

Equal Pay / Pay Equity

PAY EQUITY DEFINITIONS AND RELEVANT LEGISLATION

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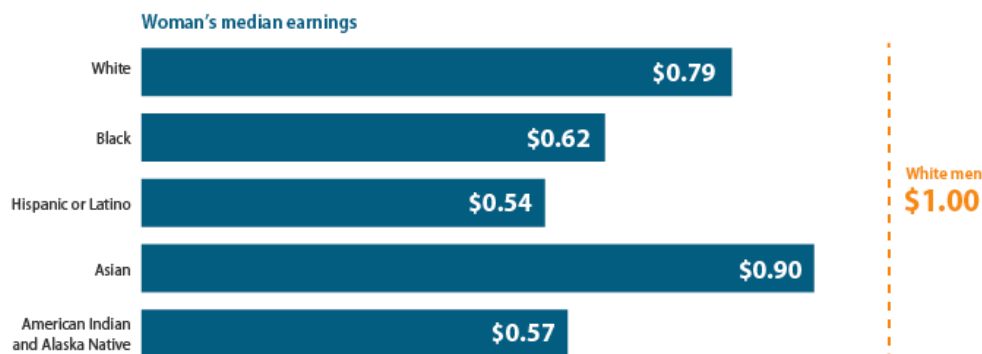
CURRENT ISSUE

In the United States, on average, women earn about 82 cents on the dollar compared to men's average earnings¹. The gender wage gap between men and women is unacceptable by any standards in 2021. When you take it a step further and acknowledge the intersectionality of our identities, and breakdown by both gender and race, the gap widens even more. The Center for American Progress published an article, "[Quick Facts About the Gender Wage Gap](#)", where they addressed this wage gap within these differentiations.² The figure below (Figure 1) draws attention to the stark and startling pay disparities between white men and women, especially BIPOC women. For every dollar a white man earns, Black women earn \$.62, Hispanic and Latino women earn \$.54, and American Indian and Alaskan Native women earn \$.57. The Gaps are for white and Asian women is slightly smaller at \$.79 on the dollar for white women and \$.90 for Asian women. It is uncomfortable using the word "gap" when describing this pay inequity given the magnitude of the disparity. It's more like a deep chasm that needs to be seriously addressed by men and women alike.

FIGURE 1

The gender wage gap is more significant for most women of color

Comparing 2018 median earnings of full-time, year-round workers by race/ethnicity and sex



Notes: The gender wage gap is calculated by finding the ratio of women's and men's median earnings for full-time, year-round workers and then taking the difference. People who have identified their ethnicity as Hispanic or Latino may be of any race.
Sources: For all groups except American Indian and Alaska Native women, the Center for American Progress calculated the gender wage gap using data from U.S. Census Bureau, "Current Population Survey: PINC-05. Work Experience—People 15 Years Old and Over, by Total Money Earnings, Age, Race, Hispanic Origin, Sex, and Disability Status: 2018," available at <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html> (last accessed March 2020). Specific tables used are on file with the author. CAP calculated the gender wage gap for American Indian and Alaska Native women using U.S. Census Bureau, "Table B20017C: American Indian and Alaska Native alone population, non-Hispanic or Latino population 16-years and over with earnings in the past 12 months, 2018 American Community Survey (ACS) 1-Year Estimates," available at <https://www.census.gov/programs-surveys/acs/> (last accessed March 2020); U.S. Census Bureau, "Table B20017H: White alone, non-Hispanic or Latino population 16-years and over with earnings in the past 12 months, 2018 American Community Survey (ACS) 1-Year Estimates," available at <https://www.census.gov/programs-surveys/acs/> (last accessed March 2020).



This figure, found in [Quick Facts About the Gender Wage Gap](#), was published by the Center for American Progress. (online).

1 Bleiweis, Robin. (2020, March 24). Quick Facts About the Gender Wage Gap. Center for American Progress. <https://www.americanprogress.org/issues/women/reports/2020/03/24/482141/quick-facts-gender-wage-gap/>

2 Bleiweis, Robin. (2020, March 24). Quick Facts About the Gender Wage Gap. Center for American Progress. <https://www.americanprogress.org/issues/women/reports/2020/03/24/482141/quick-facts-gender-wage-gap/>

Female-identifying LGBTQIA+ individuals may face similar pay inequities, although present research is limited. Nevertheless, the overall impact of pay inequity on American society is so acute that, according to some studies, if equal pay were effectively regulated and achieved nationwide, it would profoundly alleviate poverty in the United States.³ This is still true, despite herculean efforts by former Supreme Court Justice Ruth Bader Ginsburg, and of course Lilly Ledbetter. Ledbetter had sued her previous employer (Goodyear) because she was paid less than her male counterparts for doing the same work. After the Supreme Court ruled that the complaint was time-barred, Justice Ginsburg penned a dissenting opinion which led Congress to draft legislation to address the statute of limitations issue. The Lilly Ledbetter Act was the first bill signed by President Barack Obama in January of 2009. The Act amends Title VII of the Civil Rights Act of 1964 such that the 180-day statute of limitations for filing an equal pay lawsuit now resets each time the complainant is paid. While this legislation was transformative in terms of the ability for women to sue for equal pay, it did nothing to solve the underlying problem - that women don't get paid the same as men for the same work.

This paper illuminates the ongoing disparities between women's and men's compensation. Below, we explore how existing legislation works to close the pay gap and the present-day challenges that continue to impede that goal. This paper further reviews the meaningful options available to businesses to identify and remedy pay inequities, including assessment of factors such as race/ethnicity and age. More importantly, this paper is a call to action. To every CEO, Board of Directors, People Leader, HR Leader, and Hiring Manager inside and outside the cannabis industry: it is within your power to demand immediate action within your business or organization to identify and correct pay inequities, most especially for BIPOC women.

Equal pay has been vigorously debated for decades (consider, for instance, the Equal Pay Act of 1963). Yet achieving equal pay remains a serious challenge across all industries and most

professions, including more female-dominant professions, such as home health aides and childcare workers. The cannabis industry is no exception. Today, the debate is driven by the concept of pay equity: providing equal compensation to employees for performing the same or similar job duties while taking into consideration relative experience, job performance, and tenure. Another challenging facet of the gender pay gap is the disproportionate number of men serving in leadership roles – including the dominance of white male leaders in cannabis. Pay equity for all jobs is paramount; however, minding the gap includes advancing women to leadership roles.

We cannot overlook the issues of racial and social injustice, which have an outsized effect on worsening pay inequities. Many business leaders are doing their part to deliver positive change – and achieving pay equity is well within their power. Part of that responsibility is to speak openly to one's leadership teams and organizations about the commitment to pay equity and what steps are being taken to achieve it. Likewise, business leaders have a broader responsibility to speak about their actions, experiences, and commitment to pay equity to their industries and the business community at large.

The cannabis industry could readily come together through an industry-wide call-to-action to achieve pay equity throughout the emerging industry. The broader point remains that progressive actions to achieve pay equity are critical for all businesses. By doing what is right and just, we can continue to break down systemic barriers that perpetuate injustices such as pay inequity.

One example⁴ of progressive actions to achieve pay equity happened at Salesforce. In 2015, the company took a consciously public stance on pay equity, disclosing that its pay equity audit exposed existing pay inequities between male and female employees. Salesforce took immediate action to correct the situation and adopted forward-looking approaches to ensure its compensation practices were fair and equitable. A \$3 million compensation correction was necessary in the first year alone,

3 Hartmann, H., Hayes, J. & Clark, J. (2014, January 13). How Equal Pay for Working Women would Reduce Poverty and Grow the American Economy. Institute for Women's Policy Research. <https://iwpr.org/iwpr-issues/employment-and-earnings/how-equal-pay-for-working-women-would-reduce-poverty-and-grow-the-american-economy-2/>

4 Benioff, M., & Langley, M. (2019, October 15.) How Salesforce Closed the Pay Gap Between Men and Women. Excerpt from Trailblazer: The Power of Business as the Greatest Platform for Change, published by Wired. <https://www.wired.com/story/how-salesforce-closed-pay-gap-between-men-women/>

but the company readily made the correction and spoke openly, internally and externally, about the importance of pay equity and Salesforce's commitment to achieving it. Since 2015, Salesforce has continued to evaluate pay annually, to address any gaps and continue to make equal pay adjustments. It should come as no surprise, then, that Salesforce is regularly featured as a best place to work by Fortune and Glassdoor.com, while its market share and stock price continue to increase.

DOING THE WORK – “WHAT ACTIONS ARE YOU PREPARED TO TAKE”

Below is a list of key actionable takeaways the cannabis industry can leverage in order to do the work that is needed to make an impact with pay equity.

1. Commit to carefully examining your existing pay structure and promise to correct any inequities.

2. Conduct a Pay Equity Audit.

This can be achieved internally or with the assistance of a third-party expert. Take a rigorous approach to reviewing all jobs in the same job category and their respective salaries, while considering factors such as gender and race/ethnicity. There may be non-discriminatory factors that create some pay discrepancies, such as tenure in the job; however, a careful audit will raise any legitimate concerns.

3. De-construct your hiring/recruiting practices.

- Are your hiring managers adopting a **Salary History Ban** approach to their candidate selection?
- When salary history is not asked, women can see substantial pay increases. In one study, salary history bans led to an 8% increase in pay for women, and an 13% increase for black people. Consciously consider equitable salary offers. This is one of your best opportunities to start the employment relationship in a positive way.⁵
- Adopt the Salary History Ban regardless of whether your state law mandates this.

4. Adopt a consistent annual or bi-annual review of your job titles, position descriptions, and job applications.

This is a healthy discipline to continue to keep a keen focus on pay equity and should be incorporated into any hiring or promotion process.

5. Review your promotion practices.

- Promoting employees presents another opportunity to prevent pay gaps by establishing clear salary thresholds for each position. When people are being promoted to a new role, regardless of their current compensation, the role should have the same base pay. This approach enables you to correct any previous pay discrepancies.
- Evaluate the criteria being used when promoting talent. Intentionally consider where bias may be creeping into the promotion process. These intentional discussions are often referred to as "calibration" meetings, wherein a group of people leaders challenge each other's assumptions and hold one another accountable to measuring performance based on established and communicated standards.
- Review and ensure that your approved, promotional-based salary increases are equitable.
- **Promotional criteria** should be established. Promotional pay adjustments should not be standard percentage increases but instead should embrace an equitable approach to starting salaries in the new role – regardless of the percentage increase. This is a clear means of level-setting compensation and avoiding perpetuating any pay discrepancies going forward.

5 Bessen, J.E., Meng, C., & Denk, E. (2020, June 1.) Perpetuating Inequality: What Salary History Bans Reveal About Wages. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628729

6. Review your incentive-based compensation and pay practices (excluding commission programs that are typically computed with a standard formula applied to everyone equally).

When evaluating equitable pay, you must consider the total compensation package: it is not enough to establish equitable base pay if the incentive pay structure is riddled with inequities. Utilize the same type of calibration session when determining pay incentives, and conduct a thorough review of all awards/rewards by gender and race/ethnicity to address any inequities. Research indicates that discretionary compensation practices are often the most disparate between genders and can create and perpetuate greater pay gaps, overall. Assess and communicate what factors and criteria are being considered in making discretionary rewards.

7. Communication and transparency.

- Given the stark statistics reported on gender pay inequities, it is possible that your company's perceptions are worse than the facts (or vice versa). Develop a sound strategy with your leadership team on how you want to communicate compensation practices and speak to your stance on equal pay.
- Share with your workforce any potential pay equity audit you may perform, including why you are undertaking this effort, and how you will correct for any inequities discovered during the audit.
- Consider how your company will communicate thoughtfully with your people leaders and any employees who may experience a compensation adjustment because of an existing pay discrepancy.

8. As leaders, we have a critical responsibility to ensure that we uphold equitable pay practices.

- Challenge yourselves and each other to uphold your commitment to gender pay equity.
- Review your systems and break down any barriers in your organization that contribute to existing pay inequities. Correct those inequities and be transparent about your intentions internally and externally.
- Adopt a regular, integrated approach to reviewing your total compensation awards to ensure your organization's continued progress toward achieving equal pay.

CONCLUSION

The existing research is abundantly clear: significant gender pay gaps exist, more starkly for BIPOC women. The best path forward for the cannabis industry is to take a practical approach to "doing the work" inside your organization and wherever possible.

Tool Kits:

[Conducting an equal pay audit](#)

[Minding the "Gap"](#)

EQUAL PAY/PAY EQUITY MINDING THE “GAP” TOOLKIT

Conducting an equal pay audit



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Conducting an equal pay audit

As the Lilly Ledbetter case renewed federal interest in wage discrimination issues, the Department of Labor's Women's Bureau developed a 10-step equal pay self-audit to help employers analyze their wage-setting policies for pay equality. This simple evaluation can help employers who want to do the right thing; the answers may be informative and useful to begin work on implementing some of these policies.

1. Conduct Recruitment Self-Audit

- Does your hiring process seek diversity in the qualified applicant pool for positions?

2. Evaluate Your Compensation System for Internal Equity

- Do you have a method to determine salaries and benefits?
- Do you write position descriptions, seek employee input and develop consensus for position descriptions?
- In unionized workplaces, do you involve union leaders?
- Do you have a consistent job evaluation system?
- Are jobs scored or assigned grades?
- Are positions where women and minorities work scored or graded according to the same standards as jobs where men or non-minorities work?
- Could a method be used for ensuring consistent pay for people with substantially similar levels of experience and education who hold jobs calling for substantially similar degrees of skill, effort, responsibility, and working conditions, even though job titles may be different?

3. Evaluate Your Compensation System for Industry Competitiveness

- Do you have a method to determine the market rate for any given job?
- Do you ensure that market rates are applied consistently? (i.e., Can you be confident that men are not being compensated at or above market rates while women are compensated at or below market rates? Can you be

confident that non-minority workers are not compensated at or above market rates while minority workers' compensation is at or below the market rates?)

- Would your company benefit from a fresh approach that updates position descriptions; assesses skill, effort, responsibility, and working conditions of various jobs; assigns grades or scores; and ensures consistent application of market rates and external competitiveness?

4. Conduct a New Job Evaluation System If Needed

- Do you have up-to-date position descriptions for all occupations?
- Do you establish criteria for assigning values to skill, effort, responsibility, and working conditions for a job?
- Do you challenge basic assumptions about the value of skills before assigning points or grades? (i.e., Do you consider how caring for sick people, small muscle dexterity in typing, and other skills may have been undervalued in jobs that have been traditionally held by women?)
- Do you ensure agreement among worker representatives and management on criteria to evaluate jobs?
- Do you assign scores or grades to jobs and allow worker input?
- Do you compare your system with market rates and other external competitiveness factors?
- Do you consider whether the market has undercompensated certain occupations or professions before making adjustments?
- Do you assign consistent compensation to jobs within similar grades or scores, and do you use market rates and other external competitiveness factors consistently?

5. Examine Your Compensation System and Compare Job Grades/Scores

- How does pay compare for positions with similar grades or scores within your company?
- On average, are women and minorities paid similarly to men and non-minorities within the same grade or job score?
- Are there legitimate reasons for any disparities in pay between jobs with similar grades or scores?
- Can corrections be made to ensure consistency in assigning grades or scores?
- How long do men, women, and minorities stay within job grades or scores before moving up?

- Do men or non-minority workers move up faster?
- What are the reasons that some workers move up faster?
- Can you take action to ensure that all workers have equal opportunity for advancement?

6. Review Data for Personnel Entering Your Company

- At what grades or positions do men, women and minorities typically enter your company?
- Within those grades and positions, are salaries consistent? Or do men, women, and minorities enter at different pay levels?
- How does negotiation affect entry-level salaries? Are men able to negotiate higher starting salaries than women or minorities?
- How do new hires compare in salary to those already working in the company in the same grades or positions?
- Do men, women, and minorities entering the company get paid higher or lower than those who already hold the same positions or grades?
- Are there differences by gender or race?
- Are changes needed to ensure that new hires are treated consistently and incorporated into existing compensation systems on a compatible basis?

7. Assess Opportunity for Employees to Win Commissions and Bonuses

- Are men, women, and minorities assigned projects or clients with high commission potential on a consistent basis?
- Are men, women, and minorities with similar levels of performance awarded bonuses on a consistent basis? Do they receive bonuses of similar monetary values?

8. Assess How Raises are Awarded

- Is there a consistent method of evaluating performance for all workers?
- Do men, women, and minorities receive consistent raises based on similar performance standards? (i.e., Are all workers with outstanding evaluations awarded the same percentage increases? If not, what are the reasons for the difference?)
- Are men, women, and minorities with similar levels of performance awarded bonuses on a consistent basis? Do they receive bonuses of similar monetary values?

9. Evaluate Employee Training, Development, and Promotion Opportunities

- How are workers selected for participation in training opportunities or special projects that lead to advancement?
- Are there differences by race or gender?
- If so, what can be done to widen the pool to reflect equal opportunity?

10. Implement Changes Where Needed, Maintain Equity, and Share Your Success

- Have you made changes to ensure consistency in the evaluation of jobs, assignment of grades or scores, advancement within the system, performance evaluation, compensation levels, raises, bonuses, commissions, and training?
- Have you evaluated your compensation system periodically to ensure that it meets equal employment opportunity goals?
- Do you maintain openness about compensation with your workforce?
- Do you regularly post job openings and salary ranges within the workplace?
- Do you allow employees to discuss compensation issues on their own time?
- Are you reaping the rewards of a productive, loyal workforce and using your success as a competitive tool to attract the best and brightest workers?

Source: U.S. Department of Labor, Women's Bureau, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210; <http://www.dol.gov/wb/>.

EQUAL PAY/PAY EQUITY MINDING THE “GAP”

TOOLKIT

Minding the “Gap”



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Minding the “Gap”

Pay Equity Definitions and Relevant Legislation

DEFINITIONS

1. Equal Pay – Men and women in the same employment performing equal work receiving the same amount of compensation. According to the Center for American Progress, U.S. women earn approximately 82 cents for every dollar earned by a man. The pay gap increases for BIWOC, which is simply unconscionable. For every dollar a white man earns, a white woman is making about 79 cents, the average Black woman is making 62 cents, and Hispanic women are earning 54 cents.

2. Pay Equity – Compensating employees the same for the same or similar job duties while accounting for other factors such as level of experience, job performance, and tenure.

3. Gender Pay (or Wage) Gap – The difference in earnings between men and women.

4. Pay Equity Analysis – A structured approach to assessing all elements of compensation by gender, race/ethnicity, job type, location, tenure, and other variables to analyze relative pay equity.

5. Pay Equity Audit – A structured, data-driven analytical approach to identifying and evaluating pay gaps that cannot be justified by job-related factors.

6. BIWOC – Black, Indigenous, and Women of Color

7. BIPOC – Black, Indigenous and People of Color

8. Salary History Ban – Prohibits employers from asking applicants about their current or past salaries or benefits. They also generally prohibit employers from seeking this information through an agent or from sources other than the applicant, such as the applicant's former employer.

RELEVANT LEGISLATION

1. [The Equal Pay Act of 1963](#) prohibits sex-based discrimination in payment of wages for equal work. The law requires that employers pay male and female employees equal wages for equal work on jobs that require equal skill, effort, and responsibility to perform and are performed under similar working conditions in the same business or organization.

2. [Title VII of the Civil Rights Act of 1964](#) protects employees against discrimination based on certain characteristics such as race, color, national origin, sex, and religion. An employer may not discriminate with regard to any term, condition, or privilege of employment.

3. The [Paycheck Fairness Act](#) is a proposed law that would provide effective remedies to employees facing discrimination on the basis of sex in the payment of wages. The bill continues to flounder in the US Senate.

4. The [Lilly Ledbetter Fair Pay Act of 2009](#) bolsters worker protections against pay discrimination. Significantly, the law clarifies that discrimination based on age, religion, national origin, race, sex, and disability will “accrue” every time the employee receives a paycheck that is deemed discriminatory.

5. **Various state laws**, such as the [California Equal Pay Act](#), the [Maryland Equal Pay for Equal Work Act](#), and the [Massachusetts Equal Pay Act](#): among the highlights of these state laws is the “Salary History Ban,” also known as a pay or wage history ban, which prohibits an employer from inquiring about an applicant's prior wage or benefits during the pre-employment process or considering this information when making recruiting, hiring, or compensation decisions. The salary history ban effectively ensures that compensation is awarded based on relevant job criteria and prevents further compensation inequities.