

Pay Equity and Collective Bargaining

Collective Bargaining – Contract Language

Unions can play an important role in narrowing the persistent gender wage gap within the industries and organizations where they have bargaining power by raising pay equity as an issue to be addressed in the collective bargaining process. Where a pay equity audit has already been conducted and the parties have identified disparities in compensation between individuals or groups of employees who are of different sexes or races/ethnicities and doing substantially similar work, the parties can specifically negotiate about the wage rates for individuals or classifications affected. Unions can also seek to negotiate over the terms and timeline for conducting and/or overseeing a pay equity audit in circumstances where this has not been done. In addition, they can negotiate for changes in hiring, compensation, promotion, and leave policies that would help to alleviate the root causes of pay inequity.

Below are some examples of potential approaches to addressing pay equity issues through collective bargaining. This is an illustrative rather than an exhaustive list, and not all of the strategies listed below will apply or be useful in every unionized workplace. For example, certain suggested approaches to bargaining over compensation practices and structures may only be relevant in situations in which the collective bargaining agreement allows for discretionary pay increases by management.

- ***Establish a Joint Labor Management Committee to Conduct and/or Oversee a Pay Equity Audit.*** Where a pay equity study has not been conducted, the parties could utilize the collective bargaining process to establish a Joint Labor Management Committee (JLMC) on Pay Equity and provide funds for the JLMC to either conduct a pay equity audit itself or hire an outside expert/consultant to design and carry out such evaluation under its oversight. In either case, parties will need to agree on:
 - the number of union and management representatives on the Committee;
 - the role of the JLMC in the audit process (i.e., as the entity that will carry out the audit or facilitate and oversee it) and its budget;
 - how often and in what manner the JLMC will keep the parties apprised of the progress of the audit and report on its findings;

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- o the nature and extent of the JLMC's authority to make recommendations to the parties about changes to policies, wage rates, job classifications, compensation structures, and/or hiring practices that would help to alleviate any gender and/or race-related wage gaps revealed by the audit;
- o the term of the JLMC and timeline for the completion of the initial pay equity audit and issuance of the JLMC's final recommendations, and
- o a schedule of meetings for the JLMC.

In addition to the terms above, contract language should specify whether the pay equity analysis will be conducted during the term of the Agreement with a re-opener to address any pay inequities and/or to negotiate about the JLMC's recommendations. The parties should also ensure there is a clear process for resolving any disputes about whether or how to implement the JLMC's proposed changes. Alternatively, the parties could agree to convene the JLMC and complete an initial pay equity audit *prior to* the start of the next round of negotiations, with any inequities to be addressed at that time. Contract language could also establish the pay equity audit as a periodic event that will occur prior to the expiration of each contract, rather than a one-time snapshot, which would enable the union and management to evaluate the impact and effectiveness of any changes they agree to make.

- **Review and update job descriptions.** As part of the collective bargaining process, the parties may review job descriptions for all covered classifications and positions to ensure that they are accurate and provide sufficiently specific information to be useful in conducting a pay equity analysis.
- **Correct inequities in pay rates and pay scales.** In the event that a pay equity study has already been conducted, and issues of inequity have been determined to exist, the parties should negotiate to correct the inequities, whether for individual employees or whole classifications (where an entire classification is paid on a lower scale than another despite doing substantially similar work under similar working conditions, for example.)
- **Increase diversity in recruitment and eliminate bias in hiring.** While not typically considered a mandatory subject of bargaining, the parties could discuss and agree upon steps that could be taken during the hiring process to increase the

gender and racial diversity of the applicant pool for some or all positions and departments. The parties may also negotiate about ways to reduce or eliminate the impact and influence of bias in the hiring process.

- ***Train hiring managers on appropriate salary criteria.*** If the collective bargaining agreement gives managers any discretion with respect to setting starting salaries for members of the bargaining unit, the parties could agree to a training program for managers who make hiring decisions and initial pay offers to ensure that they understand what the permissible and impermissible criteria for making such decisions are and how to apply them. Where the employer has discretion in setting starting salaries, the parties could negotiate language requiring decisions about initial compensation to be based on objective factors. Such language could also specify that a newly-hired employee's prior salary or salary history should not be used to set pay, and that any reliance on such factor must be documented (explained in writing) by the hiring manager.
- ***Protect discussion of wages and discourage retaliation.*** The parties could negotiate contract language that makes it clear that employees may discuss their salaries with other employees, and that management will not retaliate or discriminate against any employee for exercising their right to do so.
- ***Evaluate new hire v. incumbent salaries.*** The parties could agree to language requiring the employer to evaluate the salaries of incumbent employees at any time that a new hire is provided an initial salary that is higher than theirs.
- ***Establish objective performance evaluation process.*** The parties could negotiate a fair process for performance evaluations in which employees are evaluated on clear criteria based on the skills and specific tasks performed in the position, and not on subjective criteria subject to potential bias based on gender or race.
- ***Recognize and value employees with caregiving responsibilities.*** The parties could negotiate for flexible work hours that recognize the demands of childrearing and other types of caregiving while not diminishing the value that employees who are parents and caregivers bring to the workplace. The parties could also negotiate job-protected, paid parental leave and ensure that it is equally available to employees of all genders, with additional job-protected, paid leave for the parent who actually gives birth. The parties could also negotiate for child care centers at or near the worksite.

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- **Ensure training for potential promotional opportunities is available to all employees.** In the event that the audit finds that one reason for a pay gap between genders or between races/ethnicities is caused by more frequent promotions to one group of employees than to another, the parties could negotiate to provide training opportunities for all employees in management skills, or other skills needed for jobs that provide a promotional opportunity.

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