



# Big Data Pay Equity Legislative Changes Affecting Organizations

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# ADP Big Data

# HR is Changing

- Build out the strategic focus to compliment the operational focus
- HR must measure the impact of the people strategy to the bottom line
- HR requires data to drive fact-based decisions and conversations

Source: *Human Resource Champions: The Next Agenda for Adding Value and Delivering Results*, 1996

## Dave Ulrich Model of HR Roles



# What is People/HR Analytics?



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# People\* Analytics

An “HR practice enabled by technology that uses *descriptive, visual, and statistical analyses* of data related to *HR processes, human capital, organizational performance, and external economic benchmarks* to establish *business impact* and enable *data-driven decision-making*” (Marler & Boudreau, 2017, p. 15).

## Or more simply put...

... the application of quantitative analysis to make better people decisions that help drive positive outcomes for the business.



\*or HR/Workforce/Talent

# Reporting vs. Analytics

EMPLOYEE ...	LAST NA...	FIRST NA...	GENDER	RACE	EEO-1 JOB GROU...	EEO-1 JOB GROU...	TERMINATION..	EFFECTIVE ..	ACTION
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11784	Mackenzie	Lyndsay	F	White	3	Professionals	01/01/2017	01/01/2017	TER
11785	Reilly	Jonathan	M	White	1	Officials And Managers	01/01/2017	01/01/2017	TER
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11790	Gaines	Patricia	F	White	N				
11794	Whipple	Jacob	M	White	N				
11795	Tijerina	Kathryn	F	Hispanic O...	2	Officials An			
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11799	Escobedo	Gerald	M	Hispanic O...	3	Professiona			

Forward leaning – Leading indicators



Backward looking – Lagging indicators



# Questions Analytics Can Help With

**KEY POINT:** Metrics and analytics are only as good as the question(s) that generate them

- Do happy employees translate to more productive employees?
- Can compensation growth be slowed without loss of performance growth?
- Do “better” managers make for higher employee engagement scores?
- What leading indicators best predict successful employees in our company?





# ADP Pay Equity

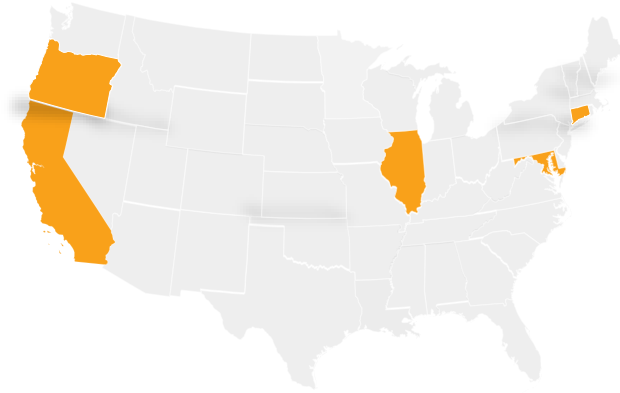


# Who Does This Impact?



## Employers of all sizes

- > Check applicable laws for specific thresholds
- > Employers interested in attracting and retaining top talent



## Locations:

- > Nationwide (U.S. federal law)
- > Many states and localities also have laws
- > Many countries have pay equity laws



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# Polling question #1

**Do you believe the media coverage about the Gender Pay Gap?**

- Yes
- No, people always complain about their pay
- It's only a limited number, and it doesn't happen at my business
- Unsure

# Focus on Equal Pay and Pay Equity

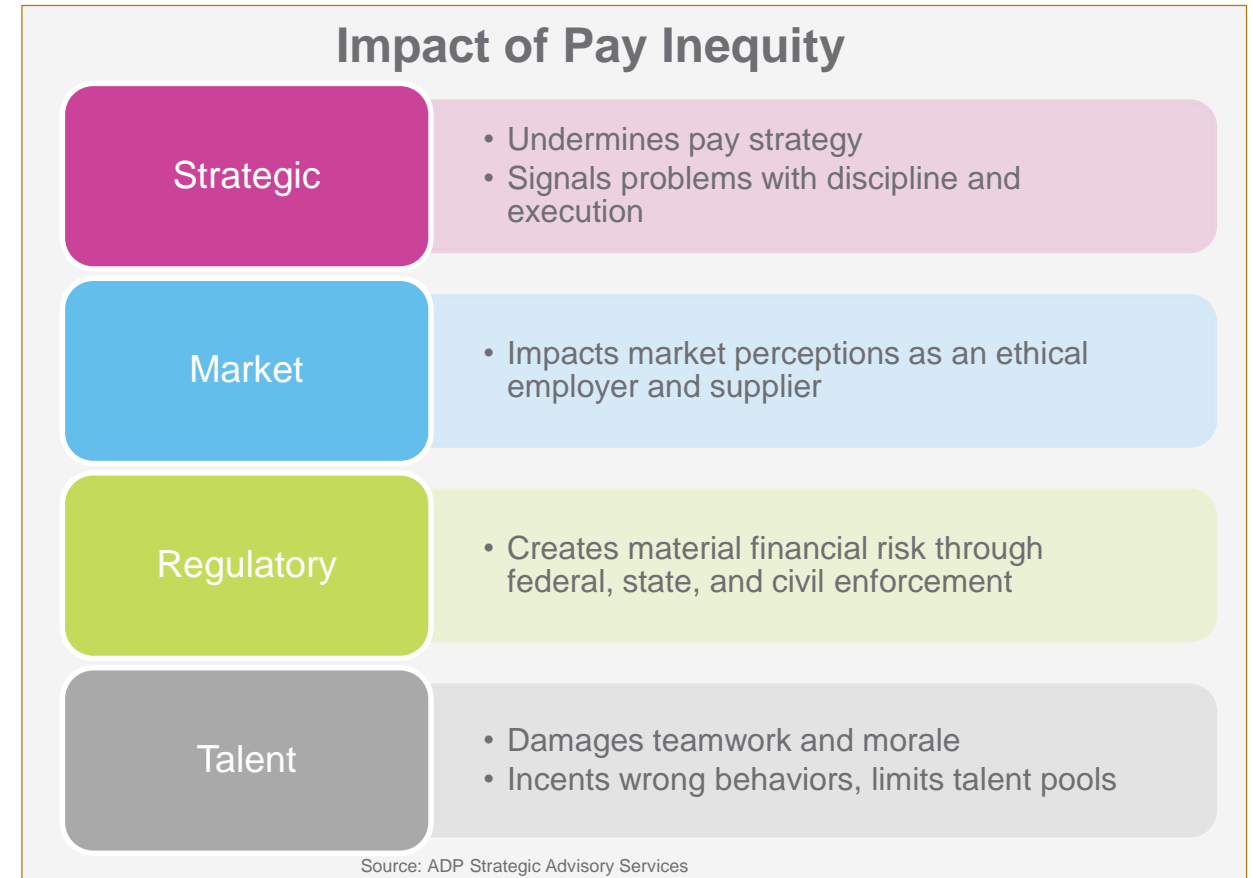
- > **Equal pay for equal work** is the concept that individuals in the same workplace performing the same or similar jobs should be given equal pay.
  - > Mostly referred to in relation to a gender pay gap
  - > Also applies to other races and ethnicities
- > **Pay Equity** compares the value and pay of different jobs.
  - > Either men or women can complain that their work is undervalued.



**Equal pay and pay equity are sometimes used interchangeably. Both concepts require data.**

# Pay Equity is a Business Issue

- > Indicates **poor execution** of HR strategy:
  - Recruiting
  - Workforce Planning
  - Performance and Learning
  - Alignment with corporate objectives
- > Variances in pay:
  - **Deliberate:** job, performance, strategy, and culture
  - **Random:** process noise
  - **Structural:** career path, industry, socio-demographics, business cycles
  - **Bias:** subjective preferences unrelated to job



# Critical Trends: Pay Equity Compliance



## Increased **transparency**

- > Social Media/Career sites
- > Legal protections for employee sharing of pay data.
- > Employer awards and recognition
- > Enforcement and policy development at both federal & state levels



## Employer mitigation of risk through **self-assessment**

- > Proactive identification of underlying causes of pay disparity may reduce risk of adverse litigation
- > Employment policies consistent with pay philosophies establish intent

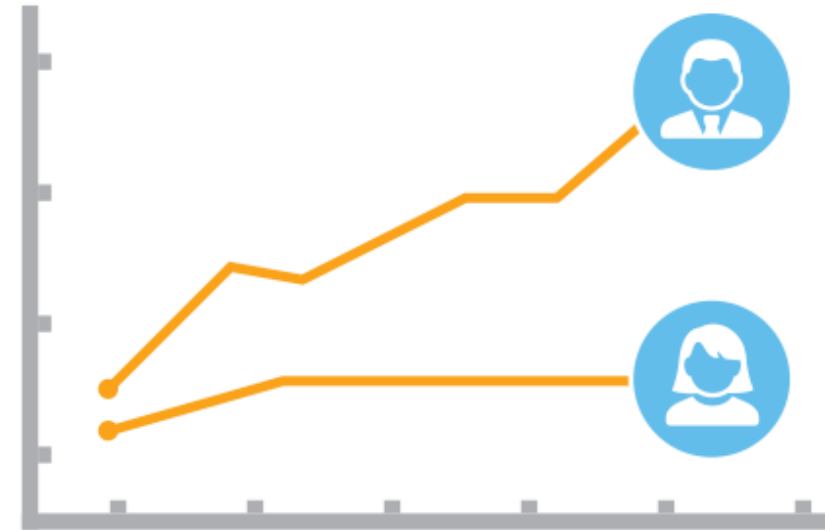


## **Shift** from regular rate of pay to total compensation

- > 69% of salaried workers receive some form of incentive compensation
- > Heightened awareness of incentive pay impact to pay equity.

# Pay Equity Today

On average,  
**men make 28% more**  
than women across all industries.<sup>1</sup>

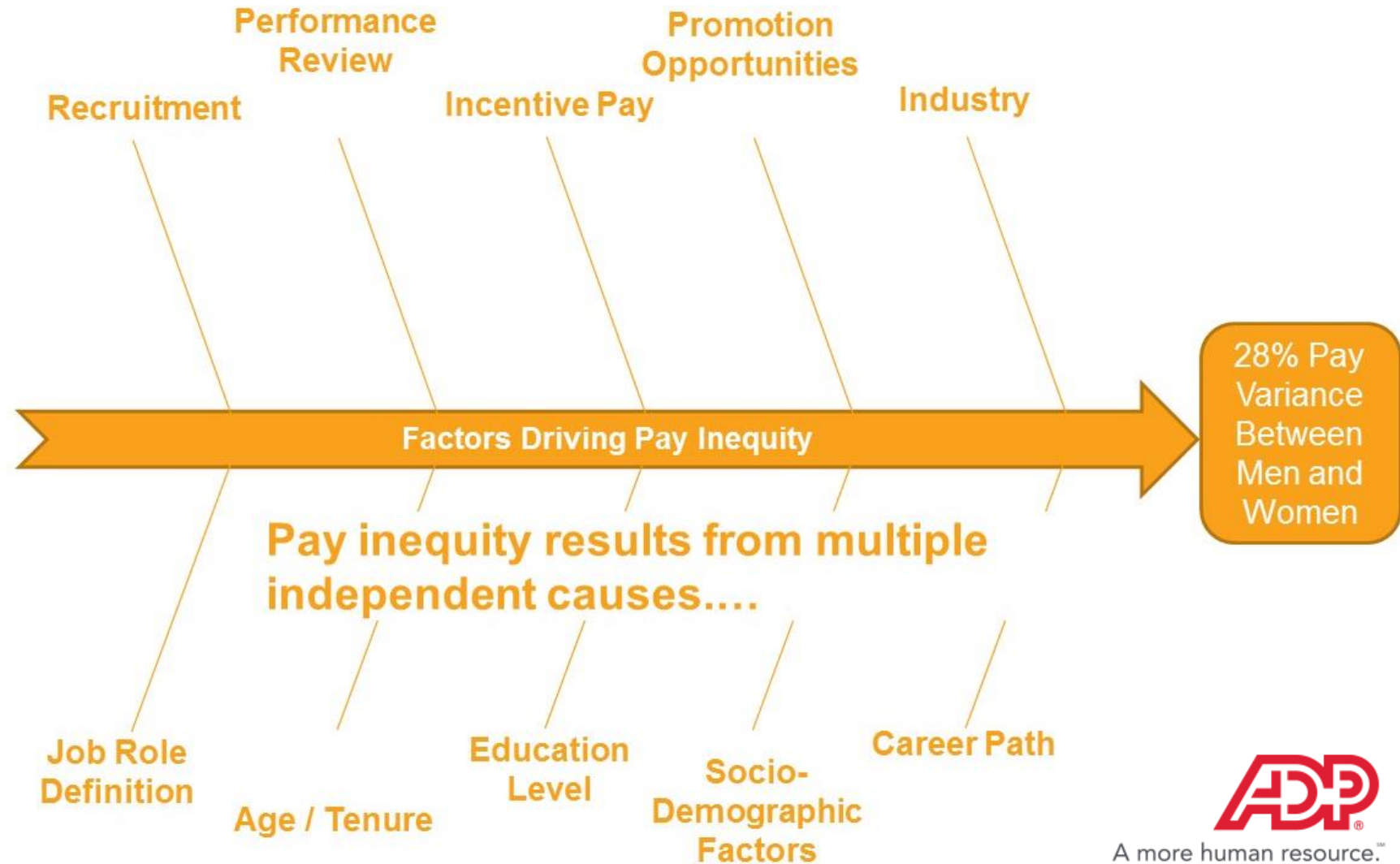


Over the past seven years,  
**millennial women's income has stagnated**  
while their male counterparts' income has increased.<sup>2</sup>

\* 1 & 2: State of the Workforce by Gender, ADP Research Institute, 2016

# Multiple Independent Causes

- 28% reflects a long sequence of independent events and causes
- The ability to isolate different impacts is difficult but critically important





# Perceptions of “Fairness” and “Equity” Appear to be Universal Traits Across some Species



1. Monkeys reject unequal pay  
Sarah F. Brosnan<sup>1</sup> & Frans B. M. de Waal  
Living Links, Yerkes National Primate Research  
Center,  
Emory University, Atlanta, Georgia 30329, USA  
*Nature* **425**, 297-299 (18 September 2003)

- > “Fairness” viewed as a critical development in the evolution of **cooperative social behavior**<sup>1</sup>
  - Same rules and principles apply to “**everyone**”
  - Reward commensurate with contribution
  - Equal rewards for equal contribution
  - Major differences in rewards—even when justified—can break down cooperative social behavior

**In species that exhibit cooperative social behavior, deception and cheating behaviors are also sometimes observed.**

<https://www.youtube.com/watch?v=t6OsVUlp7Y0>



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# Major Legislative Trends 2017

- **Affordable Care Act**
- **Regulatory Themes Driving Change**
  - **Employer Reporting is the answer**
  - **Withholding is a good thing**
  - **Expand worker protections**
  - **Scheduling restrictions**
  - **Paid Leave mandates**





# Affordable Care Act (ACA)



# Executive Order Promoting Healthcare Choice

October 12, 2017 order directs agencies to draft new rules in three areas:

## ***HRAs***

- Permit use of stand-alone HRAs to purchase health insurance

## ***Association Health Plans***

- Permit AHPs across state lines (subject to ERISA rather than state regulation)
- Could offer narrower, cheaper coverage

## ***Short-Term and Limited-Duration Insurance***

- Expand the availability of STLDI, which are exempt from ACA market reforms, such as guaranteed issue and lifetime and annual dollar limits

***Separately, CSR payments stopped. (Impact?)***



# Health Care Continues to be Highly Divisive

- > No clear consensus in Congress - many conflicting opinions
- > The ACA remains in full effect
- > Recent Treasury letter to Representative Huizenga:
  - *The recent Executive Order Minimizing the Economic Burden of the ACA Pending Repeal (January 20, 2017), directed federal agencies to exercise authority and discretion permitted to them by law to reduce potential burden imposed by the ACA.*
  - ***The Executive Order does not change the law; the legislative provisions of the ACA are still in force until changed by the Congress, and taxpayers remain required to follow the law and pay what they may owe.***

# ACA Employer Mandate Assessments Pending



**Not paid**  
with a return



IRS will determine  
amount and **notify  
employer...**  
for 2015 and 2016



Employers will have  
**opportunity to  
respond** before  
assessment



IRS will **send  
a notice** after  
proposed  
assessment



# Form 1094-C & 1095-C Update



- Final forms and instructions were released by the IRS.
  - [www.irs.gov/forms-pubs/about-form-1094-c](http://www.irs.gov/forms-pubs/about-form-1094-c)
  - [www.irs.gov/forms-pubs/about-form-1095-c](http://www.irs.gov/forms-pubs/about-form-1095-c)
- Form 1095-C must be furnished to recipients by January 31, 2018.
- Forms 1094-C/1095-C must be filed with the IRS by February 28, 2018 in paper format, or April 2, 2018 electronically.
- New Error condition:
  - The Information Return 'CoveredIndividualName' and 'BirthDt' within 'CoveredIndividualGrp' must match the IRS database

# 2017 ACA Form 1095-C Line 15 Corrections



. . . incorrect dollar amounts on line 15, Employee Required Contribution, may fall under a safe harbor for de minimis errors. . . if no single amount in error differs from the correct amount by more than \$100 . . . you will not have to correct Form 1095-C to avoid penalties.

However, if the recipient elects for the safe harbor not to apply, you may have to issue a corrected Form 1095-C.

See Notice 2017-9, at <https://www.irs.gov/pub/irs-drop/n-17-09.pdf>

## Issues:

- \$100 - per month or total?
- Impact to affordability?
- Must notify employee

Source: 2017 IRS 1095-C Instructions, p. 5

A photograph of an office environment. In the foreground, two men are focused on a laptop. One man, wearing a grey sweater, is leaning over the desk, pointing at the screen. The other man, wearing a light blue shirt and glasses, is sitting at the desk, looking at the laptop. In the background, another man in a plaid shirt is sitting at a desk, working on a laptop. The office has large windows with yellow frames and wooden desks.

# Accuracy Penalties May Apply to Forms 1095-C

# Penalties for Annual Reporting Forms

IRC Sections 6721 and 6722 (for returns due in 2017)

Scenario	Penalty Per Return	Calendar Year Maximum	Maximum for businesses with gross receipts ≤ \$5M
Failure to <b>File Correct</b> Information Returns	\$260	\$3,193,000	\$1,064,000
Failure to <b>Furnish Correct</b> Payee Statements	\$260	\$3,193,000	\$1,064,000
Failure to <b>Both</b> File Correct Information Returns <u>and</u> Failure to Furnish Correct Payee Statements	\$520	\$6,386,000	\$2,128,000
Corrected <b>on or before 30 days</b> after required filing date	\$50	\$532,000	\$186,000
Corrected <b>after 30<sup>th</sup> day</b> but on or before August 1	\$100	\$1,596,500	\$532,000

What constitutes  
**Good Faith Efforts?**



# “AIRTN500-TIN Validation Failed”...Now What?



Names/SSNs that **don't match** IRS database are the most common error condition



How **should** employers manage name/SSN accuracy?

*“A filer ...may receive an error message indicating that a TIN and name provided on the return do not match IRS records.*

*An error message is neither a Notice 972CG, Notice of Proposed Civil Penalty, nor a requirement that the filer must solicit a TIN in response to the error message.”*

IRS REG-103058-16, August 2, 2016

SSNVS? E-Verify? IRS TIN Matching?  
(not available for 1095-C reporting)

# “AIRTN500-TIN Validation Failed”...Now What?



## Best practices

**Check into** each IRS name/TIN error message

- > Check employee files, documentation (was name/TIN reported correctly)
- > Gently ask employees if they might have had name changes (e.g., marriage, divorce) not reported to SSA



## For more information

IRS Publication 1586

ADP's [Eye on Washington](#)





# Action Steps

## Each month

- > **Check** for new full-time employees & offer coverage
- > **Test for 95%** coverage of FT employees
- > **Test for affordability**

**Schedule follow-ups** with any employees that have:

- > **Missing** TINs
- > Name/TIN **errors**

**Watch for further changes!**

# Legislative/Regulatory Outlook

*What's next for the ACA??*



# Congress will continue to focus on the ACA

- Within FY2018 Budget Reconciliation?
- Through regular order?
  - Fund cost-sharing reductions for two years
  - More flexibility on **Section 1332 waivers**
  - **Relax** ACA coverage requirements - permit low-cost, basic ("copper") plans
  - **Expand** health savings accounts (e.g., allow premiums to be paid from HSAs, relax limits...)

# Tax Reform may include ACA elements

**Cadillac tax repeal** vs. cap on tax preference for employer-sponsored health benefits

**Q: What else is at stake in Tax Reform?**

**A: Everything! Employer-provided benefits such as:**

- Health coverage
- Retirement plans
- Accident/disability insurance
- Group term life
- Educational assistance
- Tuition reduction
- Transportation benefits
- Dependent care assistance
- Adoption assistance
- Meals and lodging
- Employee awards



# Treasury/IRS ACA Regulations

- Relax insurance restrictions (e.g., permit association plans)
- Simplify Full-time employee determination/tracking
- Simplify employer reporting of health coverage offers
- Permit electronic delivery of required notices
- Expand Health Savings Accounts
- More flexibility in wellness programs

# State Legislation



**States may seek ACA Innovation Waivers** to address perceived needs



**States may use new flexibility** to define minimum essential health benefits



**States may enact legislation to supplement/strengthen ACA Marketplaces**



**States may consider new employer taxes and other funding sources**

# Section 1332

## Innovation Waivers

HHS March 13 letter to Governors invited Section 1332 Innovation waiver proposals

- > High-risk pools
- > Reinsurance programs
- > an opportunity to **lower premiums and improve market stability**
- > States may receive funding associated with reductions in federal Marketplace spending



**Must result in coverage that is at least as comprehensive and affordable; provide coverage to at least as many people ...**



# Alaska's Section 1332

## Innovation Waiver



Alaska faced premium increases of **42% in 2017**



Implemented a reinsurance program that reduced the rate increase to **seven percent**



**Funded by a 2.7 percent tax** on health insurance premiums



Alaska was able to demonstrate **reduced federal spending & seek federal funds**



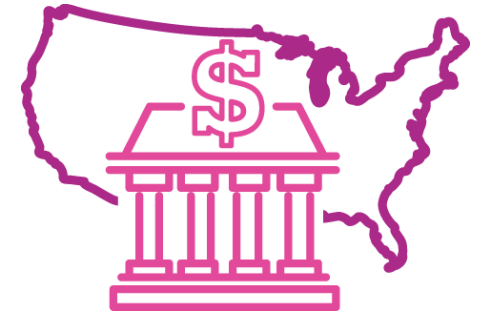
**Section 1332 waiver** sought to implement a high-risk pool/reinsurance program for 2018 and future years

# Ohio Legislation Directs a Section 1332 Waiver

- » The General Assembly enacted biennial budget language requiring the Department of Insurance to apply for a **waiver of the employer and individual mandates**.
- How would such a waiver affect IRS reporting?
- Could such a waiver be approved?

# Massachusetts Chapter 63 (8/1/2017): Further Regulating Employer Contributions to Health Care

- » Employers will **pay a contribution for each employee who receives health coverage through MassHealth** (Medicaid) and/or other subsidized health insurance
  - five percent of wages, up to a taxable wage limit of \$15,000 (\$750 annually)
  - *Effective in 2018*



## State ACA Variations

# Regulatory Themes Driving Change

- **Employer Reporting is the answer**
  - Tax administration
  - Pay Equity
  - Social safety-net administration
  - Compliance verification
- **Withholding is a good thing**
- **Expand worker protections**
  - Scheduling restrictions
  - Paid Leave mandates

# 2015 PATH Act Changes

- Accelerated W-2 filing to Jan 31
- Tax authorities' perspective:
  - *Why not January 20? 15? 10?*
    - Most states moved to Jan 31
- SSN Truncation
- De minimis corrections
  - Under \$100 (\$25 in tax)
  - Applies to W-2s, 1099s, 1095-Cs...



# Pay Equity Measures

## May Include New Employer Reporting



**Now Withdrawn** revised EEO-1 report included pay data and hours

- > **W-2 earnings and hours worked**, by race/ethnicity, and gender
- > Snapshot: **Any pay period** within the quarter ended December 31
- > Employees in a selected pay period, but include **income and hours worked** for the entire year
- > Report the number of employees and aggregate hours worked, within **12 “pay bands”** in each of the ten EEO-1 job categories (by race/ethnicity, and gender)



### EEOC Pay Data Collection

Withdrawn August 29, 2017



New EEOC leaders expected to renew pay data proposals



Electronic filing **required**

- > Complex: Potential entries increased from 140 to 3,360



The first revised report would have been due **March 31, 2018**

# Most States Have Pay Equity Laws

Common requirements:

- > **Prohibit pay disparity** based on gender
- > **Pay equality goes beyond** base compensation and includes bonus, commissions, etc.
- > **Pay Transparency:** Anti-pay secrecy requirements
- > Some are expected to include **new employer reporting**

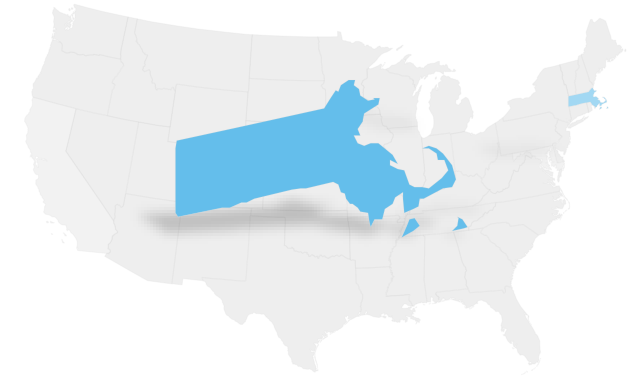


**States without Equal Pay Laws: AL, MS, NC**

# Massachusetts Equal Pay Act

## 2016 Legislation

added key provisions on gender pay equity, effective **July 1, 2018**



**“Comparable”**  
versus “substantially  
similar”

### **Wage variations are permitted if based on:**

- Seniority (family/medical leave must not reduce seniority)
- A merit system
- A system that measures quantity or quality of production or sales
- Geographic location
- Education, training, or experience
- Travel, if a necessary condition

Employees **may discuss** wages

Employers **may not ask**  
applicants for prior compensation

- May confirm if a candidate voluntarily discloses wage information

Provides an **affirmative defense** for employers that conduct a good-faith evaluation of pay practices,  
and can demonstrate progress in addressing gender wage differentials



# CA AB 1209 “*Employers: Gender pay differentials*”

- » Employers with 500+ employees in California must report the difference between average wages of male and female exempt employees (and board members), by job classification or title.
- » ~~First report due July 2020; biennially thereafter~~
- » ~~CA Secretary of State will publish results~~

**VETOED** October 15, 2017



**States considering new employer reporting requirements to address pay equity**

# NY Executive Order 162 “Ensuring Pay Equity by State Contractors”

- » January 2017 Executive Order requires contractors to report data on gender, race, ethnicity, job title and salary data for all employees working on state contracts
  - Quarterly (monthly for contracts over \$100K)
- » State contracts and procurements after June 2017 must require such disclosures
- » First reports due January 2018



**New employer  
reporting to address  
pay equity**

# As a model for some...

## United Kingdom Equality Act (2010) Gender Pay Gap Regulations (2016)



### Equal treatment required if:

- > Work is broadly similar
- > Equivalent under a job evaluation study
- > Equal value in terms of effort, skill or decision making
- > Differences must be due to **factors** other than gender

Employees **may discuss** pay and ask for pay difference information

Regulations apply to private sector employers in England, Wales, and Scotland with at least 250 employees

Employers **must publish gender pay gap details** highlighting the difference in pay and bonuses of female & male employees

- First report due **April 2018**



# Outlook



**Pay equity-related changes to the EEO-1 form** may be re-proposed.

States will continue **pay equity efforts** in the coming years.

State laws **can take many forms** and may require specific posting, disclosure and periodic reporting requirements.

# Employer Reporting is the Answer: to Government Benefit Overpayments

- **GAO** \$144 billion in improper payments in FY2016
  - **\$36 billion in overpaid Medicaid**
    - **Medicaid represents 28% of state spending**
  - From 2005 - 2014, SSA overpaid \$11 billion in Disability Insurance (DI) benefits to beneficiaries who had returned to work...
  - “...improper payment rates for the Supplemental Nutrition Assistance Program (SNAP) have ranged from 5.8 percent to 3.2 percent ... “ **\$20B - \$40B** over ten years



# News Release

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**Pat Quinn, Governor**

**Jay Rowell, Director**

**For Immediate Release  
February 25, 2013**

**Greg Rivara**  
Media: (312) 814-0095  
[www.ides.illinois.gov](http://www.ides.illinois.gov)

## **New Monthly Wage Reports to Fight Fraud in Unemployment, Medicaid, Affordable Care Programs** *Stopping Fraud Before it Starts to Save \$100 Million Each Year*

**CHICAGO** – New monthly wage reports will help stop individuals from illegally collecting unemployment insurance benefits while working because officials will have the most up-to-date wage information available, the Illinois Department of Employment Security (IDES) said today.

The new monthly reports also will help prevent fraud in the Medicaid and the Affordable Care Act programs because the up-to-date wage information will more quickly identify those who make too much money to qualify.

For more information, contact Greg Rivara, Director of Public Affairs, at (312) 814-0095 or [greg.rivara@ides.state.il.us](mailto:greg.rivara@ides.state.il.us).

# Employer Reporting is the Answer: Wage-Hour Compliance Verification

- **DC Wage-Hour Tipped Employees Report**
  - **DC legislation required a quarterly attestation**
    - Name/SSN/Hours/Pay rate/Wages (excluding PTO)/tips
    - Separate records for any employees with multiple pay rates
  - **Only for employees paid the tipped minimum wage**
  - **Similar Montgomery County, MD Tipped Employees Report** – enacted but tbd
- **More states adding Wage & Hour reporting**
  - Hours worked (DC, MA, MN, NE, OR, VT, WA)
  - Pay rate (LA proposed)
  - SOC/Title (AK, LA, NE....)

# Driving Change: Withholding is a good thing

- NEW GIG Act of 2017 (S. 1549)
  - Gig economy workers are contractors
  - Customers/platforms are not employers
  - Safe harbor tests (relationship, location...)
  - Tax withholding and reporting
  - State worker classifications?



# Driving Change: Withholding is a good thing

- HR 1393 Mobile Workforce State Income Tax Simplification
  - Passed House 6/20/2017
- A uniform threshold for employer withholding and reporting for workers temporarily in a state (30 days+/year)
- Versus the array of state thresholds (days/earnings), which are impractical and often ignored and not enforced.
  - Some states (NY) aggressively enforce and audit for compliance
- Enactment would increase expectations for compliance and enforcement
  - Affects payroll/tax, timekeeping, travel/expense systems
- Systems may also drive change: Ohio localities seeking employer reporting changes to identify underwithholding

# Withholding is a good thing:

## Retirement Savings Mandates

- CA, CT, IL, MD, OR will mandate employer auto-enrollment retirement saving plans
- Disclosures, enrollment, withholding, payments, adjustments...
- Mandates take effect 2018 - 2019
- Other states/cities?
  - ~ 20 legislative bills in 2017



# Scheduling Restrictions

# Income Volatility Affects Half of U.S. Households



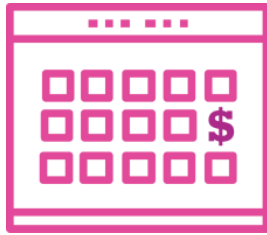
- > **41%** of consumers experience month-to-month income fluctuations of **30%** or more
- > **Many lack savings** to meet unexpected expenses
  - > Alternatives are costly (credit cards, payday lending, auto title loans)
- > **Median income families** had similar fluctuations in expenses of roughly 30% of average expenses - about \$1,300
  - > 40% of households have at least one major unexpected expense over a year (e.g., medical, auto purchase/repair, tax)
- > **Financial instability is a major impediment** to retirement savings

# Employers Viewed as Driving Volatility



- > *And also as the most likely solution*
- > **Improved technology** enables employers to more closely match staffing to business demand
- > **Employer scheduling practices** shift financial risk to workers
  - Unpredictable scheduling
  - Last-minute changes/cancellations
- > **Some businesses** have adopted policies to address concerns
  - Guaranteed minimum hours
  - 2 – 3 weeks advance notice of schedules/changes

# San Francisco Retail Employee Rights law



## Two Week Notice of Work Schedules

1 - 4 hours of pay for  
changes



## On-call Pay

2 – 4 hours of pay if  
on-call but not called  
to work



**Must offer hours**  
to PT employees in  
writing before hiring  
new employees



Generally chain stores with 20+ employees in San Francisco



Must post Retail Employee Rights Poster at the workplace



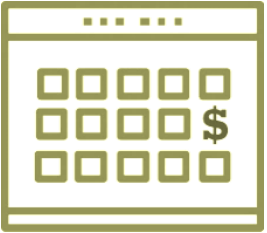
# New York City Fair Workweek Legislation

To address scheduling practices in the Fast Food and Retail Industries

- Written statement of expected hours
- Provide work schedules 14 days in advance
  - Changes require “premium” pay based on lead time (7 days, 1 day, less than 24 hours)
- Prohibits “clopenings” (less than 11 hours after last shift), or \$100 with mutual consent
- Must offer shifts to existing employees before hiring
- Permit voluntary contributions to non-profit organizations through payroll
- Retail employers - prohibits on-call shifts; canceling shifts within 72 hours; requiring work with less than 72 hours’ notice...
- Takes effect on November 26, 2017 if regulations are issued



# San Jose Opportunity To Work Ordinance



## Before hiring additional employees...

- > ...or contractors, or temporary staff, an employer must offer additional hours of work to current part-time employees
  - Does not require employers to incur overtime
- > Generally applies to employers with 35+ employees
  - For a chain business . . . the number of employees shall be determined by the combined total number of employees at every location of that chain business, whether or not located in the city.



# San Jose Opportunity To Work Ordinance



## Required Records

- > Post a notice of employee rights under this chapter
- > Be able to demonstrate compliance for each new hire
  - Document prior offer of additional hours to existing employees
  - Employee work schedules
  - “... any other records the office requires to demonstrate compliance”

# Seattle Secure Scheduling Ordinance



## **Food services and retail establishments**

- > Employers with 500+ employees nationally
  - > Restaurants with 40+ locations worldwide.
- > Good faith estimate of work schedule
- > Right to request input into the work schedule
- > 14 days advance notice of work schedule
- > Notice of work schedule changes
- > Compensation for schedule changes
- > Opportunity for additional hours for existing employees
- > Protection from a pattern or practice of underscheduling

**Effective July 1, 2017**

# What Advocates are Seeking



## On-call or Reporting pay



## Pay for schedule changes

- > E.g., San Francisco, Emeryville, Seattle



## Employee input to work schedules

- > VT, NH, Berkeley, San Francisco, Emeryville, Seattle...

# Major Legislative Trends 2017

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# Resources



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# Questions?

