

Pay Equity Issues & Insights Blog



Pay Equity Communications (AKA: What do I say?)

By Kristina M. Launey with Christine Hendrickson

Seyfarth Synopsis: Responding to inquiries regarding your company's stance on pay equity can be dicey. Having a strategy on how you address questions is important.

Every time a client asks "what do I say" in response to employee inquiries about what the client's company is doing to ensure fair pay, Justin Bieber's song "What do you Mean" starts playing in my head as "What do I Say." Luckily, while I am certainly not a Belieber, I find the song catchy rather than annoying, and appropriately thought-provoking.

It is a tricky question. I don't think any company – at least not any of our clients (!) – would argue with the importance of treating all employees equally and paying them fairly. But when an employee, or group of employees, ask pointed questions such as:

- Has the company analyzed pay equity amongst employees or different genders (or any other protected group)?
- If not, is there a plan to do so?
- If so, can the results be shared?
- Do we have any information on what other companies in our industry are doing on this front?

What do you say? This may be top of mind on the heels of Tuesday's Equal Pay Day heightened publicity on these issues. Perhaps your employee has seen one of the many articles on the issue, or read about the companies like that are taking very public positions on the topic (for example, [here](#), [here](#), and [here](#)). Or heard about the Pax Ellevest's [comment letter to the SEC](#) requesting that publicly traded companies disclose "gender pay ratios" on an annual basis to their investors. What if that is not your company's style? Or what if you are still getting your bearings about you with all the recent (and ongoing) changes in pay equity laws, and are not ready to make any pronouncements? Or, what if you did an analysis but it was privileged? What do you say?

Ultimately, this is something that depends heavily on your company structure and culture. But at its foundation – despite all the specific pay equity laws and regulations, new and old – pay inequality is a discrimination issue. Reference to a company's EEO and nondiscrimination policies and principles is an important start. And letting the employees know the company is committed to treating all employees – regardless of gender, race, or any other status – fairly in all aspects of their employment, including benefits and pay.

Then it gets more complicated. Many factors are considered in making compensation decisions. It is therefore important to ensure that any pronouncement about the factors your organization considers in compensation decisions is not so targeted that it excludes factors that may be important to some but not all employees. For example, certifications for IT professionals within your organization are likely to impact compensation for those employees, but being an Oracle Certified Master is unlikely to impact the pay of a welder within your organization. Also, pay equity is a fragile concept – changes to pay can occur on an annual or often more frequent basis – so making a blanket statement that pay is fair for all employees can be

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risky because a few hires who are paid higher (or lower) than their peers can result in significant results that were not there even a month (or even a few days) earlier.

The law is moving quickly in this area. The way companies assess fair pay now and on a going-forward basis is changing due to recent changes in laws. Many companies are working quickly to perform assessments using new statutory frameworks and ensure pay practices and documentation line up with those laws going forward, and that all employees with any responsibility for pay decisions are appropriately trained. Finally, and potentially most importantly, for companies that are conducting pay equity analyses – and as we’ve [previously indicated](#) (also [here](#) and [here](#) and [here](#), and [here](#) . . . we won’t go on), conducting a proactive pay equity analysis is often the first and best step employers can take to ensure fair pay and diminish legal risk – privilege issues should also be a big consideration. Speaking publicly about the results of an attorney-client privileged pay equity analysis may put those results at risk of disclosure.

Whether and what to communicate to employees or publicly about these processes and assessments is a decision that each company must make. But, remember that even California law – touted as the strictest in the country – does not require companies to disclose pay information (they just can’t prohibit employees from disclosing or discussing pay amongst themselves).

If there’s any solace, perhaps it’s that you are not alone in wondering “what do I say.” There is no one “right” answer. There is no one-size fits all response, though we would caution you to carefully consider your company’s pronouncement so it does not unintentionally end up in the “no good deed goes unpunished” category.

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Seyfarth’s [Pay Equity Group](#) leads the legal industry in fair pay analysis, thought leadership and client advocacy. For over twenty years, we have partnered with our clients to proactively address these developments, and minimize risk. Seyfarth also recently testified before the Equal Employment Opportunity Commission on behalf of the U.S. Chamber of Commerce, requesting the EEOC withdraw its proposal to require employers report data on compensation and diversity through the EEO-1 report. For questions, contact the authors, Kristina Launey, Annette Tyman, Christine Hendrickson, or your Seyfarth attorney with whom you regularly work.

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