

→ Mark your confusion.

→ Purposefully annotate the article (1-2 mature, thoughtful responses per page to what the author is saying)

→ Write a 250+ word response to the article.

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## Let's Not Wait For The Next World Cup To Score Equal Pay For Women

By Eric Bachman for *Forbes.com*, 8-5-19

Last month, the U.S. Women's National soccer Team (USWNT) won their fourth FIFA World Cup. Several months earlier, USWNT players filed a complaint in federal court against their employer, the U.S. Soccer Federation (USSF). The lawsuit alleges that USSF violated the Equal Pay Act and Title VII of the Civil Rights Act of 1964 by, among other things, paying the women's team less than the men's team for doing equal work. The USSF denies the allegations in the complaint.

This past week the USWNT and the Time'sUp movement (formed by entertainment figures to combat sexual harassment) further aligned to help raise awareness about—and funding for—the fight for equal pay across all different workplaces, as reported by the Washington Post.

### Equal Pay Act and Title VII Legal Frameworks To Prove Wage Discrimination

To win their Equal Pay Act (EPA) case, the USWNT must first prove a *prima facie*<sup>1</sup> case under the EPA. The team can do so by showing:

- the employer pays different wages to employees of the opposite sex;
- the employees perform equal work on jobs requiring equal skill, effort, and responsibility; and
- the jobs are performed under similar working conditions

If the USWNT establishes a *prima facie* case, the burden shifts to the USSF to establish one of four affirmative defenses: (1) that the pay difference is due to a seniority system, (2) a merit system, (3) a system that measures quantity or quality of production, or (4) “any factor other than sex.”

If the USSF makes this showing, the USWNT can still win if it shows that the USSF's justification for the pay disparity was a pretext<sup>2</sup>.

Title VII also makes it illegal to discriminate based on sex in pay and benefits, which is why the USWNT is also suing USSF under this law. Title VII prohibits discrimination in compensation and other terms and conditions of employment, so it has a broader reach than the EPA (and also outlaws, among other things, discrimination based on race, religion, and other protected characteristics).

### The USWNT Argues That, Despite Their Better Results, They Are Paid Less For Equal Work

The USWNT's complaint contains evidence and statistics supporting their argument that the USSF has unlawfully paid them less than the men's soccer team. For example, the complaint alleges:

- The USWNT is the preeminent women's soccer team in the world and has contributed to the finances and reputation of the USSF at least as much as the USMNT. The complaint lists three World Cup titles (which is now four titles), four Olympic gold medals, and asserts that the USSF revised its projected earnings for 2016 from a net loss of \$429,929, to a net gain of \$17.7 million, because of the successes of the USWNT, particularly at the 2015 World Cup.
- The USSF pays the women's team less than the men's team, despite requiring players on both teams to perform the same job duties that require equal skill, effort and responsibilities performed under similar working conditions. The complaint states that the women's team players spend more time practicing, playing, and promoting the USSF than the men's team does; indeed, from 2015 to 2018, the USWNT played in nineteen more games than the USMNT.
- In addition, the complaint asserts that from 2013 to 2016, the USSF paid USWNT players \$15,000 for trying out and making the World Cup team. Yet the USSF paid USMNT players \$55,000 for making the team.

<sup>1</sup> *prima facie* - (adj.) based on the first impression; accepted as correct until proved otherwise.

<sup>2</sup> pretext - (n.) a reason given in justification of a course of action that is not the real reason.

- Similarly, in 2014, the USSF paid the USMNT more than \$5.3 million in bonuses after their World Cup loss in the Round of 16. While in 2015, the USSF paid the USWNT only \$1,725,000 in bonuses after they won the World Cup.
- Finally, the USWNT received less favorable training and travel conditions, as well as reduced marketing for their games. For example, in 2017, USSF chartered private planes for USMNT travel at least seventeen times, but zero times for the USWNT.

### **USSF's Potential Defenses**

To rebut these claims, the USSF might argue that its legitimate, non-discriminatory reason for paying USWNT players less than USMNT players is that the men's team generates more revenue for USSF than the women's team, which accounts for the difference in pay.

According to a report, however, this may not be accurate. That is, between 2016 and 2018, USWNT games generated about \$50.8 million, compared with \$49.9 million for USMNT games.

Currently, player compensation is not directly linked to money generated by the team in ticket sales, brand deals, and other promotional activity. The USWNT's complaint refers to 2016 negotiations with the USSF in which the USWNT's union offered to enter a revenue-sharing model. Under this model, player compensation would increase in years in which the USSF derived more revenue from USWNT activities and decrease in years when it earned less from USWNT's activities. USSF rejected the offer, according to the complaint.

### **Outside Influences On The Equal Pay Movement**

Other external pressures exist on the USSF to pay all their players equitably. In July 2019, Senator Joe Manchin (D-WV) introduced the Equal Pay for U.S. Soccer Act, which would withhold federal funds to the 2026 Men's World Cup until the USWNT is paid "fair and equitable wages." Also in July 2019, Rep. Doris Matsui (D-CA) and Rep. Rosa DeLauro (D-CT) introduced the Give Our Athletes Level Salaries Act (GOALS Act). The USSF's corporate sponsors have weighed in as well. On July 14, 2019, Secret Deodorant, a product of USSF sponsor Procter & Gamble, announced their plans to donate more than \$500,000 to the USWNT Players' Association.

It will be fascinating to see how the USWNT continues to excel off the field by using the unique "bully pulpit" they earned through their historical World Cup titles to fight for equal pay.

### **Response option(s):**

- Can the USWNT establish a case under the Equal Pay Act and/or Title VII? Explain your position.
- How might the USSF defend itself against this case? Be sure to discuss specific "affirmative defenses". Are any of these credible?
- Pick any passage and respond to it.