

Guidelines for Building and Implementing a Pay Equity Strategy

Editor's Note: These guidelines are intended to provide an overview of how a company may approach developing a comprehensive pay equity strategy. Compensation systems are established differently at every company. These guidelines aren't meant to be formulaic, but to serve as an outline for developing a customized approach for analyzing pay.

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☐ Clearly define the objectives

Identify the purpose of conducting the analysis to understand why the company is undertaking the analysis. The reasons can vary, but understanding what drives the need to formulate a strategy will help focus the approach.

☐ Identify the factors motivating the company

- Title VII/Equal Pay Act claims risk
- Concerns with new, more robust state laws
- Office of Federal Contract Compliance Programs audit
- Board/shareholder pressure
- Reputational
- Threatened or actual claim
- Remediation for adjudicated claim
- Some combination of the above

☐ Address timing issues at the outset

- Align the pay analysis with the company's normal compensation cycle
- Consider when the analysis needs to be completed and work backwards to develop a timetable
- Build in plenty of time for the analysis to be completed

☐ Enlist executive management support

All appropriate executive management should be informed and aligned with the direction the organization wants to take in conducting the pay equity analysis.

☐ Obtain a budget

- ☐ Demonstrate support with executive level communications
- ☐ Obtain authority to make changes

☐ **Develop a budget**

- ☐ Cost of undertaking analysis
 - Vendor/Consultant/Attorney fees
 - Internal resources time spent
- ☐ Cost associated with adjustments

☐ **Partner with critical stakeholders**

While pay equity projects are often conducted by human resources, compliance, or legal, these departments don't have all of the information needed to conduct the analysis. It is important for the Company to consider who needs to be involved in order to obtain the necessary information.

- ☐ Compensation – process subject matter experts
- ☐ Human Resource Information Systems – data collection experts
- ☐ Human Resource Business Partner – issue investigators

☐ **Conduct the pay analysis**

- ☐ Develop project scope document
 - Finalize the objectives – finalize the factors motivating the company to conduct the analysis
 - Decide what forms of pay will be considered in the analysis (base, bonus, equity)
 - Gender, race, or both
 - Decide on form of the final deliverable
 - Establish a timetable for project completion
 - Identify the project team
- ☐ Establish attorney-client privilege
 - ☐ Engage internal and external counsel from the start of the analysis.
- Retaining outside counsel can help establish that the purpose of the analysis is to provide legal advice.
 - ☐ Establish and follow communication protocols

- All data, documents, and communications should be labeled with the “Privileged and Confidential.”
- The company's internal communications and reports should also be labeled “Generated at Request of Outside Counsel.”
- All project-related documents should be stored in a dedicated, secure area and access should be provided only to in-house counsel, outside counsel, and the Project Team on a “need to know” basis.

☐ Restrict the number of core team members

- Designate a Project Team that consists of select, management/executive-level individuals from relevant key groups (e.g., legal, management, human resources and retained experts, etc.). These individuals must be informed that the purpose of the project is to seek legal advice for the company and they should agree to keep all information strictly confidential.

☐ **Perform due diligence**

- ☐ Review the company's compensation system in order to prepare the analysis. It is critical to understand how the company's compensation system works as written in its policies as well as how it is administered practically.

☐ Review all written documentation

- Policies
- Procedures
- Training
- Forms/Templates

☐ Interview subject matter experts

- Speak to compensation team members and managers on how pay is administered

☐ Focus of due diligence

- Identifying the proper units of analysis
- Inventorying the types of pay
- Determining what data is readily available
- Identifying key factors influencing pay

☐ **Collect data**

- Leverage resources with HRIS

- Most of the compensation information will be found in the company's HRIS.
- Collect data that is readily available
- For data that isn't readily available, consider using a proxy (e.g., age for experience) or leaving until a follow up stage

☐ **Establish units of analysis**

- ☐ The units of analysis will consist of employees that will be compared. Generally, employees being compared should perform equal, substantially similar, or comparable work, depending on the law being relied upon in the analysis.
- ☐ Determine whether the units of analysis will be based on federal law or state specific law.
- ☐ Federal and state laws may differ as to which employees can be compared.
 - Federal law relies on “equal pay for equal work” standard
 - Some state laws use different terminology (e.g., “comparable work”)

☐ **Identify factors that can explain the pay differences**

- ☐ The company should identify the various factors the employer considers in deciding how much it pays its employees (e.g, length of service, experience, education, geography, etc)
- ☐ The reason for the analysis is important here
- ☐ Under the EPA, any reason other than sex generally can explain differences
- ☐ Some state laws have introduced the concept of only allowing “bona fide” reasons (job related and consistent with business necessity)

☐ **Settle on an acceptable methodology**

- ☐ While statistical analysis isn't absolutely necessary, it provides the most robust means of demonstrating EEO or isolating issues
- ☐ Types of statistical analysis to consider
 - Significance testing
 - Regression analysis

☐ **Investigate the issues**

- ☐ Once the preliminary statistical analysis is completed it is critical to investigate any unexplained pay differences that may be due to race or gender.

- The company should research whether the pay difference is due to a non-discriminatory business reason
- Leverage individuals most familiar with flagged jobs and employees (e.g., Human Resources Business Partner)
- Conduct an updated analysis to determine whether any new factors can explain the pay differences
- No need to share results with investigators – keep underlying analysis privileged
- Set a timetable for completion
- Investigation may be iterative and require revisiting issues

☐ **Act on the results**

If there are any unexplained pay differences, the company may consider whether to make pay adjustments. However, before making changes to employee compensation, the company should consult with counsel.

☐ **Be prepared to make adjustments**

- Considerations:
 - Budget
 - Timetable
 - What to do with underperformers
 - Should adjustments be made to traditionally non-protected groups (e.g., Whites and men)
- Variations:
 - Full remediation – complete remediation to all impacted
 - Spread the wealth – smaller amounts to all impacted
 - Targeted – individual amounts for specifically designated individuals most impacted
 - Clear the Flag – amounts necessary to eliminate statistical indicators

☐ **Create a communications strategy**

Implementing pay equity adjustments requires careful consideration of the content in internal and external communications, as well as ensuring guidance from all appropriate stakeholders.

☐ **Determine what needs to be communicated and to whom**

- Fact that the analysis was performed:
- Communicate to all employees?
- Communicate to the public?

- Results of the analysis:

- Communicate to executive management?
- Communicate to all management?
- Communicate to all employees?
- Communicate to the public?

☐ **Adjustments**

- Communicate them only to those impacted?
- Communicate to all employees that adjustments were made?
- If the company concludes that pay equity adjustments are necessary, they should consult with counsel for guidance on making adjustments so as to minimize exposure to legal claims
 - For instance, to minimize the risks associated with offering pay adjustments, the company may consider strategies such as coordinating the timing of increases (e.g. staggered increases over time in line with merit increases)

☐ **Draft a final report**

- Consider wrapping up the project with a final report
- Identify your audience and tailor contents to it
- Don't forget about waiver of privilege
 - Releasing a final report outside the project team could waive privilege and become discoverable in litigation.

☐ **Establish plan for ongoing monitoring**

- ☐ The traditional analysis is point-in-time, which has some drawbacks.
 - Static v. dynamic:
 - Static – the traditional point-in-time analysis is a static review of the company's pay practices.
 - Dynamic – a more fluid approach of evaluating the company's pay practices throughout the year while

actual changes occur.

- Employees come and go and salaries change

☐ Consider how to monitor for equity issues on an ongoing basis (e.g. during merit review cycles)

- Review pay system and processes. It is important to ensure that the pay system and processes are being applied consistently across the company.

☐ **EEO considerations**

Establish a method for monitoring pay equity issues in real time. An effective strategy is to question and discuss with the appropriate team members where there are unexplained difference in compensation. This will highlight any possible pay equity issues throughout the year without having to run a point-in-time analysis.

- Look at average merit increase associated with each band of performance
- Look at each new hire salary in relation to comparator group

☐ **Revisit point-in-time analysis every 3-5 years**

- Most employees' salaries don't change significantly from year to year, so annual review may be too frequent

☐ **Be aware of process changes**

- Possible changes to processes depending on the results of the analysis.
- Be aware that the new process changes are being implemented across the company to ensure consistency in pay practices.

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