

# OPENING DOORS:

*A New Way To Protect Women's Rights  
In Equal Pay Actions*



A WHITE PAPER PRESENTED BY

**TMF** LAW OFFICES OF  
**TODD M. FRIEDMAN, P.C.**

For many women in the workplace, less pay is simply part of life. Women in all walks of life go to work every day, and either they don't know what their rights are, they don't know their rights are being violated, or they don't know what to do.

But the fact is that women throughout all levels of the workforce routinely deal with discriminatory hiring and pay practices. Women from individual contributors in major corporations to the highest levels of professional practices face this unequal pay discrimination problem. From doctors and surgeons to attorneys in major law firms and high-level executives, no woman is safe from discriminatory pay practices in the workplace.

**However, due to recent legal advancements in the 9th Circuit Court, it looks like the doors are opening.**

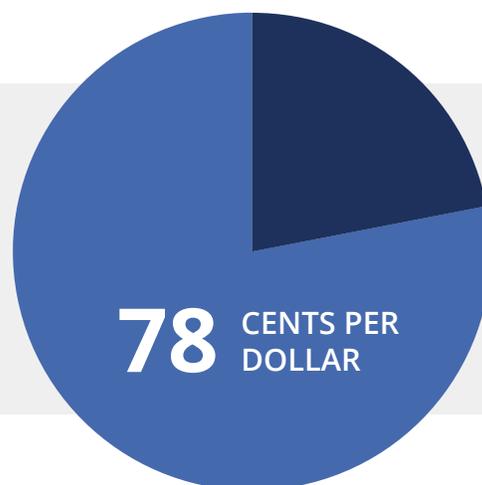
**Women facing unequal pay now have greater legal recourse than ever before to fight back.**



# HOW BAD IS THE GENDER PAY GAP?

For many years, this situation has gone more or less unchallenged. Similar to the issues of sexual harassment in the workplace, women have been facing this sexist treatment for far too long.

When taking all jobs and all levels of pay into consideration, the average woman earned **\$.78** per every dollar earned by a man.



When comparing similar jobs, women are still earning **\$.98** per every dollar earned by men in similar positions.<sup>1</sup>



**A two-cent difference per dollar might not seem like much on the surface, but it is important to remember that it is two cents per dollar, not two cents per hour or two cents per paycheck.**

For example, if a man makes \$125,000 a year as an attorney in California, based on the averages, a woman would make \$122,500 (which is \$2,500 less than the man would make). That is based on the similar position statistic. If we take the more exaggerated overall stat that does not take similarity of positions into account, this woman would make \$97,500 (a full \$27,500 less than the man would make).

These are significant numbers. Further, when a company knowingly and intentionally pays women less, the situation can be much worse for any individual woman than these stats would suggest.



# EQUAL PAY IS A RIGHT OF ALL EMPLOYEES

It should not need to be said, but unfortunately it is: ***Women have a right to equal pay in the workplace.***

Between the California Equal Pay Act and the Federal Equal Pay Act, there should be no doubt for any employee or employer as to the legal requirement of paying women the same amount that men earn for substantially similar work performed.

Unfortunately, many women don't know their rights. Many are too busy working on building their career skills and moving up the ranks. Others don't realize they are making less than their male colleagues. Many jobs have a culture of not talking about salary, so many workers don't know what their co-workers in relatively similar positions are making.



**An employer paying a woman less than a man for substantially similar work is illegal, and you can protect your legal right to equal pay.**

# NEW AND EMERGING CASE LAW

A recent class-action case has recently gained traction, allowing the plaintiffs to proceed with a re-casted complaint.

The case involves a complaint of discriminatory pay practices against the internet giant, Google, claiming that the company is discriminatory in its pay practices, regularly paying its male employees more than its female employees.

There has been some back and forth in the process. At first, the class action was denied, then the plaintiffs were allowed to re-plead their case. In the re-pleading, the plaintiff class argued that the defendant was using past salary history to determine salaries, which is inherently detrimental to women.

On this final argument, the case was allowed to proceed.

The issue of employers using past salary is also a new issue. Even as recently as last year, this argument might not have gained any traction. However, the recent case of *Rizo v. Yovino* in the 9th U.S. Circuit Court of Appeals resulted in a unanimous ruling that employers cannot use past salary history as a determining factor for new salaries.

**It is this Rizo precedent and now the Google case's use of Rizo in class-action claims that opens the door for women who have been underpaid, especially when the underpayment was due to considerations of past salary.<sup>2</sup>**



## HOW DOES THIS CASE CHANGE THE LANDSCAPE?

Now, since Rizo, any woman within the 9th Circuit's jurisdiction who has taken lesser pay due to past salary considerations has a claim.

If you are a woman who has been paid less than what you deserve because your employer used past salary to determine your starting salary, **you most likely have a valid claim.**



# WHY DOES USING PAST PAY MATTER FOR DETERMINING SALARY?

For many years, many employers used past salary to determine current salary. In fact, in some cases it might be an intentionally discriminatory practice – it is simply what many companies do and what they have done for years.

Although this issue has received pushback from the courts for many years, the Rizo case sets a strong favorable precedent for underpaid women throughout California.



*Rizo sends a clear message to employers:*

**IF USING PAST SALARIES IS YOUR PRACTICE, YOU ARE VIOLATING THE LAW.**

# STOPPING THE ENDLESS CYCLE OF PAY DISCRIMINATION

## **But what is the problem with using past salaries to determine current salaries?**

The primary problem is that it creates an endless cycle for women. Knowing that women generally make less than men make on average, a woman's first job probably paid her less than what she was worth in the first place. Then, when the next employer hires her and uses her past salary to determine her new salary, she is forced back into the same cycle of payment discrimination.



# WHAT ARE YOUR RIGHTS?

**As an employee in the 9th Circuit, you have rights:**



You have the right to equal payment for substantially similar work.



You have the right to a fair salary that does not consider past salary as a determiner.



You have the right to speak up, get the salary you deserve and obtain compensation.



You have the right to be free from retaliation from your employer for exercising your rights.

# WHY DON'T MORE WOMEN FIGHT BACK?

There are numerous reasons why more women don't fight back against unequal pay in the workplace:



They don't know they have legal rights in this regard.



They don't know their legal rights are being violated.



They don't know how to exercise their rights.



They are afraid.

The problem for many women who are underpaid in the workplace is that they are afraid to demand the pay they deserve. The fear surrounds retaliation. Many women feel that they could be demoted, get fired or be subjected to intimidation and even harassment in the workplace.

# IT IS TIME TO FIGHT BACK

Do not be afraid to fight back for equal pay. Our lawyers will protect your legal rights and make sure you get the pay you deserve.

For women dealing with underpayment in the workplace, one of the most important things to remember is: You are not alone.

In addition to many other women fighting back in all aspects of workplace mistreatment and the recent Google case opening the door for other unequal pay cases in the future, you have the attorneys of the Law Offices of Todd M. Friedman to fight for your rights and represent your interests.

**You can stand strong and make sure you get the equal pay you deserve.**



## SOURCES

<sup>1</sup> <https://www.payscale.com/data/gender-pay-gap>

<sup>2</sup> <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/04/09/16-15372.pdf>

<sup>3</sup> <http://www.latimes.com/local/lanow/la-me-ln-equal-pay-9th-circuit-20180409-story.html>



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