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Women's National Team Set to Take on U.S. Soccer in Federal Court Over Pay

The lawsuit, which is seeking damages, back pay and adjustment of their wage and benefits rate, also seeks class certification to include all female professional players since 2015. The USWNT recently filed the complaint, appropriately enough, on International Women's Day.

By **Jeffrey Campolongo and Ashley Dabb** | March 25, 2019

Does equal work really mean equal pay for pro soccer athletes? The U.S. Women's National Team (USWNT) is making headlines again as all 28 current players, collectively referred to as the USWNT, filed a lawsuit in the U.S. District Court of Los Angeles against their employer, the U.S. Soccer Federation (USFS), alleging institutionalized gender discrimination under the Equal Pay Act of 1963 (Equal Pay Act) and Title VII of the Civil Rights



Jeffrey Campolongo, (left), of The Law Office of Jeffrey Campolongo and Ashley Dabb, (right).

Act (Title VII). The lawsuit, which is seeking damages, back pay and adjustment of their wage and benefits rate, also seeks class certification to include all female professional players since 2015. The USWNT recently filed the complaint, appropriately enough, on International Women's Day. The five named plaintiffs include Hope Solo, Alex Morgan, Carli Lloyd, Megan Rapinoe and Becky Sauerbunn. After the matter was filed with the Equal Employment Opportunity Commission (EEOC) in 2016, the players finally received a right to sue this past February.

The USWNT, comprised of female players that "hold permanent nationality" for the United States, represent the country in international competitions including the Olympics and World Cup on behalf of the USSF. The USSF is a 501(c)(3) nonprofit organization and the governing body of soccer in the United States and has authority and oversight of programming, regulations, and insuring discipline for all organized soccer from amateur to professional. The USSF employs the women's and men's national teams and regulates both team's compensation and benefits.

The USWNT is looking to level the playing field by asking to be paid on par with their male counterparts, who are arguably much less successful competitively. Although equal work is not really in dispute, the women athletes are compensated under a different model than the men's national team. Under the terms of a collective bargaining agreement (CBA) ratified in 2017, the USWNT receives direct compensation and bonus compensation; enhanced "lifestyle" benefits for the players with respect to travel and hotels; per diems that are equal to those of the men's team; and greater financial support for players who are pregnant and players adopting a child, ([SI.com \(https://www.si.com/planet-futbol/2017/04/05/uswnt-us-soccer-women-cba-labor-talks-agreement\)](https://www.si.com/planet-futbol/2017/04/05/uswnt-us-soccer-women-cba-labor-talks-agreement) 2017). The USWNT players each receives a salary to play in the National Women's Soccer League (NWSL) and national team duty. The women receive bonuses from the USSF and FIFA for qualifying and winning international competitions, similar to the men's national team.

The U.S. Men's National Team (USMNT), on the other hand, operate under a pay-for-play model where the player only receives compensation when they are called in for national team games or training camps. This structure of being paid only upon appearance works well for the men because some of them choose not to leave their lucrative team contracts to take up national team duty. Both male and female players are required to play a minimum of 20 "friendly" games per year on behalf of the USSF, according to the lawsuit. Under this scenario, a male player is paid \$5,000 for simply showing up for a "friendly" game, regardless of the outcome, compared to female players who are paid \$3,600, and eligible for an additional \$1,350 bonus, but only if they win the game.

By comparison, the USSF pays top-tier female players \$72,000 a year to play in 20 games. If a male player receives no more than the base amount of \$5,000 for 20 games \$100,000 annually)—and loses them all—he would still make more than a female athlete who wins all 20 of her games." The pay disparity is even greater if the women lose any of those 20 games. Furthermore, the men could earn up to \$17,625 per game depending on the opponent's FIFA ranking, a benefit not available to the female players. Although the magnitude of pay disparity depends on method of calculation and context of the data, USWNT players have been paid less than male counterparts on the USMNT. In certain situations, the complaint contends, USWNT players earn just 38 percent of what USMNT players earn.

In the context of the Equal Pay Act, for situations to be comparable, one must consider each team's current situation, including on-field success, revenue generation, TV viewership and the CBA. The Equal Pay Act, which became law in 1963, prohibits employers from wage discrimination on the basis of sex. Employers, therefore, cannot pay women lower wages than men for equal work. As is well known, a strict comparison of "work," however, is not always straightforward. It involves careful analysis of relevant job descriptions and assessment of whether the jobs require equal skill, effort and responsibility and are performed under similar working conditions. Similarly, Title VII prohibits employers from paying workers

differently because of their sex. Like the Equal Pay Act, an employer may be able to prove it has not violated Title VII if there are lawful reasons for the pay disparity. The employer must show that the difference is explainable on account of a nondiscriminatory reasons, such as a seniority system, a merit system, or a system that measures earnings “by quantity or quality of production.”

The USSF has defended its current compensation and benefits for the USWNT by arguing that the current formula is based on some allocation of TV ratings, revenue from sponsorships, attendance and performance which is in line with how the revenue is split between the teams. The USSF has argued that any disparity in pay is a result of market realities and consumer preferences rather than gender discrimination. The global market for men’s soccer may justify higher wages, according to the USSF. The USSF also contends that the signed CBA, which runs through 2021, will preempt the USWNT claims altogether.

The market realities argument is likely dead on arrival. The women’s team has been more successful competitively, winning four Olympic Gold medals, three World Cup titles and three-time winner of the Olympic Committee’s Team of the Year Award. According to an ESPN report regarding the USSF’s 2015 financial report, the women’s team generated nearly \$20 million more revenue last year than the USMNT, yet the women are paid almost four times less.

One possible solution to this pay gap is to transition to a structure where all revenue would be split 50/50 regardless of metrics or a formula. Other sport governing bodies have sought and achieved equality among their men’s and women’s teams including the U.S. Open in 1973 with the encouragement from Billie Jean King and even more recently the USA Women’s hockey team and the Norwegian Soccer Federation. The USA Women’s hockey contract dispute lasted for 15 months and reportedly got the players \$70,000 a year

(<https://www.theguardian.com/sport/2017/mar/29/usa-womens-hockey-team-won-rout>), up from just \$6,000 every four years (tied to the Olympics), and travel stipends and accommodations that are on par with the men’s team. USA Hockey also agreed

to improve their marketing efforts for the women's team and start providing support for elite girls' programs. Most notably, the Norwegian women's soccer team receives equal pay from their federation—achieved through a pay cut from their men's team and investment by the governing body. While this is a monumental step forward for equality, the women will technically still not receive equal pay. Earnings from qualifying for international competitions, including the World Cup, create a windfall of cash from FIFA that is still not split equally among the men's and women's teams.

Given the USWNT's success and most importantly their equal work, the USSF should look at revising the compensation and benefits structure because the financial reports tell a different story than the one the USSF has made publicly. Citing U.S. Soccer's annual financial reports, the complaint says that the group's initial budget had projected a financial loss for both the men's and women's teams—but that the women's national team's success “almost exclusively” brought a projected \$17.7 million profit. For the 2017 financial year, the players say, the federation now “projects a net profit from the WNT of approximately \$5 million, while projecting a net loss of nearly \$1 million for the MNT.”

Could the USSF follow a similar model to one of the aforementioned governing bodies to achieve a more equitable compensation and benefits plan for the USWNT? Or will the USSF make the USWNT equal to the men at a 50/50 split of revenues and further increased compensation? Linger still, will be the question of the players ability to get the class certified to include players since 2015. Most likely, if the class gets certified, this will motivate the USSF to take seriously the pay disparity. Otherwise the USSF will likely continue to keep its stronghold on compensation and benefits of the USWNT based on the current calculations of revenue sharing.

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