

Pay Equity: What You Don't Know Can Cost You

Tim Muma

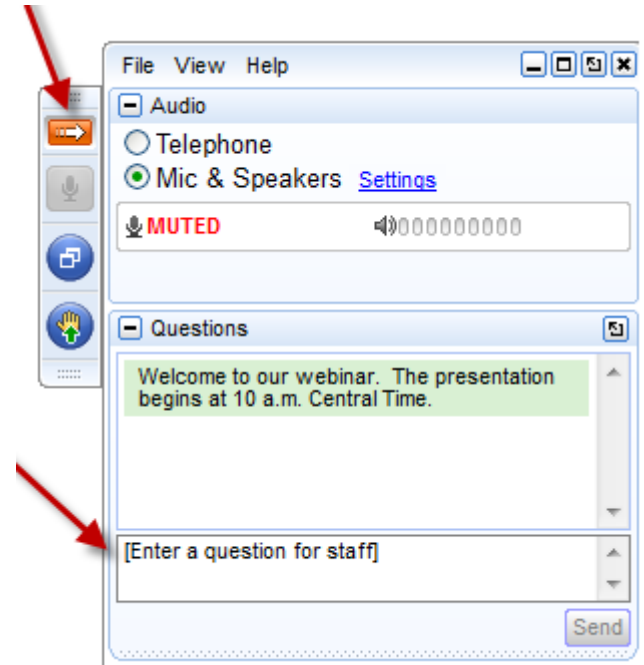
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Webinar 101

- GoToWebinar panel
- Chat questions are answered at the end of the webinar
- Phones/microphones are muted to minimize distractions



About Us



Tim Muma is a senior marketing coordinator at the Local JobNetwork™ with experience in interviewing hundreds of employers to learn about their hiring processes, strategies, and more. Tim focuses on giving employers expert insight through a variety of webinars, mostly focused on OFCCP regulations and practical perspectives on outreach, candidate management, and employee engagement.



Lynn Clements is the Director of Regulatory Affairs for Berkshire Associates Inc., a leading affirmative action consulting and software company. At Berkshire, Lynn provides clients strategic advice on EEO/AA issues and oversees Berkshire's OFCCP audit defense practice, helping clients defend hundreds of OFCCP compliance reviews each year.

Lynn served in several senior level policy positions at the U.S. Department of Labor and the EEOC during the George W. Bush administration. Prior to joining Berkshire, Lynn was a shareholder at a management-side employment law firm where she advised employers on a wide range of OFCCP and EEO compliance issues, including large-scale systemic discrimination allegations.

A frequent speaker to HR professionals of all levels, Lynn has testified before Congress on EEO and pay equity issues and regularly assists industry organizations, including SHRM and CUPA-HR, in understanding and responding to regulatory proposals.

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Learning Objectives

- What the new administration will mean for equal pay
- How recent fair pay legislation impacts employers
- How to proactively identify and address pay inequity
- Best practices for managing fair pay requirements
- Live Q&A

Federal Legislation

Title VII of Civil Rights Act and EO 11246

Prohibits compensation discrimination on the basis of sex, race, and national origin

EO 13665: Pay Transparency

Prohibits federal contractors from taking adverse action against applicants or employees because they inquire about, discuss, or disclose their own pay or the pay of others

Pay Data Collection by Federal Government?

New EEO-1 Report would add requirement to provide employees' W-2 earnings and hours worked data by 12 pay bands in each EEO-1 category from employers with 100 or more employees

Impact of New Administration

- Ivanka Trump comments on equal pay—signal this may be a continued priority
- OMB recently delayed implementation of pay data reporting requirements of EEO-1 Report but pay equity continues to be an enforcement priority for EEOC
- DOL has filed several high profile pay cases and settlements since January, but new leadership may review how agency proves pay discrimination
- State and local activity will likely continue and intensify, creating a “patchwork” of equal pay laws that employers will have to worry about

Salary History Bans

- **Biggest trend is ban on salary history questions during hiring process**
 - Many employers traditionally considered salary history when setting starting pay
 - Growing concern that practice “perpetuates” exiting pay gap
- **Salary history bans already passed in 7 jurisdictions:**
 - Delaware
 - Massachusetts
 - Puerto Rico
 - San Francisco
 - New York City
 - Oregon
 - Philadelphia
- **Bans are not all the same**
 - When does ban apply? Pre-offer only? Post-offer but when? Entire Process?
 - Scope of ban? Can you rely on voluntary disclosures by candidate?
 - Who does ban apply to? External only? Internal too? Candidates outside jurisdiction?
- **Bans also proposed in about 15 – 20 other states and localities**

Who and What To Compare

- **Growing patchwork of different standards for who should be compared in a pay equity analysis**
 - **California**
 - Effective 1/1/2016, must explain entire pay difference for similar work when viewed as a composite of skill, effort, and responsibility across establishments in entire state
 - Effective 1/1/2017, expanded to include race and to prohibit employers from using prior salary alone as a justification for differences in pay
 - **Massachusetts**
 - Effective 7/1/2018, must explain pay differences for “comparable work”
 - Ban on pay secrecy policies
 - **Puerto Rico**
 - Effective 3/2017, compare employees performing “comparable job functions or duties that require the same skill, effort or responsibilities under similar working conditions”
 - Pay secrecy ban

Who and What To Compare (cont.)

– Oregon

- Effective 1/1/2019, must explain pay differences for work of “comparable character”
- Covers 10 protected bases: sex, race, color, religion, sexual orientation, national origin, marital status, Veteran status, disability, and age
- Pay secrecy ban as of 10/1/2017

– New York

- Effective 1/19/2016, compare pay across establishments in same county, must have bona fide reason other than sex, no pay secrecy, and 3x wages liquidated damages

– Maryland

- Effective 1/1/2016, compare pay for jobs of “comparable character in facilities in same county
- Pay secrecy ban

A Bright Spot for Employers: Safe Harbors

- **Several states also have included a safe harbor for employers who conduct proactive pay equity analyses**
 - **Massachusetts**
 - If employer completed a “reasonable” proactive salary equity analysis within past 3 years AND made reasonable progress in eliminating pay disparities,
 - Employer has a complete affirmative defense to a pay discrimination claim
 - **Oregon**
 - If employer completed a “reasonable” proactive salary equity analysis within past 3 years AND made reasonable progress in eliminating pay disparities,
 - Employer would not be subject to compensatory or punitive damages, but would still have to correct any unexplained pay differences
 - **Puerto Rico**
 - If employer completed a proactive analysis within past 12 months AND made reasonable efforts to eliminate pay disparities,
 - Employer will not be subject to “double damages” but will still have to correct any unexplained pay differences

A Bright Spot for Employers: Safe Harbors

- **But even the safe harbors are different!**
 - Different time period for conducting a proactive analysis
 - Different standards for who should be compared
 - Possibly different standards about what kind of analysis is reasonable
 - Possibly different standards about what constitutes reasonable corrections
 - Different impacts on underlying pay discrimination claim

Other Reasons Pay is Important

- Activist investor interest
- Silicon Valley and other Fortune 500 companies feel pressure to conduct and publish pay analyses
 - Facebook, Microsoft
- Employees have access to more info about pay
 - Glassdoor and other websites
 - Culture shift towards pay transparency
- High profile focus on equal pay
 - Hollywood actresses
 - U.S. Women's soccer team
 - Pope Francis

Pay Equity Analysis

Planning Phase

- What is the objective for the analysis?
 - To determine compliance with federal requirements? Specific state requirements?
 - Proactive analysis or defensive audit analysis?
- When should the analysis be completed?
 - Align with annual increase process? Off-cycle?
- What employee groups will be examined?
 - Entire workforce? Particular division? Employees in particular states or regions?

Planning Phase

- What will be the level of analysis?
 - By Grade, Department/Division/Function, Job Title, EEO-1 Category, AAP Job Group
- What will be the unit of analysis?
 - Base pay, total compensation, individual components of pay?
- What factors influence pay decisions?
 - Time-based variables, education, performance, etc.
- What data is tracked in the HRIS?
- How will other data be collected?

Compensation Data Collection

Employee Data

- Employee ID
- Race/Ethnicity
- Gender
- Job Title
- AAP Job Group
- EEO-1 Category
- Pay Grade/Band/Level
- Hire Date and other time-based variables

Base Compensation

- Annualized Salary; and/or
- Wage Rate
- Typical Hours Worked in a Workweek

Other Compensation

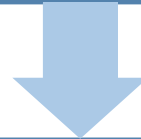
- Overtime
- Bonuses
- Incentives
- Commissions
- Merit Increases
- Locality Pay

Bona-Fide Factors Influencing Pay

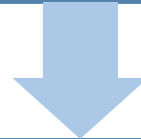
- Time in company
- Time in grade
- Time in position
- Performance ratings
- Education
- Field of study
- Certifications
- Years of relevant experience (age)
- Market data
- Promotion history
- Geographic location
- Department/function/division/business unit

Conduct Pay Equity Analyses

Preliminary Testing



Comparator Analysis



Multiple Regression Analysis

Preliminary Analysis

Grade	Protected Class	Avg Salary	Avg Years of Service	#	\$ Diff	% Diff	T-STAT/FET	Result
A	F*	\$53,001	15.35	16				
	M	\$50,125	15.62	16	\$2,877	5.74%	t= 1.520	
A	Asi	\$47,250	15.64	1	\$4,874	10.32%		Cohort
	Bla*	\$52,124	14.97	10				
	His	\$51,596	15.16	4	\$528	1.02%	FET= 0.594	
	Whi	\$51,479	15.86	17	\$646	1.25%	FET= 0.402	
B	F	\$60,548	15.23	49	\$22,263	36.77%	t= 6.820	Regression
	M*	\$82,811	23.86	265				
B	Asi	\$67,918	14.34	27	\$13,550	19.95%	t= 3.030	Regression
	Bla	\$62,725	15.07	6	\$18,743	29.88%	t= 2.040	Regression
	His	\$66,785	17.51	13	\$14,682	21.98%	t= 2.320	Regression
	Whi*	\$81,468	23.75	268				
C	F	\$40,926	16.23	65	\$8,283	20.24%	t= 4.220	Regression
	M*	\$49,209	12.76	58				
C	Asi	\$39,988	13.93	5	\$5,527	13.82%	t= 1.040	
	Bla	\$33,952	10.45	3	\$11,563	34.06%	FET= 0.109	
	His	\$34,703	10.68	2	\$10,811	31.15%		Cohort
	Whi*	\$45,514	14.80	113				

Comparator Analysis

Employee Status	ID	Sex	Race	Salary	\$ Difference	% Difference	Years of Service	Edu	Time in Job	Age/Exp
<i>Affected Employee</i>	6467	M	Asi	\$47,250.00			15.64	B	14.96	32.27
<i>Comparator</i>	4963	F	Bla*	\$55,555.00	\$8,305.00	17.58 %	12.79	Asc	12.35	30.17
<i>Comparator</i>	1657	M	Bla*	\$54,200.00	\$6,950.00	14.71 %	13.54	B	12.96	31.78
<i>Comparator</i>	8038	M	Bla*	\$50,000.00	\$2,750.00	5.82 %	14.92	B	14.09	32.51
<i>Comparator</i>	1708	F	Bla*	\$55,555.00	\$8,305.00	17.58 %	18.64	B	18.12	42.06
<i>Comparator</i>	2459	F	Bla*	\$55,555.00	\$8,305.00	17.58 %	16.64	B	16.36	41.77
<i>Comparator</i>	9896	M	Bla*	\$62,280.00	\$15,030.00	31.81 %	16.96	M	16.52	41.71
<i>Comparator</i>	5109	F	Bla*	\$55,555.00	\$8,305.00	17.58 %	13.80	M	13.54	42.97

<i>Affected Employee</i>	8002	M	His	\$46,052.00			17.71	B	16.00	45.19
<i>Comparator</i>	4153	F	Whi*	\$49,000.00	\$2,948.00	6.40 %	12.92	Asc	12.58	44.39
<i>Comparator</i>	7262	M	Whi*	\$53,234.00	\$7,182.00	15.60 %	14.70	B	14.41	45.60
<i>Comparator</i>	7662	F	Whi*	\$50,036.00	\$3,984.00	8.65 %	13.17	B	12.76	45.54
<i>Comparator</i>	7444	F	Whi*	\$50,000.00	\$3,948.00	8.57 %	12.79	B	12.63	45.99

Multiple Regression Analysis

M Compared To F For Grade: B		
Summary Output		
R Squared	0.48*	
Standard Error	16580.13	
Observations	314.00	
Predictor	Coefficients	T-Stat
Intercept	57747.90	10.61*
Sex	-12577.48	-4.57*
Edu_M	12393.03	2.28*
Edu_PhD	3619.29	1.87
Perfm_0.5	-8351.05	-1.36
Perfm_1	-8512.06	-1.61
Perfm_1.5	10809.41	2.03*
Perfm_2	2180.62	0.43
Perfm_2.5	13984.68	2.47*
Perfm_3.5	4523.60	0.72
Perfm_4	5294.00	0.81
Perfm_4.5	9222.59	1.03
Perfm_5.5	6219.74	0.79
Years of Service	850.58	7.95*
* - Indicates the value is significant.		
**-Baseline for: Edu = B, Perfm = 3		

What to Do With Unexplained Disparities

- Conduct a comparator analysis for small groups (less likely to be accepted by federal agencies now)
- If the regression model is favorable, calculate each person's predicted pay vs. actual pay
- Consider how to make pay adjustments
 - Lump sum increase (stand alone or in conjunction with merit increases)
 - Distributed over time (with normal pay increase or off cycle)
 - Differentiate equity increase from merit increase
 - Consider whether adjustments should also be made for favored gender and/or favored race to avoid reverse discrimination lawsuits

Best Practices: Pay Equity Analyses

- Develop project plan
- Get management buy-in
- Get attorney-client privilege
- Research legitimate pay factors
- Develop plan to collect factors you do not have readily retrievable
- Develop communication plan for unexplained disparities
- Review pay processes and systems to maintain pay equity

10 Ways to Limit Potential Pay Equity Issues

1. Have accurate, well-written job descriptions that focus on how jobs are similar or different
2. Analyze personnel decisions that influence compensation (promotions, performance ratings)
3. Define compensable factors and develop a more data-driven approach to setting pay
4. Ask for salary expectations rather than salary history
5. Complete external market studies and document and save results
6. Complete internal pay equity analyses under attorney client privilege
7. Review and update documentation regarding your pay practices and decisions
8. Begin tracking data used to set pay for statistical analysis (education, certifications, etc.)
9. Put monitoring systems in place so that equity can be maintained
10. Create a pay transparency culture so that employees come to you with concerns first

Resources



Contact Information

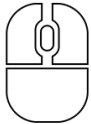
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OFCCP Resources

- OFCCP's [website](#)
- [EO 11246](#)
- [VEVRAA](#)
- [Section 503](#)

Wrap-Up

- Thank you for attending our webinar
- SHRM and HRCI credit information in follow-up email
- Please complete our survey

Resources



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