

Pay Equity Analysis

Note: This document and the information in it does not constitute legal advice.

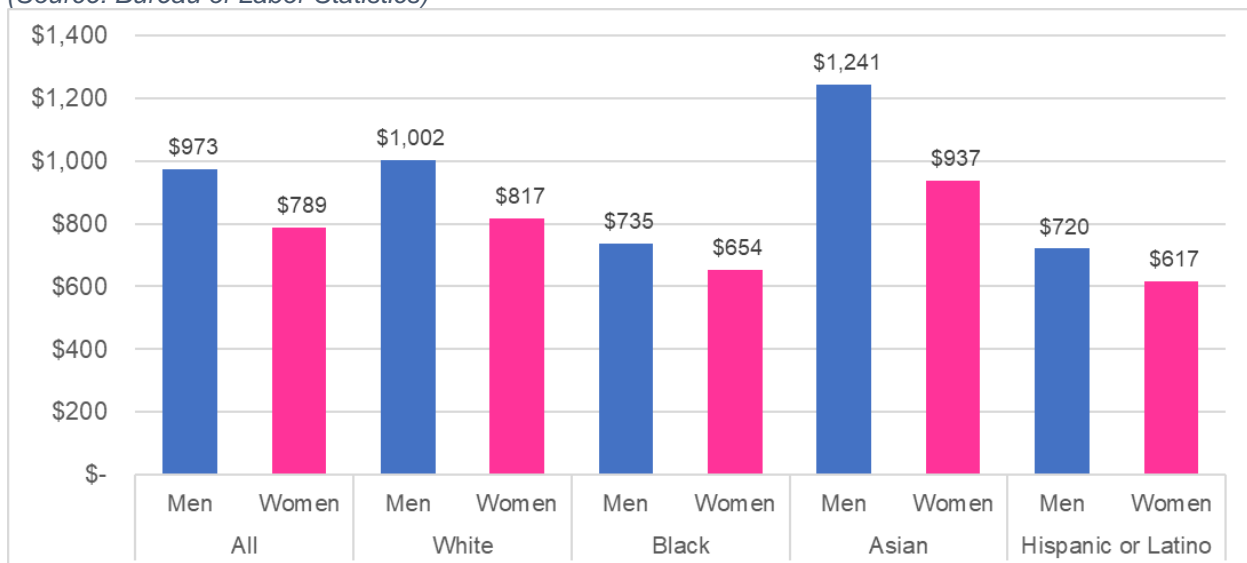
What is a pay equity analysis?

A pay equity analysis is an internal examination of your pay practices to uncover outliers and potential disparities in compensation for members of a protected class. Specifically, this analysis seeks to identify any employees whose pay is outside their identified pay grade (higher or lower) and to understand if employees who are members of a protected class receive less compensation than their peers.

Why is it important to examine internal equity?

Although legislation prohibiting discriminatory compensation practices has been in place for decades, gaps in pay for certain groups persist and these differences can't be fully explained by valid factors. Figure 1 highlights these gaps using data published by the United States Department of Labor's Bureau of Labor Statistics.

Figure 1: 2018 Median Weekly Earnings by Gender and Race/Ethnicity
(Source: Bureau of Labor Statistics)



Although there are circumstances in which a protected group is intentionally discriminated against, more frequently gaps are maintained or widened by policies that are intended to be neutral or nondiscriminatory. Disparate impact refers to employment and other practices that have a disproportionately adverse effect on people of a

protected class more than others. Unless organizations collect and analyze relevant data on their employment practices (e.g., hiring, firing, promotion, pay, etc.), they may unknowingly be propagating discrimination and making themselves vulnerable to lawsuits. A pay equity analysis is one method that organizations can use to monitor for disparate impact.

Furthermore, employees’ perceptions about the fairness of their pay is a significant driver of employee engagement, job satisfaction, and likelihood of staying with their current organization. A pay equity analysis can uncover inconsistencies that may be negatively impacting how employees feel about their pay.

What’s included in compensation?

Compensation includes all payments made to, or on behalf of, an employee as remuneration for employment. All forms of compensation are covered, including base salary and wages as well as non-base compensation such as bonuses, perquisites, cleaning or gasoline allowances, reimbursement for travel expenses. Non-base compensation can be discriminatory even if base compensation is not.

What legislation governs compensation discrimination?

Overview of Legislation

Several federal laws protect employees from discrimination in any aspect of employment—including compensation and benefits. These laws are enforced by the U.S. Equal Employment Opportunity Commission (EEOC). For more information about how these laws protect against discriminatory benefits practices, see the [Benefits Compliance](#) document. Key federal laws are summarized in Table 1.

Table 1: Key Federal Laws Governing Discrimination

| Legislation | Basis for Protected Status | Organizations Impacted | Additional Information |
|--|--|-------------------------------------|---|
| Age Discrimination in Employment Act (ADEA) | Individuals 40 or older | Employers with 20 or more employees | |
| Title I of the Americans with Disabilities Act (ADA) | Individuals with a disability or who have a relationship or association with someone with a disability | Employers with 15 or more employees | Disability discrimination includes not making reasonable accommodation. |

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|--|--|-------------------------------------|--|
| Equal Pay Act (EPA) | Gender | Nearly all employers | Men and women in the same workplace must be given equal pay for substantially equal work (jobs that require equal skill, effort, and responsibility, under similar working conditions). |
| Title VII | Race, color, religion, national origin, and sex (including gender identity, sexual orientation, and pregnancy) | Employers with 15 or more employees | Title VII is broader than the Equal Pay Act and prohibits wage discrimination even when the jobs are not identical. Comparisons can be made to “similarly situated” employees, which is a more relaxed standard. |
| Genetic Information Nondiscrimination Act (GINA) | Results of an individual’s or their family members’ genetic tests; Family medical history | Employers with 15 or more employees | An employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual’s current ability to work. |

ADA, ADEA, and Title VII also make it illegal to limit the employment opportunities of a protected class. This includes any actions that segregate or classify protected class employees into lower paying jobs or reduce their access to higher paying jobs.

Ohio Revised Code (4112.02) also prohibits discrimination on the basis of military status.

EPA and Substantially Equal Work

Job content—not job titles—determines whether jobs are substantially equal. Job content can be compared through a process called job evaluation. The following factors are examined to determine whether jobs are substantially equal:

- **Skill:** measured by factors such as the experience, ability, education, and training required to perform a job
- **Effort:** amount of physical or mental exertion needed to perform a job
- **Responsibility:** degree of accountability required in performing a job
- **Working conditions:** environmental surroundings and physical hazards of the job.

Unlike the EPA, there is no requirement under Title VII, the ADEA, or the ADA that the jobs must be substantially equal.

Legally Permissible Differences in Compensation

Differences in pay are permissible when they are based on “affirmative defenses.” Employers are responsible for proving that pay differentials are tied to one or more of the following affirmative defenses:

- Seniority (e.g., time in job or a particular salary grade, work experience with previous employers)
- Performance quality (e.g., performance rating)
- Differences in quality or quantity of production (e.g., incentive system)
- Some factor other than protected class (e.g., shift differentials, education, training).

How do you conduct a pay equity analysis?

The steps to conduct an equity analysis of base pay are below. A similar approach can be used to examine other forms of compensation.

1. Determine which employee group(s) you want to analyze. Only employees who engage in comparable or substantially similar work should be compared.
2. Examine your current pay practices and policies to identify the factors that are used to set base pay.
3. Compile relevant data. Breakdown total compensation to isolate base pay. Gather information on the employees who will be included in the analysis such as protected class identifiers (e.g., gender, race) and factors used to set base pay (e.g., education level, years of experience).
4. Sort base pay from highest to lowest.
5. Compare pay.
 - *Outliers Analysis*: Look for individuals who are not within the current identified pay grade.
 - *Median Analysis*: Look for medians that are substantially different for protected classes.
 - *Mean Analysis*: Look for means that are substantially different for protected classes.
 - *Multiple Regression Analysis*: Analysis to determine if differences in means are large enough to be statistically significant. Specifically, having two means that are statistically different indicates that there may be discrimination. If pay disparities are found, examine whether these differences can be explained by legally defensible factors used to set base pay.

Corrective Action for Compensation Discrimination

If corrective action is required, you **cannot** reduce the compensation of a higher-paid employee to fix the pay disparity. Adjustments should include a salary increase and back pay equal to the amount of the unlawful difference.

What can you do to ensure equitable pay?

1. Conduct a pay equity audit to identify whether there are any issues or areas that can be improved.
2. Examine policies for setting compensation and ensure they are based on affirmative defenses and consistently applied.
3. Utilize job evaluation to place new positions in your compensation structure.
4. Establish transparent compensation structures and communicate them to all employees.
5. Do not ask for previous compensation rates to avoid perpetuating past discriminatory practices.
6. Train leadership on equitable pay practices.

References and Additional Resources

EEOC Facts About Equal Pay and Compensation Discrimination

<https://www.eeoc.gov/eeoc/publications/fs-epa.cfm>

EEOC Compliance Manual- Section 10: Compensation Discrimination

<https://www.eeoc.gov/policy/docs/compensation.html>

This Manual Section sets forth the standards under which compensation discrimination is established in violation of Title VII of the Civil Rights Act (Title VII), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), or the Equal Pay Act (EPA).

EEOC Information on Types of Discrimination

<https://www.eeoc.gov/laws/types/index.cfm>

Learn about the various types of discrimination prohibited by the laws enforced by EEOC. The EEOC also provide links to the relevant laws, regulations and policy guidance, fact sheets, Q&As, best practices, and other information.