

The Real Cost of Revenge Porn

By [A. Michelle Gomola](#)

A woman in Los Angeles was recently awarded \$6.45 million because her ex-boyfriend posted intimate photos of her online after their breakup. It's called revenge porn. It's illegal and it will cost you. While Maryland law may not be as progressive as California (yet), revenge porn is a crime in Maryland and the General Assembly recently passed legislation making the crime a misdemeanor punishable for up to 10 years in prison and/or a fine of up to \$10,000. Since 2016, a victim of revenge porn could obtain a Peace Order (i.e. a "restraining order"), which is an additional and immediate form of civil relief available to victims. However, Peace Orders are not available to victims who are eligible for Protective Orders, including, but not limited to, victims who: (1) are current or former spouses of their abuser; (2) are related to their abuser; (3) have a child in common with their abuser; or (4) have had a sexual relationship with their abuser within the last year. Fortunately, the General Assembly also recently passed legislation that adds revenge porn as a form of abuse for which a victim can obtain a Protective Order, now giving all victims immediate protection and relief. But victims in Maryland still won't likely receive a \$6.4 million judgment ... yet.



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What Equal Pay Day Means in Maryland

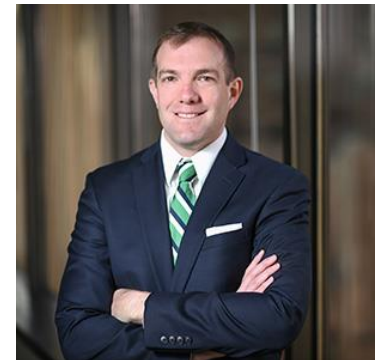
By [Gregory Currey](#)

April 10, 2018 marked Equal Pay Day, a date meant to symbolize how far into the 2018 the average woman would need to work to match a man's earnings in 2017. Fittingly, on April 9, 2018, the Ninth Circuit issued an important decision addressing a significant factor that frequently leads to pay disparities - prior salary history.

Under the Equal Pay Act, generally speaking, men and women are required to receive equal pay for equal work on jobs requiring equal skill, effort and responsibility regardless of sex. Exceptions exist if the employer has, (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex. This, then, led to the question presented to the Ninth Circuit - is prior salary history a differential based on any other factor than sex?

The Ninth Circuit held that, no, prior salary history is not a factor other than sex that may solely be used to justify a pay differential. Otherwise, later employers could simply piggy-back on a prior employer's discriminatory pay practices and perpetuate prior inequalities without a legitimate purpose. As the Ninth Circuit explained,

"Prior salary does not fit within the catchall exception because it is not a legitimate measure of work experience, ability, performance, or any other job-related quality. It may bear a rough relationship to legitimate factors other than sex, such as training, education, ability, or experience, but the relationship is attenuated. More important, it may well operate to perpetuate the wage disparities prohibited under the Act. Rather than use a second-rate surrogate that likely masks continuing inequities, the employer must instead point directly to the underlying factors for which prior salary is a rough proxy, at best, if it is to prove its wage differential is justified under the catchall exception."



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In light of this ruling, employers should be careful to ensure that, when hiring, the salaries they are offering either match similarly situated current employees or are based on legitimate, job-related reasons and are not just based on an employee's prior earnings elsewhere. For additional information on how to ensure your company's pay practices comply with the Equal Pay Act, please contact [Gregory Currey](#).

False Claims Act Liability For Third Parties

By [Michael Stover](#)

In two recent cases under the False Claims Act ("FCA") the government has asserted liability, not just against the violator, but also against third-parties. In the first case, the government intervened and asserted that a private equity investor in a pharmacy was partially responsible for an alleged kickback scheme. In *United States ex. rel. Medrano v. Diabetic Care RX, LLC*, the allegations were that the investors directed the conduct of the pharmacy through two of its partners that had seats on the board of directors and that they guided the strategic decisions of the pharmacy. The complaint further alleged that the investors knew and approved of the scheme.

In the second case, Deloitte & Touche LLP was the auditor of a mortgage lender from 2002 through 2008. The lender defrauded the government by selling sham and double-pledged mortgages. The government contended that Deloitte, as the auditor of the lender over a six-year period, should have functioned as a compliance monitor and detected the fraudulent scheme. The government further alleged that Deloitte knowingly deviated from auditing standards which allowed the mortgage lender to continue defrauding the government. Deloitte settled the case agreeing to pay \$149.5 million. In announcing the settlement, the Acting Assistant Attorney General stated "with taxpayer dollars at stake, auditors must take their obligations seriously when auditing companies that participate in government programs . . . When auditors fail to exercise their professional judgment and make false statements that allow bad actors to remain in government programs and submit false claims to the government, there will be consequences."

These cases highlight the fact that one cannot simply turn a blind eye to fraudulent acts and that even if you are a third party you can still have potential exposure under the FCA for knowingly allowing fraudulent actions to occur and continue.



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