Harvard Business Review
ANALYTIC SERVICES

Pulse Survey

NAVIGATING THE GROWING PAY EQUITY MOVEMENT

What Employers Need to Know About What to Do

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The push for equal pay has become a global initiative, one in which, it can be argued, the U.S. is playing catch-up, both on the global stage and at home.

Employers are being challenged by the growth in the number of pay equity laws and regulations being created at the federal, state, regional, and local government levels across the country. Indeed, states and cities are moving aggressively to address the equal pay issue, challenging federal agencies to do the same.

Massachusetts and Oregon have special legislation incentivizing employers to conduct in-depth pay analyses to identify and address disparities. New Jersey and New York are among the states that now prohibit employers from asking about job applicants' salary history and from punishing employees who openly discuss their earnings. Cities such as San Diego and San Francisco have also passed laws to encourage equal pay practices by businesses and contractors. And it's not just happening along the East and West coasts. Alabama, Colorado, Illinois, Georgia, and Pennsylvania are among the states passing pay equity legislation with the objective of addressing the pay gap between men and women, and between other protected groups.

The fight for pay equity affects all working people, both in and out of government. Well-known, large employers and government agencies at all levels have already experienced some of the serious implications for failing to address pay equity issues, such as increased legal and financial liability and negative press.

Investors have taken notice. The Human Capital Management Coalition, a cooperative effort between institutional investors representing more than $3 trillion in assets, has petitioned the U.S. Securities and Exchange Commission to recognize human capital management as an important component in company performance and in the creation of long-term value. If successful, this would bring workforce metrics including hiring and retention, employee engagement, training, diversity, and compensation to external corporate reporting for potential investors to consider when researching U.S. companies.

Progress on this issue seems to be inevitable as we see a more diverse electorate engage with the U.S. political system and elected to government offices. It should be noted that significant equal pay laws were passed in Iceland after a 2016 election that saw women win 30 seats in Iceland's parliament, bringing the split between men and women legislators to about 50%. We are not there yet in our political system. However, in a climate where U.S. women soccer players can elicit an international crowd on the World Cup stage to chant for equal pay and where the hashtags #MeToo, #TimesUp, #NoCeilings, #HeForShe, #EqualPay, and #EqualityCantWait are part of the American conversation, the concept of equal pay is gaining momentum.

It is our hope that this Harvard Business Review Analytic Services report will be a positive voice in this conversation. It highlights how regulatory and legislative changes and the importance of having accurate workforce data are shaping the discussion around equal pay and the need for businesses to be proactive in taking steps to identify problematic pay disparities within their organizations.

Working together, we can and should make equal pay a reality in the U.S.—sooner rather than later. And much sooner than 208 years from now.

#EqualityCantWait

BACKGROUND

https://payparitypost.firstcapitolconsulting.com/more-states-and-cities-passing-salary-history-bans-update/
https://payparitypost.firstcapitolconsulting.com/pay-equity-affects-us-all/
https://payparitypost.firstcapitolconsulting.com/its-time-for-equal-pay-in-america/
https://equalitycantwait.evoke.org/
http://www.uawtrust.org/hcmc

NAVIGATING THE GROWING PAY EQUITY MOVEMENT

What Employers Need to Know About What to Do

Pay equity regulation and compliance efforts are growing in the U.S. and several European countries, and the crush and overlap of legislative initiatives threaten to saddle organizations with more challenges instead of making things clearer when addressing gender pay gaps. In the U.S., federal reporting requirements have been expanded and more congressional initiatives are in the works, while a groundswell of states and localities are changing their laws to fill in the gaps in federal enforcement of regulations.

Employers do have a valuable tool at their disposal to help navigate this morass—pay equity audits (PEAs). An analytical tool that seeks to explain internal differences in pay across the workforce in terms of justifiable business factors, usually involving a regression analysis of an organization's pay groups, a PEA is also a first defense when it comes to compliance with federal, state, and local regulations.

Organizations are conducting PEAs, but the level at which they are doing so differs by geography and company type. According to a Harvard Business Review Analytic Services survey of 589 senior executives in the U.S. and the U.K., 77% of the U.S. respondents have conducted a PEA, but that pales next to the 86% of their U.K. counterparts that have. FIGURE 1 Organizationally, there's a difference, too. Eighty-three percent of global organizations conduct internal pay equity evaluations versus just 69% of national or regional ones.

This report looks at the current legislative movement and the role it is playing in driving the pay equity agenda, how PEAs are crucial to helping organizations operate on this new playing field, and the reasons why PEAs aren't as widespread as they could be at a time when data analytics is all the corporate rage.

HIGHLIGHTS

77%
OF THE U.S. RESPONDENTS HAVE CONDUCTED A PEA, BUT THAT PALES NEXT TO THE 86% OF THEIR U.K. COUNTERPARTS THAT HAVE.

83%
OF GLOBAL ORGANIZATIONS CONDUCT INTERNAL PAY EQUITY EVALUATIONS, VERSUS JUST 69% OF NATIONAL OR REGIONAL ONES

9%
OF RESPONDENTS SAY THEY HAVE NO PLANS TO CONDUCT A PEA

Increased Legislation in the U.S. Gains Steam

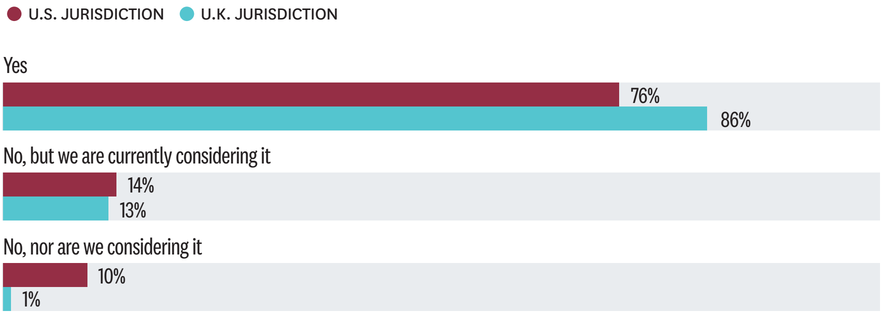
Pay discrimination has been illegal in the U.S. and the U.K. for decades, thanks to the federal Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 in the former and the Equal Pay Act of 1970 in the latter. In the U.S., the Lilly Ledbetter Fair Pay Act became law in 2009, and it prohibits sex-based wage discrimination between men and women in the same workplace who perform jobs requiring equal skill, effort, and responsibility under similar conditions.

FIGURE 1

PAY EQUITY AUDITS HAVE AN ENGLISH ACCENT

Testing for pay disparities is more prevalent in the U.K. than the U.S.

Does your organization evaluate internal pay equity?



SOURCE: HARVARD BUSINESS REVIEW ANALYTIC SERVICES SURVEY, APRIL 2019

The U.K. sprinted ahead of the U.S. when its Gender Pay Gap reporting regulations came into effect in 2017. While this British law is far from comprehensive—it excludes part-time workers and very small businesses—it's a step toward pay equity and likely drives U.K. organizations to conduct PEAs—as the 86% respondent rate attests. The more stringent law has had another desirable effect: the gender pay gap fell from 2017 to 2018, affecting 8.6% of full-time employees, according to the U.K. Office of National Statistics.

Even more strict on pay equity is Iceland, which, starting in 2022, will impose daily fines on organizations employing more than 25 workers that have not been independently certified as paying all employees equally for work of equal value. Other countries legislating similar changes are Ireland, Canada, and France.

In the U.S., two potential laws involving pay equity are making their way through Congress: the Paycheck Fairness Act (PFA), which has been introduced repeatedly by Rep. Rosa DeLauro (D-Conn.) for nearly 20 years and was reintroduced in January 2019, and the Forced Arbitration Injustice Repeal Act (FAIR), introduced in February 2019, which seeks to end the use of the mandatory arbitration clauses that are often inserted into worker contracts and require that employees waive their right to sue their employers.

DeLauro explains that the PFA, which has passed in the Democrat-controlled House and now heads to the Republican-dominated Senate, would give underpaid workers new tools to challenge discrimination. Among them are limiting an employer's ability to justify pay disparities based on a "factor other than sex," which is a defense centered on an attribute that doesn't need to be commensurate with the demands of the job. The PFA will increase compensation transparency by requiring the reporting of pay information to the Equal Employment Opportunity Commission (EEOC). The PFA also would prohibit retaliation against workers who discuss wages openly, prevent companies from using wage history as a salary determinant, and impose harsher penalties for violations.

"Current law makes it difficult for women to proceed with equal pay cases," says DeLauro, who is partnering on the bill with Sen. Patty Murray (D-Wash.). DeLauro says, "Even if a case proceeds and women are awarded a legal victory, the damages are often insubstantial, providing women with little compensation and employers with little deterrent from practicing future wage discrimination."

Fatima Goss Graves, the president and CEO of the National Women's Law Center and founder of #TimesUp, which is aimed at ending sexual harassment in the workplace, has called the PFA an "essential tool" to fighting pay discrimination.

DeLauro thinks the PFA has a good chance of becoming law, which would be timely, given the #TimesUp and #MeToo movements. These initiatives have given women a renewed sense of empowerment that has indirectly spilled over and fueled efforts on wage and advancement discrimination, say experts.

If FAIR becomes law, binding arbitration can no longer be used to cover up pay inequity, and it could make legal privilege more crucial

> “Even if a case proceeds and women are awarded a legal victory, the damages are often insubstantial, **providing women with little compensation and employers with little deterrent** from practicing future wage discrimination,” says Rep. Rosa DeLauro (D-Conn.)

when analyzing pay equity. “Forced arbitration deprives Americans of the basic right to have their day in court. FAIR is a measure that can change that,” asserts Sen. Richard Blumenthal (D-Conn.), the bill’s lead sponsor.

On the state and local levels, meanwhile, 17 states, Puerto Rico, and 19 localities have adopted laws and regulations that control employers’ ability to use an applicant’s salary history in the hiring process. Those initiatives also prohibit prospective employers from asking applicants to reveal their salary history, a long-standing practice that has helped maintain the wage gap between women and men. On the issue of whether employees can discuss compensation openly, a practice that has led to retaliation and punishment by employers, 20 states—including Connecticut, Massachusetts, New Hampshire, New Jersey, New York, and Vermont as well as the District of Columbia—have passed laws to protect workers, according to the American Association of University Women (AAUW), a nonprofit that works to advance gender equity for women and girls through research, education, and advocacy.

Regulation Drives the Use of PEAs

Some 77% of respondents say they are conducting regular PEAs, with only 9% noting they have no plans to do so. While encouraging, these findings must be viewed with some caution. Confusion may exist as to just what constitutes a thorough audit. A recent study by the consulting firm Korn Ferry, done with WorldatWork, found that larger organizations favor multivariate regression analysis as part of a PEA, but smaller organizations prefer descriptive statistics, which are limited in what they reveal about justifiable pay differences.

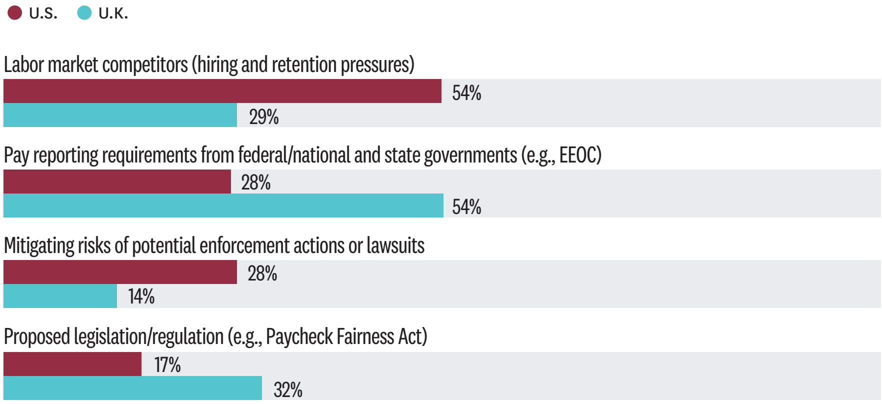
U.K. respondents’ strong use of PEAs looks to be rooted in the stricter regulatory regime they must now adhere to, especially when compared to their American counterparts. Consider that 54% of U.K. respondents cite pay reporting requirements from federal/national and regional governments as external drivers for them to perform pay equity analyses, versus 28% for their U.S. counterparts. FIGURE 2 The figures flip when it comes to the external driver being talent; 54% of American respondents say that is the reason for conducting such an analysis, while 29% of British respondents did so.

FIGURE 2

DIFFERENT PEA MOTIVATORS IN DIFFERENT PLACES

Pay reporting requirements mostly drive pay equity analysis in the U.K., but the same percentage of respondents in the U.S. say hiring competition is what moves them to do it.

Which of the following *external* drivers motivate pay equity analysis in your organization?



SOURCE: HARVARD BUSINESS REVIEW ANALYTIC SERVICES SURVEY, APRIL 2019

“BEING TRANSPARENT ABOUT NUMBERS WE’RE NOT PROUD OF WASN’T EASY, BUT WE DECIDED THAT TRANSPARENCY AROUND PAY EQUITY AND REPRESENTATION WOULD BENEFIT OUR FIRM OVER THE LONG TERM.” MICHAEL CORBAT, CEO, CITIGROUP

The divide between localism and globalism also likely plays a role. As mentioned earlier, global firms undertake PEAs more than local ones do—this is not surprising, since they must conduct business in multiple jurisdictions, meaning they are dealing with more pay equity compliance issues. This reality is evident when looking at multinational companies such as Citigroup, Adobe, and Intel, which are among the leading organizations addressing pay equity issues.

“The questions I get most often from other CEOs are about our evaluation process and methodology for reaching pay equity,” Adobe CEO Shantanu Narayen says. “I’ve had very few conversations about why companies should strive for pay equity. Everyone understands the imperative. Instead, the conversations are all about how we did it, what data we examined to determine where we were and where we needed to be, and how we ensured transparency—to employees and other important audiences—along the journey.”

In October 2018, Adobe announced that it had achieved gender pay parity across all geographies, encompassing some 40 countries. The tech firm defines pay parity as employees in the same job and location paid relative to one another, regardless of gender or ethnicity. According to Adobe’s Rosemary Arriada-Keiper, a vice president overseeing compensation and benefits, the company started its audit but then had to pause to “re-architect our job structures” and make sure they were comparing jobs by what the employees were doing and not, for instance, by a job title. The tech firm has more than 21,000 employees worldwide.

The next year, Intel announced that it had achieved pay equity among its 107,000 employees in more than 50 countries. Intel defines pay equity as closing the gap in the average pay between workers of different genders or races and ethnicities—when data is available—and in the same or similar roles after factoring in such variations as performance, time at grade level, and tenure.

Another leader, Citigroup, which in 2018 released the results of a PEA conducted in three countries representing 36% of its workforce, showed its median pay for women globally to be 71% of the median for men and its median pay for U.S. minorities as 93% of the median for non-minorities. Among Citi’s goals are to increase representation at the assistant vice president through managing director levels to at least 40% for women globally and 8% for African-Americans in the U.S. by the end of 2021. Citi has more than 200,000 employees in over 100 countries. “Being transparent about numbers we’re not proud of wasn’t easy, but we decided that transparency around pay equity and representation would benefit our firm over the long term,” says Citigroup CEO Michael Corbat. “It makes our stated commitment to advancing gender and racial equality more credible, it signals our strong desire to improve our numbers, and it shows a willingness to be held accountable for making up for the gender pay gap.”

The bank was the first U.S. company to agree to activist investment firm Arjuna Capital’s request to disclose data on its “global median gender pay gap,” and is the only American firm to have received an A grade on Arjuna’s

Gender Pay Scorecard. Arjuna, a leader in gender pay equity shareholder resolutions, pushes companies to take steps toward pay equity.

"It can be scary for companies to be early adopters in terms of pay transparency," says David Mayer, a professor in the management and organizations area at the University of Michigan's Stephen M. Ross School of Business. "However, by putting the issue on the table and being dedicated to addressing it, they are signaling a culture of inclusion and fairness that will appeal to the majority of job applicants. Assuming [that] the desire to address pay inequity is genuine and not simply used as public relations, these companies will benefit from their efforts.

"All people—including organizational leaders—are influenced by social norms that dictate appropriate conduct," he adds. "Until we reach a critical mass of companies that conduct pay equity analyses and publicly report the results, the norm will be to stay silent. These peer effects are huge."

Audits Help Change Perceptions

An upside to taking a proactive approach and conducting PEAs regularly is what it can potentially save organizations financially when it comes to lawsuits. "I would argue that it is safer to audit—and, of course, if you have a federal contract, you are obliged to do it—and find/fix anything that needs fixing than risking that you are caught by surprise with a lawsuit because employees are charging you with pay discrimination," says Ariane Hegewisch, program director, employment and earnings, at the Institute for Women's Policy Research (IWPR).

Companies acting in good faith to correct pay inequities may benefit from safe harbor provisions, which give them time to rectify the situation before they become legally liable. Colorado and Massachusetts are two states that have these provisions. In fact, a major motivator for U.S. respondents to conduct PEAs is a fear of lawsuits. "Quite a few companies are taking these audits very seriously—if only to avoid legal liability," Hegewisch adds.

PEAs can also help change perceptions of the gender pay gap. When it comes to discrimination involving pay disparities, for example, 48% of respondents at organizations that haven't done a PEA say pay rates are to blame. FIGURE 3 That figure falls to 29% at organizations that have done a PEA.

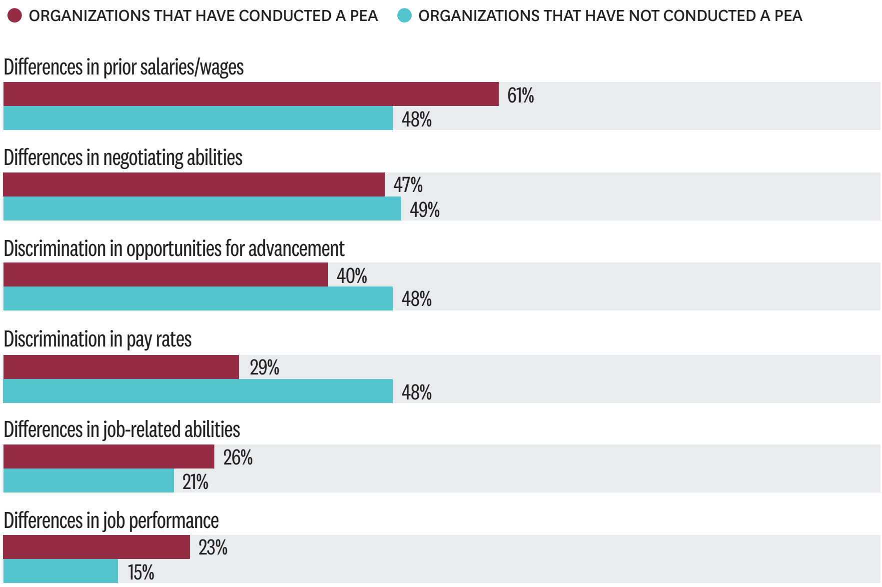
The trend is reversed when the factors involve matters such as prior compensation, performance, or job-related abilities. These business factors gain importance among respondents who have conducted PEAs. Forty-eight percent of respondents at companies that haven't done a PEA say pay disparities stem from differences in prior salaries or wages, yet that figure rises to 61% at organizations that have performed such an audit. Meanwhile, at organizations that haven't done a PEA, 15% say job performance

FIGURE 3

PEAS CHANGE PERCEPTIONS OF PAY GAP CAUSES

There are big shifts in whether prior wages and discrimination in pay rates are the cause of pay disparities, depending on whether a pay equity audit was done.

To which factors do you attribute pay disparities in your organization?



SOURCE: HARVARD BUSINESS REVIEW ANALYTIC SERVICES SURVEY, APRIL 2019

"UNTIL WE REACH A CRITICAL MASS OF COMPANIES THAT CONDUCT PAY EQUITY ANALYSES AND PUBLICLY REPORT THE RESULTS, THE NORM WILL BE TO STAY SILENT."

DAVID MAYER, THE UNIVERSITY OF MICHIGAN STEPHEN M. ROSS SCHOOL OF BUSINESS and 21% cite job-related abilities as factors in pay disparities, only to have those responses rise to 23% and 26%, respectively, at organizations where an audit has taken place.

As a result, experts like Hegewisch have said that it behooves U.S. employers to start scrutinizing their pay and advancement practices right away, before any issues that could damage the company's reputation are raised.

Barriers Must Be Overcome

Despite the potential benefits of PEAs, it's still regulatory pressures that mostly move companies to do them in the U.K. versus the U.S. British pay gap reports must be made annually, so it's little wonder that more than three-quarters (78%) of U.K. respondents say that they also conduct an annual PEA, versus 62% of their U.S. counterparts. FIGURE 4

While 23% of respondents say that they fear information gleaned from a PEA could be used against their organization in a legal action by employees or federal agencies, such as the EEOC or the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), an almost like number (26%) of those who are at organizations that did a PEA did so to insure against potential discrimination suits. In addition, more than half (58%) of knowledgeable respondents who had conducted a PEA were satisfied with the attorney-client privilege of their audit.

Besides these conflicting cause-and-effect scenarios, another barrier preventing organizations from undertaking PEAs is the need to compile the accurate, hard data needed. Respondents say that concern about data quality is one reason they don't pursue PEAs vigorously, indicating that a barrier was incomplete workforce data, including missing job characteristics and employee information, such as key performance indicators, benefits, education, certifications, and experience. The survey asked about four types of data that influence compensation and are relevant to conducting a PEA.

FIGURE 4

AUDITS ARE MORE FREQUENTLY DONE IN THE U.K.

An annual analysis of pay equity is more prevalent in the U.K., but a personnel change is four times more likely to spur an assessment in the U.S. than across the pond.

How frequently does your organization conduct a pay equity analysis?

U.S.		U.K.
17%	LESS THAN ONCE A YEAR	6%
62%	ONCE A YEAR	78%
3%	ONCE A QUARTER	12%
16%	REASSESSED WITH EVERY PERSONNEL/COMPENSATION CHANGE	4%

SOURCE: HARVARD BUSINESS REVIEW ANALYTIC SERVICES SURVEY, APRIL 2019

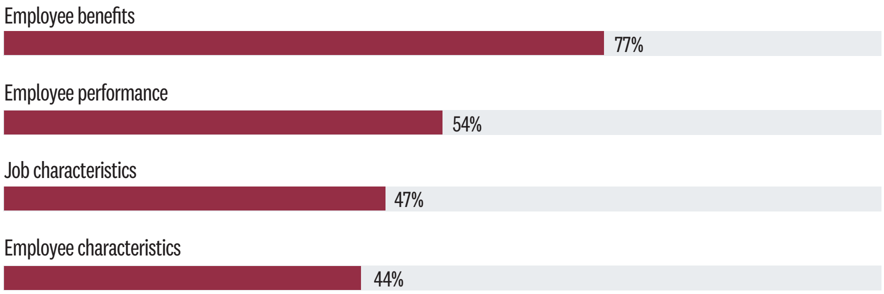
COMPANIES ACTING IN GOOD FAITH TO CORRECT PAY INEQUITIES MAY BENEFIT FROM SAFE HARBOR PROVISIONS, WHICH GIVE THEM TIME TO RECTIFY THE SITUATION BEFORE THEY BECOME LEGALLY LIABLE.

FIGURE 5

WHERE THE HINDRANCES TO TESTING LIE

Respondents have confidence in employee benefits data, but aren't as sure about performance and other measures.

Percentage of survey participants rating data type as complete



SOURCE: HARVARD BUSINESS REVIEW ANALYTIC SERVICES SURVEY, APRIL 2019

It found that respondents were most confident that they had complete records for employee benefits data (77% complete). FIGURE 5 Less confidence was placed in the thoroughness of accurate data concerning employee performance (54%), job characteristics (47%), and employee characteristics such as education, certification, and experience (44%).

One major hindrance is technological. More than three-quarters of respondents (78%) with knowledge of their software systems indicate that data from multiple software systems needed to be integrated in order to conduct a PEA.

Laying the Groundwork for Pay Equity

Chants of "equal pay, equal pay" have become a battle cry amid the American women's soccer team's triumph in the 2019 World Cup, bringing to a crescendo the gender pay gap issue worldwide. This development is only likely to cast more attention on the use of PEAs.

While the majority of respondents say that they are conducting PEAs, just how they define pay equity audits is unknown. Hegewisch believes that many companies benefiting from federal contracts take PEAs seriously and that it is imperative for them to be careful about presenting accurate results in case they are audited by the government later. There could be cases, though, when companies "are not particularly rigorous" about their audits, says Michigan's Mayer.

Ultimately, though, conducting PEAs has many benefits, positively affecting pay equity and career advancement all around. Beyond minimizing regulatory risk and potentially expensive litigation, there is a desire by most companies for the good optics of creating a level playing field for all workers. Achieving this ideal takes directed effort, beginning with a proper audit of where a company stands on pay for all employees.

The benefits of following through on this process are legion. A company ends up mitigating potential risk while developing goodwill all around, including with employees who are committed, motivated, and happy to stay on the job. What could be better?

METHODOLOGY AND PARTICIPANT PROFILE

A total of 589 respondents drawn from the HBR audience of readers (magazine/enewsletter readers, customers, HBR.org users) completed the survey.

SIZE OF ORGANIZATION

8%	100 - 499 EMPLOYEES
11%	500 - 999 EMPLOYEES
26%	1,000 - 4,999 EMPLOYEES
13%	5,000 - 9,999 EMPLOYEES
43%	10,000 OR MORE EMPLOYEES

SENIORITY

20%	EXECUTIVE MANAGEMENT/BOARD MEMBERS
46%	SENIOR MANAGEMENT
18%	MIDDLE MANAGEMENT
16%	OTHER

KEY INDUSTRY SECTORS

OTHER INDUSTRIES EACH WERE LESS THAN 5% OF THE TOTAL

13%	MANUFACTURING
13%	TECHNOLOGY
12%	FINANCIAL SERVICES
9%	GOVERNMENT/NOT-FOR-PROFIT
8%	HEALTH CARE
6%	ENERGY/UTILITIES
6%	EDUCATION
6%	PHARMA/MEDICINE/LIFE SCIENCES

JOB FUNCTION

OTHER FUNCTIONS WERE EACH LESS THAN 5% OF THE TOTAL

16%	HR/TRAINING
7%	FINANCE/RISK
6%	MARKETING/PR/COMMUNICATIONS
6%	IT
5%	R&D/INNOVATION/PRODUCT DEVELOPMENT
5%	SALES/BUSINESS DEVELOPMENT/CUSTOMER SERVICE
5%	ADMINISTRATION
16%	GENERAL/EXECUTIVE MANAGEMENT
6%	PROFESSIONAL SERVICES
6%	OPERATIONS/PRODUCTION/MANUFACTURING
5%	ACADEMIC
5%	CONSULTING
5%	STRATEGIC PLANNING

Figures may not add up to 100% due to rounding.

FROM THE SPONSOR

A pay equity audit (PEA) is a legally privileged, multidisciplinary analysis of your workforce that explains pay differences in terms of defensible business factors. These insights help defend against claims of discrimination and, with monitoring, identify which factor differences drive wage gaps over time.

A PEA also quantifies any unexplained pay disparities between such protected classes as gender, age, and race/ethnicity, and provides tools for mitigating the risk of lawsuits and regulatory penalties through alternative, budget-conscious strategies.

Legal counsel should designate the PEA project team to ensure the privilege is maintained. The project team should include personnel who understand the organizational functions, data sources, and compensation structure across departments. These members will determine the audit scope, including compensation variables, workforce segments, locations, and business lines. The team also identifies the available business factors for the analyses and the economically and statistically justifiable employee groupings (Pay Analysis Groups or “PAGs”).

The team should possess expertise in workforce data management to extract, test, and consolidate the relevant data from potentially disparate HR data silos; identify missing, incomplete, or inaccurate data; and reconcile those issues.

Because justifiable business factors vary with jurisdiction, the team should possess extensive knowledge of both employment laws across various (national, state, local) jurisdictions and of the regulatory processes of government agencies, such as the OFCCP and the EEOC.

When compensation is not formulaic, the team also requires statistical expertise.

After establishing the project team, multiple types of analysis may be undertaken. Regression analyses usually provide core findings. Other analyses can include comparisons of average wages, wage distributions, wage cohorts, overtime participation, and protected class representation. These provide robustness checks and context for the core results.

Organizations seeking outside assistance with a PEA should evaluate the partner’s expertise in data management, legal issues, and statistical modeling.

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