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## COMPARABLE WORTH AND PAY EQUITY: A CHALLENGE FOR EMPLOYERS

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All of us know that different jobs are paid at different rates in our society. A list of job titles such as carpenter, secretary, computer programmer, and machinist may bring to mind a relative ranking of the monetary worth of these jobs. Depending on our experience and background, such titles may also suggest actual wage or salary rates for each job. Both relative and absolute levels of pay for jobs reflect the value that society places on them.

With the passage and enforcement of equal employment opportunity legislation our society has become more sensitized to discrimination in any form. Discrimination in pay is clearly an area of continuing concern. When women and men perform the same work, most of us would immediately agree that they should receive the same pay. And in fact, legislation was passed twenty years ago to see that equal pay is provided in such situations.

But what about jobs that are quite different in content? Should truck drivers earn more than schoolteachers? Should construction workers be paid more than nurses? A traditional response is that the impersonal forces of the marketplace determine the dollar value of each job.

In recent times, however, advocates of women's rights have challenged this traditional answer. They have noted that occupations which are filled primarily by women are generally paid less than those occupations where men are in the majority. This, they maintain, is discrimination which must be corrected.

The issue in this kind of discrimination is not equal pay for **equal** work, but equal pay for **comparable** work. As this paper will attempt to show, the comparable worth controversy is one with which employers must become acquainted if they are to successfully administer their compensation programs in the 1980's and beyond.

### **EQUAL PAY ACT OF 1963**

To understand the comparable worth issue it is necessary to begin with the Equal Pay Act of 1963. This law, which is an amendment to the Fair Labor Standards Act, bans pay discrimination when the work both sexes are performing is substantially equal. Thus an employer cannot arbitrarily de-

cide to pay women assembly line workers less than men assembly line workers merely because of their sex.

Note also that the law does not require that jobs be identical. Only substantial equality is necessary for coverage. This means that small differences in duties will not exempt jobs from pay rate comparisons, nor will different job titles create an exemption where job content is essentially the same.

Equality among jobs is measured by their similarity of skill, effort, responsibility and working conditions. Exemptions to the law include pay differences based on bona fide merit systems, incentive plans, seniority systems, or any factor other than sex.

### **Limitations of EPA Coverage**

While the Equal Pay Act has reduced pay discrimination in the workplace, it is limited in its application. As stated above, the Act deals only with discrimination in pay among jobs which are substantially the same in content. It cannot be applied to pay comparisons among jobs which are different. Thus a woman clerical worker cannot successfully claim pay discrimination under this law because her salary is less than that of a male maintenance worker. The two jobs do not meet the "substantial equality" standard under the EPA and cannot be compared for purposes of this law.

Critics of pay practices in government and industry have, however, contended that many jobs which are traditionally held by women are undervalued in the marketplace when compared with jobs traditionally held by men (3, 7, 25, 26). Nurses, for example, are commonly paid less than truckdrivers; public schoolteachers earn less than skilled craft workers. Critics also contend that job evaluation systems used in many firms are designed so that "men's jobs" receive a higher rating than jobs which are typically held by women (3, 25, 26).

These criticisms of pay practices fall under the general heading of the term, comparable worth. Before proceeding with the implications of such views, we should first attempt to more clearly define what comparable worth really means. As we shall see, a precise definition is difficult to come by.

### **COMPARABLE WORTH DEFINED**

If one surveys the literature dealing with comparable worth, he or she will find that there is no universally agreed upon definition of the term. In fact there has been and continues to be controversy concerning what it really means. However, three common interpretations can be identified.

The first of these is that jobs are comparable when, even though their duties are substantially different, they are of approximately equal value as measured by an internal job evaluation procedure. For example, assume

that a firm is using a point system of job evaluation which measures job worth according to the amount of skill, effort, and responsibility required along with each job's working conditions. Two jobs might score very differently on each of the four factors yet still have very nearly the same point totals. Using the above definition, the jobs would be comparable. Then it is argued that they should be paid the same wage rate even if market factors indicate otherwise (14, pp. 34-35.)

A second definition would broaden the scope of comparable worth to include a close look at the firm's job evaluation plan (assuming there is one). Before accepting the results of job evaluation, advocates of this view argue for a careful examination of the factors used to evaluate jobs. Since they maintain that job evaluation plans themselves may give undue weight to factors more likely to be present in jobs dominated by men, a totally "objective" and non-sexist evaluation system would have to be constructed before any job worth comparisons could be made. Assuming such a system is developed, advocates of this position would accept the meaning of comparable worth given in the first definition (14, 25, 26).

The third and most severe interpretation of comparable worth emphasizes sex concentration and pay levels as the only two factors necessary to determine comparability. In this view one would need only to demonstrate that a firm's employees are working in largely sex-dominated occupations and that the women's occupations are paid less than the men's. The differences in occupational pay are assumed to be based on historical discrimination. The employer would then be required to raise the wages of the women's jobs to those of the men's. No showing of internal equality under a job evaluation plan would be necessary for a violation to be found (3, 17, 18). To date, no court has accepted this third view. As a result, this paper will deal only with the first two somewhat overlapping interpretations.

## **ARGUMENTS FOR AND AGAINST COMPARABLE WORTH**

In considering the validity of the comparable worth concept, it is useful to look briefly at arguments for and against it. Four arguments are commonly cited in its favor. First, it is noted that there is a substantial gap between men and women's pay in the United States. "In 1978 women of all races who worked full time all year earned 55 percent as much as white men." (26, p. 13, 27). In addition, this gap has not shown any significant decline in the last 20 years (26, p. 14).

A second position taken in support of comparable worth is that there is substantial sex segregation by categories of jobs. Those jobs performed primarily by women are paid less than those performed primarily by men, and the more dominated an occupation is by women, the lower the pay (26, p. 28).

Statistical studies are also cited which attempt to relate job worth to pay.

Typically, these studies find low correlations between the "value" of women's jobs and their rate of pay. The unexplained variation or residual factor is assumed to be the result of job discrimination (26, pp. 17-24).

Finally, job evaluation plans used within firms are seen as weighted in favor of men's jobs thus undervaluing those commonly held by women. The suggested remedy is the creation of an organization-wide evaluation plan which will objectively evaluate all jobs in terms of their actual value (14, 17, 25, 26).

Those who oppose comparable worth challenge the validity of the above arguments. While not denying the clustering of women in certain types of work, comparable worth opponents argue that much of this may be the result of socialization. Women in our society may be conditioned to believe that certain types of jobs are more appropriate for them, so they pursue the appropriate training for these jobs. In addition they may plan to remain in the workforce for a limited period of time because of marriage or childbearing. Deferring to the career demands of husbands which can require periodic relocation may be another factor. It is admitted that the extent to which these factors may actually influence employment decisions is unknown. Certainly one could argue that women today are more likely to join and remain in the workforce with career goals and permanent employment in mind.

Some employers may also be excluding qualified women from higher paying jobs which are held mostly by men. Where this is the case, opponents of comparable worth argue for enforcement of Title VII of the Civil Rights Act of 1964 which clearly prohibits discrimination in selection and promotion. It has also been suggested that affirmative action such as training programs be undertaken by employers to increase the movement of women into higher paying jobs (17, 18).

With regard to the statistical studies cited earlier, they are criticized as being far from dependable in their analysis of the causes of pay differentials among jobs. Ideally, every job should be paid at the rate of its productivity, but measuring productivity is a difficult task indeed. Instead, variables such as employee education and experience are assumed to be satisfactory substitutes for levels of productivity. This relationship is unfortunately quite tenuous. Given the variables in the statistical models, all one can say is that there is a substantial portion of pay variation not explained by those variables selected to measure job worth. This residual portion may in fact measure some discrimination, but some or even most of it might include true measures of job value that the statistical model failed to capture.

In response to the criticisms of job evaluation plans, opponents of comparable worth point out that a totally objective plan which can be validated as to its lack of bias simply does not exist. They argue that even the most carefully designed evaluation system involves human judgment in both its creation and application. The National Academy of Science study commissioned by

the Equal Employment Opportunity Commission reached essentially this conclusion (25).

## **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

Because the Equal Pay Act does not cover cases of comparable worth, advocates of reform in pay structures have sought relief under Title VII of the Civil Rights Act of 1964 (as amended). This law is a broad brush piece of legislation which prohibits discrimination in the workplace based on race, religion, sex, or national origin. It applies to such employment functions as selection, promotion, or termination of employees. But does it apply to compensation practices which may be discriminatory but are not covered by the EPA?

Due to the wording of Title VII, there was uncertainty for many years as to whether such practices were covered (21, 24). In 1981 the Supreme Court answered this question in its often-quoted **Gunther** decision. Essentially, the Court said that Title VII allows persons to file charges of sex-based pay discrimination where there is no EPA violation. But the Court was careful to state that its ruling in the **Gunther** case did not explicitly deal with the issue of traditionally "male" and "female" occupations and the above mentioned charges that female jobs have been historically undervalued. While the Court opened the door for the filing of comparable worth charges, it did not indicate how it would rule if presented with such a case (10).

Lower courts have dealt with the comparable worth issue in various ways. Although their rulings are not the final word in the matter, clues are provided which can help an employer to develop a compensation system likely to withstand legal challenge and provide fairness for employees.

### **Rulings of Lower Level Courts**

Not all of the district and appeals court decisions are in agreement with each other on the comparable worth issue. In part this is because of specific differences in the cases they have considered. Additionally, judges vary in their views toward pay comparability.

Nevertheless, the courts have agreed that a crucial factor in finding pay discrimination under Title VII is proof of the employer's **intent** to discriminate. All of the courts which have found for the plaintiffs (employees charging pay discrimination) have interpreted the facts in the cases as pointing toward a deliberate intent by the employer to disadvantage women. Standards necessary for proving intent have, however, varied from one case to another.

The most obvious kind of pay discrimination under Title VII is not in fact a comparable worth case at all. It involves deliberate segregation of women into lower paying jobs and men into higher paying ones while preventing movement of women into the higher paying jobs. Under Title VII this is

clearly illegal. In such cases there is evidence of intentional sex discrimination just as there would be under a refusal to hire or promote minorities or those of a particular religion (23).

The more difficult cases, and those on which the courts are divided, are those involving conflicts between the internally evaluated worth of jobs and their going rate in the marketplace. In these cases the employer has measured a group of jobs with the same internal evaluation plan. Although different in content, some of the predominantly female jobs are ranked as essentially equal in value to some predominantly male jobs. But those jobs dominated by men have had higher market rates than their female counterparts. When the employer has chosen to pay the market differential for these jobs, discrimination has been charged.

As noted above, not all courts have ruled the same way on this type of case. The majority, however, have refused to find discriminatory intent and have therefore ruled in favor of the employer. For example, in **Christensen v. Iowa**, a university's job evaluation plan rated clerical and maintenance workers as similar enough to be placed in the same pay grade. Clerical jobs were held mainly by women and maintenance jobs were held primarily by men.

Since market rates for the maintenance workers' jobs were higher than those for the clerical jobs, the employer felt compelled to pay those rates in order to attract and keep maintenance employees. A suit was then brought by women in the clerical jobs claiming sex discrimination under Title VII. It is important to note that the suit did not charge that women were kept from applying for or from holding maintenance jobs. The complaint centered around the failure of the employer to pay equivalent wages to jobs which were comparable under the job evaluation plan.

In its ruling the appeals court sided with the employer. It noted that an employer cannot ignore market realities in setting wages. Even though the two classes of jobs were evaluated as comparable within the organization, the employer could not be expected to pay them at the same rate if the market dictated otherwise. The ruling further noted that courts have no business trying to dictate "fair" rates of pay for jobs. In essence the court said that Title VII cannot overrule the marketplace in cases of comparable worth (9). Similar judgments have been made in several recent cases (4, 15, 20).

But not all courts have interpreted Title VII in this way. In **AFSCME v. State of Washington** a federal district court ruled that the State of Washington was guilty of intentional wage discrimination when it paid higher wages for predominantly male jobs than for predominantly female jobs. Two independently developed job evaluation plans commissioned by the state were ignored in setting wages and instead marketplace rates were used. The court saw this as intentional discrimination since jobs with equal point value were paid different amounts (1). Although the state plans to appeal the case,

a lack of agreement among the courts regarding comparable worth is evident.

A related issue is the validity of a firm's job evaluation plan. None of the above cases involved this question. As discussed previously, some challenges to organizational pay practices have centered on the bias assumed to be built into the job evaluation system. Thus even where women's jobs are not rated as equivalent to men's jobs under a plan, discrimination in pay is said to exist because of the undervaluation of jobs held primarily by women (17, 25, 26). Where there are separate plans for different families of jobs (such as one for factory workers and one for office employees) undervaluation of women's jobs may be more difficult to demonstrate, but it is assumed to exist. No court cases have yet directly addressed this issue.

## **EMPLOYER STRATEGY**

It is safe to say that the comparable worth issue will probably remain a controversial one for some time to come. A definitive decision by the Supreme Court will be necessary before the issue can hope to be resolved. And given the complexity of the matter and the number of its possible variations, several High Court decisions may be necessary to produce anything approaching clarity.

In the meantime the employer is faced with the task of administering a compensation program which has as its goals both fairness to employees and immunity to successful legal challenge. Given the current state of the comparable worth controversy, what guidelines can be cited which will help the employer accomplish these two objectives?

### **Conduct Careful Job Analysis**

First, every job in the organization must be thoroughly analyzed to identify its duties and responsibilities. Although there are many ways to perform job analysis, the approach recommended here is believed to increase the validity of the resulting job description. Its results have also been used to develop selection tests and appraisal techniques because of its high level of content validity (8, 19).

Job analysis should begin by bringing together a group of employees and supervisors who have a working knowledge of the jobs being analyzed. Working as a group, they identify and agree upon the duties and responsibilities of the job. The result is a job description developed by those best equipped to write it. Specialists in job analysis may also be involved to insure uniformity in style and format.

From the job descriptions each job is again studied by the group to identify those characteristics which jobholders must have in order to successfully perform the job. These are sometimes called KSAO's (Knowledge, Skills,

Aptitudes, and Other Characteristics). The KSAO's are also known as job specifications.

Using the above approach, every job in the organization should be analyzed and described. Because of the differences in the jobs and the different backgrounds of employees, different groups of employees and/or managers should be convened to analyze various job groupings.

### **Develop Job Evaluation Plan(s)**

Once all jobs have descriptions and specifications, one or more job evaluation plans must be developed. Typically, there are natural "job families" within most firms for which different plans are designed. Examples include factory workers' jobs, those of office and clerical, and managerial jobs. Why are these groupings commonly separated into different plans? Their separation reflects the differences in their underlying compensable factors. These compensable factors are those characteristics which give the jobs their worth to the firm. Commonly cited factors for factory workers include exposure to hazards and physical effort required while those for clerical employees may include mental effort and responsibility for errors. Ten to twelve such factors are common for most job families. Each factor should be selected after a careful study of job descriptions and their accompanying KSAO's.

Although advocates of comparable worth argue for a single job evaluation plan for all jobs in an organization, this is usually not practical because of the differences in the underlying compensable factors for the different job families. Indeed, one way to avoid a successful court challenge to the pay structures of dissimilar jobs is to separate them into different job evaluation plans.

As cited previously, some courts have held that jobs covered by the same evaluation system and which receive similar internal ratings should be paid the same even when their market rates differ. Of course, no jobs should be arbitrarily separated into different plans simply to avoid paying similar wages to both groups. Neither should the employer avoid using job evaluation in the hope that this would allow the use of market rates without challenge. This latter strategy may result in a judgment of intentional discrimination (11, pp. 510-511).

### **Conduct Adequate Wage Surveys**

To insure that market rates for jobs are accurately identified, a careful wage survey should be conducted. It is beyond the scope of this paper to discuss the proper methods for conducting such a survey, but the reader will find much material available on the subject (2, 6, 13).



## **Avoid Discrimination and Engage in Affirmative Action in Selection and Promotion**

The employer should carefully check selection and promotion practices to insure that women are not being screened out of predominantly men's jobs for discriminatory reasons. Artificial barriers such as height and weight requirements or experience which cannot be shown to be job related are violations of Title VII which perpetuate the problems of women being crowded into jobs they have traditionally held. Men should be given equal consideration for such female dominated jobs as secretary and clerk-typist.

In addition to nondiscrimination the employer should consider an affirmative action program which will seek out and train women who are promising candidates for jobs traditionally held by men. In time such a program could help to reduce the imbalance of male and female workers in the organization's occupational structure.

## **Avoid Discriminatory Statements**

Management should avoid any statements, oral or written, that it considers some jobs as "women's work" while others are reserved for men. Even if made in jest, such comments can be used against the company in a discrimination suit (23). At all times members of management should express support for equal employment opportunity in all jobs throughout the organization.

## **Keep Up To Date On Legal Developments**

The employer should continue to monitor both legislative and judicial decisions in the area of comparable worth. As new developments occur, the rules of the game may change, and the employer must be ready to change with them.

## **CONCLUSION**

The objectives of equity and legality in pay practices must be accomplished if an employer is to have a successful compensation program. While the area of comparable worth presents new challenge, it offers additional motivation for an organization to carefully design and administer a program which will meet these objectives.

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