



WOMEN- SPLAINING THE PAY GAP

PRESENTER(S):
ELIZABETH BRADLEY
JOANNA COLOSIMO
MICHELLE DUNCAN
LISA HARPE

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Introductions



Elizabeth Bradley, Esq.
Attorney-at-Law
Panelist



Joanna Colosimo, I/O M.A.
Director of EEO Compliance
Moderator/Panelist

Lisa Harpe, I/O Ph.D.
Principal Consultant
Panelist



Michelle Duncan, Esq.
Attorney-at-Law
Panelist





Elizabeth Bradley, Esq.
Attorney-at-Law
Panelist

Introductions

Elizabeth B. Bradley has over fifteen years of experience representing employers and federal contractors in litigation and mediation matters before state and federal agencies and courts, as well as counseling and training private, public, and non-profit employers in all aspects of employment law.

In addition, Ms. Bradley has extensive knowledge and experience in counseling federal contractors in matters relating to OFCCP. She has represented U.S. corporations in successfully defending against OFCCP's review of the contractor's utilization rates and compensation practices. Ms. Bradley also has experience in advising employers on wage and hour compliance under federal and state laws; litigating discrimination and retaliation claims advanced under Title VII, ADA, ADEA, and comparable state and local statutes; conducting internal investigations involving discrimination complaints; performing wage and hour compliance reviews; and drafting and negotiating employment agreements including non-compete and non-solicitation provisions.

Ms. Bradley has a broad-based practice counseling and representing employers on compliance with federal and state workplace laws and regulations and designing and implementing sound employment practices and policies. Ms. Bradley has broad experience in conducting effective investigations of workplace claims and grievances, including misconduct, discrimination, retaliation, harassment and other claims employers typically face. She has been called upon by clients to conduct corporate internal investigations on sensitive employment matters, including allegations of serious misconduct and sexual harassment charges involving executive personnel. In addition to conducting workplace investigations, Ms. Bradley provides guidance and legal advice to clients handling their investigations in-house. Ms. Bradley has drafted investigation policies and procedures, and sexual harassment and other EEO policies for employers and has counseled employers about their responsibilities under Title VII of the Civil Rights Act and other EEO laws.



Joanna Colosimo, I/O M.A.

Director of EEO Compliance
Moderator/Panelist

Introductions

Joanna Colosimo, M.A., is the Director of Compliance & Workforce Analytics and Principal Consultant at DCI Consulting Group, where she provides guidance and support to clients regarding employment discrimination statutes and regulations, OFCCP audits, affirmative action planning, pay equity, and diversity and inclusion. Joanna manages DCI's EEO Compliance division, consisting of consultants and analysts who consult with Federal contractors and subcontractors on OFCCP compliance requirements and pay equity and diversity issues.

Joanna has extensive experience working with Fortune 1000 clients to conduct and interpret complex adverse impact, utilization, and systemic compensation discrimination analyses in the equal employment opportunity context. Often, these analyses are conducted in response to formal high-stakes investigations initiated by Federal EEO enforcement agencies (e.g., OFCCP and EEOC). Joanna has vast experience in assisting clients with strategically defining their compliance programs and mitigating risk across industries and institutions of higher education.

Prior to joining DCI, Joanna worked on the creation and implementation of compliance programs in the private sector. Her background is primarily focused on the management and execution of Affirmative Action Plans. She also has project management experience for the validation of corporate-wide selection testing. Joanna has served as the on-site expert for AAPs, adverse impact, validation, quality of hire, and employment analytics. She also has familiarity with implementation and analysis of organizational development programs such as job satisfaction, quality of work life programming, and organizational justice.



Lisa Harpe, I/O Ph.D.
Principal Consultant
Panelist

Introductions

Lisa D. Grant Harpe, Ph.D., is an Industrial Psychologist and Principal Consultant, HR and EEO Analytics Area Lead in the Employment & Litigation Services Division at DCI. In this role, Dr. Harpe assists companies in the evaluation of the fairness of their employment practices. This includes statistical and qualitative analysis of hiring, performance appraisal, compensation and promotion practices, as well as coordination with attorneys and employers involved in discrimination litigation or Office of Federal Contract Compliance Program (OFCCP) audits. She brings 20 years of expertise in industrial psychology and statistical analysis.

Dr. Harpe joined DCI after 17 years working with the Peoplefluent Research Institute (PRI), part of the Workforce Compliance and Diversity division of Peoplefluent. Prior to that, she was the first Industrial Psychologist for the North Carolina State Highway Patrol where she implemented, managed and evaluated promotion and performance appraisal systems for the organizations 1,200 officers and validated a new hiring system for Troopers.

Dr. Harpe holds a bachelor's degree in psychology from Wake Forest University and a master's and Doctor of Philosophy degree in psychology from North Carolina State University.

Introductions



Michelle Duncan, Esq.

Attorney-at-Law

Panelist

Michelle Duncan is a Principal in the Denver, Colorado office of Jackson Lewis P.C. Michelle is a member of the Affirmative Action Compliance and OFCCP Defense Practice Group and the Pay Equity Resource Group. Michelle focuses her practice on representing employers in affirmative action and employment discrimination matters before OFCCP. Since joining Jackson Lewis, Michelle has assisted employers in numerous OFCCP audits and complaint investigations throughout the country.

Michelle also regularly counsels clients on the design and implementation of company-wide AAP structures, applicant tracking systems, pre-employment tests and other compliance issues. She counsels clients on pay equity issues and directs pay equity analyses for employers in many industries including higher education.

Michelle joined the firm after working for nearly fourteen years as a trial attorney with the U.S. Department of Labor, Office of the Solicitor. During her tenure with the U.S. Department of Labor, Michelle was widely regarded as a leading expert on OFCCP litigation. She litigated numerous OFCCP cases and provided ongoing counsel to high-level OFCCP officials.

Michelle offers unique insights into the inner-workings of OFCCP and the Solicitor's Office as well as what she is seeing in audits today.

Agenda

- Quick Audience Poll
- Considerations BEFORE getting started with a Pay Project
 - Legal, Practical
 - Foundational: Pay Gap vs. Pay Equity
 - What question are you asking?
- Discussion Areas
 - Attorney-Client Privilege
 - Pay Gap
 - What it is and isn't answering
 - Publicizing results
 - Pay equity studies
 - Legal and Analytical Framework
 - Research needed post study
 - Equity adjustment considerations
 - Holistic Review
 - What is really driving pay? Representation and conducting a holistic review.

Has your organization conducted a Pay GAP analysis?

Yes

No

Maybe?

If a Pay Gap study was conducted, did your organization publicize results?

Yes

No

N/A

Has your organization conducted a Pay EQUITY study?

Yes

No

Maybe



Did your organization make adjustments as a result of a pay equity study?

Yes

No

N/A

Did your organization publicize either internally or externally that a pay equity study was being conducted?

Yes, Internally Only

Yes, Both Internally
and Externally

No

N/A



Start With Your End Goal

Before You Get Started

- What Do You Want to Achieve?
 - Determine the female / male wage gap?
 - Identify pay disparities between genders / races?
- What Do you Want to Do?
 - Publicize wage gap information?
 - Publicize pay equity efforts?
 - Make pay adjustments?
- Practical Considerations
 - Budget
 - Time, resources, effort

Pay Gap vs. Pay Equity Study

Pay Gap



What do women make compared to men in the company, overall, on average?

Pay Equity

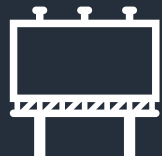


Is there a pay difference between men and women in similarly situated groups after accounting for job-related factors?



What is the purpose or objective of the study?

Will impact the type and framework of the study



Who is the audience?



What will you do with the results?

Analytical Considerations

Discussion



Attorney-Client Privilege

Questions

- Can pay gap and pay equity studies be protected by the attorney-client privilege?
- Is the work of non-attorney experts covered by the attorney client privilege?
- What are other things employers should consider?



Privileged



Outside Counsel (substance)

Covering Non-Attorney Expert Work

- Client hires attorney, attorney hires expert
- Expert communications to attorney
- Expert invoices reviewed by attorney, but may be paid by the client
- Advice ultimately rendered to client is attorney's, not consultant's
- Maintain confidentiality and distribute communications only to those who “need to know”



Pay Gap & PUBLICIZING Results

Questions

- What does a pay gap study really tell a company about its pay practices?
- How does it differ from what a pay equity study reveals?
- What are some considerations in publishing pay gap results?

“Pay Gap” in the news

CNN Money u.s. + Business Markets Tech Media Personal Finance Small Biz Luxury stock

Amazon says it pays women and men equally

by David Goldman @DavidGoldmanCNN
March 24, 2016: 12:27 PM ET

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Facebook, Microsoft Say They Offer Equal Pay to Women, Men

Major U.S. tech companies have been pressed by investment firm to reveal gender-pay details

NYSE: A NYSE COMP COMPANY

17712.58 0.29% SEP 500 2013.68 0.91% Nasdaq 4771.36 0.21% U.S. 10 YR 4.22 Yield 1.71% Crude Oil 44.57 0.56% Euro 1.3404

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Amazon Survey Shows Equal Gender Pay Among Its Workforce

Women's 2015 compensation was 99.9% of men's in equivalent jobs but women make up 39% of workforce

WOMEN IN THE WORLD

ZIPLINE NEW YORK SUMMIT EVENTS

Kicking goals

Facebook and Microsoft achieve pay equality

BY WSJW STAFF 04/22/16

NILG 2020 VIRTUAL CONFERENCE WEBINAR SERIES

What is the Pay (or Wage) Gap?

$$\text{EARNINGS RATIO} = \frac{\text{Women's median earnings}}{\text{Men's median earnings}}$$

$$\text{PAY GAP} = \frac{[\text{Men's median earnings} - \text{women's median earnings}]}{\text{Men's median earnings}}$$

Unadjusted Pay Gap

Pick what form of compensation to analyze:
total compensation vs. base pay

Calculating the Unadjusted Pay Gap		
Sex Comparison	Average Pay	Unadjusted Pay Gap
Women	\$80,000	.80 (women employees make 80 cents to the dollar that men employees make)
Men	\$100,000	
Race Comparison	Average Pay	Unadjusted Pay Gap
Minority	\$90,000	.95 (minority employees make 95 cents to the dollar that non-minority employees make)
Non-Minority	\$95,000	

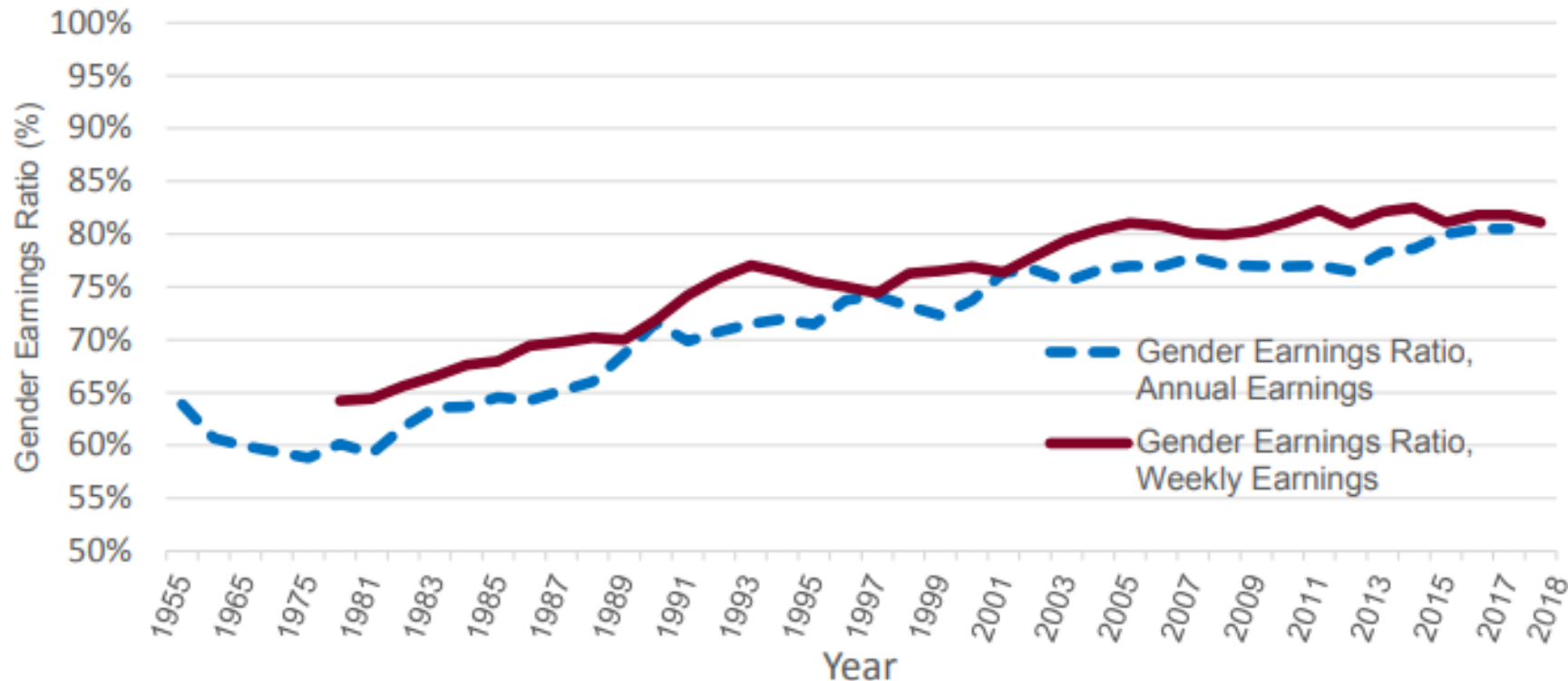
- This is the calculation used for the oft-cited .80 'pay gap' metric, a blunt indicator at best.
- More refined analysis often tells a different story.

Partially Adjusted Pay Gap

The ratio of women's and men's median annual earnings was 80.5 percent for **full-time, year-round** workers in 2017. This means a gender wage gap for full-time, year-round workers of 19.5 percent.

Institute for Women's Policy Research

Figure 1. The Gender Earnings Ratio, 1955-2018, Full-Time Workers





What Pay Gap Does & Does NOT tell us



“...But while more companies may be reporting a lack of a gender pay gap, comparing people doing the same work doesn't tell the full story ...



*“It's accurate for what it claims to be -- a lack of a pay gap when looking at the same jobs -- **but it doesn't get at the broader issue of women being underrepresented in these fields and leadership positions ...**”*

- Lisa Maatz, VP of government relations, American Association of University Women

Summary of Pay Gap Analytics

Conduct these analyses under attorney-client privilege, with an expert.

Think through if and how results will be communicated.

Understand what the study is and isn't

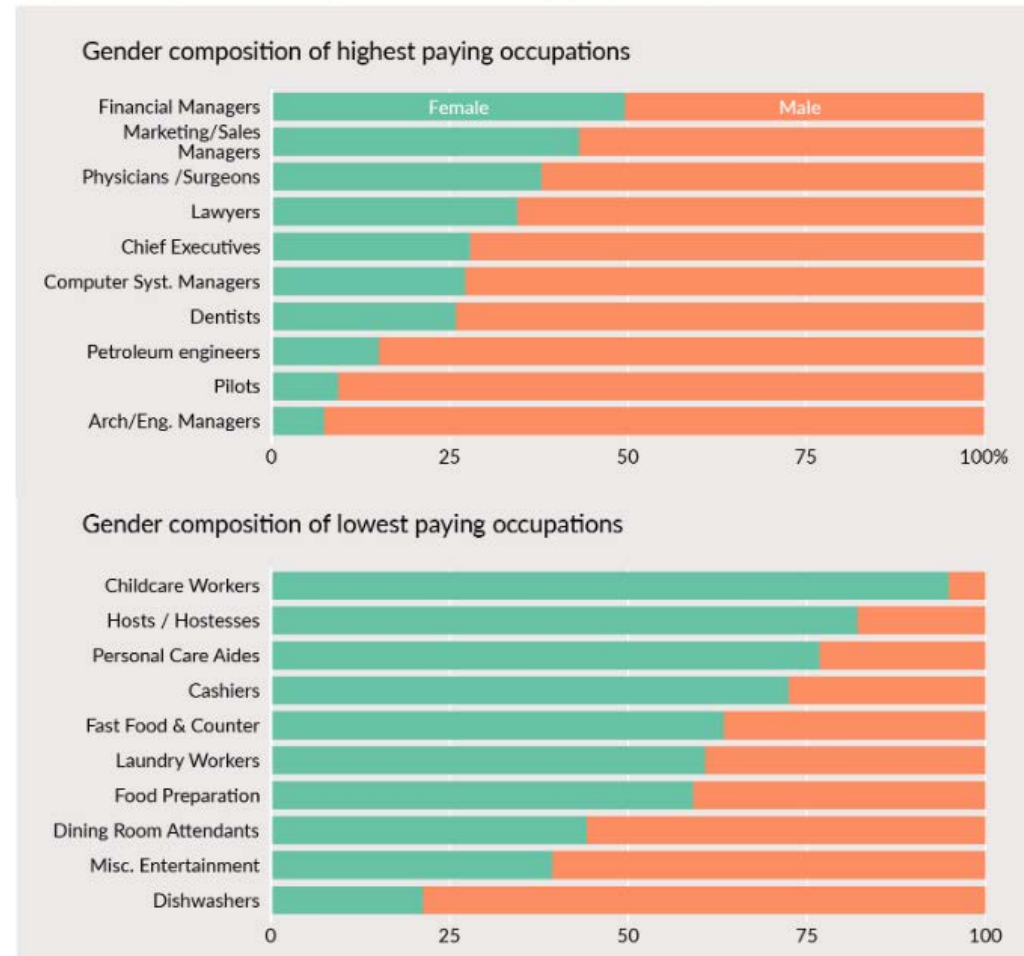
- Answers a simple question – What is the company's wage gap?
- *Does not answer the question of whether there is evidence of systemic pay bias within your organization.*
- *Does not answer the question of broader societal WHY there may be overall, unadjusted pay differences.*



Occupational Choice Plays a Role

- In part, the pay gap reflects choices. Different demographic groups often choose different college majors and types of jobs.
- Occupational gender segregation has decreased over the last 40 years.
- Increasing the number of women in traditionally male fields will likely improve wages overall for women.

The enduring U.S. divide between men and women at work
The gender composition of the highest- and the lowest-paying U.S. occupations, 2015

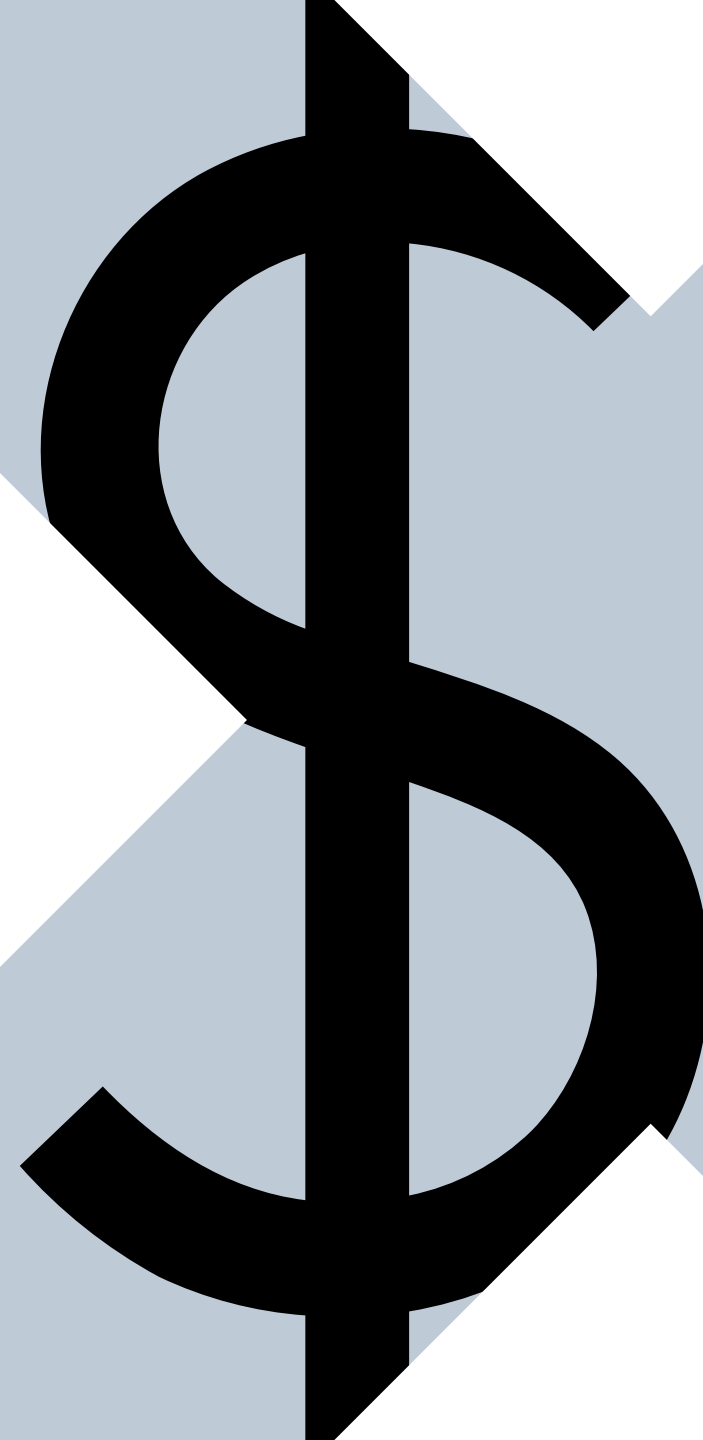


Source: Author's compilation of available gender composition data for broad occupational categories with highest and lowest mean wages according to Bureau of Labor Statistics tables "May 2015 National Occupational Employment and Wage Estimates" and "Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity."





Pay Equity





Pay Equity Analysis



Title VII



Equal Pay Act



OFCCP-Style



State-Based





Determine Pay Groupings

Different definitions under different laws

- EPA - performing *equal* or “*substantially equal*” work
- Title VII - *similarly situated*
- *State Laws*
 - *California, Illinois, New Jersey: “substantially similar work”*
 - *Massachusetts: “comparable” work*
 - *Oregon, Maryland: “work of a comparable character”*
 - *Washington: “similarly employed”*

Requires an analysis of the similarity of job content

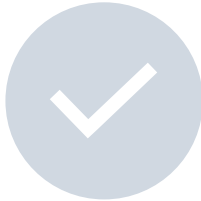
- Duties
- Levels of responsibility
- Skills required
- Levels of effort

Job analysis

- Identifies the critical work duties as well as the knowledge, skills, and abilities required to perform a job
- Job analysis data can be compared to evaluate the similarity of jobs



Key Components of Study



IDENTIFY
APPROPRIATE
GROUPINGS



IDENTIFY JOB-
RELATED FACTORS
THAT INFLUENCE PAY
AND DATA
AVAILABILITY



IDENTIFY
APPROPRIATE
ANALYTIC METHOD



ANALYZE DATA



INVESTIGATE
DISPARITIES



DETERMINE
WHETHER
ADJUSTMENTS ARE
APPROPRIATE



PLAN FOR
COMMUNICATION

What does Regression Do?



A regression analysis first determines the factors that are related to pay and the importance of each factor

We don't decide the weights for each factor, the regression "decides" based on how each factor is actually correlated with pay

Thus the regression tells us what is actually related to pay, not what should be related to pay

The weights assigned to each factor will be different for each SSEG



Once the regression analysis determines the weights for each factor, it applies those weights to each employee to determine what the formula predicts the employee should be paid, based on those factors



The regression analysis then compares the "predicted salary" with the employee's actual salary



If this difference is large, the employee is identified as an "outlier"

High outliers appear to be overpaid

Low outliers appear to be underpaid

Interpreting and applying results

- Standard statistical testing relies on **p-value** to indicate whether results are significant
 - Often interpreted as results “unlikely to occur by chance”
- *The ASA’s Statement on p-Values: Context, Process, and Purpose* (2016)
 - *p-values*, while “useful,” are “commonly misused and misinterpreted.”
- Better understood as **average group difference unexplained by factors in pay equity model**
 - **Starting point** rather than end of analysis



Conducting Follow-Up Research



Are jobs grouped correctly?



Are there any special cases that should be removed?



Are there other variables that should be included in the regression?



Are any of the data elements wrong?

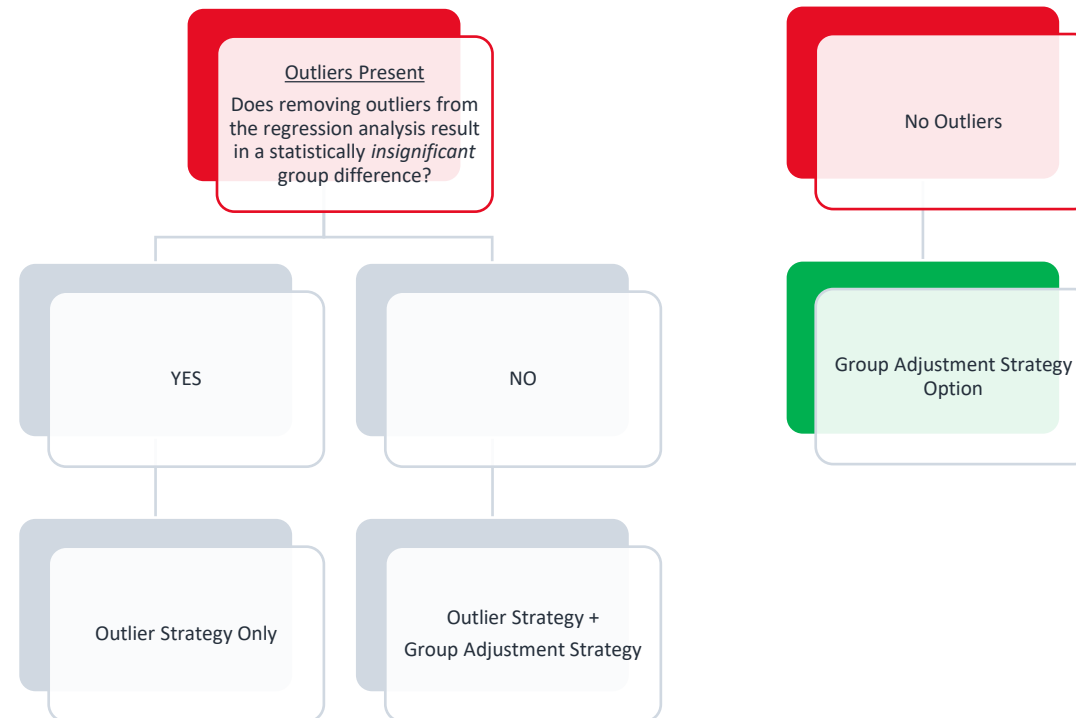
Salary
Job, grade, service dates
Market Mid data



Are any of the employees misclassified?

Wrong grade/band
Wrong job title

Analytical View: Salary Adjustment Strategies





A Tale of Two Wage Gaps

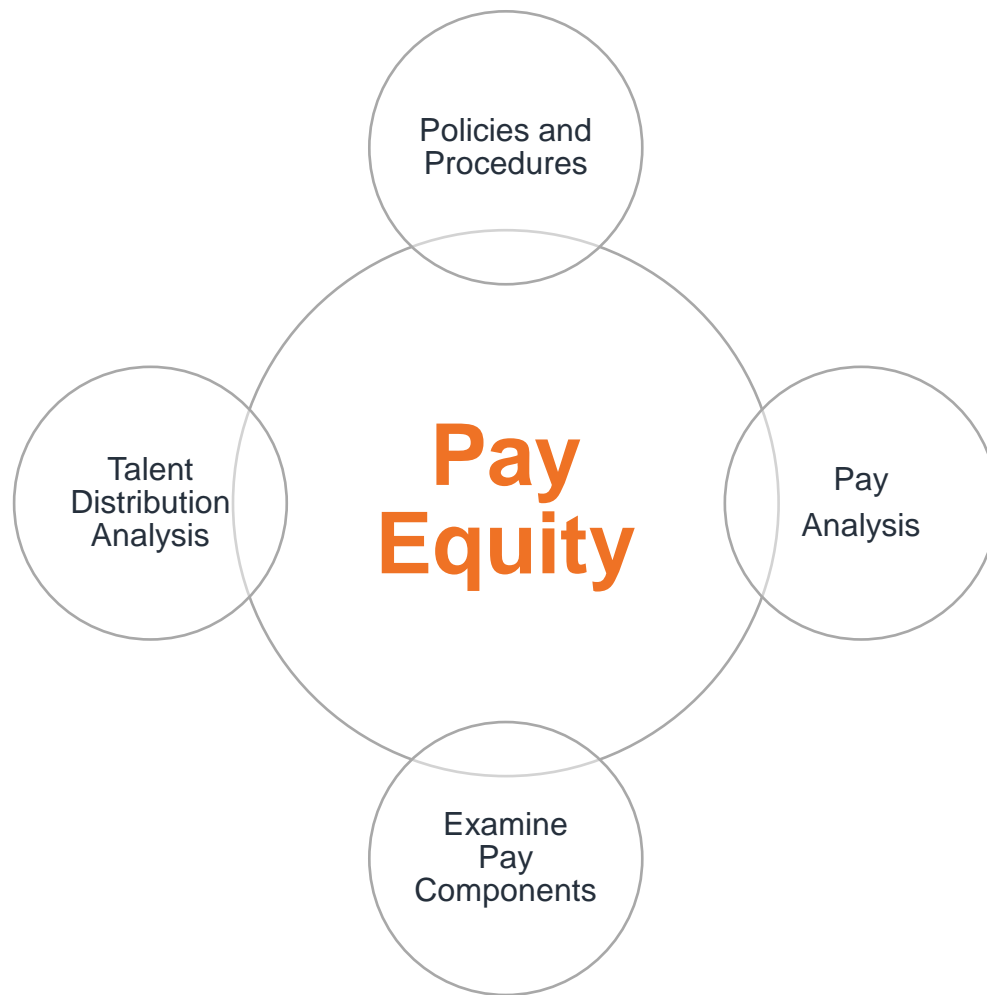
Wage Gap

- Understand what it is, and what it isn't.
- Does not answer the questions of pay equity.
- Often is a function of talent distribution – who is in the higher paying roles?

Getting at the Root Cause

- Holistic review practices to identify relationships between attraction, selection, and retention of talent to be able to address goals and initiatives.
- Focus on recruitment and selection.
- Identify gaps.
- Identify potential trends in the workforce.
- Understand opportunities.
- Tie metrics to current initiatives and programs.
- Consider what can be leveraged to build out your story – more than JUST role-to-role pay comparisons, and MORE than just workforce representation.

Holistic Review



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