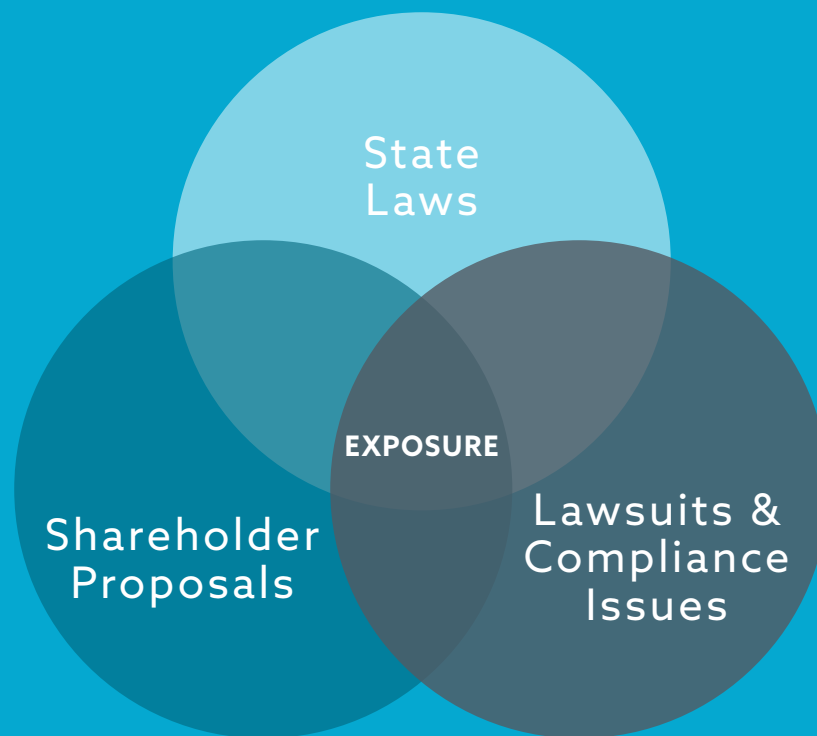




# PAY EQUITY

# Pay equity has moved to the forefront of regulatory, political, shareholder, employee, and public concern.

The pressure on employers to ensure equitable pay for employees is at an all-time high. Enhanced equal pay laws continue to grow, both in the U.S. and abroad. Employees and government agencies are bringing high stakes pay claims – exposing companies across all industries to public scrutiny and significant legal risk.



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# What You Need to Know

Some of the current challenges that we have identified and solved for our clients include:

In light of the U.K. Mandatory Gender Pay Gap Regulations and enhanced pay equity laws in France, Germany, Canada and other countries, the need to develop a comprehensive global pay equity strategy has never been greater.

The #MeToo movement, combined with high profile pay equity lawsuits, has accelerated the focus on gender equity in the workplace.

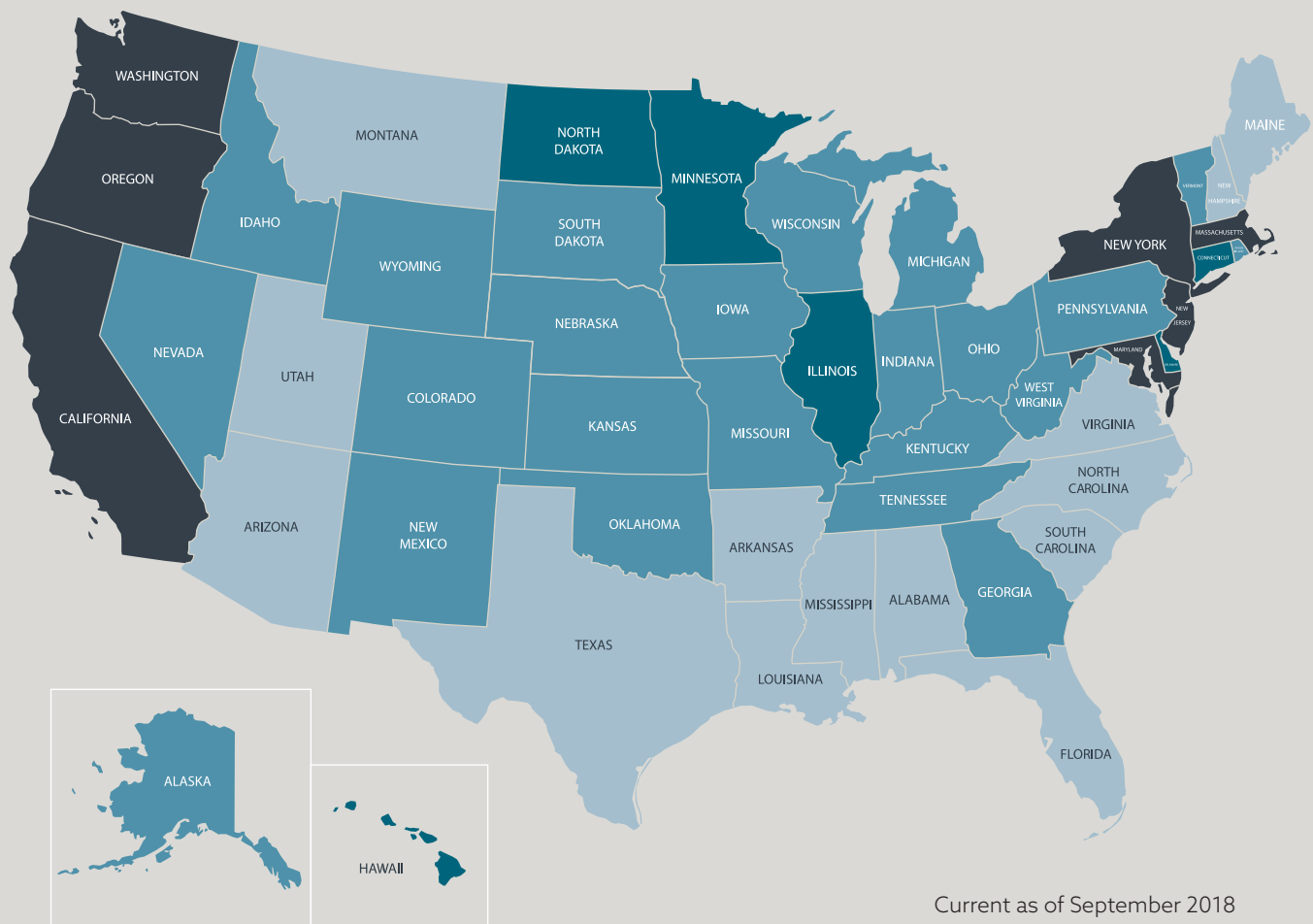
The OFCCP is pursuing systemic enforcement and drastically expanded the scope and depth of its compensation audits of federal contractors.

Many employees are discussing pay more often and more broadly, as the wave of employee activism continues to grow and enhanced pay transparency laws push these conversations into the open.

Plaintiffs are pursuing arguments that statistical tests no longer constitute a valid defense in some states, citing laws that require employers to show legitimate factors that explain the entirety of any wage difference.

Plaintiffs' lawyers are aggressively pursuing a pay equity agenda, and activist groups are filing shareholder proposals that would require the companies to publicly disclose both the percentage "pay gap" or "median pay gap" between male and female employees and their planned steps to address those "gaps."

New state and local laws in the U.S. continue to expand the reach and burden of compliance with equal pay legislation.



States are leading the legal charge on the pay equity front. We are tracking the states' ongoing legislative efforts to enhance pay equity protections, and have categorized the existing laws to help employers navigate their pay equity obligations. A number of states have recently enacted significant overhauls to pay equity legislation markedly increasing statutory protections. Many states have incorporated some elements of major pay equity protections, such as statutorily changing what constitutes a "comparator group" or increasing statutes of limitations and available claims and remedies. Finally, others have enacted legislation with minor modifications to existing pay equity protections.

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# How We Can Help

These challenges will significantly impact the way employers do business. Our Pay Equity Team can help:

## Global Employer Advisers



We have been on the forefront of this issue for many years, advising regional, national, and multinational employers about these rapidly evolving laws and compliance strategies. Our global employment team monitors the equal pay landscape across Europe and Asia, providing guidance on the application of attorney-client privilege outside of the U.S., the challenges of transferring pay data or performing analyses due to EU data protection laws, and other considerations with respect to works councils and unions.

## CLE Programs



We have prepared a series of in-house CLE programs to educate all levels of management about the requirements of the new laws, enabling them to protect their business.

## Privileged Compensation Audits



Our team partners with employers to oversee, manage, and provide legal advice regarding privileged compensation audits—including a deep review of pay data, systems, policies, and practices.

## Strategic Defense Counsel



When necessary, we defend employers in high-stakes compensation discrimination litigation and regulatory investigations on equal pay—including in-depth OFCCP audits and large-scale directed or systemic investigations by the EEOC.

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# We can also...

provide your team with custom solutions to common questions, including:

What are the best pay strategies in the U.S. and globally?

What new burdens will your company face—in litigation or during an investigation—to prove that compensation is fair and lawful, and how can you meet those burdens?

How do federal and state laws, along with laws outside of the U.S., overlap with each other and increase or complicate employer obligations?

How can you prepare your compensation data to comply with global pay disclosure requirements?

What practices and proactive steps should you consider in determining starting pay and making pay adjustments?

What types of records must (and should) your company keep?

What are the best practices to reduce risk and preserve privilege if you are considering a public pay disclosure?

What kind of privileged analyses and audits should your company be conducting regularly, and what should those audits look like going forward?

What are the best practices and strategies for dealing with regulatory agencies?

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# Why Orrick?

Our team—comprised of former senior EEOC and U.S. Department of Labor officials, employment law litigators, cross-border data privacy experts, and securities law shareholder proposal experts—has significant experience in:

Handling over 100 pay audits for major employers in the technology, retail, health care, professional services, financial, higher education, and nonprofit sectors.

Advising Boards of Directors of major public companies on equal pay issues, including responding to the recent wave of shareholder proposals.

Collaborating with government officials to keep our finger on the pulse of legislative developments. Advocating for sound interpretation and enforcement of new laws and regulations.

Defending employers in systemic and class-based compensation discrimination litigation as well as broad government investigations on equal pay.

Training in-house counsel and Human Resources on equal pay as well as ensuring effective internal implementation.

Working closely with leading statistical experts and labor economists to analyze compensation data. Evaluating legal vulnerabilities to help clients consider and implement appropriate remedial steps when necessary.

## Our U.S. Team



**Laura Becking**  
New York  
+1 212 506 5113  
lbecking@orrick.com



**Erin Connell**  
San Francisco  
+1 415 773 5969  
econnell@orrick.com



**Mike Delikat**  
New York  
+1 212 506 5230  
mdelikat@orrick.com



**Lynne Hermle**  
Silicon Valley  
+1 650 614 7422  
lhermle@orrick.com



**Andrew Livingston**  
San Francisco  
+1 415 773 5588  
alivingston@orrick.com



**Lisa Lupion**  
New York  
+1 212 506 5078  
llupion@orrick.com



**Kathryn Mantoan**  
San Francisco  
+1 415 773 5887  
kmantoan@orrick.com



**Jessica Perry**  
Silicon Valley  
+1 650 614 7350  
jperry@orrick.com



**Jill Rosenberg**  
New York  
+1 212 506 5215  
jrosenberg@orrick.com



**Gary Siniscalco**  
San Francisco  
+1 415 773 5833  
grsiniscalco@orrick.com



**Julie Totten**  
Sacramento  
+1 916 329 4908  
jatotten@orrick.com

## Our International Team



**Emmanuel Bénard**  
Paris  
+33 1 5353 7517  
ebenard@orrick.com



**Yumiko Ohta**  
Tokyo  
+81 3 3224 2829  
yohta@orrick.com



**Mandy Perry**  
London  
+44 20 7862 4637  
mperry@orrick.com



**André Zimmermann**  
Düsseldorf  
+49 211 3678 7260  
azimmermann@orrick.com



**Nicola Whiteley**  
London  
+44 20 7862 4670  
nwhiteley@orrick.com

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