

Blog Post

Pay Equity Audits For The Pay Transparency Era

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In recent years, workplace pay equity has become a priority for many states and cities, as seen by the growing number of [pay transparency laws](#) being implemented across the country. In turn, pay equity has become a critical priority for employers. With that, companies are left wondering what steps they need to take to ensure they are contributing to a more equitable workforce. Pay equity audits are most likely the answer, and can be a useful tool for employers to ensure they are promoting workplace equity and inclusion, as well as complying with any applicable federal, state, or local guidelines. Pay equity audits are extremely beneficial for companies both big and small. However, there are potential risks associated with conducting these audits and certain steps that can be taken to ensure these risks are minimized.

What is Pay Equity and How Are Pay Equity Audits Beneficial?

Pay equity is the concept of reducing salary disparities that may exist among employees based race, gender, disability, sexual orientation, or other status. The aim of pay equity is for all employees to be compensated equally when performing the same or similar job duties.

By conducting a pay equity audit, employers can evaluate and improve their pay practices to not only

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limit any potential legal risks, but also address any pay gaps. Pay audits can also proactively prepare for required federal and/or state disclosures, such as California's Pay Data Reporting requirement or Illinois's Equal Pay Act. Additionally, in some states, such as Massachusetts and Oregon, conducting a good faith, reasonable self-evaluation of pay practices (a self-audit) is an affirmative defense against a legal claim asserted based on pay inequities.

Risks Associated With Conducting Pay Equity Audits and How to Mitigate Them

Usually when conducting audits, employees are separated into groups of similarly situated workers, then statistically significant pay disparities within those groups are flagged. This is necessary to analyze whether any pay disparities exist and if so, whether they are lawful. Regardless of the intentions behind an audit, if the results of the analysis were ever disclosed, it could potentially harm the reputation of the company and/or expose the organization to legal action. As a result, a recommended way to protect against unintended disclosures is by employing attorney-client privilege or the attorney work product doctrine.

In order to utilize this privilege, the company must make an intentional effort to establish and maintain privilege at the outset of the pay equity audit. This can be achieved by doing the following:

- Engage legal counsel to initiate and lead the pay equity audit and analysis, with the purpose of providing *legal* advice for the company regarding pay equity risks and recommendations for mitigating such risks. Additionally, the company should have counsel engage all consultants and statisticians required to conduct the audit.
- Brief team members assigned to assist with the audit on how to protect privileged information and to what communications and records the

privilege will apply. Additionally, have members mark correspondence and work product related to the audit as “privileged.”

- Limit the number of employees actively involved in the audit to avoid the risk of privilege-waiving disclosures. Since privilege can be waived if communications are disclosed to third parties outside of employees who are designated as having a business need to be involved with or to know the results of the audit, this step is extremely critical.
- Identify how pay equity audit outcomes will be communicated to the workforce and leadership and pre-plan how results will be incorporated into human capital management and pay practices.

Key Takeaways

Conducting a pay audit is a first step to addressing pay equity in the workplace. Beyond that, it is vital that employers take action to identify and address significant disparities. Additionally, hiring and pay policies should be reviewed to reduce any gaps for future employees. Once an initial pay equity audit is complete, employers can continue to conduct them annually to ensure compliance. If you have questions regarding pay equity laws or need assistance in conducting a pay equity audit and analysis, contact your Labor and Employment Akerman attorney.

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