



The Equal Pay Act requires employees in the same workplace to be compensated with equal pay for equal or substantially similar work. However, the analysis is more complicated than comparing job titles. Instead, employers must look at job duties and determine if employees are tasked with “substantially equal” duties.

Employers must also keep in mind that equal pay encompasses far more than an employee's base salary. Total compensation is examined for pay equality, including overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and medical benefits.

The purpose of this checklist is to provide employers with a roadmap for planning and conducting an equal pay evaluation. Bear in mind that conducting an equal evaluation under state laws can involve different criteria than the federal standards.



## Step 1: Creating a Plan

### Determine Who Should Be Involved in the Evaluation Process

- HR team member(s): person(s) who can access employee databases and personnel files, with knowledge of relevant pay and grading arrangements and how these have changed over time.
- Finance/payroll team member(s): person(s) who can use the payroll system to access pay data and generate reports.
- Legal counsel: partner with internal and/or external legal counsel and implement a privilege protocol to minimize the risk that the analysis and the discussions concerning the analysis become discoverable in litigation.

### Set Expectations

- Recognize and communicate to team members and senior management that an equal pay evaluation is not a simple data collections exercise.
- Utilize the evaluation team to plan and budget sufficient human and financial resources to effectively conduct and complete the evaluation.
- Secure the backing of senior leadership. Many employers believe they are providing equal pay and do not expect an evaluation to reveal inequalities. Ensure senior management has realistic expectations about the possibility changes in pay may be necessary.

### Determine the Scope of the Evaluation

- Gender only.
- Include other protected classes, such as race or ethnicity act on that voluntarily disclosed salary history information to support a wage or salary higher than initially offered.



## Step 2: Collecting Data

### The Initial Collection Should Include the Following

- Job description for each job or job category to be evaluated.
- For each employee.
  - » Job title or category.
  - » Hire date.
  - » Gender.
  - » Depending on the evaluation scope, other protected class identifiers such as race or ethnicity.
  - » Job location.
  - » Resume and/or employment application.
  - » Total hours worked by each employee over the past 52 weeks.
  - » Total compensation data, including overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, and perks (e.g., travel and entertainment expenses, medical and insurance benefits).



## Step 3: Determining Where Employees are Doing Equal or Substantially Similar Work

### Review Job Descriptions and Job Titles, Interview Managers and Update Job Descriptions as Necessary

- Do the job titles and job descriptions accurately reflect the duties, experience, skills, education and training required to do the job?
- Do they accurately reflect the degree of responsibility and accountability required of the job?
- Do they accurately reflect the amount of physical or mental exertion necessary to perform the job?
- Do the job descriptions accurately reflect the physical surroundings in which the job is performed? (e.g. temperature, ventilation, fumes, hazards, etc.)?
- Other factors specific to business or employee population.

### Determine Pay Analysis Groups

- Group employees by those who perform equal or substantially similar work.
- One place to start may be with existing major job categories or groupings of workers used by the organization such as job grades and levels, job families or wage and hour classification.
- Factors to examine in determining appropriate pay analysis groups include:
  - » Skill: the duties, experience, skills, education and training required to do the job.
  - » Responsibility: the degree of responsibility and accountability required of the job.
  - » Effort: the amount of physical or mental exertion necessary to perform the job.
  - » Working conditions: the physical surroundings in which the job is performed (e.g. temperature, ventilation, fumes, hazards, etc.).



## Step 4: Analyzing Pay Data by Job Grouping

### Determine Methodology and Conduct Analyses for Each Job Grouping

- There are many ways to calculate average earnings.
  - » Using the median as a measure of average earnings tends to be less affected by a small number of extremely high earners (which can skew the distribution of earnings).
  - » Consider whether other statistical analyses should be used.
  - » Using the mean can help capture differences across the distribution.
- Calculate the difference between the total pay of women and men (or other categories) for each job grouping.
- Identify compensation disparities and determine whether disparities warrant a more sophisticated statistical analysis, such as a multiple regression analysis.
  - » Coordinating with counsel in any outsourced statistical analysis may allow you to assert.
- Investigate disparities further including, but not limited to, interviews and further document analysis.



## Step 5: Examining the Causes of Pay Disparities

### Investigate Why Compensation Disparities Exist

- Drill down on disparities to find the root cause.
  - » For example, if all upper-level managers are males, consider which jobs feed into those positions and determine whether females are included in those positions and are promotable. If the composition of the feeder suggests that there should be more females in some positions, a claim could be made that females are channeled into lower-paying, less prestigious jobs.
  - » Determine whether there is a legitimate, legal reason for the disparity such as seniority; merit; quantity or quality of production, sales or revenue; or job-related education, training, or experience. Note that what constitutes a legitimate or legal justification for differences in pay varies under federal and state laws.



## Step 6: Examining the Causes of Pay Disparities

### Developing an Action Plan

- Partner with legal counsel to minimize the risk documents created in developing the plan are discoverable.
- Determine how and when disparities will be remedied. Note that employers are not permitted to lower the compensation of the higher paid gender to correct the disparity.
- Consider employee relations issues related to compensation changes and create a communications plan.
- Secure senior management buy in and approval.



The Fisher Phillips Pay Equity Practice Group helps employers navigate the demands of equal pay laws. As one of the first law firms to establish a dedicated pay equity practice, our national team is attuned to evolving state laws and works with employers to evaluate compensation data to identify pay disparities, implement pay practices designed to comply with new laws and regulations, and defend claims of unlawful pay practices. To learn more, visit [fisherphillips.com](http://fisherphillips.com) or contact any member of our Pay Equity Practice Group



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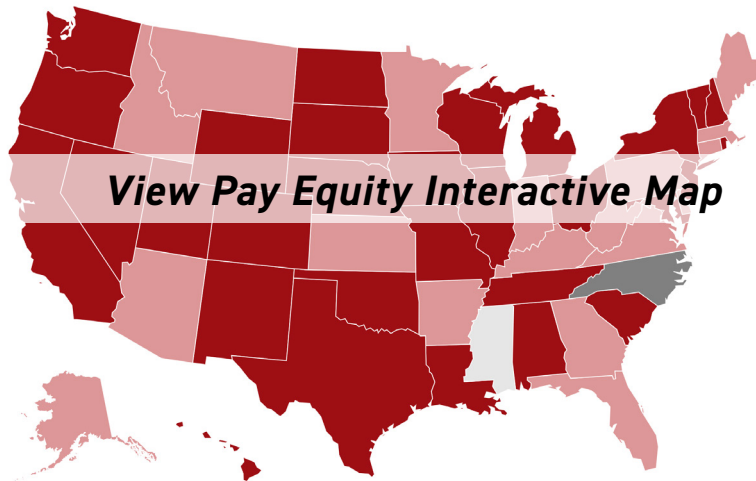
To help employers understand and respond to these developments, Fisher Phillips' Pay Equity Interactive Map allows visitors to explore various pay equity laws by simply hovering on each state.

## States Prohibiting Pay Discrimination

[Click here to view a map showing states prohibiting salary history inquiries](#)

[Click here to view a map showing states requiring wage disclosure](#)

Map Table



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