



LATINA EQUAL PAY DAY: INTERSECTIONALITY AND THE PAY GAP

Presenters:

*Maria Dantes-Sanchez, VP and Regional General Attorney, Liberty Mutual;
HNBA VIA General Counsel*

*Paulina Vera, Professorial Lecturer in Law at The George Washington Law
School; HBA-DC President*

Victoria Hamscho, Associate at K&L Gates; HBA-DC Board Member

*Craig Leen (Moderator), Partner at K&L Gates; BADC Board Member;
Former OFCCP Director at the U.S. Department of Labor*

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Program Overview

Learning Objectives

- Provide an overview of the legal standards relating to pay gaps and pay disparities, including Title VII, the Equal Pay Act, and EO 11246, along with how pay gaps are evaluated.
- Discuss the concept of intersectionality and the importance of evaluating pay gaps while combining protected class statuses in order to fully address pay disparities.
- Identify compliance guidelines and best practices in seeking to eliminate pay gaps and achieve pay equity.
- Learn from the personal experiences and insights of our panel of experts.

Sponsors and Presenters

Thanks to the Hispanic Bar Association of DC, the Women's Bar Association of DC, the Bar Association of DC, and the DC Bar DC Affairs Community for co-sponsoring this important program with the K&L Gates DC Diversity Committee

And many thanks to our panelists:

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What is Intersectionality

- According to Merriam-Webster, **intersectionality** is “the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect especially in the experiences of marginalized individuals or groups”
- Concept developed by Professor Kimberlé Crenshaw
- The EEOC, OFCCP, and state civil rights agencies have started reviewing/evaluating/investigating pay gaps that are indicative of intersectional or compound discrimination

What is the Pay Gap

- According to the Bureau of Labor Statistics, women are receiving 83.6 cents per every dollar received by men
- Pay gaps of approximately 20% or more exist for racial and ethnic minorities, people with disabilities, and LGBTQ+ employees
- Pay gaps are average differences in pay between different groups within a protected class
- Adjusted pay gaps include a control for job title (thus looking at pay differences within jobs)
- Adjusted pay gaps are less but they are still material

What is the Latina Pay Gap

- **Latinas** make up the second-largest group of women workers in the United States, after White women
- There are 13,900,000 Hispanic women in the labor force (slightly more than 10 percent of all women in the labor force today)
- Bureau of the Census data show Latina women working full-time are paid **57 cents for every dollar** paid to White, non-Hispanic men
- The National Women's Law Center has calculated that, on average, Latina women lose over \$1,200,000 in potential earnings over a 40-year career to the wage gap
- At the rate observed in 2023, Latinas will not reach equal pay with White non-Hispanic men for 183 years, or until **2206**
- **Similar intersectional pay gaps seen for Latinas also exist for Black women and Indigenous women**

Legal Standards

What are the legal standards in the area?

- Title VII of the Civil Rights Act of 1964
- Executive Order 11246 and related regulations
- Equal Pay Act
- Americans with Disabilities Act
- Section 503 of the Rehabilitation Act
- 41 CFR Section 60-2.17(b)(3); 41 CFR 60-741.62 (APA process)
- OFCCP Directives 2022-01 and 2018-05
- Other federal, state, and local laws

How to do Pay Equity Audits

- Establishing pay analysis groups or similarly situated employee groups is the key component of an effective pay equity self-audit
- Determining job-related factors that impact pay and can be controlled for in an audit is just as key
- Assess for pay disparities based on race and gender, as well as intersectional or compound disparities; consider adding age, disability, and other protected classes
- Create an adjustment plan
- Have an attorney conduct under privilege with the help of an expert (economist, statistician, or I/O psychologist)

Pay Equity Best Practices

- Set starting pay without regard to prior pay (legally required in some jurisdictions and soon potentially for all federal contractors)
- Test for and correct salary compression when market pressures are increasing starting salary
- Have a written policy that establishes the factors considered in setting and increasing pay
- When relying on evaluations for merit increases, include scoring system based on objective factors to mitigate subjectivity and the potential for unconscious bias

Pay Gap Statistics

- Pay Gap Information

- <https://www.census.gov/newsroom/stories/equal-pay-day.html>
- <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/quantifying-americas-gender-wage-gap.pdf>
- <https://www.compa.as/blog/wage-gap-statistics>
- <https://www.newsweek.com/disabled-workers-earned-26-percent-less-non-disabled-2020-report-1699898>
- <https://www.hrc.org/resources/the-wage-gap-among-lgbtq-workers-in-the-united-states>

Introductory Remarks from Panelists

Each panelist will have 3-5 minutes to reflect on what National Hispanic Heritage Month and Latina Equal Pay Day means to each of them and to provide any insights each would like to share

Discussion Topic One

How have large pay gaps impacted Latinas and denied EEO in a wide range of occupations from high level executives to entry level positions, from those who have been in the US for their whole lives to recent immigrants?

Discussion Topic Two

What can organizations do to help achieve equal pay, and what is your advice to Latinas in seeking higher pay and advancement, including in the legal profession to partner and general counsel positions?

Discussion Topic Three

What changes to policy and practice can we take as a society to ensure we are fully utilizing and fairly compensating our workforce so that we see much more improvement in the next decade than in the last decade on eliminating pay gaps?

Conclusion and Q&A

Each panelist will have an opportunity to provide any final remarks, and if there is time we will answers questions from the audience.