

Compensation Analyses: From Theory to Practice

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Agenda

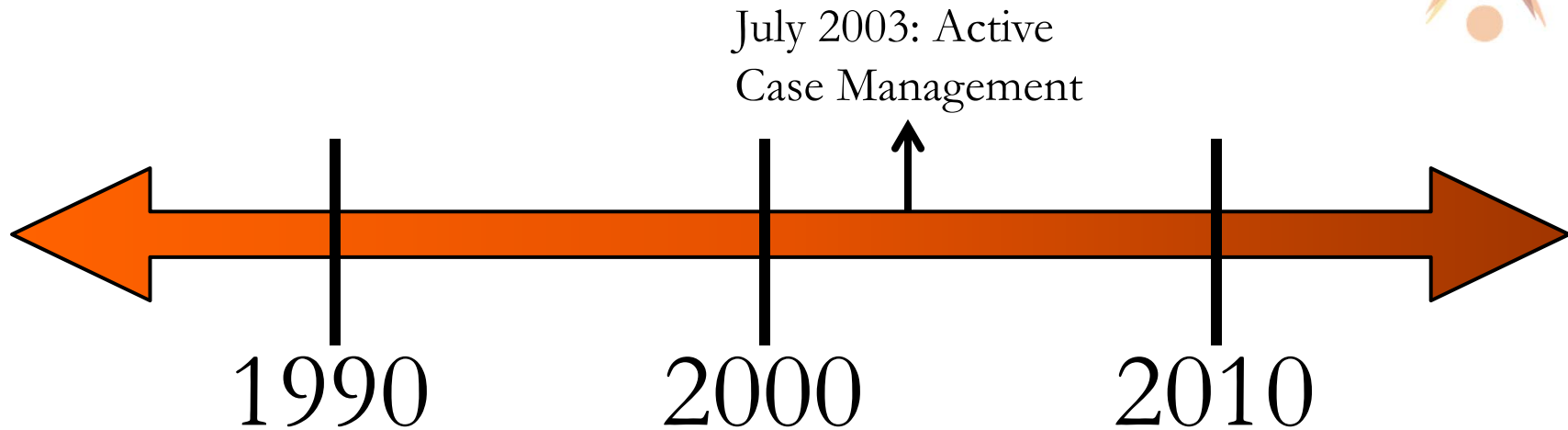


- Compensation Analyses: A Historical Perspective and Why the OFCCP has to Get it Right this Time
- Money is Tight: Compensation Analyses on a Budget
- Understanding the Theory Behind Regression Analyses
- Strategies and Recommendations



Compensation Analyses: A Historical Perspective and Why the OFCCP has to Get it Right this Time.

The Rise of the Compensation Standards and Guidelines

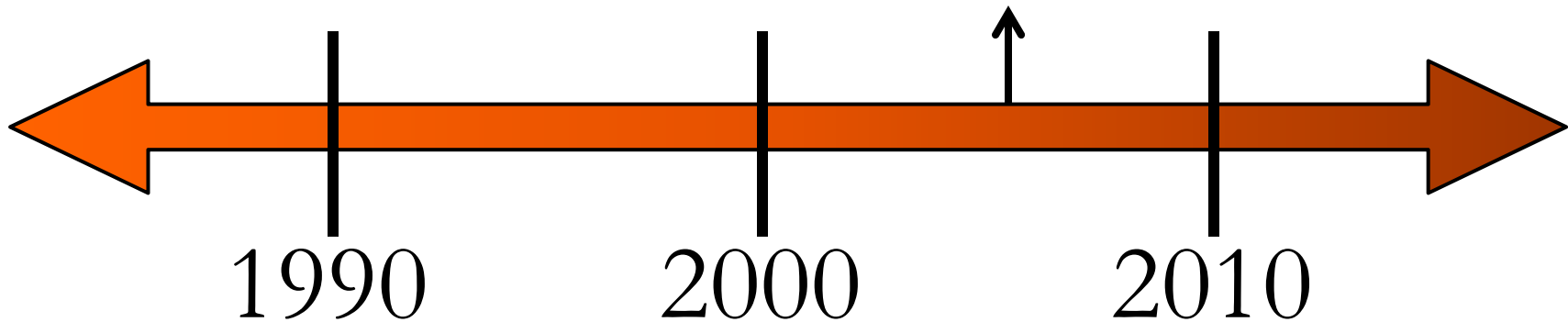


- Dramatic reduction of Agency resources under Charles James (788 FTEs – 585 FTEs)
- Designed to focus Agency resources on issues of systemic discrimination
- Statistics drove investigations
- Resulted in 6+ consecutive years of record enforcement

The Rise of the Compensation Standards and Guidelines

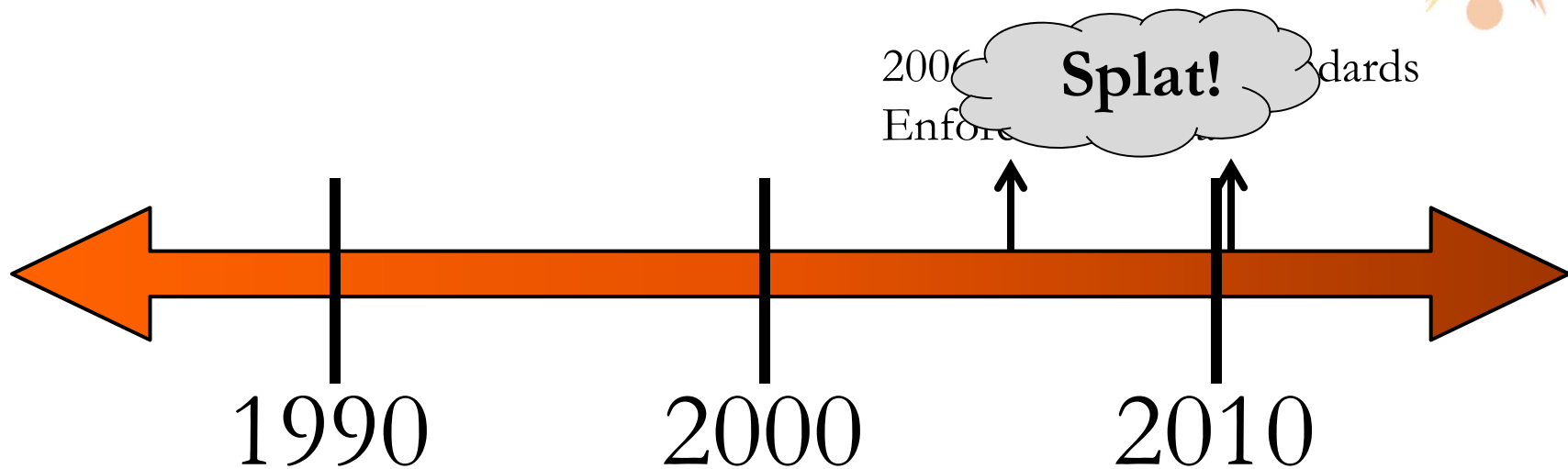


June 2006: Comp Standards and Guidelines - SSEGs, Regression, Anecdotal Evidence Codified



- OFCCCP realized that “litigation-worthy” analyses were necessary to successfully investigate compensation.
- Comp Standards (i.e., what the Agency will do) and Guidelines (i.e., what contractors should do) were released in 2006
- Included guidance regarding regression, SSEGs, and the need for anecdotal evidence to support statistical findings (*most* of the time)

The Fall of the Compensation Standards and Guidelines

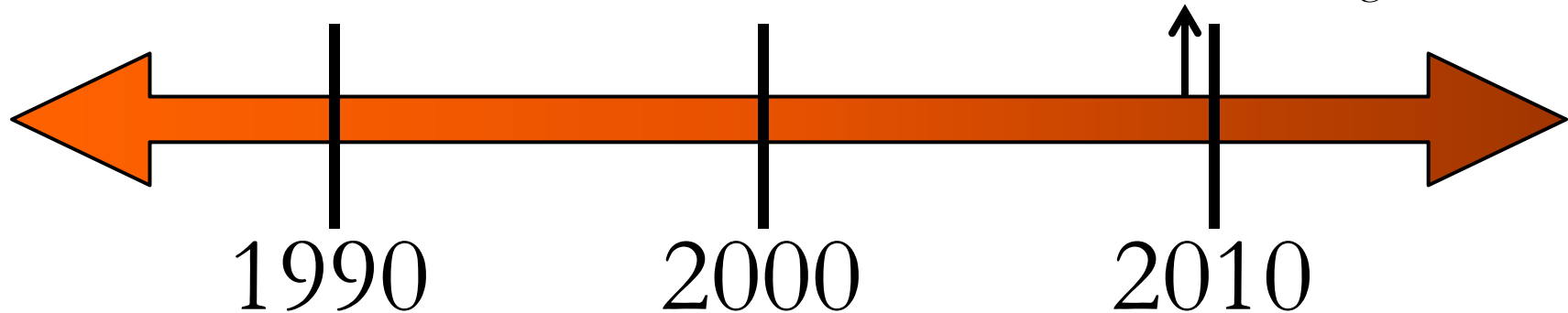


- The bar set high for compensation enforcement (is that such a bad thing?)
- Comp investigations are inherently quirky, can be very time consuming, and typically involve several stages: 1) SSEG argument, 2) Regression argument, 3) Anecdotal evidence
- On the contrary, systemic hiring investigations are relatively straightforward by comparison (and the OFCCP has a successful history of enforcement)
- ***No systemic compensation-based conciliation agreements in 4+ years***

The Fall of the Compensation Standards and Guidelines



2009/2010: Change of Administration and Significant Increase in OFCCP Budget

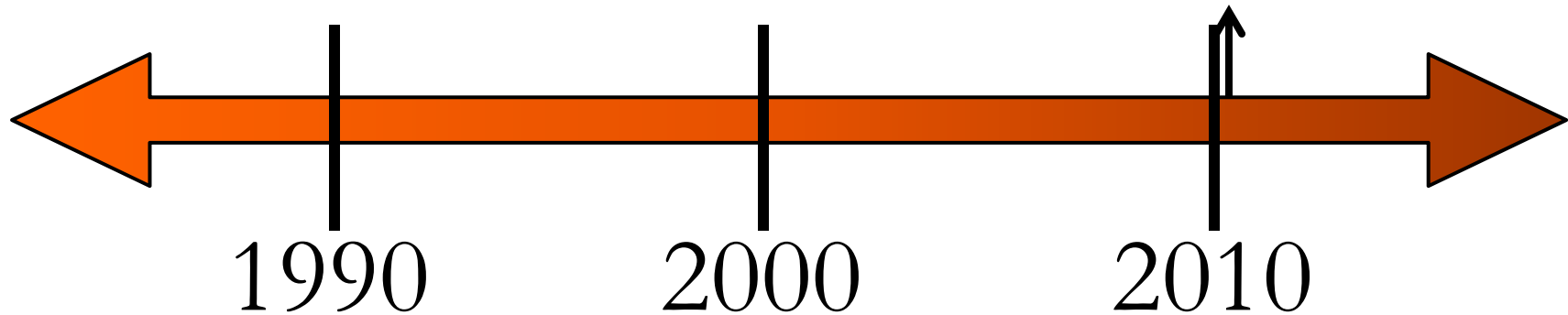


- President Obama inaugurated January 20, 2009
- January 29, 2009 – Ledbetter signed into law (Paycheck Fairness Act fails)
- January 2010: Establishment of the Equal Pay Enforcement Task Force
- Patricia Shiu becomes director of OFCCP – Former EEO litigation attorney (OFCCP is an “enforcement agency”)
- OFCCP receives \$20M+ budget increase and approval for 200+ more FTEs
- Tremendous amount of pressure to perform

The Fall of the Compensation Standards and Guidelines



Jan 2011: Notice to
Rescind Comp Standards
and Guidelines

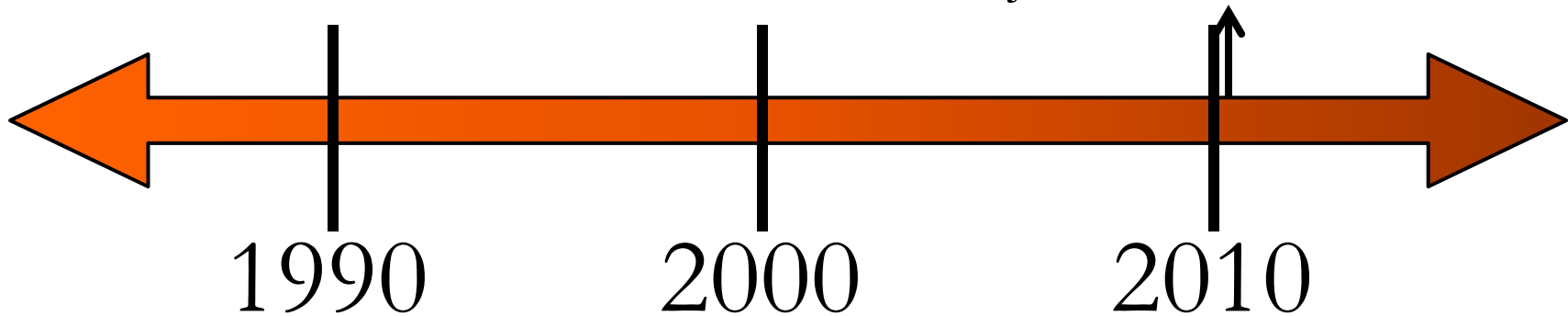


- “Standards have limited OFCCP’s ability to effectively investigate, analyze, and identify compensation discrimination”
- OFCCP wants to dramatically lower the bar by eliminating the requirement for SSEGs, regression, and anecdotal evidence . . . (which, by the way, are firmly codified in legal precedent)
- So . . . why lower the bar if the new strategy won’t be legally defensible . . . ?
Because some organizations will conciliate.

It's a Big Deal for the OFCCP . . . And They Have to Get it Right This Time!



Feb 2011: Release of
OFCCP 2012 Budget
Justification

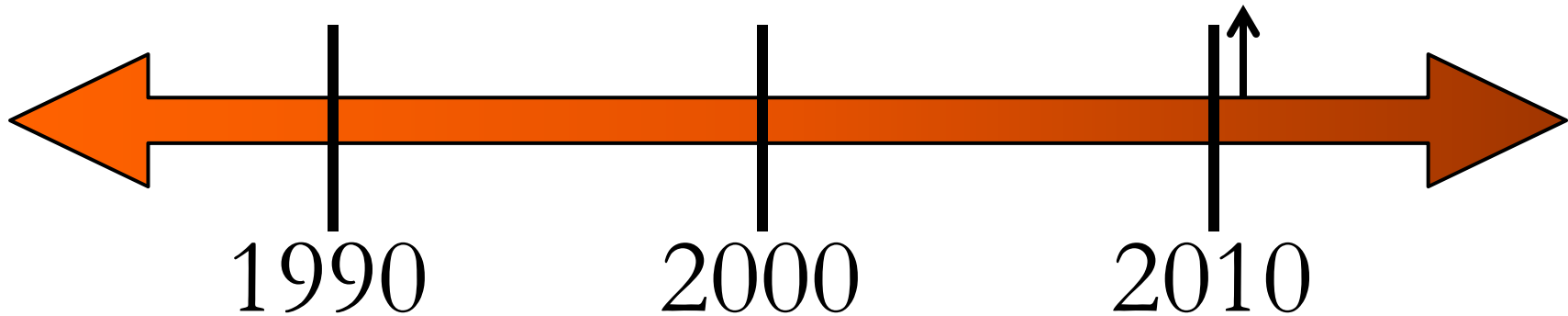


- “OFCCP is making the issue of pay equity a top priority”
- “OFCCP plans to develop and implement a web-based compensation data collection tool that would enable the agency to identify indicators of pay disparity among federal contractors”
- “The scope of the data is yet to be fully determined. Current possibilities include salary, gender, race and ethnicity data **for each employee** OR average compensation and **variances** for each group by gender, race and ethnicity”

It's a Big Deal for the OFCCP . . . And They Have to Get it Right This Time!



August 5, 2011: OFCCP submits NPRM for compensation data collection tool

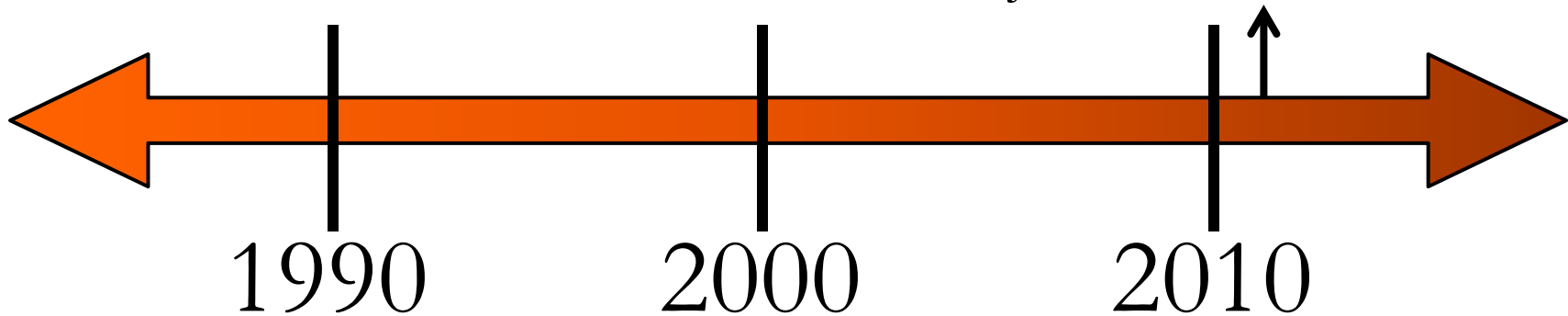


- OFCCP proposes changes to the audit scheduling letter to allow for collection of individual employee-level compensation data (still not yet codified as of today)

It's a Big Deal for the OFCCP . . . And They Have to Get it Right This Time!



February 2012: Release of
OFCCP 2013 Budget
Justification



- OFCCP Outlines the Federal Contract Compliance System (FCCS), a cloud-based tool that will include:
 - Basic case and content management functionality
 - Dashboard reporting
 - **Automated data analysis**
 - **Electronic submission of AAP data and other HR reports**
 - **Integration of a compensation data collection tool**

It's a Big Deal for the OFCCP . . . And They Have to Get it Right This Time!



Enforcement in the meantime . . . (changing almost daily)

- OFCCP has disbanded use of the former trigger tests and has adopted a much more liberal trigger test (i.e., the “2 or 2”)
 - Use the contractors own groupings (e.g., job groups, job titles, etc.) submitted in item 11 of the scheduling letter
 - Are there any groups with greater than 2% differences in average salary between men/women or whites/minorities
 - If so, request detailed compensation data (e.g., 14-16 factors) for all employees
- This liberal of a trigger will likely catch almost everyone . . . so now the Agency can do whatever they want with the data (t-tests, regression, cohort analyses)

It's a Big Deal for the OFCCP . . . And They Have to Get it Right This Time!



Enforcement in the meantime . . . (cont.)

- OFCCP taking an Equal Pay Act (EPA) approach where any difference is actionable (FYI-OFCCP does not enforce the EPA)
 - Cohort-level comparisons
 - In the absence of an identified discriminatory decision
 - Contractor has the burden to justify disparities
- This is all backward!
 - Court precedence states that complainant (i.e., OFCCP/EEOC) has to identify a discriminatory decision prior to shifting the burden to the employer to justify.
 - Just identifying a difference in salaries isn't enough.
- But some contractors will acquiesce.



Money is Tight: Compensation Analyses on a Budget

By Being Proactive, You Can Dramatically Reduce the Damages



- OFCCP generally begins with a “make-whole” relief calculation which typically includes:
 - Current adjustments
 - Back-pay (for two years)
 - Interest (from the beginning of the enforcement period through the signing of the conciliation agreement)
 - Benefits
- When you proactively identify problems, you have the option to just make current adjustments
- The difference in financial impact (cost) between the OFCCP finding issues v proactively finding them yourself can sometimes be 10X+

It's Nowhere Near as Expensive as You Think... And You Can Set the Budget



- Because of technological advancements, the cost for performing analyses has dropped dramatically . . . analyses can oftentimes be conducted for a fraction of what they cost just a few years ago
- Of course . . . running the analyses is just one portion of the cost, what about the cost of fixing the identified issues?
- The cost for *completely* fixing the identified issues can often dwarf the cost for running the analyses . . . but there is another option . . . allocate a *fixed amount* of available funds then address the issues in priority of legal exposure.

It's Nowhere Near as Expensive as You Think... And You Can Set the Budget



- Creating a fixed-pool of available funds has several advantages:
 - It avoids the need for a “blank-check”
 - It increases the likelihood of receiving approval for the project because now the total costs are known
 - The amount of available funds can be determined based on: 1) budgetary constraints, and 2) a company’s level of risk aversion/tolerance
 - You can choose to focus on either: 1) the job titles with the largest exposure, or 2) the most egregiously under-paid employees (regardless of job title)

It's Nowhere Near as Expensive as You Think... And You Can Set the Budget



Risk Tolerance/Aversion Continuum

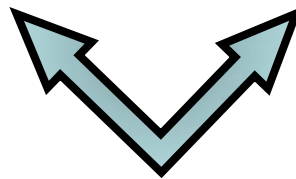
Conduct No Analyses: It's
Better We Don't Know

Identify and Completely
Address All Problems



Conduct Analyses: Limited Budget to
Fix Issues – Issues Will Take Many
Years to Address . . . But Exposure
Will be Reduced

Conduct Analyses: Moderate Budget
to Fix Issues – Issues Will Take a Few
Years to Address . . . But Exposure
Will be Reduced



Moving in the right direction . . . but how long are you
comfortable with the exposure?



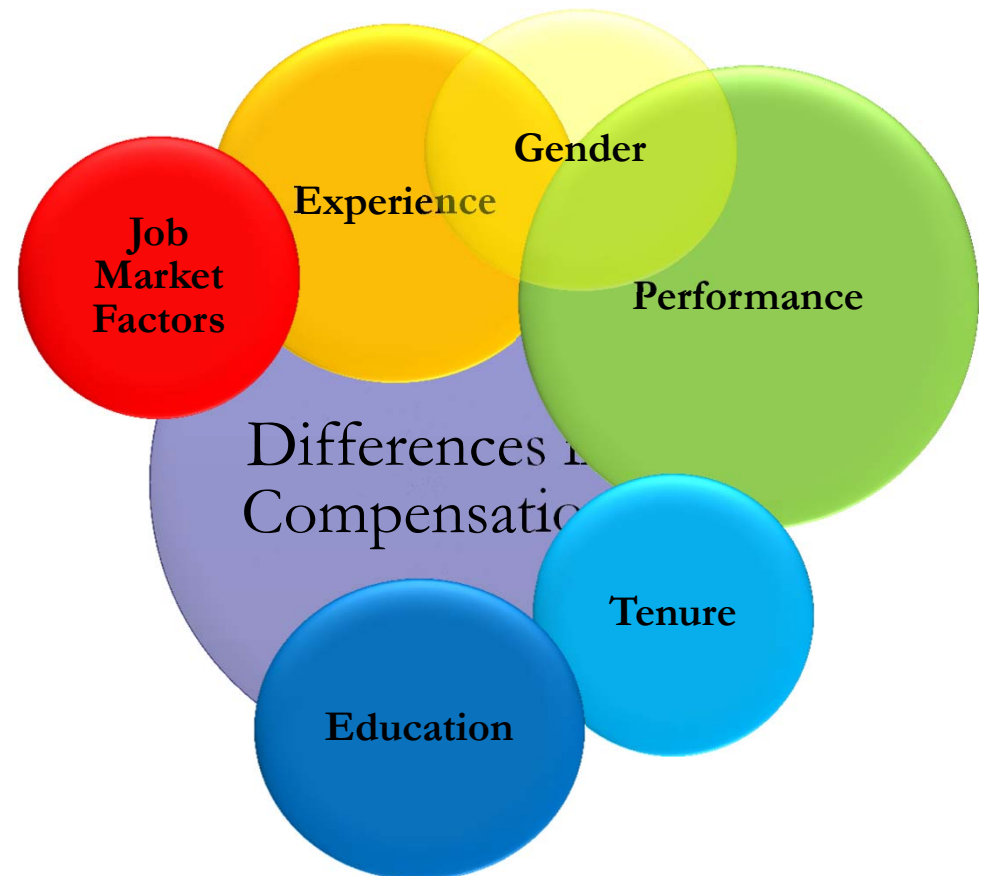
Understanding the Theory Behind Regression Analyses

Multiple Linear Regression



Multiple Regression

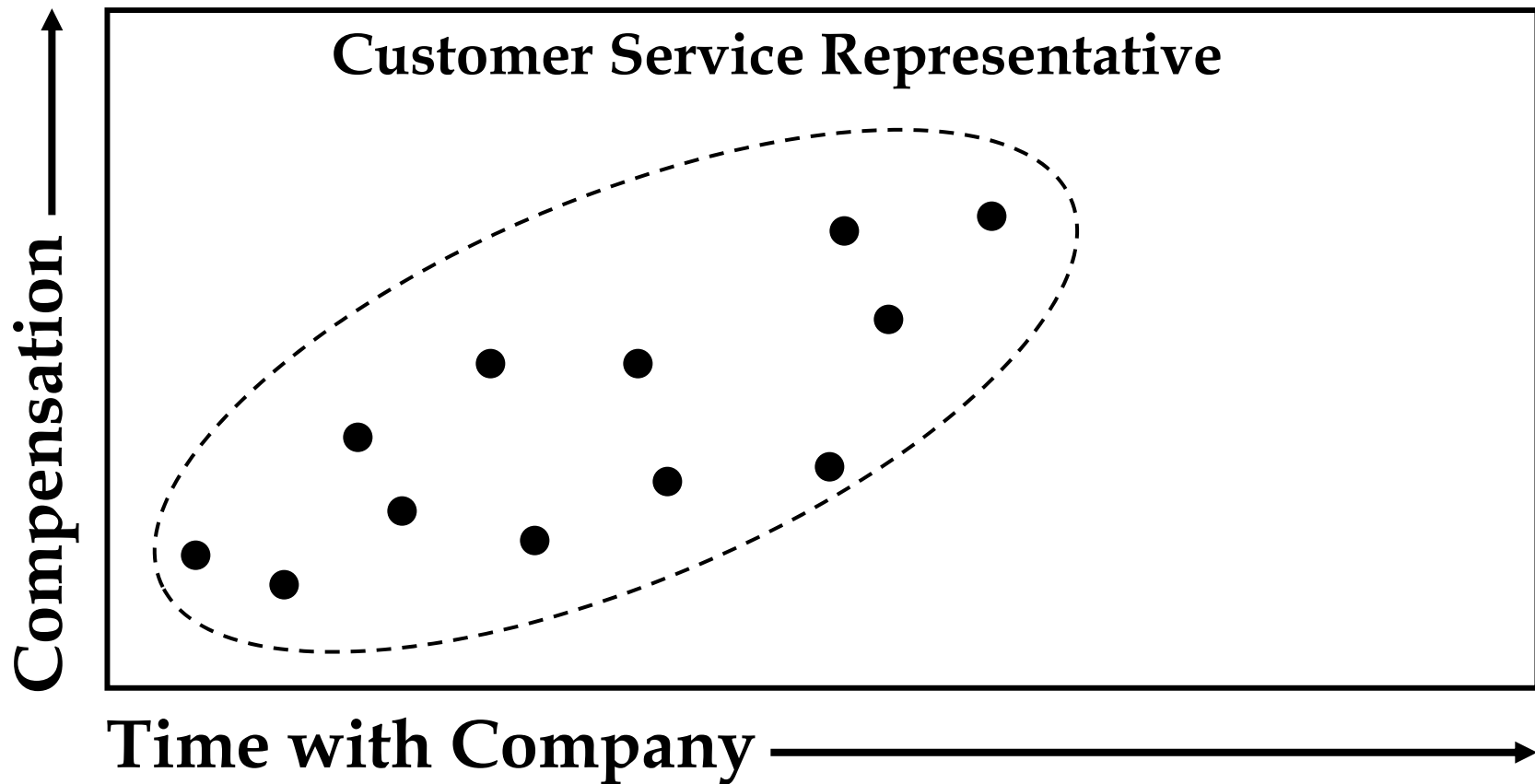
Used to create a “model” to determine whether differences in compensation are due to “legitimate job-related factors” or (perhaps) an employee’s gender or ethnicity.



Correlation



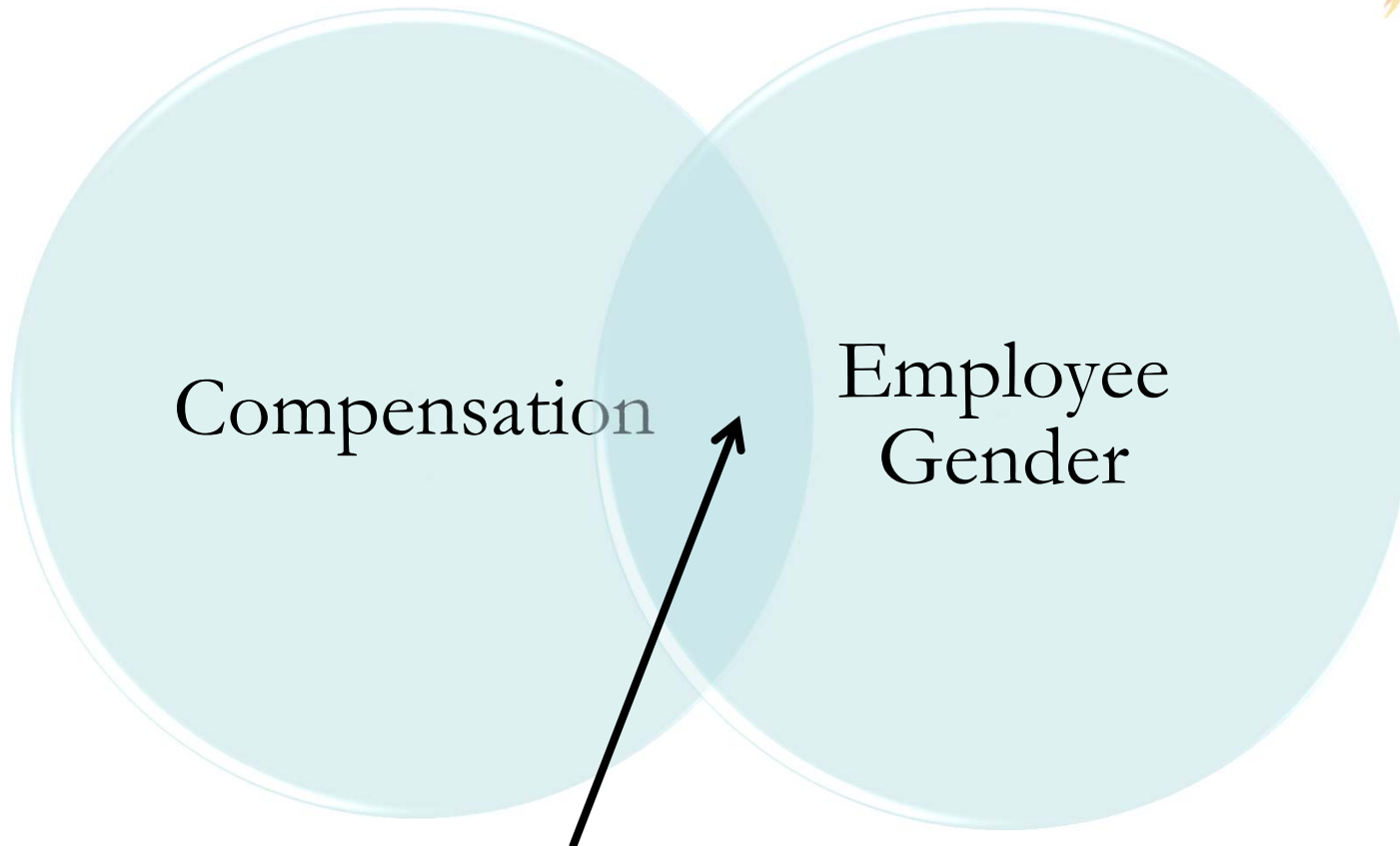
Correlation Coefficient ($r = .35$)



Correlation



$$r = .35$$



Percent of compensation explained by gender ($r^2 = .35 \times .35 = 12.3\%$)

The Correlation Coefficient



Range

- Always between -1.00 and +1.00

Size

- Close to + or – 1.00: stronger the relationship
- Close to 0.00: weaker the relationship
- 0.00: no relationship

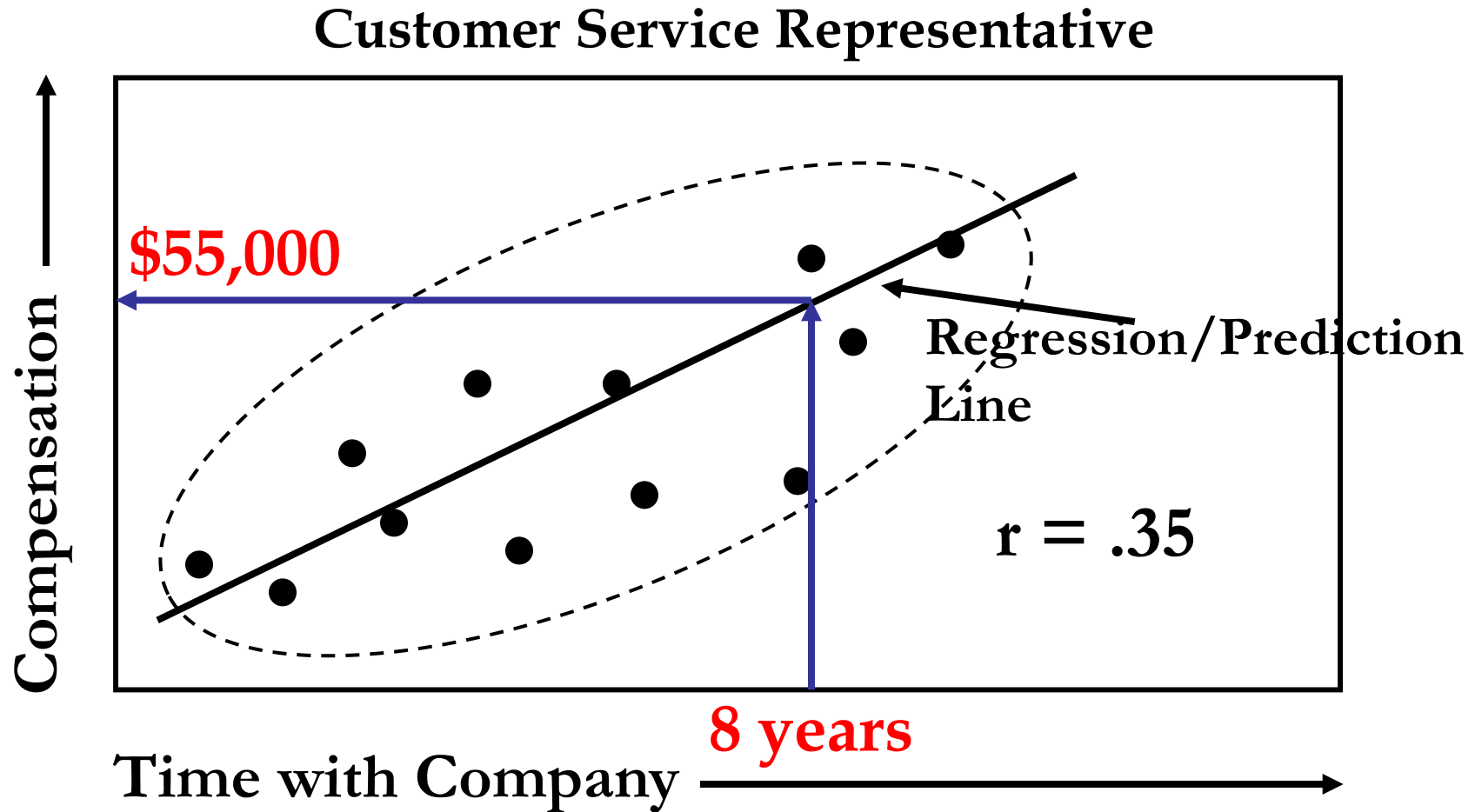
Direction

- Negative: variables move in the opposite direction
- Positive: variables move in the same direction

Coefficient of Determination

- Square the correlation coefficient to get the percent of one variable that is accounted for by the other variable

Correlation and Multiple Regression



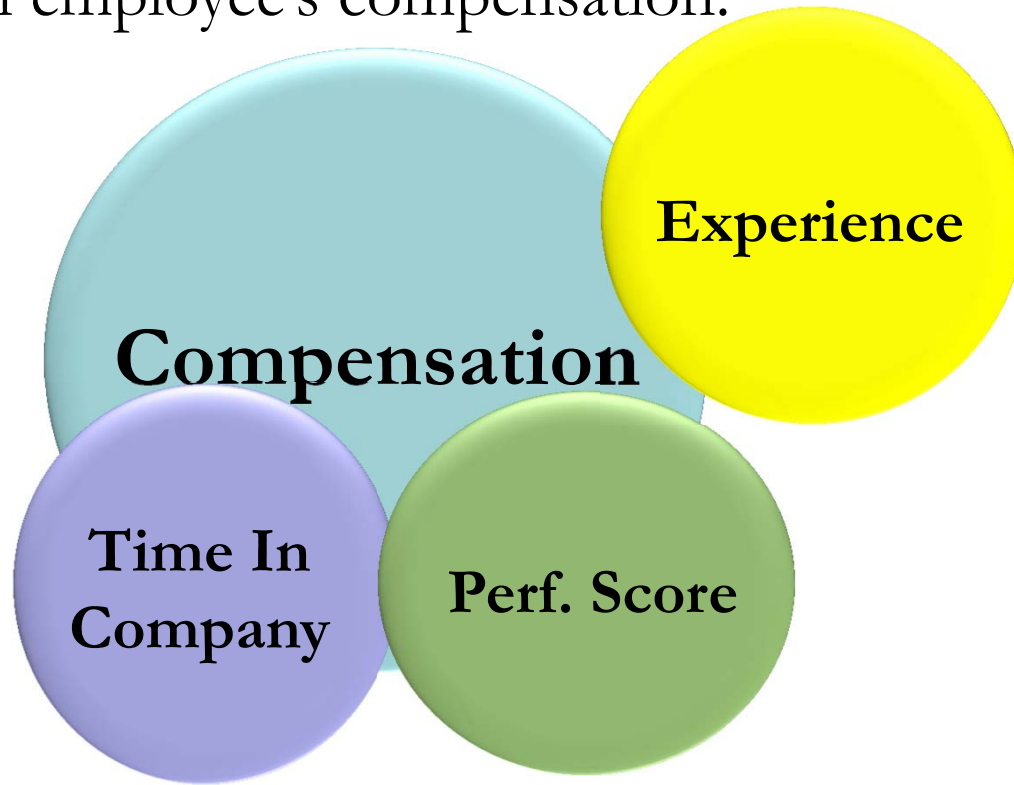
The Regression “Model”



- All variables together become the basis for a prediction “model” known as a regression model.
- The regression model predicts a certain percentage of what makes up an employee’s compensation.

$$R = .67$$

$$R^2 = 45\%$$

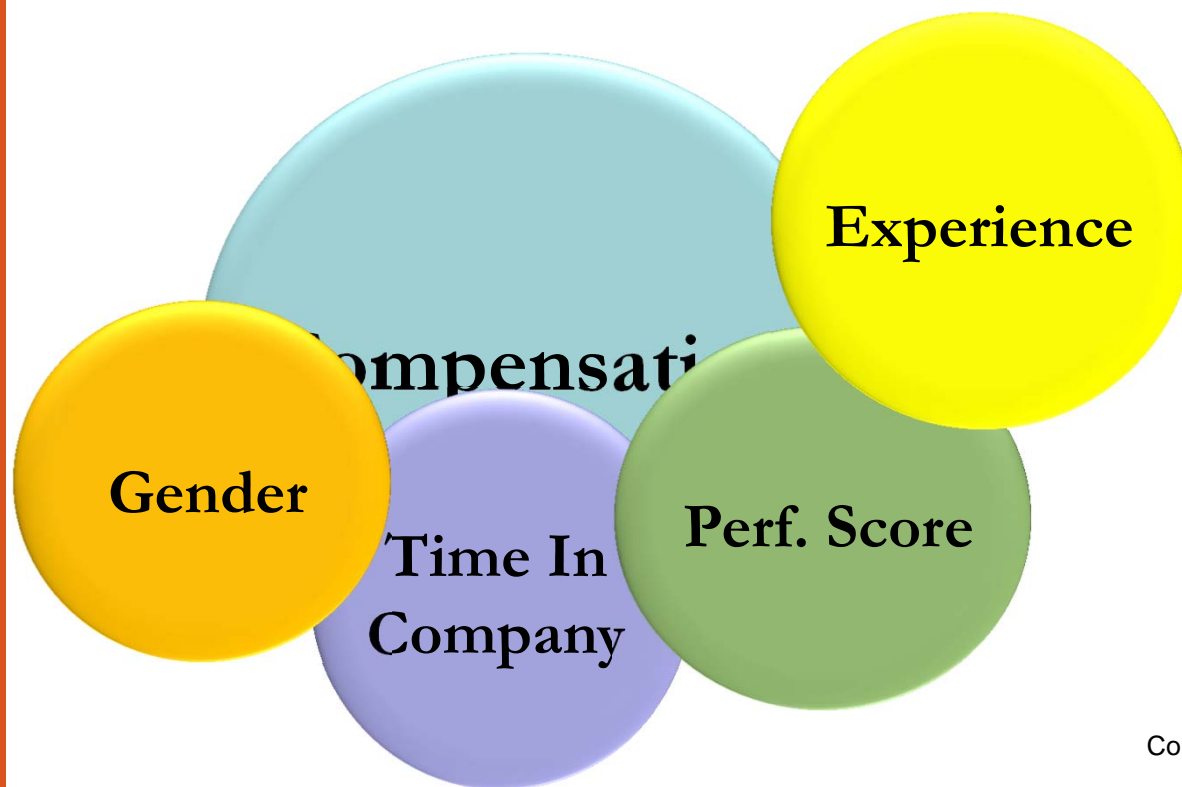


The Regression “Model”



Q: So how does regression help to identify discrimination in pay?

A: If the prediction model becomes significantly better *after* including the protected variable.



$R^2 = 45\%$
without gender

$R^2 = 51\%$
with gender



**Before you start freaking out
(again), there is a tool. Just join
BCGi . . .**

COMParé™



Strategies and Recommendations

Strategies and Recommendations



Policy/Personnel-Based

Step 1: Audit Current Pay Documentation Practices – Verify sufficient documentation exists to clearly support compensation decisions. Focus primarily on rationale behind starting pay and performance-based specifics.

Step 2: Develop Specific Criteria for Compensation Decisions – Develop objective and measurable guidelines for compensation decisions and apply them consistently. For example: establish (narrow) starting salary ranges for specific positions.

Step 3: Review Compensation Decisions – Establish third-party internal review process for compensation decisions (e.g., starting salary, yearly increases, etc.) . . . review should be conducted by personnel with knowledge of identified issues.

Strategies and Recommendations



Policy/Personnel-Based (cont.)

Step 4: Revise Document Retention Practices as Necessary – Maintain records regarding compensation decisions to ensure data/evidence is available in the event of future litigation.

Step 5: Train Supervisors and Managers – Train all supervisors and managers regarding new policies/procedures.

Step 6: Conduct Periodic Statistical Analysis of Compensation Data – Proactively determine whether pay disparities exist. Once identified, make adjustments to eliminate unexplained disparities (only make adjustments after a statistical *and* cohort-level review have been conducted)

Strategies and Recommendations

Analytical

Step 1: Create pivot tables (as initial investigation)

Nothing “sells” the need for action like liability calculations!

JOBCODE/JOBTITLE	Data	Female	Male	Grand Total	Difference	Difference (%)	Potential Liability (\$)¹
Priority 2 ADMINISTRATIVE SUPPORT	Count of GENDER	12	5	17			
	Average of Salary	\$12.08	\$14.52	\$12.80	\$2.44	16.8%	\$152,256.00
	Average of Time in Company	3.0	8.9	3.9	5.9		
	Average of Performance	3.1	4.6	3.5	1.5		
	Average of Time in Job	1.1	3.6	1.8	2.5		
Priority 1 CUST SERV REP 1	Count of GENDER	24	126	150			
	Average of Salary	\$11.29	\$13.25	\$12.94	\$1.96	14.8%	\$244,608.00
	Average of Time in Company	4.2	3.1	3.9	-1.1		
	Average of Performance	3.4	2.9	3.3	-0.5		
	Average of Time in Job	4.2	3.1	3.9	-1.1		
CUST SERV REP 2	Count of GENDER	45	29	74			
	Average of Salary	\$14.29	\$14.35	\$14.31	\$0.06	0.4%	\$14,040.00
	Average of Time in Company	5.1	4.9	5.0	-0.2		
	Average of Performance	3.0	3.0	3.0	0.0		
	Average of Time in Job	2.9	2.7	2.8	-0.2		
Priority 2 DEPARTMENT MANAGER	Count of GENDER	8	15	23			
	Average of Salary	\$15.97	\$17.42	\$16.92	\$1.45	8.3%	\$60,320.00
	Average of Time in Company	6.6	6.7	6.6	0.1		
	Average of Performance	4.2	4.2	4.2	0.0		
	Average of Time in Job	4.1	4.2	4.1	0.1		
Priority 3 SUPERVISOR - CUSTOMER SERVICE	Count of GENDER	15	24	39			
	Average of Salary	\$23.70	\$23.70	\$23.70	\$0.00	0.0%	\$0.00
	Average of Time in Company	8.3	2.0	6.4	-6.3		
	Average of Performance	4.8	2.9	4.2	-1.9		
	Average of Time in Job	4.9	0.8	3.7	-4.1		

Note:

1. Potential Liability = "Make-Whole Relief" = Difference (\$) x 2080 (hours) x 2 (years) x # impacted x 1.25 (benefits + interest)

Strategies and Recommendations



Analytical (cont.)

Step 2: Conduct statistical regression analyses (if differences are identified in initial review)

Step 3: Prioritize your efforts (focus on the low-hanging fruit – i.e., a statistically significant difference with a large number of employees)

Step 4: Conduct “cohort” review (i.e., a file-by-file review to identify why differences remain – *starting salary*, education, prior salary, quantity or quality of previous experience)

- Starting salary is often the culprit . . . But the question is *why are the starting salaries different and do you have the information necessary to justify the difference?*

Step 5: Make changes where differences cannot be justified statistically or by cohort review (must use regression analyses to identify the amount needed for each impacted individual)

Strategies and Recommendations



Cohort Review (Example 1)

Sample Cohort Analysis Ordered by Salary (Descending)

Name	Gender	Salary (\$)	Time in Co. (Years)	Avg. Perform. Scores (3 years)	Educ. (Years)
Steve Randall	M	\$57,000	7.3	3.5	18
Chris Avery	M	\$52,350	4.9	3.3	16
Leigh Barrows	F	\$51,950	12.1	3.9	18
Danielle Yoko	F	\$51,500	11.0	3.4	16
Mike Freeman	M	\$51,000	13.9	2.9	16
Frank Viola	M	\$50,500	8.7	3.2	16
John Smith	M	\$50,000	8.5	3.5	16
Frank Robison	M	\$49,560	12.1	3.7	16
John Cameron	M	\$49,250	9.5	3.0	16
Mike Stevens	M	\$48,995	10.9	4.0	16
Shelli Jackson	F	\$48,000	8.5	2.9	16
Desiree Laub	F	\$47,580	8.9	3.8	16
Dan Bostick	M	\$43,675	9.2	2.9	16
Nina Ling	F	\$42,850	3.6	3.9	18
Heather Monte	F	\$42,678	4.9	3.8	16
Shana Larris	F	\$40,750	12.8	3.8	16
Nancy Tramel	F	\$40,500	5.6	3.3	16



Strategies and Recommendations



Cohort Review (Example 2)

Sample Cohort Analysis Ordered by Time in Company (Descending)

Name	Gender	Salary (\$)	Time in Co. (Years)	Avg. Perform. Scores (3 years)	Educ. (Years)
Mike Freeman	M	\$51,000	13.9	2.9	16
Shana Larris	F	\$40,750	12.8	3.8	16
Leigh Barrows	F	\$51,950	12.1	3.9	18
Frank Robison	M	\$49,560	12.1	3.7	16
Danielle Yoko	F	\$51,500	11.0	3.4	16
Mike Stevens	M	\$48,995	10.9	4.0	16
John Cameron	M	\$49,250	9.5	3.0	16
Sarah Norris	F	\$47,560	9.2	2.9	16
Dan Bostick	M	\$43,675	9.2	2.9	16
Desiree Laub	F	\$47,580	8.9	3.8	16
Frank Viola	M	\$50,500	8.7	3.2	16
John Smith	M	\$50,000	8.5	3.5	16
Nancy Tramel	F	\$40,500	5.6	3.3	16
Heather Monte	F	\$42,678	4.9	3.8	16
Chris Avery	M	\$52,350	4.9	3.3	16
Nina Ling	F	\$42,850	3.6	3.9	18

Strategies and Recommendations



Impact of Starting Salary (Example 1)

Longitudinal Impact of \$4,000 Difference in Starting Salaries (Assuming a Constant 4% Yearly Increase)

Year	Salary (\$)		Pay Disparity (\$)
	Mike	Stephanie	
Starting	\$40,000.00	\$36,000.00	\$4,000.00
5	\$46,794.34	\$42,114.91	\$4,679.43
10	\$56,932.47	\$51,239.23	\$5,693.25
15	\$69,267.06	\$62,340.35	\$6,926.71
20	\$84,273.97	\$75,846.57	\$8,427.40
25	\$102,532.17	\$92,278.95	\$10,253.22
30	\$124,746.06	\$112,271.45	\$12,474.61

Accumulated difference over 30 years: \$224,339.75

Strategies and Recommendations



Impact of Starting Salary (Example 2)

Longitudinal Impact of \$4,000 Difference in Starting Salaries (Assuming: 4% Yearly Increase for Mike / 5% Yearly Increase for Stephanie)

Year	Salary (\$)		Pay Disparity (\$)
	Mike	Stephanie	
Starting	\$40,000.00	\$36,000.00	\$4,000.00
1	\$41,600.00	\$37,800.00	\$3,800.00
2	\$43,264.00	\$39,690.00	\$3,574.00
3	\$44,994.56	\$41,674.50	\$3,320.06
4	\$46,794.34	\$43,758.23	\$3,036.12
5	\$48,666.12	\$45,946.14	\$2,719.98
6	\$50,612.76	\$48,243.44	\$2,369.32
7	\$52,637.27	\$50,655.62	\$1,981.66
8	\$54,742.76	\$53,188.40	\$1,554.37
9	\$56,932.47	\$55,847.82	\$1,084.66
10	\$59,209.77	\$58,640.21	\$569.56
11	\$61,578.16	\$61,572.22	\$5.95
12	\$64,041.29	\$64,650.83	

