APRIL 11, 2018

9th Circuit Rules that Prior Salary Cannot Justify Gender Pay Differentials under Equal Pay Act

On April 9, 2018, the U.S. Court of Appeals for the Ninth Circuit ruled in *Rizo v. Yovino* that an employer cannot use an employee's prior salary to justify a wage disparity between male and female employees under the federal Equal Pay Act. The Ninth Circuit's decision broadens the split among federal judicial circuits on whether an employer may consider an employee's compensation history in making pay decisions. For now, employers in the states that make up the Ninth Circuit—Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington—should refrain from making pay decisions based on an employee's prior salary.

It appears likely that the U.S. Supreme Court will eventually resolve the split among the circuits on this issue. Until such time, employers should shift their focus to job-related factors that are less likely to be directly linked to wage discrimination when making pay decisions, such as experience, educational background, training, or prior job performance.

For more information, please see our Labor & Employment team's legal alert.