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# Google Gender Bias Verdict Resonates for Employer Equity Efforts

By Khorri Atkinson

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- First pay bias case against Google since walkouts
- Damages award sets up post-trial fight

A New York federal jury's demand that Google LLC shell out \$1.15 million in damages to resolve a former female executive's gender bias claims is a wake-up call for employers, especially tech companies, to identify and mitigate biases against protected groups.

Ulku Rowe, an executive in Google's cloud unit, was the first to sue the tech giant for pay discrimination after more than 20,000 workers in 2018 walked out in protest over how management was handling cases of sexual misconduct and issues concerning pay inequality. The protest led to the company ending its mandatory arbitration policy for individual sexual harassment and sexual assault claims.

The case highlights "the importance of employers conducting a pay equity audit to ensure they are paying men and women the same amount for the same job because, when a disparity exists, employers are opening themselves to significant liability," said Doug Lipsky, a partner at Lipsky Lowe LLP.

"Juries are becoming increasingly sophisticated in identifying discriminatory practices and rejecting employer's after-the-fact explanations," Lipsky added.

Employers should evaluate their pay scales and make any necessary adjustments to remove gender-based disparities, attorneys said. Companies also should be sure to identify legitimate, nondiscriminatory business reasons for paying similarly situated workers differently for comparable work, they said.

Tech workers in particular say discrimination linked to race and gender is getting worse, according to a recent study by Dice, a career marketplace for technology professionals.

Google disputed the jury's decision in a statement.

"We disagree with the jury's finding that Ms. Rowe was discriminated against on account of her gender or that she was retaliated against for raising concerns about her pay, level, and gender," Google spokesperson Courtenay Mencini said in the statement.

## High Burden

Workers alleging sex-based wage discrimination claims often face an uphill battle in court, attorneys said.

Rowe brought her case under New York's equal pay law and the city's human rights statute. Unlike Title VII of the federal Civil Rights Act of 1964, the New York statute is more favorable to plaintiffs because it provides workers with more legal protections.

But it's difficult for a woman plaintiff to prove sex-based wage discrimination claims if their job isn't equal to a male counterpart for comparison purposes, said Lynne Bernabei, a founding partner at Bernabei & Kabat PLLC.

The burden of proof can be especially heavy for plaintiffs who don't have a union contract with salary data that can help determine what disparities exist among workers, Bernabei added.

The jury found that Google treated Rowe differently from other employees by denying her promotion because of her gender, and that it retaliated against her when she complained. However, it said Rowe didn't prove that Google violated New York law by paying her less than two of her male counterparts.

The large verdict could potentially invite other workers to sue, attorneys said.

"There historically has been a high fear for filing these kinds of lawsuits. It requires tremendous courage to put yourself out there as a plaintiff," said Danielle Fuschetti, a partner and co-chair of Sanford Heisler Sharp LLP's discrimination and harassment practice group. "So when you see other people doing it and creating a path like this, you may be more inclined to step forward yourself."

### Post-Trial Fight

A Google spokesperson didn't immediately comment on whether the company would appeal the decision. Despite Rowe's victory, the company is likely to challenge the award as excessive, some attorneys said.

In Rowe's case, the jurors awarded her \$150,000 for pain and suffering caused by Google's mistreatment, as well as \$1 million in punitive damages.

"I hope it survives," Bernabei said of the award. But it's unusual that the verdict didn't include economic damages, which are generally available in employment cases, she added.

The jury award "sends a resounding message that discrimination and retaliation will not be tolerated in the workplace," Rowe's attorney, Cara Greene of Outten & Golden LLP, said after the verdict was announced.

Fuschetti said the jury award shows that tech companies can't ignore discrimination concerns.

"I think the punitive award for a case like this shows that the jury wants to hold this company accountable," Fuschetti said. "Large tech companies still have a very big problem with sex discrimination and it germinates to the highest level."

The case is *Rowe v. Google*, S.D.N.Y., No. 1:19-cv-08655, verdict 10/20/23.

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