 million administrative pay bias suit filed by the U.S. Department of Labor's Office of Federal Contract Compliance Programs, earning her a spot among Law360's 2021 Employment MVPs.

### **HER BIGGEST ACCOMPLISHMENT THIS YEAR:**

Connell said the Oracle win is the crowning achievement of the past year for her.

The OFCCP, which handles alleged bias by government contractors, had claimed that an analysis of Oracle pay data showed widespread pay bias against Black, Asian and female employees, as well as hiring discrimination that favored Asian applicants.

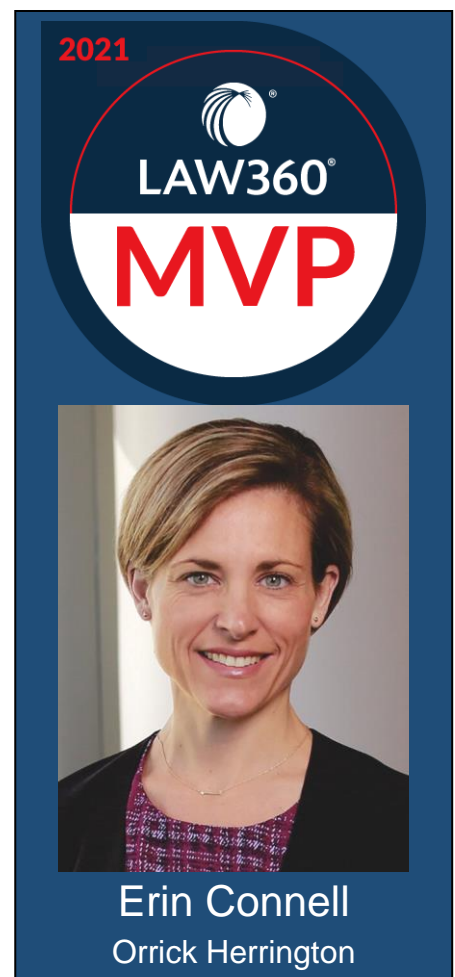
But an administrative law judge in San Francisco penned a nearly 280-page decision in September 2020 saying the OFCCP's data didn't show intentional bias.

The judge noted that while "inequities persist," the numbers didn't back the discrimination allegations. In December, the DOL said it wouldn't challenge Oracle's win.

Connell said it was a gratifying victory, not least because the detailed ruling helped offer "clarity" to federal contractors and employers about how to handle complicated systemic bias and pay class actions.

"When you are trying to prove discrimination using statistics, it's not enough to just come forward with any model that generates statistically significant disparities," she said.

"Instead, the underlying model has to be meaningful; it has to be accurate. It has to be true to Title VII [of the Civil Rights Act of 1964] standards, which require the comparison of similarly situated employees."



Connell said statistics can be a good tool in the toolbox, particularly in pay equity cases, but the way those numbers can be used depends on the law in question.

#### ***HER BIGGEST CHALLENGE THIS YEAR:***

Connell, who said she gravitates toward developing legal landscapes such as pay equity, also counsels employers on COVID-19-related issues. She pointed to the ever-shifting pandemic and the laws around it as a challenge over the past year.

There's not much legal precedent for how to handle changes of this magnitude, she noted.

"It's challenging. But it's also what I love about it because it's exciting, and it allows you to be creative, and it allows you to use your judgment and draw analogies," she said of pandemic-era problem-solving.

"We're practicing in this space where we are literally making law."

#### ***WHY SHE'S AN EMPLOYMENT LAWYER:***

Connell said she loves the "people-oriented" and team-centric nature of employment law. She's been with some of her clients for a long time, so they feel like partners, she said.

She said she also loves representing technology companies because their work and the issues that come up for them tend to be new and interesting.

Connell also works with employers so they can avoid litigation from agencies like the OFCCP in the first place, helping them analyze their pay internally to catch any inequities. She likes the proactive aspect of the work as well, she said.

#### ***ADVICE FOR JUNIOR ATTORNEYS:***

Connell advised young lawyers to find an area of law they genuinely enjoy.

"As lawyers, we work hard, and it can be stressful, but it can also be fun and exciting and rewarding," she said. "So I would say try to find an area of the law that really inspires you and motivates you, and it makes it really worthwhile."

#### ***OTHER NOTABLE CASES:***

Connell, who is based in San Francisco, noted that the California Department of Fair Employment and Housing, a state agency that enforces civil rights law, has over the past two or three years been more "active and aggressive" than she's ever seen.

She said the agency has initiated several sweeping investigations into issues like pay and promotions, which have been keeping her busy.

Connell is also on Pinterest's defense team in a proposed wage-and-hour class action in California state court, filed in February by Kiana Mathews, who said the company failed to pay her and other hourly workers fairly.

Pinterest has said it never employed her because she went through a staffing agency, while Mathews said a Pinterest employee signed off on her timesheets.

Connell also is representing Oracle in another pay bias case, this one an ongoing class action in California

state court.

The class members include women employed in information technology, product development and product support roles as early as June 2013.

They first sued in June 2017, alleging Oracle underpays women across its California operations in violation of the state's Equal Pay Act. The law prohibits businesses from paying women less than men for "substantially similar work" unless they can supply "bona fide" reasons, such as experience, for the discrepancies.

A trial is set for November 2022.

— *As told to Amanda Ottaway*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2021 MVP winners after reviewing nearly 900 submissions.*

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