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Insights From Ongoing Labor Economics Research

Law360, New York (July 12, 2011) -- Ongoing academic research in sociology and economics has sought to address differences in salaries among various groups of employees, especially differences in salaries between men and women. Scholars have (1) investigated differences in negotiating tactics as well as job preferences by gender, (2) researched occupational choice and differences in market demand for jobs, and (3) identified that women may work fewer hours and have longer voluntary spells outside the labor force.

Being aware of potential nondiscriminatory reasons for pay differences and collecting the appropriate data and documentation may allow employers to reduce litigation and regulatory risk and reward valued employees more fairly.

Negotiating Skills

Recent academic studies have suggested that women are less willing to negotiate at work. Linda Babcock, an economist at Carnegie Melon, has written extensively on differences in negotiating tactics between men and women.[1] Recent research indicates that men are four times more likely than women to ask for a salary raise.[2] Additionally, Babcock and her colleagues asked several hundred volunteers to play the role of job candidates and allowed the volunteers to decide whether to ask for a larger salary than they were offered.

The researchers found that women were less likely than men to negotiate when they believed they would be dealing with a man. However, there was no significant difference between men and women when they thought that the decision would be made by a woman.[3]

As management positions tend to be filled more by men, employers should be aware of potential differences that the gender of applicants and managers can have on salary negotiations. This can cause potential disparities when managers are given discretion in determining the size of promotions and in negotiating starting salaries.

However, even when promotions follow a more formulaic approach, women can be disadvantaged if they negotiate a lower starting wage, which could result in a persistence of the initial wage difference. The issue may be particularly acute for employers with high turnover. In a typical year, about one-third of the U.S. work force will leave their current jobs to take new ones.[4] With sufficient turnover and uniform pay increases each year, individuals who started with a lower salary are unable to catch up and this can cause a whole group to appear undercompensated.

Lower starting wages may not just be an issue of negotiation tactics. If protected class members have a preference for a certain type of work and are willing to accept a lower salary, an employer may see a persistent disparity in pay. Also, employers often use the applicant's current or most recent compensation as a base from which to form an offer. If a woman had earned lower wages at a previous employer for any of the reasons this article discusses, the base from which employers work can result in lower starting compensation. Employers therefore may want to be careful when using previous salary as a basis for offering a starting salary.

Employers should recognize differences in negotiating skill and the impact it may have on employee salaries, both with the current and former employees. Management may want to consider providing training to the relevant decision makers to recognize these differences. Additionally, employers may also consider proactively monitoring starting salary rates and instituting controls, such as strong documentation or instituting stricter salary bands, to explain any unusually large starting salaries or adjustments.

Occupational Choice

Scholars also have examined differences in the occupational choices made by both women and minorities. On a more macro level, researchers have shown that women may be more likely to choose majors associated with lower-paying careers, or may seek greater work-life balance.[5]

Also at the more micro level, employees may choose jobs with different requirements and expectations. Men may choose riskier jobs or seek occupations with greater requirements for physical exertion (which also can be better paying). If these differences are unaccounted for, an analysis of salaries may cause an appearance of potentially discriminatory pay differences.

Both the macro and micro issues may present similar dilemmas for employers. Jobs within the same job grouping (as defined by a classification such as the EEO-1 job category) can have incremental differences in characteristics and requirements and must therefore be compensated differently. If there are salary differences between jobs and if women or minorities are over (or under) represented in these jobs, a more aggregated statistical analysis may find a disparity in pay even if there is no difference in pay for a given job.

Courts have noted that jobs with only slight variations in characteristics and requirements are often compensated differently by the market, requiring employers to adjust salaries accordingly. In Randall, et al. v. Rolls-Royce Corporation, et al., the Seventh Circuit recognized the importance of market competition in determining salaries for specific job titles.

The difference in market compensation for jobs was considered to be a valid factor in explaining differences in salaries paid to employees in different jobs. Employers can potentially avoid the debate of the proper level of aggregation when examining pay equity by documenting the market compensation for various job titles which then allows employers to account for these differences when investigating potential difference in salaries between employees.

Employers may want to consider maintaining or purchasing data about market compensation. Vendors provide granular and extensive data about salaries, salary trends and cost-of-living comparisons for a variety of jobs and geographic locations. These data can be used to conduct proactive pay studies and provide guidance as to whether a firm's compensation structure is in line with market factors. Job characteristics and salary information are also maintained by various government agencies such as the Bureau of Labor Statistics.

Differences in Hours Worked

There is continued academic interest in comparing weekly and lifetime hours worked by women and men. There is evidence that women tend to take longer voluntary breaks in employment and work shorter hours. Understanding and accounting for these differences in employment history between women and men can be crucial for a firm to understand and potentially explain its pay practices in a litigation or regulatory context. Enhanced data collection could provide employers with a more complete picture of a given employee's experience.

The 2011 statistical abstract published by the U.S. Census Bureau still finds significant differences in labor force participation rates between men and women.[6] While the gap in participation rates has declined to 12.8 percent in 2009 from 25.9 percent in 1980, the difference still persists.

Anecdotally, Angie Kim, the author of a recent Slate article, conducted a nonscientific survey of her law school classmates and found that "the majority of the women of the class of 1993 of Harvard Law School have left the fast track. Thirty percent of the respondents have mommy-track jobs, with 21 percent working part-time and 9 percent working full-time with special arrangements like job-sharing and working nonconventional hours. Another 30 percent of the respondents stay at home, most having "off-ramped," with the expectation of going back to work when their children are older."[7] This difference in hours worked can translate into differences in experience and therefore salaries.

Additionally, research has indicated what women may work fewer hours in a week. Data collected by the Bureau of Labor Statistics suggest that in 2007 (the most recent year for which data are available), among full-time employees, men worked 8.2 hours a day whereas women worked 7.8 hours a day, a gap of about 5 percent.

Consequently, women on average have less experience than men of similar age. As an example, assuming equal starting wages and a 3-percent increase a year, an employee who takes a voluntary two-year absence will have a persistent 6-percent salary gap when she returns to work in comparison to employees who did not take a leave of absence.

Similarly, an attempt to promote a particular group earlier can have a potentially negative impact on compensation. Again if salaries increase by 3 percent a year and a promotion results in a 10-percent salary increase, an employee who was promoted two years early will be, on average, paid 6-percent less than a comparator who worked an additional two years at a lower position.

The reason is that the rapidly promoted employee will not have worked the additional two years (and received the two additional pay increases) at the previous position. Time in a previous position is important in understanding salary progression, so a rapid promotion can result in this counterintuitive outcome, counteracting the desired goal of increased opportunities for a group of employees.

As a result of these differences in labor force participation rates, employers may need a greater understanding of past experience and career progression to verify fair employment practices. Age is sometimes used as a proxy for experience, but this is not necessarily accurate. It can be important to understand and record past employment experience as well as time spent in various positions within the company.

In my experience, employers usually conduct proactive pay equity studies utilizing snapshot data on time in current grade and time in company. These studies could be enhanced, however, by collecting information on previous relevant experience and time spent in other grades. A more complete picture of career progression rather than just a snapshot in time may assist in making sense of observed salary disparities.

This paper examines three avenues of ongoing academic research into understanding differences in salaries between groups of employees. This research can provide valuable insight into real-life intricacies that determine salary and occupational choice, and inform decisions by employers about which types of data and documentation to maintain.

These include monitoring and document starting salary and promotion decisions, documenting market compensation, and maintaining records of career progression. Hiring, promotion and compensation decisions are all complex and can be hard to explain or model accurately, especially in a potentially adversarial situation. The additional data described in this paper can assist employers in justifying their decisions and shielding them from potential litigation and regulatory issues.

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[1] Summary of finding can be found in “Ask For It: How Women Can Use the Power of Negotiation to Get What They Really Want,” by Linda Babcock and Sara Laschever.

[2] http://www.npr.org/2011/02/14/133599768/ask-for-a-raise-most-women-hesitate

[3] “Salary, Gender and the Social Cost of Haggling” Washington Post article by Shankar Vedantam, July 30, 2007.

[4] Editorial on May 16, 2011 in the Wall Street Journal by Edward Lazear: http://online.wsj.com/article/SB10001424052748703730804576317142210698436.html

[5] From article published by the Federal Reserve Bank of New York titled “College Major Choice and the Gender Gap” by Basit Zafar. URL: http://www.newyorkfed.org/research/economists/zafar/p1.pdf

[6] http://www.census.gov/compendia/statab/cats/labor_force_employment_earnings/labor_force_status.html. Tables 585 and 600.

[7] "The Mommy Track Turns 21” by Angie Kim appeared on March 31, 2010 in Slate. http://www.slate.com/id/2249312