

CURING THE GENDER & RACIAL PAY GAP

By Liz Mayo, Chris Crawford & Brent Longnecker

There is a common story that white males make more than their female and non-white male counterparts. In short, there is a gender and racial pay gap that exists in the US. A recent study by the Pew Research group supports this claim. Even though this pay gap has narrowed over the years, one summary of the pay gap is as follows:

While the Equal Pay Act of 1963 and Title VII of Civil Rights Act of 1964 banned pay inequality; it still exists in many companies. Consequently, the number of lawsuits and related legislation have recently strengthened. Add the growing number of A-listers, athletes and presidential debaters that have weighed in on the matter, and this has become an issue that is front and center for many companies. Given this recent attention to the pay gap across public, private and not for profit companies in the US, the issue represents a growing legal liability if mishandled on one side, and a cultural marker of success and goodwill when handled correctly on the other side.

Legal Liability

Every year, there are over 10,000 discrimination suits filed against employers. Many are tossed out, but some do stick. And when they stick, they can be costly. The top 10 discrimination suits the past few years have cost companies on average about \$60mm. Given this cost of pay disparity, the Equal Employment Opportunity Commission ("EEOC") and court systems have provided a legitimate path where companies can have pay disparity when based upon: 1) a seniority system, 2) a merit system, 3) a pay system based on quantity or quality of output, or 4) any other factor other than sex or race.

These guidelines create a grey area when discerning pay disparity based upon race or gender. There is, however, one unique factor in equal pay cases that actually works in the complainant's favor. Unlike most discrimination actions, the Equal Pay Act is "intent neutral". In other words, it doesn't matter whether you meant to pay an employee less because of gender—the fact that you did is enough. The burden of proof then shifts to the employer, who should be able to show that any policy that resulted in disproportionate pay is in place throughout the organization.

Take Action

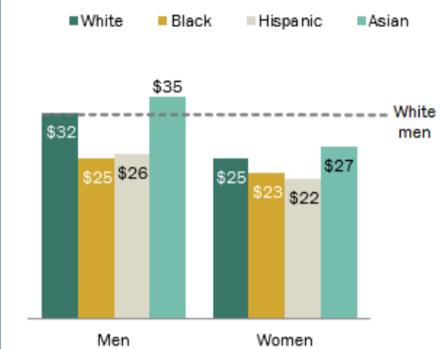
Whether taking proactive steps to avoid litigation, or creating a culture of fair pay for fair work, there are a number of ways L&A can apply our expertise and independence to help your company, including:

- Annually review pay in terms of gender and ethnicity to see if there are departments, jobs or individuals that appear to have a discrepancy toward a protected class;
- If discrepancies are found, research the employee records to determine if an appropriate reason for the discrepancy exists;
- Create a process to correct potential inappropriate discrepancies. For example, set aside a portion of the merit pool to accommodate internal equity adjustments;
- Review your population to insure the company is adequately represented when compared to the geographic labor market. If you find the representation is low, set hiring goals to reduce the gap; and
- Develop a curriculum to train supervisors how to monitor pay insuring that equality is top of mind. Insure that supervisors and hiring authorities are accountable to reaching your diversity goals.

For more information and/or assistance, call any L&A consultant to assist with your pay gap analysis needs at 281.378.1350. To learn more about our Compensation Consulting Services [click here](#).

Controlling for education, white men still out-earned most groups in 2015

Median hourly earnings among those ages 25 and older with a bachelor's degree or more



Note: Based on civilian, non-institutionalized, full- or part-time workers with positive earnings. Self-employed workers are excluded. Hispanics are of any race. Whites, blacks and Asians include only non-Hispanics. Asians include Native Hawaiian and Pacific Islanders.
Source: Pew Research Center tabulations of 2015 Current Population Survey data.

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