

# Special Report for HR Professionals

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The Management Advantage, Inc., PO Box 3708, Walnut Creek, CA 94598
www.hrwebstore.com newsletter@management-advantage.com 925-671-0404


## INSIDE THIS ISSUE



## PRESIDENT OBAMA SIGNS EXECUTIVE ORDERS ON PAY: THE TRUTH ABOUT THE WAGE GAP

**BY JIM HIGGINS, Ed.D.**

On April 8 President Obama signed a pair of executive orders impacting federal contractors and how they implement their pay practices. The first executive order was specifically aimed at bolstering the goal of equal pay for women, while the other mandates that federal contractors are barred from retaliating against employees who wish to discuss their pay at the workplace and with their supervisors. While federal contractors are not required to disclose the pay rates of their workers to interested parties, the order encourages transparency.

Since signing the *Lilly Ledbetter Fair Pay Act* as his first legislative action in 2009, the President has been consistent in his emphasis on the issue of women obtaining fair and equal pay. The timing of the latest executive orders is linked to the *Paycheck Fairness Act* which is currently being considered in the Senate. Although it is unlikely to pass the Senate this year, the *Paycheck Fairness Act* is intended to further highlight what is perceived to be a widespread gap in the wages paid to women when compared to their male counterparts.

The President, in his speech, referred to the notion that it takes “the average female 15 months to earn what the average male earns in 12 months.” Unfortunately, statements such as these, far from building a consensus on how to identify and address actual pay discrimination, have the effect of oversimplifying the issue.

As every federal contractor knows, the pay between two groups cannot be distilled to what is typical of an “average” group member. Another way of saying this is that, “the problem with all things being equal is that they almost never are.” What is an average male? For that matter, what is an average female.

In literally dozens of large scale compensation analyses conducted on behalf of companies representing a broad cross-section of the US economy, this author has observed that, when steps are taken to compare equally qualified males and females, the disparity observed when comparing “average males to average females” in most (but not all) cases disappears.

While it is true that there are instances where males earn more than females. It is often just as true that females earn more than their male counterparts. The truly important question remains: “Is the average pay of <u>equally</u> qualified males and females sufficiently similar to permit one to determine that any differences in pay are simply due to chance and not a practice or policy that results in lower pay for <u>either</u> group?”

*Continued on page 2*

## OFCCP LAUNCHES ONLINE VIETNAM ERA VETERANS' READJUSTMENT DATABASE TO HELP FEDERAL CONTRACTORS

The OFCCP has posted a link to the Benchmark Database required by new regulations implementing the *Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)*. Federal contractors use the VEVRAA Benchmark Database when establishing a hiring benchmark for protected veterans as required by 41 CFR 60-300.45. The database is to be used if a contractor wishes to compute a benchmark (hiring target) other than the 8% specified as the primary choice. Computation based on the database is the secondary choice. This database includes the annual national percentage of veterans in the civilian labor force for contractors that choose to use this number as their benchmark. It also includes data on the percentage of veterans in the labor force in each State and the number of veterans who participate in each State's employment service, for use by those contractors choosing to develop an individualized benchmark.

To help contractors use this database, OFCCP provides detailed user instructions and examples illustrating how a contractor could use the database to set an individualized VEVRAA benchmark. To access the VEVRAA Benchmark Database, visit the OFCCP's website at http://www.dol-esa.gov/errd/VEVRAA.jsp.

Source: http://www1.eeoc.gov/eeoc/newsroom/release3-10-14.cfm

## PRESIDENT OBAMA SIGNS EXECUTIVE ORDERS: THE TRUTH ABOUT THE WAGE GAP *(Continued)*

With the exception of entry level jobs and certain jobs where pay is strictly assigned through a union contract, this question if far more complex than simple sound bytes lead us to believe. To answer this question requires three things. First, a commitment to finding the truth. Second, the resources and technical expertise to conduct a valid analysis of the pay assigned to staff. And finally, a willingness to take the steps necessary to address pay disparities when they are observed.

What almost always goes unsaid in speeches about pay disparities is the fact that all of America's federal contractors are required to conduct comprehensive analyses of their compensation practices every year. This process requires them to dedicate significant staff resources to the effort of gathering data, verifying its accuracy, and gathering a wide variety of variables that can be used to identify who may be considered "equally qualified". Finally, the vast majority of federal contractors go to significant lengths to correct any pay disparities when they have been identified.

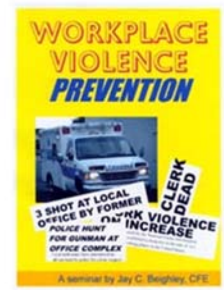
Perhaps the best way forward for addressing real pay disparities is to begin by defining exactly what a pay disparity is (which is not nearly as simple as it sounds), what is the most powerful method for identifying those disparities in a way that is both technically valid and practically feasible, and finally, to ensure that employers address in a fair manner any illegal biases that have been identified.

Great progress has been made in this effort. First, compliance reviews are at the heart of encouraging employers to conduct the needed studies. Multiple regression analysis is perhaps the best tool for evaluating the pay of equally qualified employees by controlling for legitimate job-related pay factors. And statisticians have identified a number of ways to calculate pay adjustments that will remove the observed pay disparities.

The greatest problems remaining include creating a truly systematic list of those factors that can be legitimately considered as being legally predictive of pay, encouraging contractors to update their HR information systems to collect those variables, and to facilitate the kinds of training necessary to help contractors be able to conduct the analyses without unreasonably impacting their core business.

Paycheck fairness can be achieved. However it is more likely to come from an internal commitment on the part of employers following well designed laws than from simple solutions that may or may not gloss over the technical and operational challenges that exist in every US business.

## Workplace Violence Prevention Training Program




Everyone is aware of the problems with workplace violence these days. Knowing how to recognize the warning signs and dealing with the problem once it occurs are key elements of saving lives and reducing injuries. Here is your training guide for a successful prevention program.

http://www.management-advantage.com/products/wpv.htm

## POTPOURRI

- **Pitre Car Dealership to Pay over $2 Million to Resolve EEOC Same-Sex Sexual Harassment Suit**
  An Albuquerque car dealership has agreed to settle a same-sex sexual harassment and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC) for over $2 million and a very strong consent decree. In its lawsuit, the EEOC charged a former lot manager, James Gallegos, under the direction of Charles Ratliff, Jr., then general manager, with subjecting a class of men to egregious forms of sexual harassment. The EEOC also alleged that Pitre retaliated against male employees who objected to the sexually hostile work environment.

  *Source: http://eeoc.gov/eeoc/newsroom/release/4-1-14.cfm

- **Fast Food Restaurant Charged With Paying Female Shift Managers and Cashiers / Sandwich Makers Less Than Males for the Same Work**
  Market Burgers, LLC, doing business as Checkers in West Philadelphia, will pay $100,000 and furnish significant equitable relief to settle a gender pay discrimination lawsuit filed by the U.S. EEOC. The EEOC charged that Market Burgers paid female shift managers and female cashiers / sandwich makers lower wages than their male counterparts even though they did substantially equal work. According to the lawsuit, Market Burgers also suppressed the wages of female shift managers and cashiers / sandwich makers through discriminatory job assignments, such as scheduling them for fewer hours than their male counterparts.

  *Source: http://eeoc.gov/eeoc/newsroom/release/4-2-14.cfm

- **Weight Watchers to Pay $45,000 To Settle EEOC Pregnancy Discrimination Suit**
  According to the EEOC's suit, Weight Watchers' Farmington Hills location violated federal law when it refused to hire an applicant as a group leader because she was pregnant. When Weight Watchers learned of the applicant's pregnancy, it told her that it did not hire pregnant women and refused to consider her any further, the EEOC said. The agency also claimed that Weight Watchers discriminated against the applicant based on pregnancy-related weight when Weight Watchers disqualified her by using its "goal weight" requirement.

  *Source: http://eeoc.gov/eeoc/newsroom/release/4-7-14.cfm



* If the link doesn't open from here, paste it into your browser and then click enter.

# WHY USING THE "AVERAGE" IS NOT ALWAYS THE BEST STATISTIC TO COMPARE TWO GROUPS

In our title article, we referred to President Obama's reference to "the average pay" of men and women to support the argument that women, as a group, receive less pay than the average male. It is not unusual for people to use the average when they make comparisons. This is because we all, generally, understand that the term "average" is a reference to "what is typical." In this case, the "average pay for males" is interpreted to describe what the typical male earns.

The problem with this statement is that while most people think of the average as a concept, the term average actually refers to a statistic. If you remember the old days of sitting in a classroom or training session, you may recall that to calculate the average pay for a group you need to add everybody's pay together and then divide by the number of people in your sample. For example, if you have 5 employees and their hourly pay is $10, $15, $20, $25, and $30, the average hourly pay for these 5 people is $20--right in the middle. So the average is the "middle" of the pay range.

Now, let's suppose that one person's pay is an outlier: $10, $15, $20, $25, and **$50**. Now, the average is no longer $20 but it is $24. Notice what happened! The average--what is supposed to be the "typical" was skewed in the direction of one (or more) extreme scores. The result is that the average only makes sense and allows valid comparisons if the distribution of pay is (generally) normally distributed in the groups being compared.

The moral of the story is that one must be very careful when comparing "average" wages--especially when the number of people in the groups is small.

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**The Management Advantage, Inc.**
PO Box 3708
Walnut Creek, CA 94598
925-671-0404

www.hrwebstore.com
Editor: William H. Truesdell, SPHR
Contributing Editor: Jim Higgins, Ed.D.
billt@management-advantage.com

OHiggins@surewest.net

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