

Conducting a Compensation Self-Analysis of Employee Pay

Pay Discrimination Laws

US LAWS GOVERNING PAY *DISCRIMINATION*

01

Equal Pay Act of 1963

- Prohibits pay discrimination based on sex.
- Enforced by Equal Employment Opportunity Commission (EEOC).

02

Executive Order 11246

- Pay disparities due to sex or race are a form of discrimination prohibited under Executive Order 11246.
- Enforced by the Department of Labor OFCCP.

The Equal Pay Act*



(d) (1) *No employer* having employees subject to any provisions of this section *shall discriminate*, within any establishment in which such employees are employed, between employees *on the basis of sex* by *paying wages* to employees in such establishment at a rate less than the rate *at which he pays wages to employees of the opposite sex* in such establishment *for equal work* on jobs the performance of which *requires equal skill, effort, and responsibility*, and which are performed under similar working conditions, *except* where such payment is made pursuant to (i) *a seniority system*; (ii) *a merit system*; (iii) *a system which measures earnings by quantity or quality of production*; or (iv) a differential based *on any other factor other than sex*: Provided, that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

*1963

OFCCP's Compensation Analysis



Disparate Treatment. An Individual allegation of intentional compensation discrimination or a pattern or practice of intentional discrimination at the group level.



Disparate Impact. A facially-neutral policy or practice that unintentionally results in group-level compensation disparities.



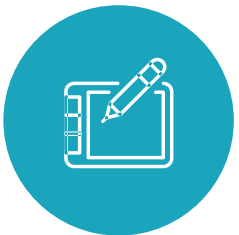
Current AAP regulations require contractors to evaluate: “...compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities.”
[41 CFR 60-2.17(b)(3)].

Definitions



Similarly-Situated Employees.

Those who would be expected to be paid the same based on: (a) job similarity (e.g., tasks performed, skills required, effort, responsibility, working conditions and complexity); and (b) other objective factors such as minimum qualifications or certifications.



Pay Analysis Groupings (PAGs).

OFCCP achieves comparisons of similarly-situated employees by (1) developing pay analysis groupings (PAGs) of comparable employees and then (2) statistically controlling for further structural differences among PAG members (e.g., division, BU, product line, location) and individual employee characteristics related to the Contractor's pay determinations (e.g., tenure, prior experience, education, grade level).

Why Conduct a Compensation Self-Analysis?



- ✓ The goal to eliminate pay discrimination is a key enforcement policy for OFCCP; however, the Agency can only audit a small portion of all contractor establishments annually.
- ✓ In 2018 Directive (2018-05) was issued to provide transparency and to clarify OFCCP's approach in conducting Contractor compensation evaluations.
- ✓ Studies continue to show persistent pay gaps for women and people of color. Recent cases indicate that discrimination may play a role in pay disparity even after accounting for objective factors of education, experience, geography, etc.

OFCCP Directive 2018-05

August 28, 2018



Directive Goals:

- ✓ Support Contractor Compensation Self-Analysis under applicable Law.
- ✓ Improve OFCCP's Compensation Analysis Consistency and Efficiency During Audits.
- ✓ Provide More Transparency Regarding the Agency's Practices:
 - Determining "similarly-situated employees"
 - Creating PAGS (Pay Analysis Groups)
 - Conducting a Statistical Analyses.

OFCCP COMPENSATION ANALYSIS PROCESS

A

OFCCP Scheduling Letter Requests AAP & Supporting Documentation, including Compensation Data.

B

Desk Audit begins by reviewing the AAP and Supporting Data.

C

Compliance Officer will not begin the audit of compensation data until the AAP submission is complete and acceptable.

D

Contractor Data File for compensation includes Job Title Structure, Pay System Information, Job Functions, Workforce Organization Hierarchy, etc.

E

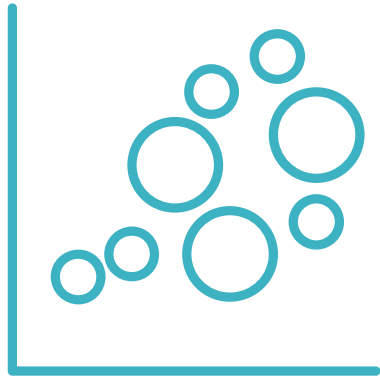
OFCCP will design PAGS that mirror a Contractor's Compensation System with full data file information.

F

Absent Information about a Contractor's compensation systems, OFCCP will conduct its initial analysis using EEO-1 Categories or AAP Job Groups.

OFCCP Statistical Methodologies

Based on Directive 2018-05, OFCCP will initially use the following methods to evaluate Contractor compensation during a Compliance Evaluation:



- ✓ Multiple linear regression analysis is used to evaluate factors influencing pay and to minimize false positive and negative results.
- ✓ Base Pay and Total Compensation will be analyzed separately.
- ✓ Other Pay components (Bonus, Commission, OT, Incentive, etc.) are analyzed, if needed.
- ✓ Statistical outliers will be analyzed for indications of inappropriate pay analysis groupings, etc.

Results of an OFCCP Compensation Analysis



Desk Audit.

At conclusion of the Desk Audit, Compliance Officers will notify Contractors in writing, of the results of their analysis, and any preliminary pay findings.

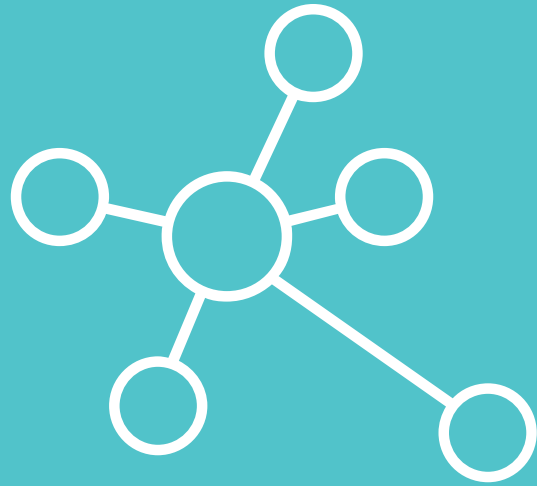
The Desk Audit is a “screening process.” Preliminary indicators at this stage will not limit OFCCP to investigate further.



Unresolved Pay Discrepancies.

When unresolved pay discrepancies exist, OFCCP would issue a Pre-Determination Notice (PDN) with its potential findings. The Contractor is also provided with the necessary data to replicate OFCCP’s results to resolve the issues found.

Note: OFCCP will include representatives from its National Office Branch of Expert Services, as necessary, to clarify statistical methods and findings.



Gerstco Self-Analysis of Employee Compensation

Case Study Company



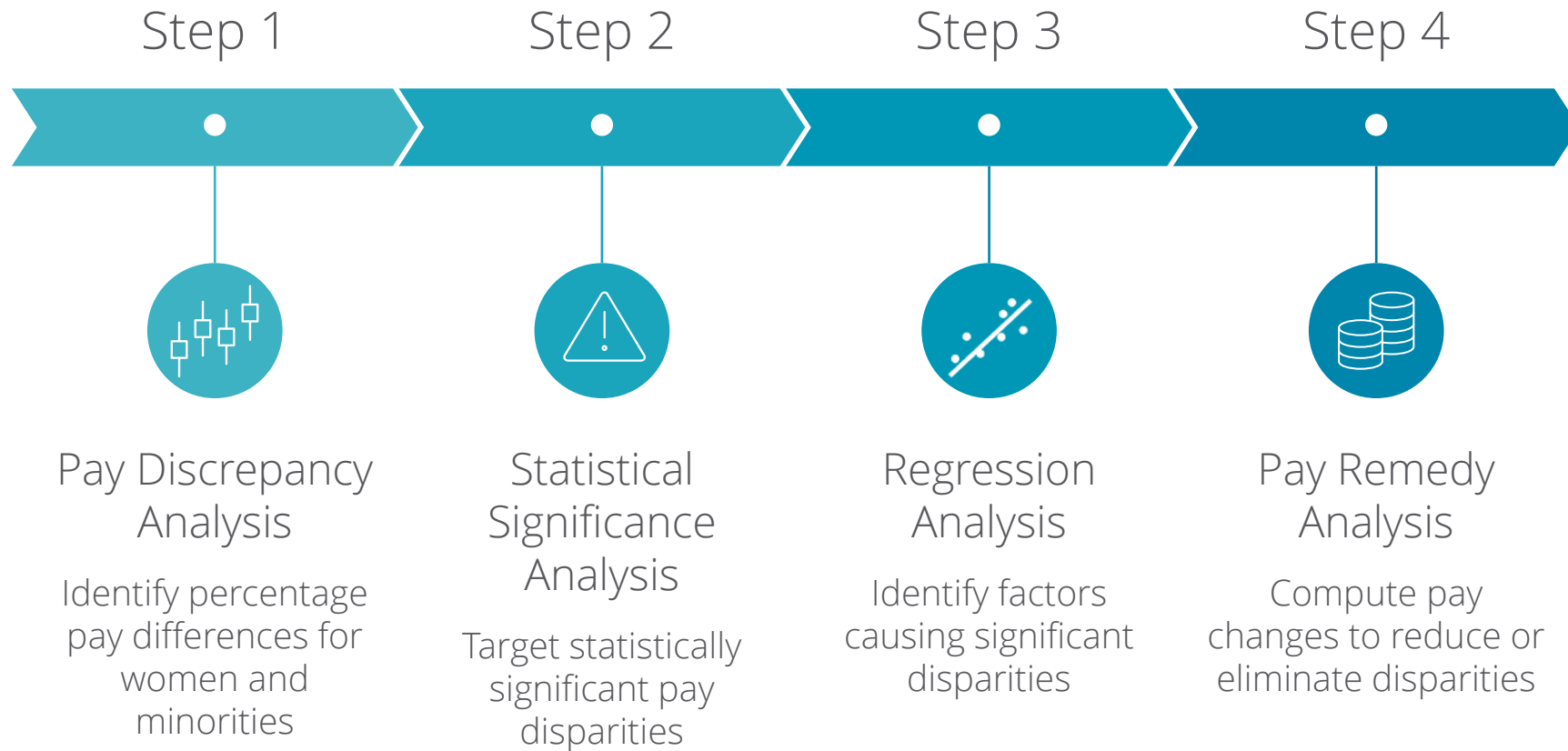
- Acme Corp.
- 1366 Employees
- One Location
- Technology-based Organization

The Data



	A	B	C	D	E	F	G	H	I	J
1	EMP_ID	RACE	SEX	JOB_GROUP	JOB_TITLE	PAY	HIRE_DATE	PAG	DEGREE	LASTREV
2	390821	AMI	M	Administrative	Sr Programmer	91291	11/5/2007 0:00	Administrative	HS	NeedsImp
3	353555	AMI	M	Engineering Services	Code Specialist	73840	4/10/2006 0:00	Engineering Services	BA	Meets
4	8261	AMI	M	Engineering	IT Manager	233158	6/4/1990 0:00	Engineering Technicians	MA	Exceeds
5	533141	AMI	M	Engineering	Sr Programmer	109898	1/1/2016 0:00	Engineering Technicians	BA	Meets
6	533110	AMI	M	Engineering	Sr Programmer	130864	1/1/2016 0:00	Engineering Technicians	PhD	Exceeds
7	357606	AMI	M	Engineering	Group Engineer	125602	6/19/2006 0:00	Engineering Technicians	HS	NeedsImp
8	224798	AMI	F	Engineering	Principal Manager	161232	8/21/2000 0:00	Engineering Technicians	BA	Meets
9	163651	ASN	F	Engineering	Sr Group Engineer	156115	7/8/1998 0:00	Engineering Technicians	BA	Meets
10	210255	ASN	F	Engineering	Sr Group Engineer	148502	8/30/1999 0:00	Engineering Technicians	BA	Meets
11	220715	ASN	F	Engineering	Sr Group Engineer	141680	12/12/2011 0:00	Engineering Technicians	BA	Meets
12	320387	ASN	F	Engineering	Sr Group Engineer	145590	9/17/2003 0:00	Engineering Technicians	BA	Meets
13	322484	ASN	F	Engineering	Group Engineer	150603	9/2/2003 0:00	Engineering Technicians	BA	Meets
14	329459	ASN	F	Engineering	Group Engineer	122003	11/1/2004 0:00	Engineering Technicians	BA	Meets
15	333638	ASN	F	Engineering	Sr Group Engineer	169490	2/7/2005 0:00	Engineering Technicians	MA	Meets
16	357106	ASN	F	Engineering	Group Engineer	134171	6/12/2006 0:00	Engineering Technicians	BA	Meets
17	357575	ASN	F	Engineering	Group Engineer	137499	8/19/2013 0:00	Engineering Technicians	BA	Meets
18	367058	ASN	F	Engineering	Principal Manager	195594	10/31/2011 0:00	Engineering Technicians	BA	Meets
19	461489	ASN	F	Engineering	Group Engineer	123813	4/18/2011 0:00	Engineering Technicians	HS	NeedsImp
20	464946	ASN	F	Engineering	Engineer	91282	3/11/2013 0:00	Engineering Technicians	AA	NeedsImp
21	481533	ASN	F	Engineering	Group Engineer	119195	1/17/2012 0:00	Engineering Technicians	PhD	Excels
22	496118	ASN	F	Engineering	Group Engineer	144010	4/30/2012 0:00	Engineering Technicians	HS	NeedsImp
23	501365	ASN	F	Engineering	Group Engineer	131155	8/20/2012 0:00	Engineering Technicians	BA	Meets
24	503231	ASN	F	Engineering	Engineer	106840	10/1/2012 0:00	Engineering Technicians	AA	NeedsImp
25	521615	ASN	F	Engineering	Group Engineer	118550	9/2/2014 0:00	Engineering Technicians	BA	Meets

Compensation Analysis Methodology



Pay Discrepancy Analysis

Pay Grouping	Total Employees	Females		Males		Whites		Hispanics		Blacks		Native Hawaiian/ Pac. Islander	Asian		American Indian		Two or More Races		All Minorities	
Administrative	37	82,806	24	89,429	13	86,684	29	55,120	1	40,726	1		90,397	3	91,291	1			79,510	8
		\$6,623						\$31,563		\$45,957									\$7,173	
		8.0%						57.3%		112.8%									9.0%	
Engineering	55	104,665	11	117,662	44	114,164	47	162,346	2	145,830	1		95,332	3			103,003	1	120,342	8
		\$12,996											\$18,831				\$11,160			
		12.4%											19.8%				10.8%			
Engineering Services	70	69,051	19	69,484	51	69,089	52	74,057	7				67,683	6	73,840	1	52,000	1	70,168	18
																	\$17,089			
																	32.9%			
Engineering Technicians	925	129,484	96	140,769	829	135,987	651	134,443	29	125,664	3		149,762	184	152,151	5	126,177	11	148,175	274
		\$11,285								\$10,323							\$9,811			
		8.7%								8.2%							7.8%			
Finance/Accounting	37	75,461	16	97,248	21	84,581	31	157,664	3				49,348	2					104,596	6
		\$21,786											\$35,232							
		28.9%											71.4%							
Human Resources	13	117,959	12	78,686	1	118,110	11	97,490	2										97,490	2
								\$20,621											\$20,621	
								21.2%											21.2%	
Manufacturing	33	50,133	14	75,704	19	73,047	18	62,200	10	34,112	1		45,087	3					55,026	15
		\$25,572						\$10,847		\$38,935			\$27,960						\$18,022	
		51.0%						17.4%		114.1%			62.0%						32.8%	
Marketing	41	139,690	13	158,104	28	159,577	32	134,578	5				107,002	3			142,514	1	126,268	9
		\$18,415						\$24,999					\$52,575				\$17,063		\$33,309	
		13.2%						18.6%					49.1%				12.0%		26.4%	
Materials	87	112,206	24	121,789	63	118,668	66	103,545	6				128,168	10					120,645	21
		\$9,582						\$15,124												
		8.5%						14.6%												

Statistical Significance Analysis

Pay Grouping	Total Number of Employees	Females vs. Males						Minorities vs. Non-minorities						Stat. Sig. Indicated for Std. Dev <= -2.0
		Females Emps.	Females Pay MEAN	Males Emps.	Males Pay MEAN	Pay Discrep.	# of Std Devs. Diff.	Min Emps.	Min Pay MEAN	NonMin Emps.	NonMin Pay MEAN	Pay Discrep.	# of Std Devs. Diff.	
Administrative	37	24	82,806	13	89,429	\$6,623 8.0%	-0.49	8	79,510	29	86,684	\$7,173 9.0%	-0.46	
Business Excellence	2	1	300,019	1	132,392		TFV**			2	216,206			
Engineering	55	11	104,665	44	117,662	\$12,996 12.4%	-1.65	8	120,342	47	114,164		0.68	
Engineering Services	70	19	69,051	51	69,484		-0.10	18	70,168	52	69,089		0.24	
Engineering Technicians	925	96	129,484	829	140,769	\$11,285 8.7%	-2.64	274	148,175	651	135,987		4.30	Females
Finance/Accounting	37	16	75,461	21	97,248	\$21,786 28.9%	-1.40	6	104,596	31	84,581		0.95	
Human Resources	13	12	117,959	1	78,686		TFV**	2	97,490	11	118,110	\$20,621 21.2%	-0.74	
Manufacturing	33	14	50,133	19	75,704	\$25,572 51.0%	-1.80	15	55,026	18	73,047	\$18,022 32.8%	-1.25	
Marketing	41	13	139,690	28	158,104	\$18,415 13.2%	-1.40	9	126,268	32	159,577	\$33,309 26.4%	-2.36	Minorities
Materials	87	24	112,206	63	121,789	\$9,582 8.5%	-0.94	21	120,645	66	118,668		0.19	
Operations	1			1	266,510					1	266,510			

Regression Analysis

Regression Analysis

Annual Pay for Minorities

1/1/2020
Acme Corp.
Focus: - Marketing

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Employee Counts and Annual Pay Averages:

Total	Males	Females	White	Black	Hispanic	Am. Ind.	Asian	Nat. Hawaiian	Two+ Races	Total Min.
41	28	13	32		5		3		1	9
152,266	158,104	139,690	159,577		134,578		107,002		142,514	126,268

Regression Results

Adjusted R-squared: 0.05462

Independent Variable(s)	Coefficient	T-statistic	p-value	Stat. Sig.
Minorities	-0.22335	-2.18	0.0356	✓
Educ. Degree	0.11524	1.21	0.2341	
Years of Service	0.00255	0.54	0.5930	
Last Perf Rev	-0.10069	-0.67	0.5073	

Pay Remedy Analysis

SS Pay Remedy Analysis

Annual Pay for Minorities

Target t-stat: -1.50

Analyzed Pay

1/1/2020
Acme Corp.
Focus: - Marketing

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Employee ID	Minorities	Current Pay	Adjusted Pay	Adjustment Amount	Adjustment Percentage
577		\$130,579			
3130		\$130,312			
353962		\$124,738			
160367		\$120,058			
682679		\$112,008			
223424		\$88,878			
533147		\$85,904			
672561		\$71,302			
9378	✓	\$155,021	\$156,872	\$1,851	1.19%
199575	✓	\$149,552	\$153,625	\$4,073	2.72%
10167	✓	\$142,514	\$149,446	\$6,932	4.86%
533156	✓	\$137,902	\$146,707	\$8,805	6.39%
320459	✓	\$127,984	\$140,819	\$12,835	10.03%
345994	✓	\$125,083	\$139,096	\$14,013	11.20%
250	✓	\$105,333	\$127,370	\$22,037	20.92%
533743	✓	\$97,778	\$122,884	\$25,106	25.68%
467083	✓	\$95,245	\$121,380	\$26,135	27.44%

Adjustment Total:

\$121,786

Cohort Analysis

Cohort Analysis

CONFIDENTIAL

1/1/2020
Acme Corp.
Focus: Marketing

Pay Grouping		Emp. Count	Pay Means & Headcount					
			Overall	Males	Females			
Marketing		41	152,266	158,104 28	139,690 13			
Employee ID	Race	Sex	Annual Pay	Educ. Degree	Last Perf Rev	Hire Date	Supervisor ID	Department
655470	WHT	F	154,816	BA	Meets	01/03/2017		Marketing Product Marketing
199575	HSP	M	149,552	BA	Meets	03/01/1999		Marketing Technical Customer Management
▼ 521296	WHT	F	147,597	AA	NeedsImp	09/02/2014		Marketing Product Management
▼ 653855	WHT	F	145,581	MA	Meets	12/05/2016		Marketing Marketing
525729	WHT	M	143,062	PhD	Excels	11/03/2014		Marketing Product Management
▼ 10167	TWO	F	142,514	BA	Meets	05/04/2015		Marketing Product Management
7855	WHT	M	142,418	BA	Meets	08/01/1988		Marketing Product Management
533156	HSP	M	137,902	MA	Meets	01/01/2016		Marketing Marketing
8721	WHT	M	137,176	MA	Meets	04/15/1991		Marketing Product Marketing

▼ Protected employee whose pay is below the unprotected mean pay by at least 5%