



Equal pay audits: an important diagnostic tool to help close the gender pay gap

GENDER PAY GAP SERIES - NO. 5

In this latest insight into the gender pay gap, we look at the benefits of equal pay audits and how they can be used to narrow the gender pay gap.

Introduction

For most organizations, the single biggest cause of the gender pay gap is the lack of women in senior roles, which is primarily driven by challenges in recruiting, retaining and promoting women.

While this is not an equal pay issue, employees (and the media) often conflate the two - and unequal pay will certainly contribute to a gender pay gap.

In our experience, some employers do have some pockets of the organization where there is an "unexplained" pay gap between employees carrying out the same or similar work. The current push for transparency — from governments, employees and other stakeholders — can also lead to difficult questions about the real causes of the gap and what is being done about it.

An equal pay audit is therefore a useful tool to help employers identify gaps, assess the organization's risks and begin to address the issue. This can have the dual benefits of significantly reducing the risk of equal pay claims, and at the same time, helping to narrow the gender pay gap.



The benefits of an equal pay audit

There are many good reasons why an organization would choose to carry out an equal pay audit:

- ▶ A thorough audit will provide a detailed examination of how rewards work at your organization, both in theory and in practice. It results in a deeper understanding of the discernible factors which actually drive pay, and often these are not always as initially predicted. For example, an organization may predict that length in role (tenure) is the biggest driver of pay within particular job roles, but an audit may reveal that it has a lower impact than other factors.
- ▶ An examination of these factors (and the related data) will help you to understand whether any of your practices are adversely (and possibly inadvertently) impacting either gender in a discriminatory fashion. Specific compensation drivers can be analyzed against the impact that they have had, which may bring to light some unexpected issues.
- ▶ If a risk is identified, an audit allows you take steps to remedy it before litigation arises. Remedial options are many and varied, and can include salary increases for those specific individuals who are affected, red circling of individuals and process improvements designed to reduce risks going forward.
- ▶ A further benefit of process improvement is the ability to identify and explain why people are paid at the level they are. When defending equal pay claims, one of the challenges is to prove the non-discriminatory reason why one individual is paid more than another. Often the records simply do not exist — either because the information needed to defend an equal pay claim was not recorded at the time, or because no information was recorded at all. Therefore, the ability to identify and explain the reasons for any differentials will materially reduce the risk.
- ▶ Audits can also be used to drive cultural change within a business. In most cases, disparities in pay between genders are not due to direct discriminatory intent, but rather an unforeseen consequence of an otherwise legitimate pay practice. Audits can identify where this is happening, and allow an organization to take steps to ensure the right questions are being asked when compensation decisions are in progress.
- ▶ An audit can also help an organization consider if its pay practices are consistent with its employer brand and values (particularly important in winning the talent war). Openness and transparency on issues of equal pay is helpful to attract and retain existing employees and candidates.



How do I do one?

The specific audit methodology which best suits your organization will depend on a number of factors. However, there are a number of key steps which should be followed in all cases, in order to ensure your audit is most effective.

Scoping

The key threshold determination is what are you going to look at, which populations and which elements of pay (e.g., salary, bonus, benefits, equity, etc.).

Largely this will be driven by the quality of data your organization is able to rely upon. However, you will also want to consider local guidance and legal requirements where applicable (for example, in Germany there is a new statutory framework for carrying out a gender equality audit).

Ultimately, pay audits are a diagnostic tool, not an intervention, so they will not of themselves remedy the gender pay gap and they are unlikely to deliver insight into the issue of gender imbalance in senior management roles or the talent pipeline.

However, pay audits do help organizations concentrate their efforts toward what will be most effective in closing any gap which exists between men and women doing the same or comparable work. While that gap will be smaller than the aggregate difference between men and women, any opportunity to shrink the gap even partially merits serious consideration.

Further, audits provide you with a valuable insight into your organization's reward strategy, and the impact that strategy has across gender. This informs your strategy going forward, and allows you to take steps to both remedy and defend allegations of discrimination (as the case may be).



In jurisdictions where equal pay laws require analysis between roles, which are different but are of equal value, you will also need to consider how easily you can identify which roles are genuinely comparable.

For example, an existing corporate title and global grading framework is an important tool in deciding which roles to compare, but in most organizations this does not give the full picture, as there are likely to be inconsistencies in approach in different areas of the business and differences between jurisdictions with regards to which analysis should be run.

The best audits capture as many employees of your organization as possible, so the broader the better in the initial stage. The wider net can be drawn in at the stages which follow.

Data capture and analysis

Once you have identified your comparison pools, the next step is to analyze the data to identify where pay differentials exist. It will not be feasible to look in detail at every role within your organization, so at this stage you are looking for statistically significant gender pay gaps within the populations you have identified as comparable when scoping the audit.

For example, you may choose to look at roles where there is a 5% pay gap or more, or at elements of pay, such as bonus, where men are earning more than comparable women.

The UK Equality and Human Rights Commission suggests that, as a general rule, differences of 5% or more, or recurring differences of 3% or more, merit further investigation. There is no equivalent official guidance in the US but we typically recommend a similar approach.

A deeper dive and action planning

Having identified your statistically significant populations, the next stage is to delve into the detail and identify what is causing any unexplained differentials.

Again, the precise scope of this phase will depend on the results of the data analysis. However, it typically involves exploring the link between identified factors (e.g., length in role) and pay by testing sample cases to establish the likely root causes of disparity and identifying potential non-compliance with local equal pay legislation.

These results then inform your action plan going forward, as you implement your report's findings across the business.

Managing legal privilege and disclosure obligations

Before conducting any pay audit, you should consider the question of sharing the results with your employees or their representatives. This involves an understanding of the local legal requirements and context.

For example, in Germany, a new legal framework requires employers to inform employees and works councils of the results of voluntary pay audits.

In contrast, in jurisdictions such as the US and UK, employers may (although do not always) prefer to carry out an audit under legal privilege as far as possible since pay audits (even where voluntary and confidential) may otherwise be disclosable to would-be claimants in equal pay litigation. If the audit is to be carried out under privilege, it is particularly important to ensure that privilege is not inadvertently waived by, for example, the way in which the audit is carried out and how it is messaged to employees, and it is critical to have a privilege strategy in place from the start.

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Our gender pay gap series

The Baker McKenzie Gender Pay Gap series will be spotlighting gender pay gap regulations in key jurisdictions and exploring the central issues, including how to narrow the gap.

For more on the global picture and how our global network of over 700 labor and employment lawyers are helping clients address this issue, see the [Gender Pay Gap series](#).

Next in the series: Spotlight on the gender pay gap in Germany

