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Pay Equity: New Pressures, New Strategies

More aggressive regulation for pay equity represents a stern call to action for employers to review their job and pay structures, as well as analyze pay differentials to ensure that they understand their data, with a focus on pay gaps and business-related factors that may or may not explain them.

By Stefan Gaertner, Gail Greenfield and Brian Levine
Tuesday, April 12, 2016

Pay equity, the notion that pay levels should be equitable for all employees regardless of their demographic background, including race and gender, is top-of-mind for many executives these days. Interest in this topic has reached new levels, as exemplified in previously unimaginable efforts by large organizations such as Amazon, Apple, Gap, Salesforce and UBS to publicly discuss and disclose their pay information and existing processes.

In fact, the National Committee on Pay Equity has designated today as Equal Pay Day, symbolizing how far into the year women must work to earn what men earned in the previous year. Equal Pay Day was originated by NCPE in 1996 as a public awareness event to illustrate the gap between men's and women's wages.

Indeed, investors are pressing for this information -- and leading companies are looking to get out ahead of such demands. The World Economic Forum holds sessions to discuss equal pay for equal work and publishes its own research, projecting that it will take more than 100 years to achieve equal pay, on a global basis, for equal work between men and women. In the United States, celebrities such as Patricia Arquette and Reese Witherspoon are activists for the cause, and a new documentary, "Equal Means Equal," investigates pay inequity as the cornerstone of the broader struggle for women's rights, while legislators have launched a series of efforts to monitor and regulate comparative pay levels.

Although regulatory and cultural pressures have played a role in focusing executives on this topic, organizations globally have strategic reasons to be concerned. Consumer product companies -- broadly defined -- notice that their products may not optimally serve all of their clients equally well if their product developers are predominately white men.

In fact, talent shortages in traditionally male occupations have also led to re-evaluation of historically narrow workforce strategies. In all, business needs combine with regulatory and societal pressures to evaluate all processes to attract, retain and motivate a diverse workforce -- and data play a key role in this evaluation.

Recent regulations aim to speed up change in two ways: by making it easier for plaintiffs to sue successfully and by raising awareness in the broadest sense, including monitoring pay data through standard reporting. The California Fair Pay Act of 2015 is probably the best example of a law that strengthens the ability of plaintiffs to successfully sue for pay discrimination, and it is considered the most aggressive equal pay law in the United States.

To understand this, consider the key reason it is generally difficult for plaintiffs to win pay equity court cases. Many organizations have hundreds of job titles, each with its own job description. Defendants often argue that pay levels are unique by job, making it difficult to establish a meaningful employee pool for pay comparisons. Statistics to detect pay differences require a fairly large number of employees within a pool, making a strategy of employee "fragmentation" a successful defense strategy.

The California Fair Pay Act of 2015 has quite a few provisions, but the key one -- in our view -- addresses the point above. The definition of a relevant employee pool for comparison has been broadened to include employees performing *substantially similar work* based on a composite of skill, effort, and responsibility. No longer can analyses be conducted only at the level of the job. The law covers only gender-based pay differences, but it has relevance for any organization with a workforce in the state of California. In all, the law clearly demonstrates that pay equity is a key concern to the state. Employers are advised to look at their data to be prepared.

Other U.S. states are drafting their own laws to advance fairness in pay. New York, for example, amended its equal-pay law (Labor Law Section 194) effective Jan. 1, 2016. Similar to the California law, it broadens the potential basis of comparison to cross both jobs and geographies.

In both states, employers can no longer justify pay discrepancies by relying on "any factor other than gender." The new provisions now clearly state that any factor used to justify pay differences must be job related -- examples outlined in the New York law include education, training and experience. The burden is now on the employer to explain pay gaps using legitimate business reasons.

On the federal level, President Obama announced several legislative actions on Jan. 29, 2016, to further advance equal pay for all workers in the United States. Among the provisions is a proposed requirement for all employers with 100 or more employees to report summary data on paid wages in their EEO-1 form. Employers need to be ready to tell their stories to explain the proactive work that they are undertaking, the scope of issues they are working to address, and to make clear that the reality of the "pay gap" cannot be captured in such aggregate statistics. The White House also announced a summit on the United State of Women, which is likely to generate additional initiatives to advance employment and other women's rights.

More aggressive regulation for pay equity is clearly a trend. We believe this represents a stern call to action for employers to review their job and pay structures as well as analyze pay differentials to ensure that they understand their data, with a focus on pay gaps and business-related factors that may or may not explain them. Employers also need to rectify any issues identified. We find that the all-too-common "wait and see" approach is not effective -- once a plaintiff knocks on the door, it is too late to craft a story or actually address gaps in an orderly fashion. So, what can companies do today?

There are a number of proactive steps an organization can take to address pay equity now.

Regular Assessment

First and foremost, organizations can start to assess internal pay equity on a regular basis -- at least annually. Do not go for a simple average-pay-by-group approach, as it is not meaningful and is irrelevant when it comes to actual lawsuits. Instead, we recommend a robust statistical approach -- such as multiple regression -- to ensure that legitimate differences in pay are accounted for in the assessment. Pay equity does not mean that all people in an organization should be paid the same amount, but an organization needs to ensure that observed pay differences are due to legitimate factors, such as job-related skills, performance/productivity, company tenure, prior work experience, salary grade, work location and education.

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Using a robust statistical approach will enable the organization to spend its limited compensation dollars wisely by ensuring that internal equity adjustments are focused on groups with unexplained pay gaps (that is, pay gaps that cannot be explained by the legitimate factors accounted for in the assessment). Mercer's most recent *When Women Thrive, Businesses Thrive* global research study shows that only 35 percent of organizations have a pay-equity process that is built on a robust statistical approach

Group Employees for Comparisons

Second, as part of a robust statistical approach, ensure that employees can be grouped into meaningful pools for comparison purposes -- not too narrow and not too broad. We believe that the provisions in the California Fair Pay Act are a good starting point. Few states and courts will continue to uphold a narrow "equal work" stance when evaluating pay gaps; a relaxation of this standard toward "substantially similar work" is likely to occur. For some organizations, this might mean that they have to conduct or renew a formal job evaluation.

Implement Formal Remediation Processes

Third, have a dedicated team responsible for assessing pay equity and implement a formal remediation process. This team should conduct (or oversee) the pay equity assessment, identify groups with unexplained pay gaps, conduct targeted research on specific employees potentially requiring a pay adjustment, document explanations for making or not making adjustments, and ensure that adjustments are being made.

Ideally, this remediation process would be tied to the organization's year-end compensation process. According to Mercer's WWT research, 34 percent of organizations have a formalized remediation process. The figure is highest in the United States/Canada (40 percent), followed by Latin America (37 percent), Australia/New Zealand (33 percent), Europe (28 percent) and Asia (25 percent). Notably, Mercer's research shows that having a team responsible for pay equity, coupled with a process that relies on a robust statistical approach, is linked to improved gender-diversity outcomes.

Be Proactive

One such practice is to reduce the organization's reliance on salary history (or salary expectation) in setting starting pay for new hires. Another practice is to rely less on negotiation in setting starting pay. Another step would be to ensure that employees taking leave are not inadvertently penalized in year-end pay decisions.

Ultimately, the most powerful strategy is to consider the unique strengths of women identified in the *When Women Thrive* study as collaborating, connecting and managing employees and ensure that they are associated with commensurate pay and opportunity. If anything, it's important to look at pay practices through a broad lens, since pay differences within job families are dwarfed by the differences in pay that occur as women and men progress at different rates.

Achieving pay equity is by no means a simple challenge, but organizations can and must rise to it. Today -- Equal Pay Day! -- is a perfect time to start.

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