Legal Update Article

# Why Pay Equity Matters for Manufacturers and How Manufacturers Can Proactively Reduce Risk

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## Meet the Authors


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Pay equity is a critical issue for employers — and it should be top of mind for those in the manufacturing industry.

A number of states enacted laws designed to strengthen equal pay protections and improve pay transparency in 2021, and more are expected to follow. These laws reflect a continued and growing focus on the "gender pay gap" and a growing risk for employers that do not take steps to address any inequities in their own workforce.

### Issue for Manufacturers

According to data collected by the Bureau of Labor Statistics, women, on average, often earn significantly less than men in many manufacturing-related jobs.

In 2020, for example, women supervisors of production and operating workers earned, on average, 26.8% less than their male counterparts. Women truck drivers earned 17.3% less than men in the same role. Across all the "transportation and material moving occupations," women were paid, on average, 20.9% less than men. In the "production, transportation, and material moving occupations," they were paid 22.9% less. Both are worse than the nationwide gender gap, meaning, the difference in pay between men and women in these fields is greater than it is in other industries.

### The Labor Crunch Can Increase the Risk

Equal Pay Act (EPA) claims do not require proof of discriminatory intent. Whether an employer intends to pay employees less based on their sex is irrelevant. Employees only need show that they were paid less than someone of the opposite sex for jobs requiring equal skill, effort, and responsibility, performed under similar working conditions. It then becomes the employer's burden to show that the pay differential is based on a lawful factor.

Because intent is not an element of an EPA claim, employers (particularly those with a large workforce) may not realize that they have pay inequities. Moreover, recent events may be creating, or exacerbating, equal pay issues. Manufacturers have faced an unprecedented labor shortage, and many are looking to pay increases and "sign on" and "stay on" bonuses to both recruit and retain employees, especially those with experience. Depending on how they are applied, these initiatives, in some instances, could cause or increase existing pay differences between male and female employees, increasing the risk of potential equal pay claims. In addition, "equal pay" covers *any* form of compensation, not just salary or total pay. Employees can sometimes state a claim if they were paid a different sign-on or retention bonus than employees of the opposite sex, even if their base pay or overall compensation is equal. While these claims might be small on an individual basis, there could in some instances be significant class risk. In other words, in trying to address the issues caused by the labor shortage, employers might be causing a future headache.

## What Manufacturers Can Do

The first step toward minimizing pay equity risk is understanding the pay differences in the workforce. A privileged pay-equity analysis, among other steps, can help identify areas of risk and determine what, if any, steps should be taken in response. These analyses are increasingly common and an important tool for employers.

According to recent study by SHRM, 58% of organizations are voluntarily conducting pay equity reviews. Of those employers that did, 83% adjusted employees' pay as a result, underscoring just how common latent pay equity issues are.

Employers should consider reviewing their pay systems to ensure that they comply with federal and state fair pay laws, including pay data reporting and pay transparency requirements. Contact a Jackson Lewis attorney if you have questions about how to conduct a pay equity analysis or want to take steps that could reduce your equal pay risk.