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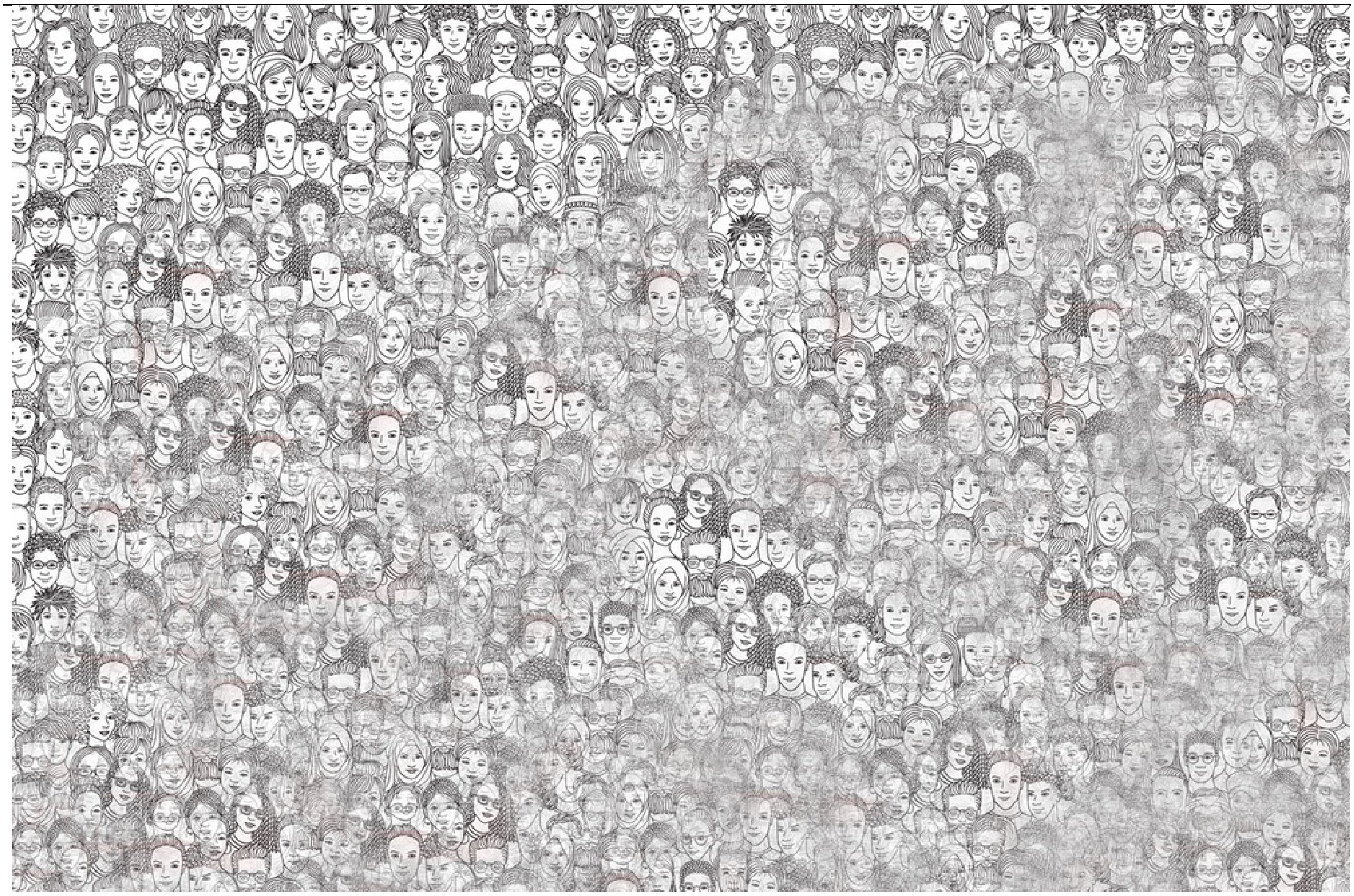
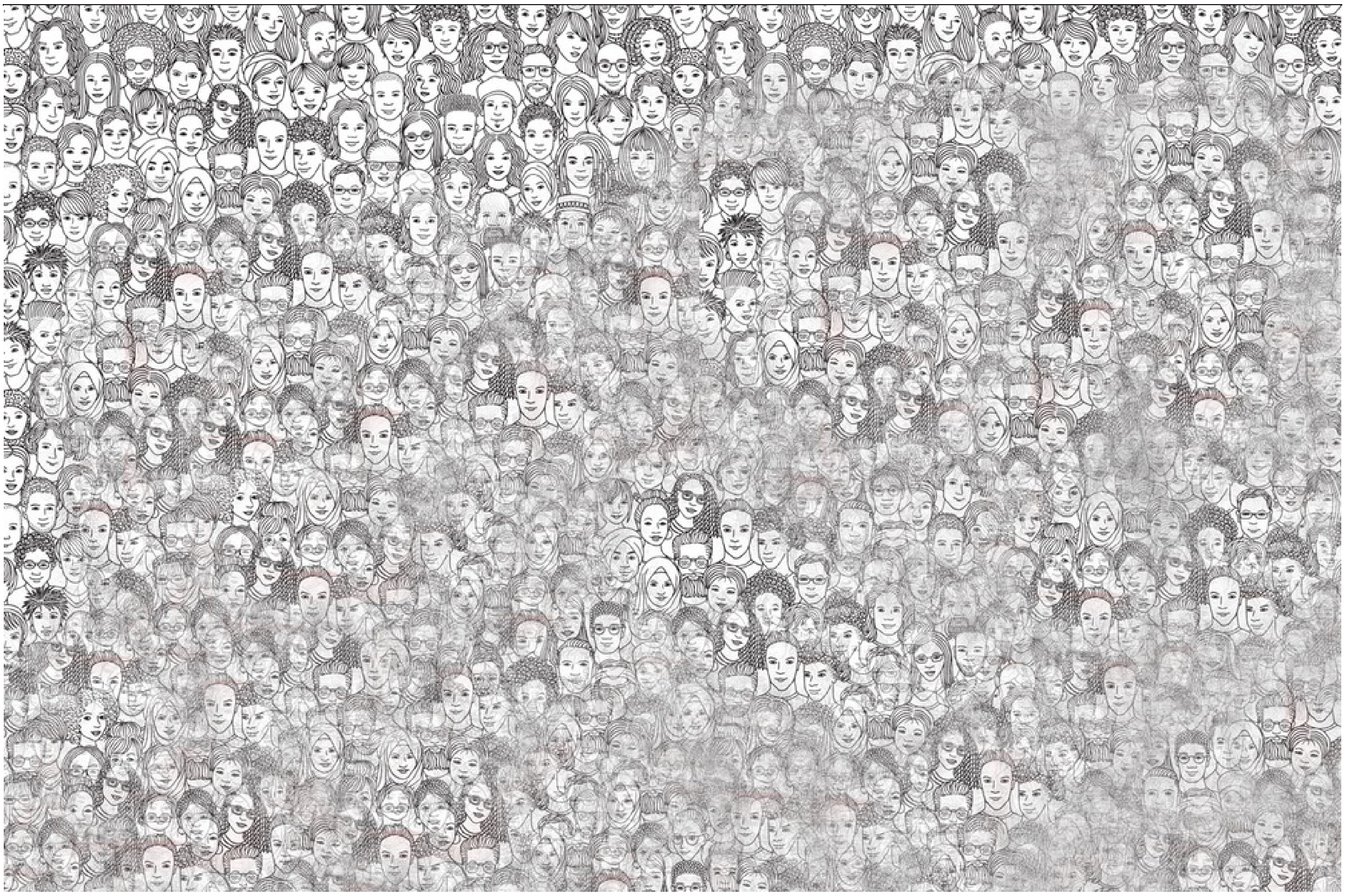
Pay Equity Laws Are Headed Your Way — If They Aren't Already the Rule

Employment and Labor





CHEAT SHEET

- ***Pay gap.*** According to the World Economic Forum, women across the globe, on average, earn about 57 percent of what men earn.
- ***Societal factors.*** Certain societal factors contribute to pay disparities: women are more likely leave the workforce to care for children or elderly parents; women are more likely to work part-time; and women often work in fields that pay less, such as teaching and nursing.
- ***Government efforts.*** Governmental attempts to close the wage gap include pay equity laws, salary history bans, and transparency acts.
- ***Next steps.*** Companies wanting to prepare for new laws, or to be competitive in the eyes of prospective employees, can eliminate salary questions during the hiring process, conduct an internal wage analysis, consider global privacy laws, and consult trusted advisors

Gender pay equity might be grabbing today's headlines, but efforts to set equal pay for equal work started more than 50 years ago with rules and regulations that sought to level the playing field for women workers.

Of course, anybody who has been following the headlines knows that decades after those first laws were passed, many women continue to earn less than men for the same work.

Across the globe, a woman takes home, on average, about 57 percent of what a man earns, according to the World Economic Forum. The pay gap is much smaller in the United States, and has narrowed in recent years, but US women still earn about 18 percent less than their male coworkers, according to the Pew Research Center.

The more recent push for fair pay comes as women, who comprise about 45 percent of the global workforce, and their supporters demand change, and rightfully so. In response, national, regional, and local leaders around the world have heard the pleas of their constituents and are shoring up existing laws and adopting new ones.

As these new laws are debated, passed, and enforced, employers have an important decision to make.

Do they wait for the passage of regulations in countries where they operate before they make changes? Or, do they address the issue of pay equity now to ensure that all their employees are fairly paid, regardless of what the law requires?

Fifty years in the making

The United States was one of the first countries to lead the charge toward a national fair pay mandate when President John F. Kennedy signed the Equal Pay Act of 1963 into law.

The act, which was decades in the making, and an amendment to the Fair Labor Standards Act, banned gender-based wage discrimination between men and women doing jobs at the same employer that require substantially equal skill, effort, and responsibility.

Seven years later came the United Kingdom's Equal Pay Act of 1970, which, similar in many ways to the US law, established that employees, regardless of their gender, should earn equal pay for equal work.

The law defines "equal work" as "like work," when the work is similar though the job title may be different; "equivalent" when it's rated as such in a job evaluation; or of "equal value," when the job demands related effort, skills, knowledge, or responsibility.

The United States and United Kingdom might have been among the first countries to mandate equal work for equal pay, but soon other parts of the globe followed. Notably, they included not just first-world countries, but developing nations where the economy relies heavily on manufacturing, manual labor, and other blue-collar jobs.

India's Equal Remuneration Act, for example, arrived in 1976 and required women and men to be paid the same for similar work. China's Constitution, adopted in 1982, states that women enjoy equal rights in "all spheres of life," including "economic." And, Brazil's Labor Code, as it was amended in the 1988 Federal Constitution, also mandates equal pay for equal work.

Well-meaning, but ineffective

These laws are well-meaning, as they attempt to drive equal pay for all, but over time they have generally been found to be ineffective in helping to close the pay gap. Researchers have spent years sorting out the reasons, which are myriad and complex.

They begin with the different choices men and women make — and have — in the workplace.

Women are more likely than men to take time away from the workforce to care for children or elderly parents, for instance. Likewise, it's more common for women to work part-time than their male colleagues. As a result, over the course of their career, they have fewer benefits, a lower salary, and not as many opportunities to move up the management ladder and qualify for hefty raises.

Meanwhile, studies show that women often end up in fields that generally pay less. They make up the majority of teachers, nurses, clerical workers, and home health aides, typically low-paying fields, according to the US Department of Labor.

And when they pursue lucrative industries, they are less likely than men to end up in the highest-paying jobs, according to a Georgetown University study. In law, for instance, lawyers are highly compensated, but women comprise a larger share of lower-paying roles as paralegals and legal assistants. In engineering, women more often elect environmental engineering over, for example, petroleum engineering where salaries are often double.

Regulation and oversight part of problem

But these historical gender differences aren't the only reasons for pay disparity. In many ways, regulatory bodies have been hamstrung by anti-transparency laws and cultural norms. A lack of legislative oversight deserves plenty of blame, too.

Regulators, for instance, are responsible for promoting compliance with laws, but generally, they act only if there have been substantiated reports of unequal pay. In the past, female workers have been reluctant to come forward or, in other cases, didn't even know that they were being paid less than the man working right next to them. Though some have now been waived, past laws and some corporate policies have specifically restricted people from talking about compensation with their colleagues.

What's more, these cases can be tricky to verify and for women to prove. Consider these numbers from the Equal Employment Opportunity Commission, which investigates cases of compensation unfairness in the United States: In fiscal year 2017, the agency considered 996 equal wage discrimination complaints. That same year, more than 65 percent of the cases they looked into had "no reasonable cause" for action. Yet it's clear that women continue to be paid less than men.

Moving from equality to equity

In an attempt to promote further equality among the genders, newer legislation around the world has been introduced concerning "pay equity."

These pay equity laws look more broadly at paying similar wages for related job classifications, regardless of whether the positions are typically held by women or men. They strive to look beyond gender or other protected classes to eliminate the inequalities perpetuated by setting compensation lower for jobs that are typically held by women than for those traditionally held by men.

Ontario, the Canadian province, took a step in that direction in 1987 with its Pay Equity Act. The act requires that employers with 10 or more employees pay workers in typically female job classes at least as much as workers in male job classes of similar value.

In 2010, the United Kingdom also expanded its own Equal Pay Act and later amended it in 2017 to require annual gender pay gap reporting. Now, employers with 250 or more workers must detail, among other information, their mean and median pay gap and bonus pay gap for men and women.

More than 10,000 employers filed their first reports in 2018, and the data shows that there is plenty of room for improvement.

According to the UK Government Equalities Office, more than three out of four companies reported that they pay men more than women; more than half gave higher bonuses to men; and more than 80 percent have more women in their lowest paid positions than in their highest paid positions.

It’s clear that there is still room to better level the playing field.

New laws target hiring process

As some tackle the wage gap through pay equity laws, others are trying a newer tactic with salary history bans. These laws preclude employers from inquiring about a prospective hire’s previous compensation until some later point in the hiring process — generally after a contingent offer.

Conversations about past salary, while historically part of the hiring process, can be dicey for job seekers. Sharing a salary history that exceeds a company’s budget could mean that they’re dropped from consideration. They also could end up earning far less than they’re worth, however, if they list a low salary to a potential employer.

What’s more, women often bring with them a long history of lower pay. So, considering their past earnings each time they make a career move only perpetuates wage disparities, making it difficult for them to ever truly boost their income and catch up with their male coworkers.

Salary history bans are especially popular in the United States.

So far, seven US states — California, Connecticut, Delaware, Hawaii, Massachusetts, Oregon, and Vermont — have adopted salary history bans. Local governments, including New York City, San Francisco, Albany, NY, Suffolk County, NY (effective June 29, 2019), and Westchester County, NY, have joined them. Puerto Rico lawmakers also have signed an act that prohibits early questions about salary history.

The laws aim to end compensation discrimination, but the fine print can vary widely.

In Connecticut, for instance, employers can never ask a job candidate about their past wages and compensation histories at any point during the hiring process. In Massachusetts, a company can’t ask a candidate about their wage history until after a negotiated compensation offer.

And while more states and municipalities are considering similar measures, it’s important to note that not all legislators are on board with salary history bans. Both Michigan and Wisconsin have laws that block local governments from regulating what information employers can seek during the hiring process. And in spring 2018, part of Philadelphia’s ban was ruled unconstitutional.

Still, additional US states and cities are considering salary history ban measures. And, in 2018, for the first time, this kind of legislation expanded beyond the United States' borders.

Change in the north

In April 2018, lawmakers in Ontario, Canada passed the Pay Transparency Act. It aims to increase transparency in the hiring process, so women have a better chance to secure equal pay.

Starting Jan. 1, 2019, the law has four primary mandates. The act, according to the province's Ministry of Labor:

- Requires that all publicly advertised job listings include a salary rate or range;
- Bars employers from asking a job candidate about their past salary;
- Prohibits reprisals against employees who discuss or disclose compensation; and
- Establishes a framework to require larger employers to track and report pay gaps.

The disclosure requirements will first affect Ontario Public Service. They then will apply to employers with more than 250 employees in 2020 and companies with more than 100 employees in 2021.

While the act is specific to employers in Ontario, there's a good chance that other Canadian provinces could mirror Ontario's law. Home to Ottawa, the nation's capital, Ontario is Canada's most populous and, in terms of law-making, its most influential province. Lawmakers in other parts of Canada often follow Ontario's lead when it comes to the passage of new rules and regulations.

Iceland takes a tough stance

All these measures intend to close the pay gap, but is the most effective measure direct oversight and regulation? That's where Iceland comes in.

In January 2018, what some consider landmark legislation in the fight for equal pay went into effect in the Nordic country.

Iceland's Law on Equal Pay Standardization requires that all public and private employers with more than 25 employees obtain independent certification every three years to prove that all employees, regardless of their gender, are paid equitably. Employers face daily fines of about US$400 if they don't become certified.

To a lesser degree, Australia has followed a similar strategy. Its Workplace Gender Equality Act requires private employers with more than 100 employees to turn in annual reports on its workplace gender equality efforts. The reports consider so-called gender equality indicators that include the gender composition of the workforce, along with its governing bodies, and equal compensation for both women and men.

Corporations get ahead

Absent pay equity laws, salary history bans, or other regulations, employers may choose to implement their own practices to end compensation discrimination.

Amazon's move, for example, to amend its corporate minimum wage is a start toward leveling the playing field for women. The ecommerce giant announced in October 2018 that it would raise the minimum wage for US workers to US$15 an hour.

But that alone is not the answer. While boosting the minimum wage ensures all hourly workers start on the job at the same level, it doesn't address the pay disparity that can follow a woman for the remainder of her career.

And, indeed, earlier in 2018 and months before Amazon announced its plan to boost its corporate minimum wage, the company struck pay history from the list of questions it asks prospective employees.

Other major corporations are taking similar steps to achieve pay equity even without laws mandating it.

Starbucks announced in March 2018 that it has reached 100 percent pay equity for all genders and races performing similar work in the United States. To do it, the coffee giant spent more than a decade working toward the goal, relying on three principles: equal footing, transparency, and accountability.

So other companies can take heed, Starbucks laid out the tools it used to reach the goal. The company, for instance, does not ask job candidates to provide their salary history; publishes its pay equity progress annually; and addresses any unexplained differences in pay between men and women.

Adobe, Apple, Intel, and Salesforce also have undertaken notable corporate efforts to ensure all employees are compensated equitably.

And, in September 2018, global leaders from public and private sectors pledged to reduce the gender pay gap by 2030 during the United Nations General Assembly in New York. They included representatives from IKEA, Deloitte, Pepsi Co., Nestle, and Novartis AG, all of whom committed to reviewing hiring practices to reduce unconscious bias and implementing policies that prohibit gender-based discrimination.

The moves to eliminate pay inequity from their workforce comes with plenty of benefits for corporations.

From a recruiting standpoint, ensuring that all employees are paid fairly can boost a company's employment brand. It demonstrates that an organization bases its wages on the merit of a candidate or employee, not what gender they happen to be or whether they choose a career that skews mostly female.

Meanwhile, it's less likely the company will need to scramble when the community, state, or country where they operate passes laws to end compensation discrimination. It makes sense to get ahead of any potential legislation. Many of the recently adopted rules have swiftly worked their way through the legislative process.

Four tips to shore up pay practices

For employers, the takeaway in all of this is that pay equity laws are here to stay and are poised to continue to expand across the globe.

Because of the regulatory oversight and administrative burden brought on by pay equity certification requirements such as Iceland's strategy, we'll likely see that kind of legislation contained. But the number of pay equity laws and salary history bans will only grow, as will the number of organizations that will start taking steps, even without laws requiring they do so, in order to promote wage equality.

Here's what employers should do now to prepare for new laws and to compete at the hiring level with other companies who are making a commitment to ensure all of their workers are paid fairly.

Eliminate salary questions during the hiring process

Today, banning questions about a job seeker's earning history should be considered a best practice when bringing on new hires.

Striking the "what did you make" question from the hiring process can take work. To do it, organizations will need to train — and retrain — hiring managers, third parties, and other employees who are involved in evaluating and interviewing job candidates. At the same time, they'll need to review all hiring-related paperwork to ensure the question is no longer present. This includes reviewing your background screening process or talking with your provider to make sure they aren't asking this question of your candidates, and reviewing any print or online forms that job seekers might fill out.

But that's not to say that an employer can't inquire into a candidate's salary expectations. This nuance of the law is an important one for employers to consider and should replace discussions of compensation history.

Conduct an internal wage analysis

A comprehensive review of an organization's pay structure and salaries will set a baseline and determine where a company may need to improve. The review should include a thorough look at base salary, wages, bonuses and incentives pay across jobs, genders, and, possibly, classes. Companies should look for any disparities that demonstrate gender bias and revise appropriately. Doing so may amount to an affirmative defense if your pay practices are challenged.

Consider global privacy laws

Employers that want to promote a culture of pay equity globally before legislation or regulations are in place are certainly admirable, but they should proceed carefully in their analysis.

Privacy laws such as the European Union's General Data Protection Regulation, Brazil's Data Protection Act, and similar regulations across Asia limit the kinds of information that employers can share about individuals. In many countries, the release of any personal information about job candidates or employees to a third party, who might be involved in the hiring process or conducting a wage analysis, likely would be prohibited absent the express consent of the individual.

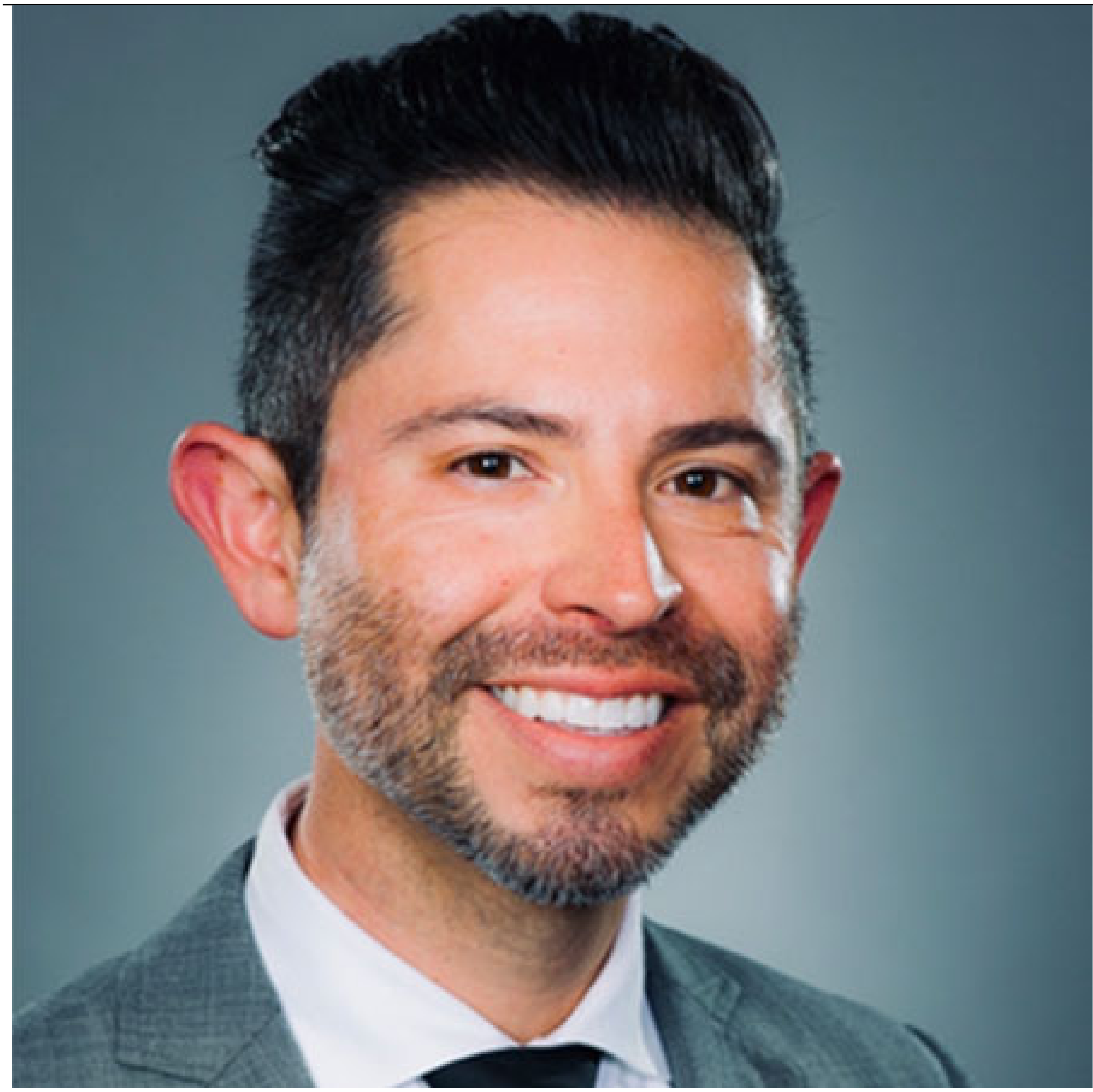
Organizations will need to conduct that research in house or obtain informed notice and consent from employees and possible hires for a third party to proceed with the work. If working with a third party on a wage analysis, an employee's personally identifiable information as it relates to their pay data will also likely will need to be anonymized.

Rely on your trusted advisors

Right now, employers must deal with a patchwork of laws at all levels of government that attempt to address the wage gap through pay equity laws, salary history bans, and other regulations. Keeping up with the different requirements can be administratively burdensome. In-house lawyers may need to engage external legal counsel to help organizations sort out their compliance responsibilities; keep tabs on new ones; refine existing employee handbooks, notices, and practices; and evaluate new strategies to achieve pay equity.

Whatever strategies a company pursues, employers must be prepared for the expansion of regulations around the world to level the playing field for female workers. Now is the time for employers and hiring managers to have these discussions so they can start to revise their own pay practice programs and get ahead of any new laws that may be passed.

Alonzo Martinez



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