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SPOTLIGHT ON

Pay Transparency & Equity: Integral Drivers of Long-Term Returns

The legislative landscape around pay equity in the United States is complex and constantly evolving, with well-intentioned current policy proposals that could have unintended consequences for the future of the U.S. workforce.

By Ani Huang

About this Series

HR Policy Association (HRPA) represents nearly 400 of the largest companies worldwide. Members employ more than 10 million individuals in the U.S. This report articulates the perspectives of our members regarding the trajectory of work in the U.S. and the need for specific changes in both corporate and public policies to effectively advance the future of the American workforce.

HR Policy Association's "Advancing the American Workforce" series equips policymakers and business leaders with insights from Chief Human Resource Officers (CHROs) of major companies. The profound changes employers and society have experienced over the past five years have transformed the way large employers and their employees think about work, the workforce, and the workplace and how each needs to be structured for long-term success. HR Policy provides the perspective, not only from employers, but from CHROs who bridge the goals of their companies with the talents and needs of its greatest asset: employees.

New technologies, evolving demographics, and shifting political winds demand a strategic approach to HR. Chief Human Resource Officers are at the forefront of navigating these changes, and their perspective provides invaluable insights for policymakers. This multi-part series offers practical experiences and perspectives on the critical trends shaping the future of work, and suggests policy approaches to ensure the American workforce remains at the vanguard of global excellence in the years to come.

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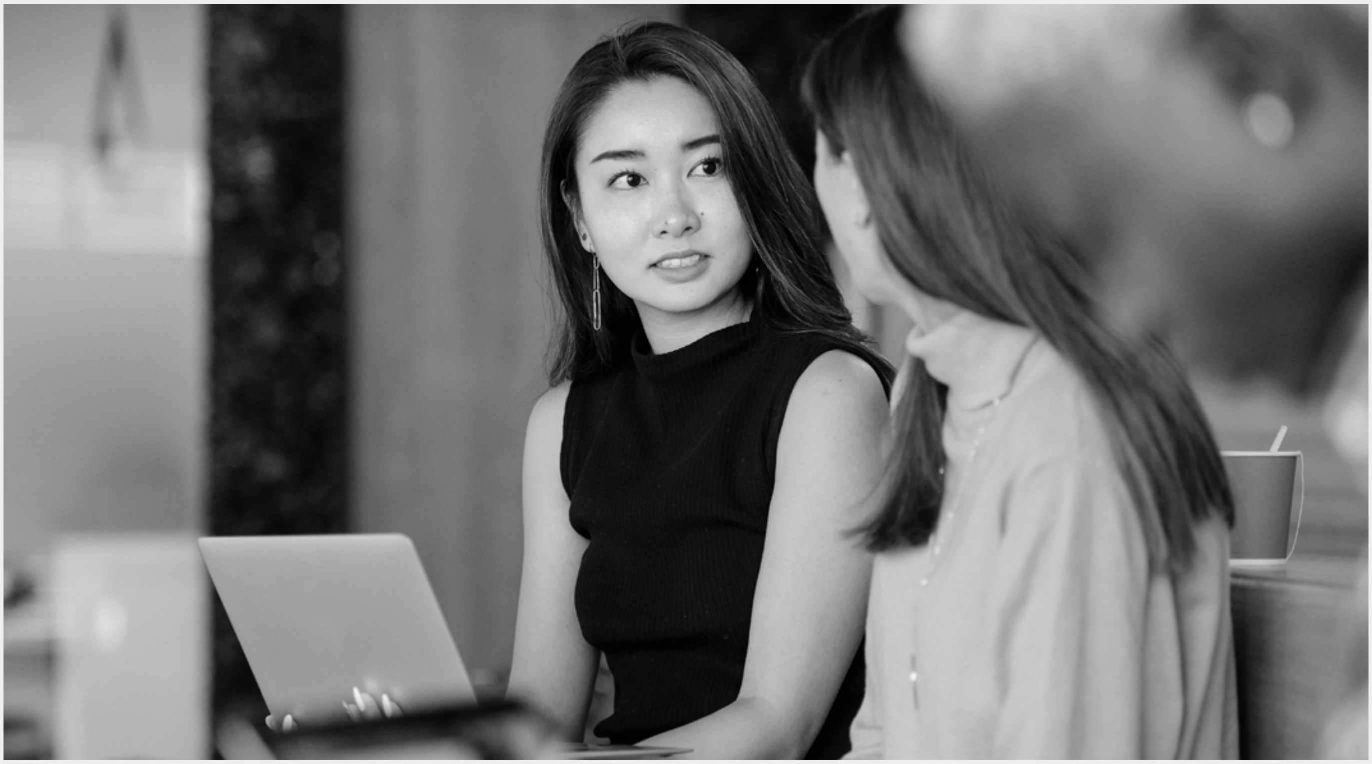

EXECUTIVE SUMMARY

Pay Transparency & Equity: Integral Drivers of Long-Term Returns

Chief Human Resource Officers (CHROs) view pay equity (equal pay for equal work) as an integral driver of positive company culture, employee retention, and morale that shareholders also see as critical to sustainable long-term returns.

Fair and market-competitive compensation plays a vital role in attracting top talent, regardless of gender, race, ethnicity or religion.

Policymakers have focused on pay transparency as a promising method for achieving pay equity, but states and localities have taken disparate approaches to transparency resulting in compliance burdens for multi-state employers. Furthermore, while well-intentioned, current policy proposals that mandate disclosure of unadjusted pay data to measure pay equity could have unintended consequences for the workforce.

The legislative landscape around pay equity in the United States is complex and constantly evolving, with a mix of federal and state laws addressing the issue. As we look to 2030 and beyond, guidelines designed to achieve pay equity must be uniform regardless of company location and based on effective data.

Companies With Equitable Work Environments Are Better Positioned to Attract and Retain Top Talent

By 2030, the U.S. will be less white and more minority with Hispanic, Black, and Asian Americans increasing their share of the population.[1] (Figure 1)

According to the U.S. Census Bureau, America will experience a "minority-majority" crossover within the next 20 years, as non-Hispanic Whites will comprise less than 50% of the population. This transformation is being driven by the growth in the Latino population.[2]

An inclusive and diverse workplace is a stated priority for many job seekers. Companies that create inclusive cultures and strive for a fair and equitable work environment will be better positioned to attract and retain top talent into the future. Along with workplace benefits like work-life balance, retirement, healthcare, career development, and remote work options, competitive salaries will remain a key driver of employee motivation and loyalty.

FIGURE 1

Minority share of U.S. population increases, 2022 to 2030

	2022		2030
White	58.9%	↓	56.0%
Hispanic	19.1%	↑	20.8%
Black	13.6%	↑	13.8%
Asian	6.3%	↑	7.0%

SOURCE: ADAPTED FROM U.S. CENSUS BUREAU

Companies determine pay using a mix of market research and objective criteria. External data is used to benchmark salaries against similar roles in the industry. Compensation is adjusted based on skills, experience, and performance of individual employees.

To address ongoing fairness and equity, companies use:

Pay Audits: Companies conduct regular pay analyses to identify and address any pay gaps based on protected characteristics. A Syndio study found that almost 90% of organizations conduct pay equity analyses at least annually, if not more frequently.[3]

Transparency: Even where not required by law, companies have dramatically increased transparency around employee compensation and benefits along with their efforts to promote pay equity within their organizations. A recent SHRM study found that three out of five companies "always" or "often" list pay ranges in job postings even when not required by law.[4]

Proactive Outreach: Companies identify and support talent from under-represented groups through mentorship, training, and career development opportunities.

> **Feeling valued and fairly compensated leads to more engaged and productive employees.**
>
> HR POLICY ASSOCIATION MEMBER CHRO

Pay equity can positively impact company culture, morale, and ultimately, the bottom line. Demonstrating a commitment to pay equity improves a company's image and attracts ethical consumers and investors, and customers increasingly support companies that promote social responsibility and fair treatment of employees. It is important, therefore, that policies designed to achieve pay equity enhance the workplace goals of rewarding individual performance, supporting company culture, and attracting talent.

At a federal level, the Equal Pay Act of 1963[5] and Title VII of the Civil Rights Act of 1964[6] are the primary laws prohibiting pay discrimination. It seems unlikely we will see additional federal legislation to mandate pay transparency, or a major change to Title VII or the Equal Pay Act absent an unexpected election outcome. Similarly, depending on the future political landscape, the EEOC may re-propose disclosure of pay data by racial, ethnic, and gender categories, which are currently used to report company diversity to the government.

"Pay equity will remain a business imperative."

HR POLICY ASSOCIATION MEMBER CHRO

Employees want to work for organizations that share their principles, including the importance of a fair and equitable work environment.

Patchwork of Pay Equity Legislation at the State Level

A complicated patchwork of laws and regulations presents challenges for U.S. employers, requiring them to navigate different standards across jurisdictions.

On the state level, there is significant variation in approaches to pay equity. Many states have enacted their own pay equity laws with some states exceeding federal requirements by:

- **Expanding protected classes** (*e.g.*, gender identity, LGBTQ+, disability)
- **Requiring disclosure of salary ranges** in job postings
- **Prohibiting salary history inquiries**
- **Mandating equal pay for comparable work**, not just equal work (also known as comparable worth)

In addition, a high number of states and cities introduced pay transparency requirements with Hawaii joining states such as California, Illinois, Maryland, New York and Colorado in mandating more pay transparency in job listings. Moreover, the agency that oversees companies that provide goods and services to the federal government has proposed an expansive pay transparency regulation. This explosion of laws and regulations is challenging, requiring employers to navigate different standards across jurisdictions.

Tracking Pay Equity Legislation

Keeping up with the ever-changing pay equity requirements can pose daunting challenges for operations that operate in multiple states. See below for two regularly-updated resources:

LAW360

State Pay Disclosure Law Tracker

Legislation barring employers from asking applicants what they've been paid previously and requiring employers to share estimated salary ranges for open positions has been on the rise, as state lawmakers try to make a dent in stubborn gender and race-based pay gaps in the U.S.

Seyfarth

50 State Pay Equity Desktop Reference

What businesses need to know about U.S. pay equity laws.

HR Policy Association Supports the Following Reforms

The following recommendations are based on employer experience evaluating and implementing strategies to achieve pay equity. Based on a shared desire to address pay equity, the practical experience gained by employers can help inform policy development. HR Policy Association recommends the following approaches to policy:

1 Avoid reliance on unadjusted pay analysis to achieve equity

There are two forms of pay gaps measured by companies: adjusted, which accounts for factors such as tenure, qualifications or performance, and unadjusted, which measures median or mean pay without accounting for any other factor that would affect pay.

Some stakeholders have expressed an interest in mandating unadjusted pay gap disclosure requirements similar to the EU's new pay equity directive, which requires companies to publish median and mean pay gaps for men and women, without adjusting for relevant factors. While well-intentioned, policy approaches based on unadjusted pay equity may have adverse effects on companies and employees:

- ***Misleading Conclusions:*** The sole emphasis on unadjusted pay equity fails to account for factors influencing compensation such as experience, education, tenure, and performance. Ignoring these factors oversimplifies the assessment of pay disparities, leading to misleading conclusions about potential discrimination.
- ***Inability to Retain Top Talent:*** Strict adherence to unadjusted pay equity could hinder an organization's ability to retain top talent. If compensation decisions are solely based on achieving perfect equality without considering individual contributions or market demand for certain skills, it limits the organization's capacity to reward high performers competitively.
- ***Impact on Performance and Motivation:*** Overemphasis on unadjusted pay equity might undermine performance-based incentives. A rigid focus on equality could diminish the motivation for high-performing employees, affecting overall productivity and innovation within the company.
- ***Recruitment Challenges:*** Companies might face challenges in attracting skilled candidates if constrained by a rigid pay equity framework. If salary structures are entirely uniform, irrespective of an individual's skills or market value, it might deter potential hires seeking competitive compensation aligned with their qualifications and expertise.

2 Test EEOC pay disclosure scheme prior to requiring it

If the Commission reproposes mandatory pay disclosure, the proposal should first be tested on actual employer data. Criticisms identified by the National Academy of Sciences study of EEOC's proposal, which concluded that data was "not well-suited to measure pay equity," must be addressed.[7]

3 Avoid further proliferation of state, local mandates around pay transparency

Inconsistencies in state policy does not achieve equity and may, in fact, be harmful for the following reasons:

- ***Unintended Consequences:*** Companies use pay as an important tool to attract, reward and retain the best talent possible. A one-size-fits-all approach is not possible when employees have a choice of companies and individual circumstances that require flexibility in pay. Mandated pay transparency might result in unintended consequences that would harm employees. For instance, organizations might opt for standardized pay scales, eliminating flexibility for rewarding high-performing employees and hindering innovation in compensation structures.

- ***Competitive Disadvantage:*** Disclosing detailed salary information might reveal proprietary compensation strategies or sensitive business information to competitors, impacting an organization's ability to attract and retain talent or negotiate contracts with suppliers and partners.

- ***Impact on Employee Morale:*** Complete transparency in pay could inadvertently lead to dissatisfaction among employees. When individuals discover disparities in compensation among colleagues without the context of why those disparities exist, it might breed resentment and negatively affect workplace morale, potentially leading to a decrease in productivity or an increase in inter-office tensions. It is often not feasible to disclose all the factors which lead to pay differences between employees.

- ***Flexibility in Negotiations:*** Salary negotiation is influenced by a variety of factors, including experience, qualifications, and negotiation skills. Overly rigid transparency measures hinder organizations from offering tailored compensation packages based on these individual considerations.

- ***Administrative Burden:*** Mandating pay transparency can impose substantial administrative burdens on organizations. For larger companies with complex pay structures, the process of compiling and disclosing comprehensive salary data to accommodate different state laws can be time-consuming and resource intensive. This burden might divert resources away from core business activities.

4 **Incentivize voluntary actions without imposing strict mandates** through guidelines, industry best practices, and educational initiatives, that encourage organizations to adopt pay practices and that fit their culture and business model.

- ***Adjusted Pay Equity Analysis.*** Rather than focusing solely on unadjusted pay equity, companies perform adjusted equity analyses that consider relevant factors like job roles, experience, education, and performance. This approach provides a more nuanced understanding of pay disparities, distinguishing between systemic issues and legitimate differences based on individual merit. Yet, various measures at the state and federal level – such as the Paycheck Fairness Act (H.R. 17/S. 728 in the 118th Congress)[8] – would restrict employer defenses to gender pay discrimination lawsuits to such a degree as to make it nearly impossible to defend lawful, widely accepted gender and race-neutral pay practices.[9]

- ***Transparency on how pay decisions are made:*** Emphasizing transparency in compensation practices (as opposed to compensation) and accountability for fair and unbiased decision-making can be pivotal. Companies can communicate clearly about pay structures, ensure objective evaluation criteria, and address identified disparities. This promotes fairness without compromising an organization's ability to reward performance. A 2023 Syndio survey indicates that 50% of organizations already conduct pay equity analyses annually with an additional 36% conducting analysis on a more frequent basis. Often, companies are reviewing multiple components of pay data beyond base salary.[10]

- ***Continuous Evaluation and Improvement:*** Companies should commit to ongoing evaluation and improvement of their pay practices. Regular internal audits and assessments, coupled with proactive measures to rectify any identified discrepancies, can foster a culture of fairness and equality within the organization.

Endnotes

[1] U.S. Census Bureau, In table: 2022-2030, https://www2.census.gov/programs-surveys/popproj/tables/2023/2023-summary-tables/np2023-c.xlsx

[2] The Latino Worker Project Report, HR Policy Association, https://www.hrpolicy.org/hrpolicy/media/meeting/2023/09/latino-worker-project-report.pdf

[3] The 2024 Workplace Equity Trends Report Syndio, https://synd.io/workplace-equity-trends-report/

[4] The Real Effects of Pay Transparency in Business, SHRM, https://www.shrm.org/topics-tools/news/all-things-work/pay-transparency-equity

[5] Equal Pay Act of 1963, https://www.eeoc.gov/statutes/equal-pay-act-1963

[6] Title VII of the Civil Rights Act of 1964, https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964#:~:text=L.%2088%2D352)%20(,religion%2C%20sex%20and%20national%20origin.

[7] Evaluation of Compensation Data Collected Through the EEO-1 Form, National Academy of Sciences, https://nap.nationalacademies.org/catalog/26581/evaluation-of-compensation-data-collected-through-the-eeo-1-form

[8] Paycheck Fairness Act (H.R. 17/S. 728 in the 118th Congress), https://www.congress.gov/bill/118th-congress/house-bill/17

[9] As discussed in an HRPA analysis of the bill, the employer would be required to establish a "business necessity" for the pay system in question – a standard in employment litigation that is virtually unattainable. But even if the employer met that burden the plaintiff could defeat it by demonstrating that "an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice." This provision would lead to conflicting expert testimony, result in confusion in the courts, and ultimately may exclude any meaningful defenses from employers.

[10] 2024 Workplace Equity Trends Report, Syndio, https://synd.io/wp-content/uploads/2023/10/Workplace-Equity-Trends-Report-2024-Digital.pdf

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ABOUT

HR Policy Association

For more than 50 years, HR Policy Association has been the lead organization representing Chief Human Resource Officers of major employers. HRPA consists of nearly 400 of the largest corporations doing business in the United States and globally. These companies are represented in the organization by their most senior human resource executives. Collectively, HRPA member companies employ more than 10 million employees in the United States, over nine percent of the private sector workforce, and 20 million employees worldwide. These senior corporate officers participate in the Association because of their unwavering commitment to improving the direction of human resources policy. To learn more, visit hrpolicy.org.