Mind the (Pay) Gap: Investor Requests for Reports on Gender Pay Disparities Are on the Rise

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According to media reports, this year several high-profile companies, including Apple, Facebook, and Intel, have received or responded to proposals from investors requesting shareholder votes on the issue of whether the companies should be required to prepare reports addressing their policies and goals to reduce the gender pay gap. Although thus far such proposals seem to have been limited to companies in the tech industry, gender pay gap shareholder proposals could easily spread to other industries. In this article we describe the shareholder proposal process, the gender pay gap shareholder proposal received by tech companies, the companies’ various responses to the proposal, and steps that companies can take now to address possible investor concerns.

The Shareholder Proposal Process

The rules of the U.S. Securities and Exchange Commission (SEC) provide shareholders with an opportunity to place certain proposals in a company’s proxy materials for a vote at an annual or special meeting of shareholders. To be eligible to submit a proposal, the SEC rule requires the shareholder to have continuously held at least $2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal for at least one year.

The Gender Pay Gap Proposal

This past year, an investor requested that the following proposal be included in the proxy statements of several tech companies:

"The company should . . . prepare a report [by a specific date], omitting proprietary information and prepared at reasonable cost, on the Company’s policies and goals to reduce the gender pay gap. The gender pay gap is defined as the difference between male and female earnings expressed as a percentage of male earnings according to the Organization for Economic Cooperation and Development."

Response to the Shareholder Proposal

According to media reports, companies have responded to this proposal in a variety of ways. Some have resolved the issue with the investor either by disclosing the fact that they do not have a gender pay gap or by agreeing to prepare the requested
report setting forth their policies and goals to reduce a pay gap that exists. Other companies have opposed the proposal, setting forth their opposition in their respective proxy statements.

**Next Steps**

Employers may want to consider the following steps to prepare for the possibility of a gender pay gap shareholder proposal or other pay equity inquiry from investors:

1. Review the company’s compensation data to make a preliminary determination about the company’s level of gender pay equity (or differential).

2. Determine the process by which the company would undertake an evaluation of gender pay equity and calculate the time and cost of different methodologies needed for compiling and analyzing the data.

3. Review the list of company investors and the published reports of how investors respond to pay equity and related shareholder proposals.

4. Prepare a strategy for communicating with investors and other stakeholders.

Designing a responsive communications plan and pay equity strategy now can help position companies to better respond to gender pay gap shareholder proposals and other similar future requests as demands for pay transparency and accountability continue to increase on a number of different fronts.