



## Taking a Proactive Approach to Achieving Pay Equity<sup>1</sup>

Nearly 60 years after the enactment of the Equal Pay Act of 1963, women working full-time year-round still on average earn \$10,000 less per year than men, with even larger wage gaps for women of color.<sup>2</sup> The disparity in earnings has implications for the economic security of women and their families. Over the course of a lifetime, women stand to lose hundreds of thousands of dollars in pay, reducing families' ability to save for retirement and afford basic needs.<sup>3</sup> Although a number of factors contribute to the wage gap, including occupational segregation and the devaluation of work historically done by women, discrimination remains a key driver.<sup>4</sup>

The Office of Federal Contract Compliance Programs (OFCCP) is committed to advancing pay equity, including through its efforts to root out discrimination. In the last two fiscal years, OFCCP has recovered \$33.9 million in backpay and salary adjustments on behalf of over 10,600 women jobseekers and workers who have experienced discrimination, including unlawful pay disparities.

As our nation invests in its infrastructure and the economy through the Bipartisan Infrastructure Law, Inflation Reduction Act, and CHIPS and Science Act, it is more important than ever for federal contractors to proactively assess their hiring, pay, and promotion practices to ensure they are free of bias. OFCCP has identified risk factors for pay inequity and promising practices for equal opportunity based on a review of the agency's enforcement efforts and available research. This roadmap enables all employers, including federal contractors, to take a proactive approach to achieving pay equity.

### OFCCP's Legal Authority

OFCCP administers and enforces three equal employment opportunity authorities: Executive Order 11246; Section 503 of the Rehabilitation Act of 1973; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Collectively, these authorities make it unlawful for contractors and subcontractors doing business with the federal government to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations, and may not retaliate against applicants or employees for engaging in protected activities. These legal authorities also require that federal contractors take affirmative efforts to advance equal employment opportunity including, for instance, evaluating compensation systems to determine whether there are gender-, race-, or ethnicity-based disparities.

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<sup>1</sup> This document does not change the laws and/or regulations governing OFCCP's programs and does not establish any legally enforceable rights or obligations. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way.

<sup>2</sup> [Income in the United States: 2021](#)

<sup>3</sup> [A Window Into the Wage Gap: What's Behind It and How to Close It](#)

<sup>4</sup> [An Evaluation of the Gender Wage Gap Using Linked Survey and Administrative Data](#)

## Risk Factors for Pay Inequity

### Pay Secrecy Policies

Pay secrecy policies – both explicit and tacit – perpetuate pay inequities by preventing workers from discovering that they are being paid less than comparable employees. As a result, pay discrepancies are harder to remediate and more likely to persist. Several legal authorities already ban pay secrecy policies. Executive Order 13665, issued in April 2014, prohibits federal contractors and subcontractors from firing or otherwise discriminating against employees and job applicants for discussing, disclosing, or inquiring about compensation. Additionally, the National Labor Relations Act makes it unlawful to discriminate against employees and job applicants for discussing wages. Still, the practice remains prevalent and impacts women disproportionately.<sup>5</sup>

OFCCP has seen the practical effect of pay secrecy policies. OFCCP reached a conciliation agreement with Hospitality Logistics International, LLC, a furniture, fixture, and equipment provider in Charlotte, NC, for \$100,000 to resolve allegations that the contractor fired the complainant after he inquired about his compensation plan. The contractor will also revise its policy regarding pay transparency non-discrimination and provide targeted training for all managers and employees.<sup>6</sup>

#### **OFCCP Enforcement Efforts Secure Monetary Relief for Pay Discrimination**

OFCCP has obtained significant monetary relief for women who experienced pay discrimination in the workplace, including these recent resolutions:

- In August 2022, OFCCP entered into [a conciliation agreement with Esri](#), a digital mapping and analytics company, for \$2.3 million in back pay and interest to resolve allegations of gender-based compensation discrimination. OFCCP’s review found that the company discriminated against 176 female engineers by compensating them at a statistically significant lower pay rate than their similarly situated male counterparts. The company will review and revise its overall compensation system, provide enhanced training to its managers to ensure future compliance, and conduct annual compensation analyses.
- In April 2022, OFCCP entered into [a conciliation agreement with LinkedIn Corp.](#) to provide \$1.8 million in back pay and interest to 686 female employees. OFCCP’s compliance evaluation found systemic compensation disparities against women in engineering and product jobs. LinkedIn will revise its compensation policies and practices and agreed to monitoring and reporting to ensure compliance with federal contract obligations.
- In December 2021, OFCCP entered into [a conciliation agreement with AlliedBarton Security Services LLC](#) to resolve allegations of pay discrimination in an agreement providing \$1.175 million to 2,263 female, Black and Native American employees working as security officers. OFCCP found that the company paid these workers less than their counterparts by assigning them to lower-paying job sites. The company will take corrective action to eliminate discriminatory compensation and job-site placement policies, conduct training and monitor compensation and job-site placements.

<sup>5</sup> [On the Books, Off the Record: Examining the Effectiveness of Pay Secrecy Laws in the U.S.](#)

<sup>6</sup> [Conciliation Agreement between the U.S. DOL OFCCP and Hospitality Logistics International, LLC d/b/a HLI Govt Svcs.](#)

## Reliance on Salary History

Asking about and relying on an applicant's salary history for hiring and compensation decisions can perpetuate, and compound pay disparities for workers who have experienced inequality in the past. In an effort to reduce the wage gap, 16 states and Puerto Rico have enacted salary history bans that apply to all employers, and several other states have implemented bans for public employees.<sup>7</sup> Additionally, in March 2022, President Biden issued Executive Order 14069, urging the Federal Acquisition Regulatory Council to consider rules limiting or prohibiting federal contractors and subcontractors from seeking and considering salary history when making employment decisions.<sup>8</sup>

Research suggests that salary history bans are effective in narrowing the gender wage gap, largely by raising women's earnings. One study found that after the passage of salary history bans, women's hourly wages increased and led to a 4.5 percentage point drop in the weekly earnings gender wage gap.<sup>9</sup> Another study found that minority workers who changed jobs saw a 7.9 percent increase in their wages after the passage of salary history bans, and that around half of the residual wage gap for female and nonwhite job changers disappears under a salary history ban.<sup>10</sup> This suggests that salary history bans help to level the playing field between workers and employers by limiting the effects of past discrimination or inequities.

## Stereotyping and Steering of Women Toward Lower-Paying Positions

Stereotypes about the roles that are appropriate for women and steering of women toward lower-paying, female-dominated positions can contribute to pay inequity. Although part of the gender wage gap can be attributed to differences in the industries and occupations where women and men are typically employed, women still earn less than men within 94 percent of occupations.<sup>11</sup> Notably, there are no occupations where women have a statistically significant earnings advantage over men, including in occupations such as nursing where women have long been highly represented.<sup>12</sup> Moreover, approximately 10 percent of the gender wage gap can be attributed to the systematic devaluation of female-dominated occupations.<sup>13</sup>

In its compliance reviews, OFCCP has found patterns of steering women toward lower-paying jobs. In a recent resolution, Becton, Dickinson and Company agreed to pay \$499,349 in back pay and interest to resolve alleged hiring discrimination against women at three subsidiaries in rural Nebraska.<sup>14</sup> During a compliance evaluation, OFCCP found a pattern of discrimination where

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<sup>7</sup>[Equal Pay in the United States: Salary History Bans](#)

<sup>8</sup>[Federal Register: Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency](#)

<sup>9</sup>[Salary History Ban: Gender Pay Gap and Spillover Effects](#)

<sup>10</sup>[Perpetuating Inequality: What Salary History Bans Reveal About Wages](#)

<sup>11</sup>[An Evaluation of the Gender Wage Gap Using Linked Survey and Administrative Data; A Window Into the Wage Gap: What's Behind It and How to Close It](#)

<sup>12</sup>[Bearing the Cost - How Overrepresentation in Undervalued Jobs Disadvantaged Women During the Pandemic](#)

<sup>13</sup>[Bearing the Cost - How Overrepresentation in Undervalued Jobs Disadvantaged Women During the Pandemic](#)

<sup>14</sup>[Becton, Dickinson and Company agrees to pay \\$499K to resolve alleged hiring discrimination at Nebraska subsidiaries in Columbus, Holdrege | U.S. Department of Labor \(dol.gov\)](#).

women were steered into the lower paying, entry level operator positions and denied entry into higher-paying setup operator positions. In another case, OFCCP entered into an early resolution conciliation agreement with UniFirst for \$104,568 to resolve alleged pay discrimination against 37 former and current female employees.<sup>15</sup> OFCCP found that women applied for general production positions yet were placed in lower paying female-concentrated positions while men were placed in higher paying or male-concentrated positions.

#### Relying on Subjective Factors for Setting Pay and Promotion

Relying on unguided subjective factors for compensation setting and promotion decisions can result in bias. Without clear and standardized evaluation criteria, as well as oversight, women may be offered lower starting salaries than men with comparable education and experience or may be passed over for promotions because of assumptions about their qualifications and abilities. For example, research suggests that higher occupational levels may be impacted by subjective factors for pay-setting, increasing the risk of pay inequities.<sup>16</sup> Adopting objective factors for hiring, pay, and promotion decisions can reduce the likelihood of bias.

#### Failure to Engage in Proactive Evaluation of Compensation Systems

Under Executive Order 11246, supply and service federal contractors are required to perform in-depth analyses of their compensation system to determine whether there are gender-, race-, or ethnicity-based disparities. On August 18, 2022, OFCCP issued “Advancing Pay Equity Through Compensation Analysis,” a revision to Directive 2022-01, “Pay Equity Audits,” which promotes greater contractor attention to federal contractors’ longstanding obligation to analyze compensation systems and document compliance.<sup>17</sup> The revised Directive clarifies that in order to determine that a contractor has satisfied its obligation to conduct a compensation analysis, OFCCP requires certain documentation. Compensation reviews are already widespread; according to a recent survey conducted by the Society for Human Resource Management (SHRM), nearly three in five U.S. organizations conduct pay equity reviews, and of those organizations, 83 percent adjusted employees’ pay.<sup>18</sup>

OFCCP’s experience shows that failing to affirmatively assess pay practices makes it harder for companies to identify and rectify pay inequities. OFCCP recently entered into a conciliation agreement with Bank of New York (BNY) Mellon Corp., which agreed to pay \$1.925 million in back wages and interest for alleged pay discrimination against 120 female workers and 47 Black and 26 Hispanic workers. OFCCP found that BNY Mellon failed to evaluate compensation systems to determine whether there are gender, race or ethnicity-based pay disparities.<sup>19</sup> In another recent conciliation agreement, Cooper Health System paid \$625,000 to resolve alleged

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<sup>15</sup> [US Department of Labor, UniFirst reach agreement to resolve alleged gender-based pay discrimination at New Kensington facility | U.S. Department of Labor \(dol.gov\)](#).

<sup>16</sup> [Missing the Forest for the Trees: Gender Pay Discrimination in Academia](#); [Money, Sex, and Sunshine: A market-Based Approach to Pay Discrimination](#)

<sup>17</sup> [Directive \(DIR\) 2022-01 Revision 1](#)

<sup>18</sup> [Pay Equity Audits and Transparency Foster Trust, SHRM Research Shows](#)

<sup>19</sup> [Bank of New York Mellon Corp. will pay \\$1.9M in back wages, interest to resolve compensation discrimination allegations at Jersey City location | U.S. Department of Labor \(dol.gov\)](#)

hiring and compensation discrimination. OFCCP's review found that Cooper Health System discriminated against 64 female, Black and Hispanic applicants for nurse associate PRN positions, and against 337 individuals employed in supervisor, nursing, and clerical positions by paying them less than comparable male and white employees. Significantly, OFCCP found that Cooper Health failed to properly perform an in-depth analysis of its total employment processes, including compensation systems.<sup>20</sup>

## Bias Against Mothers

Mothers may experience discrimination because of stereotypes about their commitment to their work and ability to do the job. For example, one study found that among equally qualified women job candidates, mothers were perceived as less competent and recommended for lower salaries than non-mothers, while men were not penalized for, and sometimes benefited from, being a parent.<sup>21</sup> Taking adverse employment actions against women as a result of sex stereotypes is a violation of Executive Order 11246, including adverse treatment of employees or applicants based on sex-based stereotypes about caregiver responsibilities.<sup>22</sup>

## Promising Practices for Advancing Pay Equity

- **Conduct compensation analyses.** Supply and service federal contractors are required to perform in-depth analyses of their compensation system to determine whether there are gender-, race-, or ethnicity-based disparities. Performing an annual self-analysis of compensation helps contractors prevent discrimination by identifying problems early so that they can be corrected. OFCCP's experience shows that effective compensation analyses examine pay at multiple levels of aggregation to identify disparate outcomes in placement, promotion, career stalls, and additional earnings. Effective analyses also use statistical techniques to examine the impact of group influences. In addition to finding improper pay disparities, pay equity reviews can benefit all employers by fostering trust among employees that the organization pays people fairly.<sup>23</sup>
- **Ban pay secrecy policies and practices.** Federal contractors are prohibited from firing or otherwise discriminating against employees and job applicants for discussing, disclosing, or inquiring about compensation. Additionally, many states have passed laws prohibiting employers from adopting policies that restrict an employee's ability to discuss compensation.

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<sup>20</sup> [US Department of Labor, Cooper Health System enter agreement to resolve allegations of hiring, compensation discrimination | U.S. Department of Labor \(dol.gov\).](#)

<sup>21</sup> [Getting a Job: Is There a Motherhood Penalty?](#)

<sup>22</sup> 41 CFR 60-20.7(d). It may also be a violation of Section 503 of the Rehabilitation Act of 1973 for an employer to discriminate against an applicant or employee because of their association with an individual with a disability. 41 CFR § 60-741.21(a)(5). In some situations, such individuals may be caregivers. The EEOC released guidance on when discrimination against applicants and employees related to caregiving responsibilities may violate Sections 501 and 505 of the Rehabilitation Act, or other EEOC-enforced laws. For example, according to the EEOC, it would be unlawful for an employer to refuse to promote an employee who is the primary caregiver of a child with a mental health disability that worsened during the pandemic, based on the employer's assumption that the employee would not be fully available to colleagues and clients, or committed to the job, because of the employee's caregiving obligations for the child. [The COVID-10 Pandemic and Caregiver Discrimination Under Federal Employment Discrimination Laws.](#)

<sup>23</sup> [Pay Equity Audits and Transparency Foster Trust, SHRM Research Shows](#)

By ensuring that employees or job applicants are not discriminated against for discussing their pay with coworkers, federal contractors comply with federal regulations and all employers advance transparency and equity in the workplace.

- **Prohibit reliance on salary history.** Instead of relying on an applicant’s prior salary for compensation decisions, employers can determine pay based on the relevant experience, qualifications, and responsibilities for the role.
- **Advance transparency in compensation and advancement decisions.** Transparency around how compensation and promotion decisions are made – including standardized and objective performance outcomes – can reduce bias by decreasing the risk of relying on unguided subjective criteria for employment decisions. Greater transparency can also help ensure employees are aware of the criteria by which they will be assessed. Additionally, oversight and review of pay decisions for equity, such as by requiring an explanation for decisions by managers, can reduce implicit bias.
- **Include salary ranges in job announcements.** Salary ranges in job postings provide applicants with important background to inform an offer instead of relying on personal salary history, thereby leveling the playing field between workers and employers.<sup>24</sup> For example, research suggests that gender differences in negotiation are less pronounced when the bargaining range is clear.<sup>25</sup> Including salary ranges also encourages employers to proactively review their compensation practices and address unjustified disparities. Additionally, including salary ranges in job postings can be good for business; studies show that job applicants want companies to provide pay transparency, and that advertising pay ranges in postings cuts down on recruitment costs.<sup>26</sup>

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<sup>24</sup> [Salary Range Transparency Reduces Gender Wage Gaps; Equal Pay in the United States: Salary History Bans](#)

<sup>25</sup> [Gender Differences in Negotiation and Policy for Improvement](#)

<sup>26</sup> [Study: Pay Transparency Reduces Recruiting Costs; The Push for Transparency](#)