



50 State

PAY EQUITY DESKTOP REFERENCE

What Employers Need to Know About
Pay Equity Laws

2018 EDITION



Dear Clients and Friends,

For organizations that operate in multiple state or local jurisdictions, tracking the ever-changing requirements related to pay equity can pose daunting challenges. To simplify the process, we are pleased to provide you with our *50 State Pay Equity Desktop Reference: What Employers Need to Know about Pay Equity Laws*.

This one-stop desk reference provides answers to these five common questions: (1) who is protected? (2) what type of work must be compared? (3) may employers rely on geographic location to explain pay differences? (4) what is the statute of limitations? (5) may employers ask about salary history? This is based on review of state law except for the salary history ban information and addresses only laws that impact private employers. We also provide more information about undertaking a proactive equity audit and the lifecycle of such an audit. The information contained in the booklet is purposely condensed and simplified, and thus, while it provides a convenient point of reference, always consult with your attorney before making any decisions as the law is constantly changing.

In addition to this desktop reference, Seyfarth Shaw at Work (SSAW), in association with Seyfarth Shaw LLP, offers a more comprehensive 50 state survey, updated quarterly, covering (1) citations to the current statute (2) citations to pending amendments/bills (3) protected status (4) comparison group (5) whether location can be considered (6) burden of proof (7) affirmative defenses (8) statute of limitations (9) damages (10) length of back pay (11) remediation and (12) comments or other notable differences from federal law. For additional information, please email payequity@seyfarth.com.

We hope this booklet proves a useful and informative tool. This does not however constitute legal advice or create an attorney-client relationship. Please do not hesitate to contact payequity@seyfarth.com if you have any questions.

Life Cycle of a Pay Equity Audit

Is your organization considering undertaking a proactive pay equity analysis? Changes to state and federal laws in the U.S. and globally make undertaking such an analysis a wise decision and a key risk mitigation priority for your organization. Seyfarth's Pay Equity Group (PEG) can guide you through this evaluation by developing an analysis that evaluates the key components of pay relevant to your organization. We will partner with you to model the compensation practices for your workforce, or you may choose to target a subset of those employees. The analysis will be designed to align with your organization's objectives, identify and address unexplained differences in pay and ensure that your organization's practices align with stated business policies and priorities.

Together, we will guide you through the life cycle of a pay equity analysis:

1

Initial Contact: Identify Goals and Protect the Privilege

We will kick off the analysis by first identifying your organization's key goals and objectives, including whether to coordinate the timing of the audit with any typical annual review process. We will also identify the appropriate and right-sized internal and external resources necessary to conduct the analysis. Before the substantive components of the project begins, Seyfarth's Pay Equity Group (PEG) will work with you to implement attorney-client privilege protocols to safeguard the analysis to the maximum extent possible.



2

Team Kick-Off Call: Identify Scope and Resources

During our first discussion with the audit team, we will define the scope of the analysis, including identifying the workforce and the components of pay under review. In order to better understand your organization, we will ask for information about compensation structure and pay philosophy and discuss the drivers of employee compensation. Together, we will determine the most appropriate way to group employees for the statistical analysis and identify the job-related factors that are relevant to employee pay.



3

Gather the Data

Our next step will be to partner with the key stakeholders responsible for data collection and maintenance (e.g., HRIS team) to gather relevant data regarding employee pay from the organization's electronic and physical data systems. Because the key data to be analyzed in an audit (such as time with the organization, time in role, job, grade/level, date of hire, performance metrics, and, of course, pay information) may be stored in a variety of systems, we will suggest efficient ways to gather the data.



4

Initial Statistical Analysis and Identification of “Hot Spots”

Once we have gathered the data, we will partner with statistical experts to conduct the statistical analysis. We will interpret the results and identify any “hot spots” within the organization that require further review.



5

Deeper Dive and Further Analysis

Often the initial analysis brings to light errors in the data, individual employees who were slotted in the wrong job or level, or additional factors that drive employee compensation that were not identified initially. We will help your organization identify these issues by leveraging the full force of the statistical tools to identify potential employees or groups of employees that are driving any apparent disparities. We can then work with you to explore additional factors that we may wish to include in the statistical model and data errors that need to be addressed in the further analysis.



6

Potential Pay Adjustments and Reclassifications

After the full investigation of pay differences is complete, we will provide advice related to mitigation strategies if needed. We will present our assessments and preliminary recommendations, and will work with you to develop solutions that stand the greatest chance of success in light of applicable legal, operational, and corporate-culture considerations and constraints. These recommendations may include pay adjustments or reclassification of employee levels or job titles.



7

Potential Changes to Policies and Practices

After reflection on the results of the assessment, we may provide additional recommendations with respect to modifications to policies or practices regarding hiring and starting pay, performance reviews, promotions and bonuses in order to best position the organization for future compliance.



8

Follow-Up

After the audit is complete, we will work with your organization to identify desirability and frequency of routine follow-up analysis, including real-time analysis of pay and promotion decisions. There is no one-size fits all with respect to the audit or follow-up — we have seen nearly every possible pay issue and are able to provide real-time and real-life recommendations on how to ensure that your pay practices are in line with your corporate culture and business objectives.

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
AL Alabama	No law	No law	No law	No law	No law
AK Alaska	Gender	Work of comparable character or work in the same operation, business, or type of work in the same locality	Yes, must compare employees in the same locality	Not addressed within equal pay law	Not currently addressed
AZ Arizona	Gender	Same quantity and quality of the same classification of work	Yes, must compare employees in the same establishment	6 months	Not currently addressed
AR Arkansas	Gender	Comparable work	Not addressed	Within 2 years of the accrual of the wages	Not currently addressed
CA California	Gender, race, and ethnicity	Substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions	Not explicitly permitted in the statute. However, Senator Beth-Jackson's May 2015 letter clarified that geographic location may potentially be a bona fide factor other than gender. She specified that it was never the legislature's intent to make this factor unavailable to an employer responding to an equal pay complaint	2 years from the date of the violation (each paycheck counts as a violation); 3 years if willful	No. Unless offered voluntarily and without prompting, employers may not seek an applicant's salary history or rely on it to determine whether to offer employment or what salary to offer. Prior salary will not justify disparities in compensation San Francisco (Eff. 7/1/2018 penalties 7/1/2019): Same as above, but also may not retaliate due to failure to disclose salary history; may not release salary history of current employee to prospective employer without written consent (with limited exceptions); and must post notice of rights. May discuss compensation that applicant would forego in order to take the new job (e.g. unvested equity, deferred comp or bonus)
CO Colorado	Gender	Not addressed	Not addressed	1 year to file a complaint with state DOL	Not currently addressed

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
CT Connecticut	Gender	Equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions	Not addressed	Two years after act or within 3 if violation is intentional or committed with reckless indifference	State law (Eff. 1/1/2019): No, unless a prospective employee has voluntarily disclosed such information, or unless the request is pursuant to any federal or state law that specifically authorizes the disclosure or verification. The law does not prohibit an employer from inquiring about components of a prospective employee's compensation structure, so long as employer does not inquire about the value of the elements of such compensation structure
DC District of Columbia	There is no equal pay law. There is a general wage discrimination law	No law	No law	No law	Not currently addressed
DE Delaware	Gender	Not addressed	Yes, must compare employees in the same establishment	Not addressed within equal pay law	No, employers cannot seek the compensation history of an applicant or seek the same from the applicant's current or prior employer prior to offer acceptance (after offer acceptance, may request only for purposes of confirming compensation history). Employers cannot screen an applicant based on their compensation history, including requiring that compensation history meets minimum or maximum criteria
FL Florida	Gender	Equal work requiring equal skill, effort, and responsibility, performed under similar working conditions	Not addressed	Within 6 months after termination of employment	Not currently addressed
GA Georgia	Sex	Equal work requiring equal skill, effort, and responsibility, performed under similar conditions	Yes, must compare employees in the same establishment	One year after the cause of action accrues	Not currently addressed

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
HI Hawaii	Sex	Equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions	Yes, must compare employees in an establishment	Employee must file complaint with Human Rights Commission within 180 days	Pending (Eff. 1/1/2019): No. Unless offered voluntarily and without prompting, employers may not inquire about, search public records for, or rely on salary history of applicants in the hiring process
ID Idaho	Sex	Comparable work on jobs that have comparable requirements relating to skill, effort and responsibility	Yes, must compare employees in the same establishment	Not addressed within equal pay law	Not currently addressed
IL Illinois	Sex	Same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions	Yes, must compare employees in the same county	All complaints shall be filed with the state Department of Labor within one year from the date of the underpayment. Civil actions shall be brought within 5 years from the date of underpayment	Not currently addressed
IN Indiana	Sex	Equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions	Yes, must compare employees in the same establishment	3 years after the cause of action arises	Not currently addressed
IA Iowa	For state employers: Sex For all employers: Age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability	For state employers: Comparable as measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of work For all employers: Equal work on jobs which require equal skill, effort, and responsibility, and which are performed under similar working conditions	For state employers: Not addressed For all employers: Yes, must compare employees within the same establishment	Typically employee must file a charge within 300 days after the alleged unlawful practice	Not currently addressed
KS Kansas	Sex	Work on jobs requiring equal skill, effort, and responsibility, performed under similar working conditions	Yes, must compare employees in the same establishment	Not addressed within equal pay law	Not currently addressed

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
KY Kentucky	Sex	Comparable work on jobs that have comparable requirements relating to skill, effort and responsibility	Yes, must compare employees in the same establishment	6 months	Not currently addressed
LA Louisiana	The state equal pay act only applies to public employers. There is a general wage discrimination law that applies to all employers and prohibits sex discrimination	Public employers: Same or substantially similar work on jobs that require equal skill, education, and responsibility that are performed under similar working conditions including the time worked in that position All employers: Jobs that require equal skill, effort, and responsibility and are performed under similar working conditions	Not addressed	Public employers: 1 year, with tolling provisions	Not currently addressed
ME Maine	Gender	Comparable work on jobs that have comparable requirements relating to skill, effort and responsibility	Yes, must compare employees in the same establishment	Not addressed within equal pay law	Not currently addressed
MD Maryland	Sex and Gender Identity	Work of comparable character or work in the same operation, in the same business, or of the same type	Yes, must compare employees in the same establishment, which is defined as within the same county	3 years after the employee receives wages paid on the termination of employment	Not currently addressed
MA Massachusetts	Gender	Work of like or comparable character or work on like or comparable operations that requires substantially similar skill, effort and responsibility and is performed under similar working conditions	Geographic location is possible defense	3 years, each pay check is violation	No, cannot seek salary history from a prospective employee or current or former employer before an offer. If a prospective employee has voluntarily disclosed salary history information, the employer can confirm prior wages or salary or permit a prospective employee to confirm prior wages or salary. Cannot require that prior wage or salary history meet certain criteria. Prior wages are not a defense to equal pay complaint

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
MI Michigan	Sex	Jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions	Yes	Not addressed within equal pay law	Yes. State law prohibits local jurisdictions from implementing salary history bans
MN Minnesota	Sex	Jobs that require equal skill, effort, and responsibility and are performed under similar working conditions	Not addressed	1 year	Not currently addressed
MS Mississippi	No law	No law	No law	No law	No law
MO Missouri	Female employees	Same quantity and quality of the same classification of work	Yes, must compare employees in the same establishment	Six months after the date of the alleged violation, but in no event shall any employer be liable for any pay due for more than thirty days prior to receipt by the employer of written notice of claim thereof from the female employee	Not currently addressed
MT Montana	Women	Equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment	Description of work compared includes the same industry, school, establishment, office, or place of employment	Not addressed within equal pay law	Not currently addressed
NE Nebraska	Sex	Equal work on jobs which require equal skill, effort and responsibility under similar working conditions	Yes, must compare employees in the same establishment	4 years	Not currently addressed
NV Nevada	Sex	Equal work which requires equal skill, effort and responsibility and which is performed under similar working conditions	Yes, must compare employees in the same establishment	Not addressed within equal pay law	Not currently addressed

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
NH New Hampshire	Sex	Equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions	Not addressed	3 years of discovery of the violation	Not currently addressed
NJ New Jersey	Race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or liability for service in the armed forces	Substantially similar work, when viewed as a composite of skill, effort and responsibilities	Not addressed	Continuing violation doctrine applies; backpay limited to 6 years	Not currently addressed
NM New Mexico	Sex	Equal work on jobs the performance of which requires equal skill, effort and responsibility and that are performed under similar working conditions	Yes, must compare employees "within any establishment"	2 years from last date of employment	Not currently addressed

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
NY New York	Sex	Jobs that require equal skill, effort and responsibility, and are performed under similar working conditions	Yes, must compare employees located in the same geographical region (no larger than a county), taking into account population distribution, economic activity, and/or the presence of municipalities	Not addressed within equal pay law	<p>New York state: Currently not addressed</p> <p>New York City: No, employers or their agents cannot seek the compensation history of an applicant, seek the same from the applicant's current or prior employer, or conduct public records review to determine prior salary. Cannot rely on the salary history of an applicant in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of a contract unless disclosed voluntarily and without prompting. May discuss compensation that applicant would forego in order to take the new job (e.g. unvested equity, deferred comp or bonus)</p> <p>Albany County: No, cannot request that an applicant disclose his/her wage or salary history or seek the same from applicant's current or former employer; cannot screen applicants based on wage history (inclusive of compensation, salary or other benefits); may confirm prior wages, with written authorization from applicant, after making an offer that includes compensation</p> <p>Westchester County: No, cannot rely upon wage history to determine wages or require as a condition of interview or offer that a prospective employee disclose wage history information. May rely on salary history when it is voluntarily provided by an applicant to support a wage higher than the wage offered by the employer</p>
NC North Carolina	There is no standalone equal pay law. There is a general wage discrimination law	No law	No law	No law	Currently not addressed, but there is pending legislation

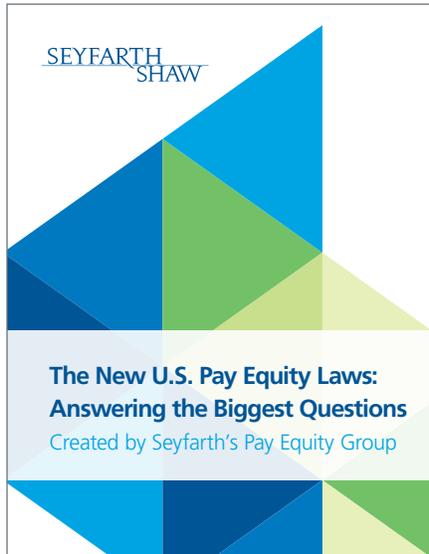
State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
ND North Dakota	Gender	Comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility	Yes, must compare employees in the same establishment	2 years after the unlawful employment practice occurred, with tolling provisions	Not currently addressed
OH Ohio	Race, color, religion, sex, age, national origin, or ancestry	Work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar conditions	Not addressed	1 year	Not currently addressed
OK Oklahoma	Women	Comparable work on jobs which have comparable requirements relating to comparable skill, effort, and responsibility	Not addressed	Statute does not provide a private right of action	Not currently addressed
OR Oregon	Pending (Eff. 1/2019): Race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Current: Gender	Pending (Eff. 1/2019): "Work of comparable character" means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title. Current: Work of comparable character, the performance of which requires comparable skill	Pending (Eff. 1/2019): Yes, "workplace location" is a factor that can be considered	Pending (Eff. 1/2019): 1 year	No, cannot seek salary history from applicant or prior employer before offer. Can confirm prior compensation after offer that includes amount of compensation, with written authorization of prospective employee. (Eff.10/6/2017, no private right of action until 2024) Pending (eff. 1/1/2019): Cannot screen job applicants based on current or past compensation, or determine compensation based on current or past compensation
PA Pennsylvania	Sex	Equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions	Yes, must compare employees within same establishment	Two years	Philadelphia only (partially enjoined by legal challenge): Employers cannot rely on wage history in determining the wages for applicants at any stage in the employment process, unless the applicant knowingly and willingly discloses salary history. The provision of the Philadelphia law that prohibited inquiries about wage history was enjoined by a court on First Amendment grounds

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
PR Puerto Rico	Sex	Comparable job functions or duties that require the same skill, effort or responsibilities under similar working conditions	Not addressed	1 year	No, cannot seek salary history from a prospective employee before an offer. If a prospective employee has voluntarily disclosed salary history information, the employer can confirm prior wages or salary or permit a prospective employee to confirm prior wages or salary
RI Rhode Island	Sex	Equal work or work on the same operations	Not addressed	Not addressed	Not currently addressed
SC South Carolina	There is no standalone equal pay law. There is a general wage discrimination law that prohibits pay discrimination on the basis of sex, race, religion, color, sex, national origin, or disability	Not addressed	Yes, can consider whether employees work in different locations	1 year	No law
SD South Dakota	Sex	Comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility, but not to physical strength	Not addressed	2 years	Not currently addressed
TN Tennessee	Sex	Comparable work on jobs the performance of which require comparable skill, effort and responsibility, and that are performed under similar working conditions	Yes, must compare employees within same establishment	2 years	Not currently addressed
TX Texas	There is no standalone equal pay law. There is a general wage discrimination law	No law	No law	No law	Not currently addressed
UT Utah	There is no standalone equal pay law. There is a general wage discrimination law	No law	No law	No law	No law

State	Who is protected?	What type of work must be compared?	May employers rely on geographic location to explain pay differences?	What is the statute of limitations?	May employers ask about salary history? (State and Local)
VT Vermont	Sex	Equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions	Not addressed	Not addressed within equal pay law	No, employers may not inquire about compensation history. Employers cannot screen an applicant based on their compensation history, including requiring that compensation history meets minimum or maximum criteria. If a prospective employee voluntarily discloses the information, an employer may confirm it after making an offer with compensation
VA Virginia	Sex	Equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions	Yes, must compare employees within any establishment	2 years	Not currently addressed
WA Washington	Gender	The performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions; job titles alone are not determinative of whether employees are similarly employed	Yes, if it is a bona fide regional difference in compensation levels	Continuing violation doctrine applies; 3 years	Salary history inquiries are not banned but an employee's salary history is not a defense to an equal pay claim
WV West Virginia	Sex	Work of comparable character, the performance of which requires comparable skills	Not addressed	1 year	Not currently addressed
WI Wisconsin	Sex	Equal or substantially similar work	Not addressed	Employee must file complaint with state department within 300 days of alleged discrimination	Yes. State law prohibits local jurisdictions from implementing salary history bans
WY Wyoming	Sex	Work that requires equal skill, effort and responsibility and which is performed under similar working conditions	Yes, must compare employees within same establishment	Not addressed within equal pay law	Not currently addressed

Additional Resources

Pay Equity Guide



Pay Equity Issues & Insights Blog
www.seyfarth.com/pay-equity-microblog

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