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## TAKING A CLOSER LOOK AT PAY EQUITY

**April 2022**  
**Insights Forum:**  
*Executive Summary*



# CHROS AND CEOS NEED TO USE EVERY TOOL THEY CAN FIND TO ATTRACT AND RETAIN TOP TALENT.

While organizations are looking at compensation factors such as salary levels, bonuses and raises, the issue of pay equity often goes unnoticed. That's a mistake that could provoke employees to quit and tarnish your organization's reputation. Another risk is that broad, systemic pay gaps could get your organization slapped with a wage discrimination suit.



“Now more than ever, it’s really critical as an executive to think about pay equity,” said Kerri Nelson, Ph.D., a director with SHRM Research. “Not just as an equity issue but also as a powerful tool to attract and retain top talent to your company.”



# TAKING A CLOSER LOOK AT PAY EQUITY.

Nelson explained that there are two ways of looking at pay gaps: “controlled” and “uncontrolled.” For example, an uncontrolled gap examines pay differences between male and female employees overall without accounting for differences in their experience, education and job title, among other factors. A controlled analysis accounts for all those factors, so the resulting data can identify causes that can and can’t be explained by job-related factors and indicate more systemic issues at work, such as gender and race.

## **Uncontrolled pay gap<sup>1</sup>**

- Women earn 82 cents for every \$1 earned by men.
- Black women earn 79 cents for every \$1 earned by white men.

## **Controlled pay gap<sup>1</sup>**

- Women earn 99 cents for every \$1 earned by men.
- Black women earn 98 cents for every \$1 earned by white men.



## **SMALL GAPS ADD UP.**

If you think that the controlled pay gap doesn’t look all that bad, think again. Even a gap of as little as a penny per dollar can add up throughout a career, especially when raises, bonuses and other compensation are calculated as a percentage of the employee’s salary. “It may seem trivial, but it can amount to hundreds of thousands of dollars lost over these workers’ careers,” Nelson said. “And we know that those discrepancies are not only bad for workers but also for companies.”

## SHORTCHANGED WORKERS WILL ACT IF YOU DON'T.

According to SHRM Research, about 1 out of 4 workers say they've experienced pay inequity. Often, workers find out they're earning less than a colleague not because their organization had audited the pay gap, but through office gossip. This puts their employer on the spot if the organization hasn't addressed the problem.

"The issue here," Nelson explained, "is that companies that don't address pay inequities proactively actually risk these employees surfacing those inequities themselves." SHRM Research revealed:

### **Workers who found out they make less than a colleague:**

Requested a pay raise	29%
Started to look for a new job	27%
Requested more information from their supervisor	18%
Requested more information from HR	12%
Did nothing or stayed quiet about the information	33%

"By not addressing pay equity in your company, you might actually create a culture of distrust," Nelson warned. "More than 1 in 4 employees started looking for a new job after learning that they were paid less than a colleague performing the same job, even though they had the same level of experience. That's particularly a big concern right now amid the Great Resignation."

# GAUGING THE GAP:

SHRM’s researchers found that conducting pay equity audits is the standard practice at many organizations, with 58% saying they undertake some kind of pay review. Equity audits are more common in larger organizations and those led by female CEOs.



## Percentage of organizations that conduct pay equity reviews by size

Organizations with 1-99 employees	48%
Organizations with 100-499 employees	54%
Organizations with 500-4,999 employees	61%
Organizations with 5,000+ employees	78%

## Where you should be looking.

It’s no surprise that gender is the most significant consideration when looking at pay inequity. But it’s not the only one that exists—or that should be measured in a pay audit.

## Employee characteristics tracked in pay equity audits according to SHRM Research

Gender	75%
Race/Ethnicity	64%
Age	48%
Disability Status	25%
Sexual Orientation	17%

“Some groups are faring worse in the pay gap than others, particularly Black women,” Nelson said. “If we focus on gender exclusively, it really fails to consider how race and age and other identities that people may have impact their pay. And that can have some serious consequences.”





# KEYS TO PROMOTING PAY EQUITY.

Organizations that don't have good data about pay differences and a solid plan for collecting it run the risk of discrimination complaints and legal actions, as well as taking a hit to employee morale and turnover. Here are five data-driven takeaways for building an effective pay equity auditing process, according to SHRM Research.<sup>2</sup>

## **Invest in data systems and technology:**

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Compared with organizations that don't conduct equity audits, HR professionals at firms that review pay equity are twice as confident that their data can explain pay gaps. They are 1.5 times as likely to maintain high-quality data systems to support pay equity reviews.

## **Provide training:**

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Those organizations that conduct equity audits are more likely to provide training on how to make and document business-related pay decisions and the importance of pay equity. Just 5% of companies that don't conduct audits hold training on making pay decisions, compared with 26% of companies that review pay equity.

# KEYS TO PROMOTING PAY EQUITY.

## **Engage leaders and people managers:**

Pay is an issue at all levels of the organization, but pay equity training is most often provided to HR staffers, with fewer senior leaders and even fewer people managers receiving pay equity training. While 85% of HR employees get training on documenting pay decisions, just 40% of people managers receive the same instruction.

## **There's a transparency gap, too:**

A whopping 94% of HR professionals say it's important for organizations to be transparent about pay equity, but less than half—47%—say their organization is open with employees about pay decisions.

## **Equity awareness starts—or stops—at the top:**

At organizations that don't conduct pay equity reviews, 47% of the HR professionals say equity audits aren't a priority for their senior leaders.



“Achieving pay equity isn’t a journey that you can accomplish overnight,” Nelson said. “Companies that begin taking these steps toward pay equity really are best positioned to remain competitive in this ultracompetitive market that we’re seeing right now.”

# EEOC COMMISSIONER JANET DHILLON: RETALIATION COMPLAINTS ARE SOARING

*The April Insights Forum guest speaker was Equal Employment Opportunity Commission (EEOC) Commissioner Janet Dhillon, who echoed SHRM's findings on the importance of pay equity. She also warned Forum members that pay audits could be used against them in wage discrimination complaints and that previously confidential information employers hand over to the commission can now be shared with the Department of Labor. She also shared her take on the worst employment abuses she had seen, calling them "egregious and shocking."*

*Commissioner Dhillon was nominated by former President Donald Trump and then confirmed as the 16th chair of the EEOC in May 2019. Her commission term expires at the end of June 2022. Before joining the EEOC, Commissioner Dhillon served as executive vice president, general counsel and corporate secretary of Burlington Stores Inc. and J.C. Penney Company Inc. She also was senior vice president, general counsel and chief compliance officer of US Airways Group Inc.*

**Pay-related complaints are becoming less common.** Commissioner Dhillon offered some encouraging data: While the percentage of complaints the commission receives regarding the Equal Pay Act remains steady at 1% to 1.5% of the total, the number of pay-related complaints dropped from 100,000 in 2012

"Pay equity has been relatively constant as a percentage," she said, "but what we are seeing is a very steady but significant decline in the number of charges we receive."

**But there are areas where complaints are increasing.** Commissioner Dhillon pointed to two growing categories of employment complaints: disability discrimination and retaliation by managers. Disability discrimination complaints rose from 26% of the commission's charges in 2011 to 37% in 2021.

She said retaliation complaints—incidents where an employer punishes an employee for legally protected activity—have grown to where they now make up 56% of all the charges filed with the commission. "That has been growing steadily and continues to be an area of focus for the commission."



# THEMES FROM THE EEOC COMMISSIONER

## **You may need to share pay equity audit results.**

Commissioner Dhillon warned that if your organization is a federal contractor, your pay equity audits are now subject to review by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). A directive issued by the OFCCP last month stated that employers are under a continuing obligation to conduct pay equity audits, which aren't protected by the attorney-client privilege or the attorney work product doctrine.

"If the OFCCP comes to take a look at your organization, [it's] going to want to see those pay equity audits," she said. "If you conduct an audit, your regulator may want to take a look at it. So if you are going to conduct an audit, you have to take action on the findings."

**Your confidential EEOC information may be shared.** Commissioner Dhillon noted that the EEOC gave the OFCCP access to the [EEOC's] enterprise data warehouse. "That means people in the Department of Labor have access to information that you are turning over to the EEOC, even if you're not a federal contractor," she said.

That's a significant change because, under law, the EEOC must keep employer information confidential, to the point that EEOC employees can be criminally prosecuted for unauthorized disclosures. Those rules don't apply to the Department of Labor.

"If you're disclosing sensitive information to the commission, you should be asking, 'Where is it going to go? Is it going to go outside the walls of the EEOC?' I think it's something for employers to be very aware of."

*"So if you are going to conduct an audit, you have to take action on the findings."*

## **Speeding up the review process.**

As the EEOC chair, Commissioner Dhillon saw the commission's backlog of charges drop to a 14-year low by the end of 2020. "That took a lot of work, and I was really proud of the work that was done," she said. In 2021, the backlog ticked back up, possibly because of an influx of COVID-19-related charges and other pandemic factors.


"The sooner that a charge can get addressed and resolved, the sooner you can take proactive action if the situation is a broader issue for you other than that one particular charge," Commissioner Dhillon said. "Charges are not like fine wine—they don't age well."

## THEMES FROM THE EEOC COMMISSIONER

### **Expect more and different EEOC lawsuits.**

The five EEOC commissioners now include three Republicans, but the commission's composition will shift to a Democratic majority when Commissioner Dhillon's term expires this summer. She expects that to influence how the commission decides to bring lawsuits against employers.

As the commission chair, Commissioner Dhillon moved the EEOC's litigation review process from commission staff to the full commission, which now approves any suit going forward. She expects that the newly constituted commission will return to a process where the EEOC general counsel and regional attorneys can bring lawsuits on their authority, with the commission reviewing only a small percentage of major cases.



"I think you'll see more litigation, and you'll probably see more so-called systemic litigation," she said. "Rather than focusing on a particular individual charge, there will be an effort to expand the litigation more broadly."



# THEMES FROM THE EEOC COMMISSIONER

## **Watch out for pay compression.**

Returning to the topic of pay equity, Commissioner Dhillon noted that as many organizations respond to the tight labor market by offering higher salaries, they could unintentionally be creating pay gaps. Pay compression can happen when a firm raises starting salaries for new hires or increases pay to retain specific types of workers without adjusting the wages paid to other employees. That inadvertently creates a pay equity issue that may need to be addressed by a larger review of the organization's overall pay scale.

"It's a trickle, but we are starting to see charges alleging some form of wage discrimination," she said.

## **What are the worst abuses the EEOC finds?**

"I would have to say the racial discrimination cases have been the biggest surprise to me," Commissioner Dhillon said. "Some of these are really egregious and shocking, in this day and age, to see some of the language that is used and the level of harassment."

"It does exist, and it's pretty awful," she added. "There's just no daylight between Republican and Democrat commissioners on those issues because that just cannot happen in our country."



## Sources

- 1 *2022 State of the Gender Pay Gap Report*, Payscale, 2022
- 2 *Bridging the Pay Gap: Why Pay Equity Pays Off*, SHRM Research, 2021.

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