THE PUSH TO ADVANCE

PAY PARITY

WorldatWork.

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With the maelstrom of social issues coming to a head in 2017, gender pay inequality once again is at the forefront, although the issue has been discussed for decades and remains a global social challenge. As human resources and compensation professionals, we cannot forget that it also is a legal issue, one that "depresses wages and living standards for employees ... prevents the maximum utilization of the available labor resources ... burdens commerce and the free flow of goods in commerce, and constitutes an unfair method of competition," according to the Equal Pay Act of 1963.

While there have been numerous attempts at the federal level to enact laws that would improve or even alleviate pay inequality (see "A Brief History of Federal Equal Pay Legislation"), women today make only 80 cents to every dollar made by men, based on a U.S. national average. This statistic prevails, even though women make up nearly half of the employed U.S. labor force, enroll and graduate from higher education institutions at rates higher than men, and make a majority of household buying decisions. Why does this inconsistency still exist when there are rules to prevent and prohibit it? Much of the answer may lie in the fact that grievances are difficult to prove, and data can be scarce or inconsistent.

In September 2017, the Trump administration set aside an effort to collect pay data by gender, race and ethnicity for businesses with more than 100 employees, stating that such efforts would be ineffective and too burdensome for employers. (See "Federal Efforts.")

Nevertheless, all but two states — Alabama and Mississippi — have had their own pay equality laws in place for years. And with increased focus on the issue, many states — including California, Delaware, Maryland, Massachusetts, New York, Oregon and the territory of Puerto Rico — recently made their laws more robust, providing for retaliation protections and, in some cases, eliminating the ability of a prospective employer to ask about salary history — a real potential game-changer for companies as they seek to hire the best talent at the right compensation level.

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A Brief History of Federal Equal Pay Legislation

When	What	The Outcome
1942	The National War Labor Board	Adopted policy to provide women with equal pay in jobs where they replaced males.
1945	Women's Equal Pay Act	Congress introduced a failed bill that would have mandated equal pay for "comparable quality and quantity" of work performed.
1963	The Equal Pay Act	Passed by Congress as an amendment to the 1938 Fair Labor Standards Act which mandates equal wages for equal jobs with skill, effort, and responsibility that is "performed under similar working conditions."
1964	Title VII of the Civil Rights Act	Bans employment discrimination on the basis of "race, color, religion, sex, or national origin."
1972	Educational Amendment of 1972	Expanded the Equal Pay Act to include white collar jobs, which were previously excluded.
1978	Pregnancy Discrimination Act	Strengthened protections for pregnant employees.
2009	Lilly Ledbetter Fair Pay Act	Expanded ability to file pay discrimination complaints beyond 180 days after an initial pay decision.

With no intended focus by the federal government (at least not now), we are finding that in addition to the initiatives by state and local authorities, pay parity also is being addressed by various stakeholders in unexpected ways:

- A few of the largest U.S. companies in the technology industry, including Amazon, Apple, Facebook, Microsoft and Uber, are voluntarily disclosing gender pay statistics.
- Activist and institutional investors are putting forth gender pay resolutions at annual shareholder meetings for publicly traded U.S. companies.
- Proxy advisory firms such as Institutional Shareholder Services (ISS) and Glass Lewis are including policies on gender pay in their 2018 proxy voting guidelines.
- Many board members are asking management about their company's policies and practices regarding gender pay parity.

So where does your company stand on this longtime social and legal subject? Is there an explicitly stated policy in the corporate handbook or only an implied perspective? Are you or others in the organization fielding internal or external questions on the topic? Has your company analyzed its own data to see where it stands?

Salesforce is just one example: CEO Marc Benioff took the issue seriously and spent $3 million in 2016 to help close the gender pay gap in his company. In 2017, he spent another $3 million to increase compensation for more than 11% of its workforce to further address gender pay gaps. He also made pay parity an explicitly stated priority for the company.

Many organizations could take a page from the Salesforce CEO's playbook by being more explicit in company policies and actions regarding gender pay. While it does have merit to simply state to large employee groups the importance of the issue, taking some initial action and outlining next steps are key to eventually resolving this problem.

Absent a CEO like Benioff, HR and compensation professionals have the means to push this discussion to the top using several steps to impart initiative and action.

Gather the Data

Take the time to download all pay data into an easily editable format that allows for various sorting capabilities. Include all employees, ranging from the lowest paid to the senior-most executives, along with title, grade, gender, ethnicity (if available), company and position tenure, educational background, historical annual performance assessment ratings, and a complete pay data history. Remember that elements of pay (e.g., annual incentives, long-term incentives) will vary by level of position, so look at all pay elements, not just base salary.

Evaluate the Data Using Different Lenses

Once the data is gathered in one file, it is time to begin the evaluation process. The key to this step is to not seek the best answer that positions the company and its practices in the best light, but rather analyze the data in multiple ways using different lenses to see if a real problem truly exists.

Determine Whether an Issue Exists

By looking at pay data though various lenses, one should be able to determine if an issue exists. Identify specific departments, functions, groups and/or individual positions of concern. Determine how many people are affected, by how much, and through what forms of compensation. Decide if this is a systemic issue, a corporate administration issue or something else entirely.

Develop Potential Solutions

Potential solutions should account for cost, impact, timing and exposure as well as the behaviors that resulted in the issue. Once we understand the who, what and where, we need to understand the why — the behaviors behind how we got to pay inequality. Solutions that fix only pay for affected individuals will not address the long-term behavioral issue. Re-education of HR departments, corporate recruiters and managers who make pay and hiring decisions likely is needed. Companies also should craft and communicate a procedure for employees to report pay inequality issues and determine how such reports will be investigated and resolved in the future.

Address the Issue

Select and approve the best, most efficient and reasonable approach to address the gender pay gap issue. Consider bringing the board of directors into the dialogue (if it's not already involved), as many boards are being asked or even pressured by activist investors on this topic, (i.e., 3% to 4% of shareholder proposals in 2017 were related to gender pay or related pay disparity). The company may even want to weigh the benefit of voluntarily disclosing, at a high level, the company's explicit policy on pay parity in its next proxy statement to help guard against external pressures.

Avoid Future Complicity

As long as companies hire or replace talent every day, pay inequity will be an issue. It is important to establish a regular process of review to stay on top of the issue. Companies may want to create a pool of funds to help address pay gap issues that creep back into the system along with determining ways to continually educate (and even discipline) managers who make pay or hiring decisions. Stay on top of pay gap issues reported by employees and keep the board informed of the internal processes to help avoid unintended issues in the future.

Making Strides

With collective focus and action, we can make a real impact and move the issue of pay parity forward faster than it has moved in the past 55 years. Perhaps by working together in an environment of social pressure for change, energized HR and management teams, along with their boards, will be able to accomplish what decades of federal laws have failed to do. **WS**

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Federal Efforts

In early 2016, President Barack Obama and the Equal Pay Task Force tasked the Equal Employment Opportunity Commission (EEOC), in partnership with the U.S. Department of Labor, to "help focus public enforcement of our equal pay laws and provide better insight into discriminatory pay practices across industries and occupations" to create new reporting for all U.S. companies with more than 100 employees.

Such a process would have required all qualifying companies to provide annual pay data by gender, race and ethnicity covering more than 63 million employees. While this information could be enormously helpful and allow for a better understanding of the scope and distribution of pay inequality, many believe the directive as written could create an undue administrative burden on companies. There currently are no reliable and comprehensive publicly-available data sources on the subject.