

ENSURING PAY EQUITY

A Practical Guide to Address Urgent Issues

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April 24, 2019 In-House Counsel Conference

Presenters:

- Michael Hanlon, Member, Cozen O'Connor
- Rose Isard, Senior Counsel, Entercom
- Ted Anderson, Principal, VP and Senior Economist, Welch Consulting

Women's national soccer team players sue for equitable pay

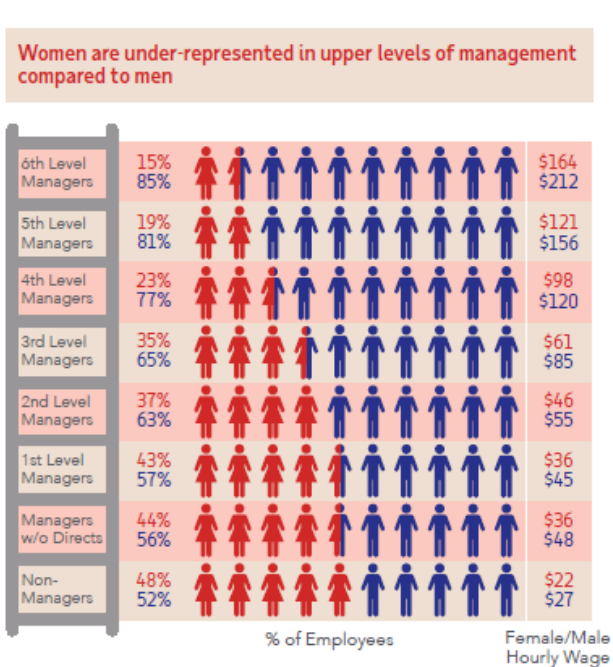
Leaders: 'Pay Equity Day' On Long Island Again Serves As Teachable Moment For Young Girls Everywhere

Recognizing and Remediating Gender Pay Equity Issues in the Workplace: Part I

Equal Pay Day 2019: 50 State Pay Equity Desktop Reference - What Employers Need to Know About Pay Equity Laws

Voices behind Time's Up

Court Holds New Jersey's Equal Pay Act Will Not Be Applied Retroactively



Males and females show significant disparities across pay and organizational hierarchies

Gender differences across hierarchy levels show that the proportion of women in senior level positions is significantly lower than that of men. This pattern was evident across all industries and intensifies up the corporate ladder. In addition, the gender pay gap remains intact across hierarchy levels and is consistent with previous research results.

The fourth management level, however, appears to define the "glass ceiling" — a steep decline in female representation even from the third level.

While less than half of one percent of all American workers reach the three highest management tiers, the under-representation of women is problematic because these elite positions have an outsized influence on corporate policy and culture. The average wages of job holders in these fourth-level management positions is also 40 to 50 percent higher. Considering that these leadership positions typically require candidates with substantial job tenure and mentoring, short-term fixes will be challenging.

Impact: Employers have new benchmarking data for measuring the effectiveness of Diversity and Inclusion programs.

(Source: The ADPRI 2019 State of the Workforce Report: Pay, Promotions and Retention)

10 Years Post Ledbetter

- Ten years after President Obama signed the Lilly Ledbetter Fair Pay Act into law, Congress has still failed to take the next meaningful steps to end pay discrimination
- Today the wage gap is worst for moms and women of color, with moms making 69 cents for every dollar paid to dads and women of color making as little as 49 cents on the dollar
- Overall, women are paid just 80 cents for every dollar paid to men

(Source: <https://www.momsrising.org/blog/10-years-after-the-lilly-ledbetter-fair-pay-act-became-law-congress-must-do-more-to-close>)

The New Jersey Equal Pay Act

- On April 24, 2018, Governor Murphy signed into law the Diane B. Allen Equal Pay Act
- The Act amended the New Jersey Law Against Discrimination (NJLAD) to provide equal pay protections for certain New Jersey employees
- The Act prohibits discrimination in pay or benefits
- Employers may be liable for discriminatory compensation practices for a period of six years
- If a jury determines that an employer is guilty of an unlawful employment practice, the Act states that the judge shall award three times any money damages to the aggrieved employee

Data/Statistical Analysis: Three Essential Tasks

1



Collect and organize

existing electronic and non-electronic data

2



Identify potential trouble spots

using statistical tools, and especially multiple regression. Propose adjustments for pay disparities that remain after analyses within groups of similarly-situated employees

3



Prepare

effectively (affirmatively and defensively) for potential investigations or class litigation

Pay Equity Analysis and Multiple Regression

- Many factors affect compensation, including years of experience, job-specific skills, performance ratings, education and experience at hire etc.
- Multiple Regression allows the statistician to partially explain differences in individual compensation by estimating returns to gender-neutral characteristics, such as additional years of service.

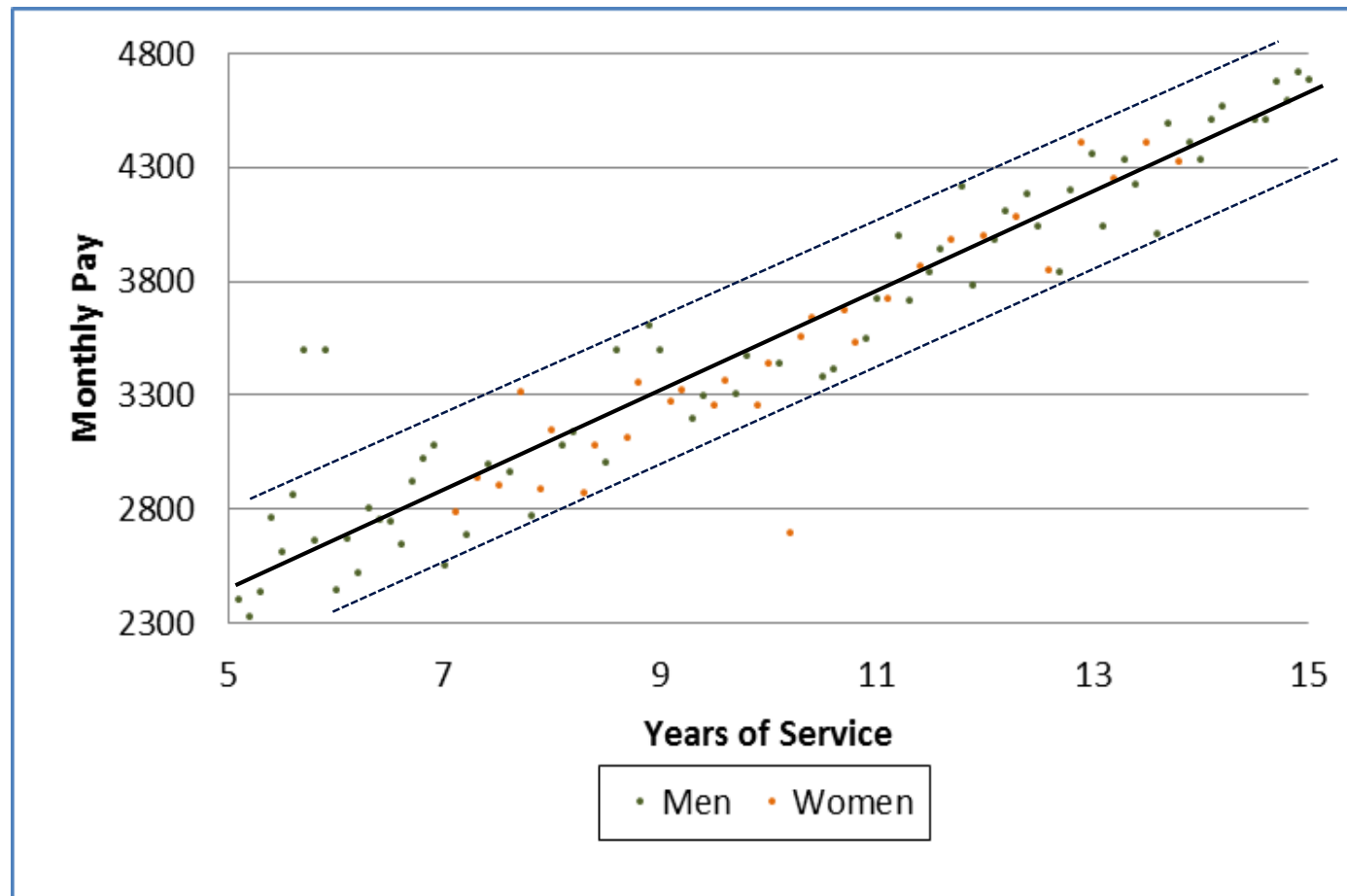
A Gender- and Race-Neutral Factor:

Years of Experience

- Statistical analyses, including pay equity analyses, recognize that the wages of employees within an organization typically rise over time.
- Unless shown to be untrue, a labor economist assumes years of experience is a **race-neutral** and/or **gender-neutral** factor. It is therefore appropriate to include in an analysis explaining the wage level of an employee.
- A multiple regression estimates the relationship between employee experience years and wage levels and can estimate remaining differences among men and women after accounting for these “experience years” effects.

Pay Differences Arise From Multiple Factors:

Regressions Fit the “Best” Line to the Data
Regressions Give Estimates of Expected Variation



Example of a Pay Equity Analysis and Regression:

Service Company

Organization/Job Category	Total	Female	Males	% Female	Female Salary	Male Salary
Home Office						
1.2 - First/Mid-Level Officials and Managers	1	1	0	100.0%	\$ 160,000	
2 - Professionals	199	81	118	40.7%	\$ 89,639	\$ 103,663
4 - Sales Workers	50	29	21	58.0%	\$ 52,042	\$ 56,396
5 - Administrative Support Workers	1	1	0	100.0%	\$ 75,931	
Overall	251	112	139	44.6%	\$ 80,410	\$ 96,522
Professionals, National						
1.2 - First/Mid-Level Officials and Managers	40	12	28	30.0%	\$ 84,478	\$ 82,713
2 - Professionals	7	2	5	28.6%	\$ 98,413	\$ 105,592
Overall	47	14	33	29.8%	\$ 86,468	\$ 86,180
Managers, National						
1.2 - First/Mid-Level Officials and Managers	55	26	29	47.3%	\$ 95,562	\$ 114,507
2 - Professionals	100	32	68	32.0%	\$ 97,477	\$ 102,524
Overall	155	58	97	37.4%	\$ 96,619	\$ 106,107
Directors, National						
1.1 - Executive/Senior Level Officials and Managers	1	1	0	100.0%	\$ 11,500	
1.2 - First/Mid-Level Officials and Managers	36	17	19	47.2%	\$ 140,820	\$ 157,423
Overall	37	18	19	48.6%	\$ 139,386	\$ 157,423

Example of a Pay Equity Analysis and Regression:

Service Company

Organization/Job Category	Total	Female	Males	% Female	Female Salary	Male Salary	Raw Difference	
							Coeff	SD
Home Office								
1.2 - First/Mid-Level Officials and Managers	1	1	0	100.0%	\$ 160,000			
2 - Professionals	199	81	118	40.7%	\$ 89,639	\$ 103,663	-\$14,024	-3.11
4 - Sales Workers	50	29	21	58.0%	\$ 52,042	\$ 56,396	-\$4,354	-1.11
5 - Administrative Support Workers	1	1	0	100.0%	\$ 75,931			
Overall	251	112	139	44.6%	\$ 80,410	\$ 96,522	-\$12,068	-3.26
Professionals, National								
1.2 - First/Mid-Level Officials and Managers	40	12	28	30.0%	\$ 84,478	\$ 82,713	\$1,764	0.14
2 - Professionals	7	2	5	28.6%	\$ 98,413	\$ 105,592	-\$7,179	
Overall	47	14	33	29.8%	\$ 86,468	\$ 86,180	\$464	0.04
Managers, National								
1.2 - First/Mid-Level Officials and Managers	55	26	29	47.3%	\$ 95,562	\$ 114,507	-\$18,945	-2.64
2 - Professionals	100	32	68	32.0%	\$ 97,477	\$ 102,524	-\$5,047	-1.17
Overall	155	58	97	37.4%	\$ 96,619	\$ 106,107	-\$10,419	-2.73
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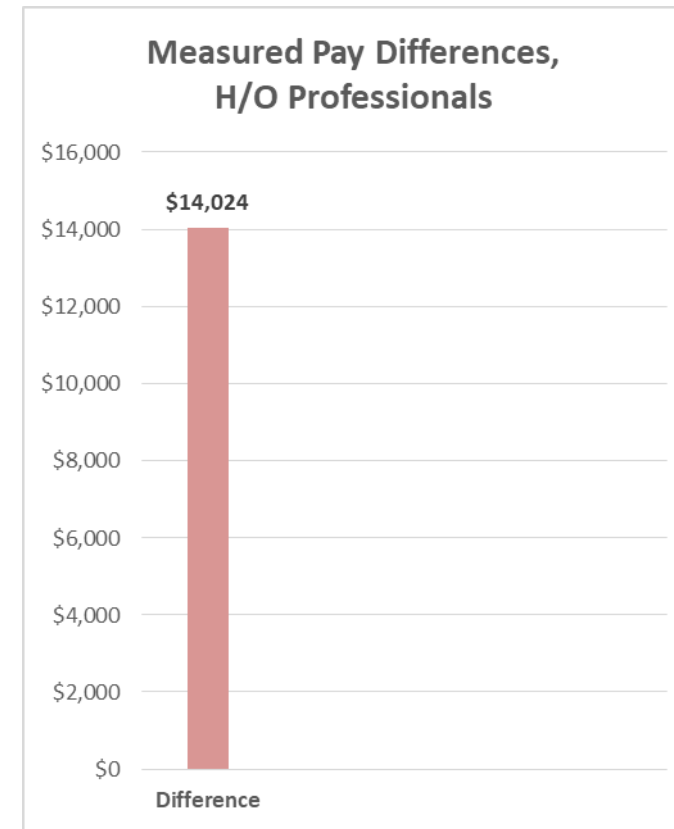
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Difference in Pay: Home Office Professionals

Service Company

Raw Difference

Organization/Job Category	Coeff	SD
Home Office		
1.2 - First/Mid-Level OAMs		
2 - Professionals	-\$14,024	-3.11
4 - Sales Workers	-\$4,354	-1.11
5 - Administrative Support Workers		
Overall	-\$12,068	-3.26
Professionals, National		
1.2 - First/Mid-Level OAMs	\$1,764	0.14
2 - Professionals	-\$7,179	
Overall	\$464	0.04
Managers, National		
1.2 - First/Mid-Level OAMs	-\$18,945	-2.64
2 - Professionals	-\$5,047	-1.17
Overall	-\$10,419	-2.73
Directors, National		
1.1 - Executive/Senior Level OAMs		
1.2 - First/Mid-Level OAMs	-\$16,602	-1.19
Overall	-\$16,602	-1.19

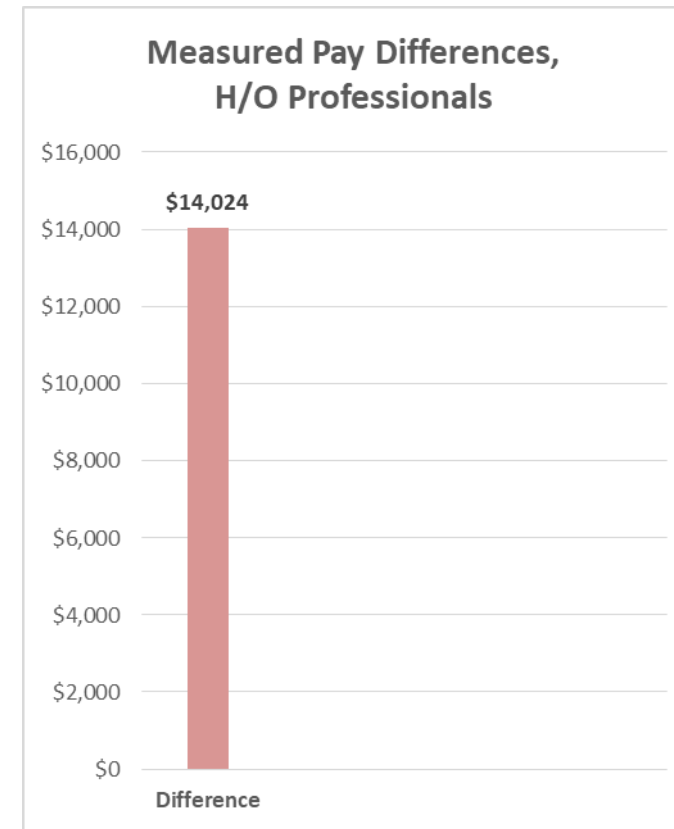


Difference in Pay: Home Office Professionals

Service Company

Raw Difference

Organization/Job Category	Coeff	SD
Home Office		
1.2 - First/Mid-Level OAMs		
2 - Professionals	-\$14,024	-3.11
4 - Sales Workers	-\$4,354	-1.11
5 - Administrative Support Workers		
Overall	-\$12,068	-3.26
Professionals, National		
1.2 - First/Mid-Level OAMs	\$1,764	0.14
2 - Professionals	-\$7,179	
Overall	\$464	0.04
Managers, National		
1.2 - First/Mid-Level OAMs	-\$18,945	-2.64
2 - Professionals	-\$5,047	-1.17
Overall	-\$10,419	-2.73
Directors, National		
1.1 - Executive/Senior Level OAMs		
1.2 - First/Mid-Level OAMs	-\$16,602	-1.19
Overall	-\$16,602	-1.19

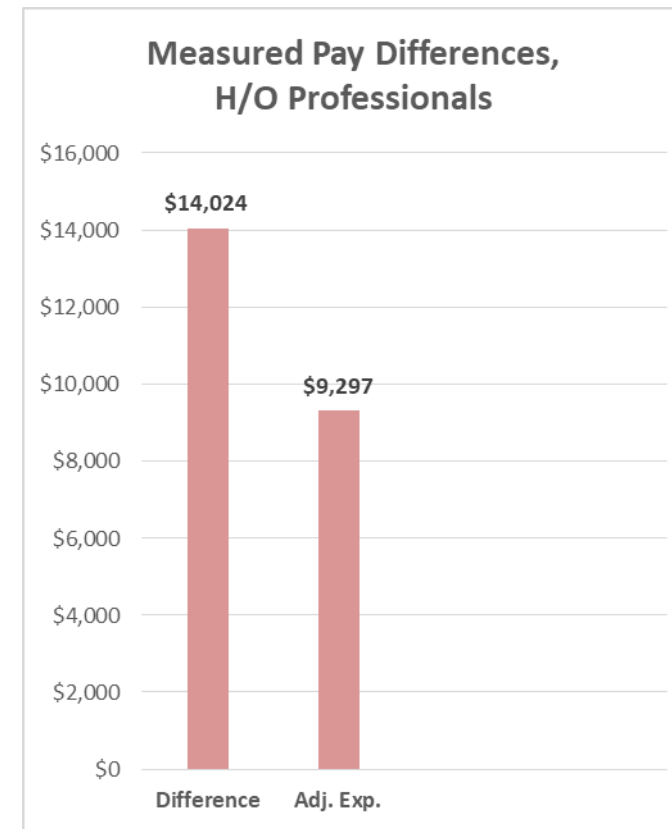


Accounting for Each Home Office Professionals

Years of Experience

Add Experience
Years

Organization/Job Category	Coeff	SD
Home Office		
1.2 - First/Mid-Level OAMs		
2 - Professionals	-\$9,297	-2.23
4 - Sales Workers	-\$1,327	-0.31
5 - Administrative Support Workers		
Overall	-\$7,696	-2.26
Professionals, National		
1.2 - First/Mid-Level OAMs	\$20,706	1.76
2 - Professionals		
Overall	\$15,070	1.53
Managers, National		
1.2 - First/Mid-Level OAMs	-\$2,174	-0.32
2 - Professionals	-\$2,253	-0.53
Overall	-\$3,326	-0.93
Directors, National		
1.1 - Executive/Senior Level OAMs		
1.2 - First/Mid-Level OAMs	-\$16,971	-1.01
Overall	-\$16,971	-1.01

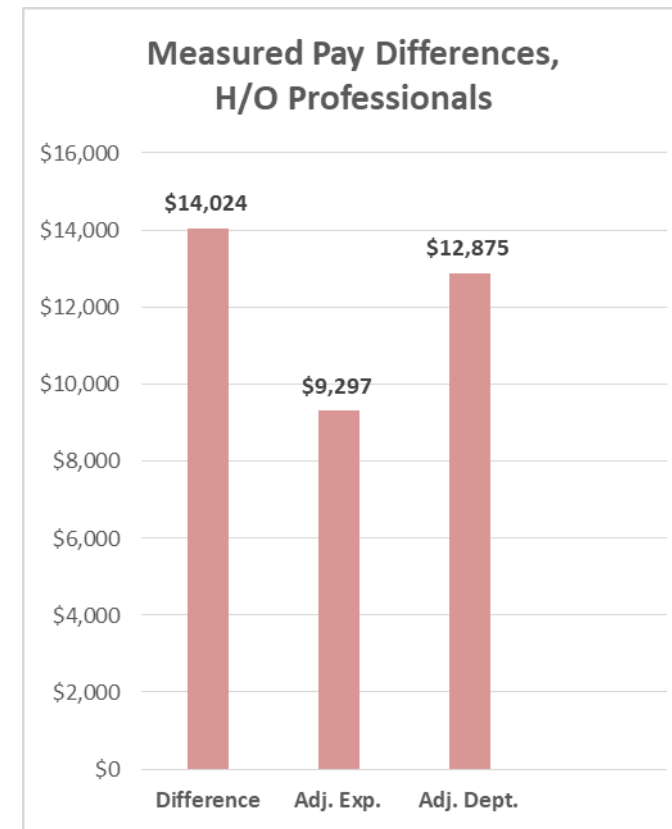


Accounting for Each Home Office Professionals

Years of Experience + Dept.

*Experience Yrs
+Department*

Organization/Job Category	Coeff	SD
Home Office		
1.2 - First/Mid-Level OAMs		
2 - Professionals	-\$12,875	-2.93
4 - Sales Workers	-\$4,135	-1.05
5 - Administrative Support Workers		
Overall	-\$11,075	-3.08
Professionals, National		
1.2 - First/Mid-Level OAMs	\$6,607	0.48
2 - Professionals		
Overall	\$4,224	0.36
Managers, National		
1.2 - First/Mid-Level OAMs	-\$3,388	-0.51
2 - Professionals	-\$5,839	-1.35
Overall	-\$4,884	-1.36
Directors, National		
1.1 - Executive/Senior Level OAMs		
1.2 - First/Mid-Level OAMs	-\$10,886	-0.76
Overall	-\$10,886	-0.76

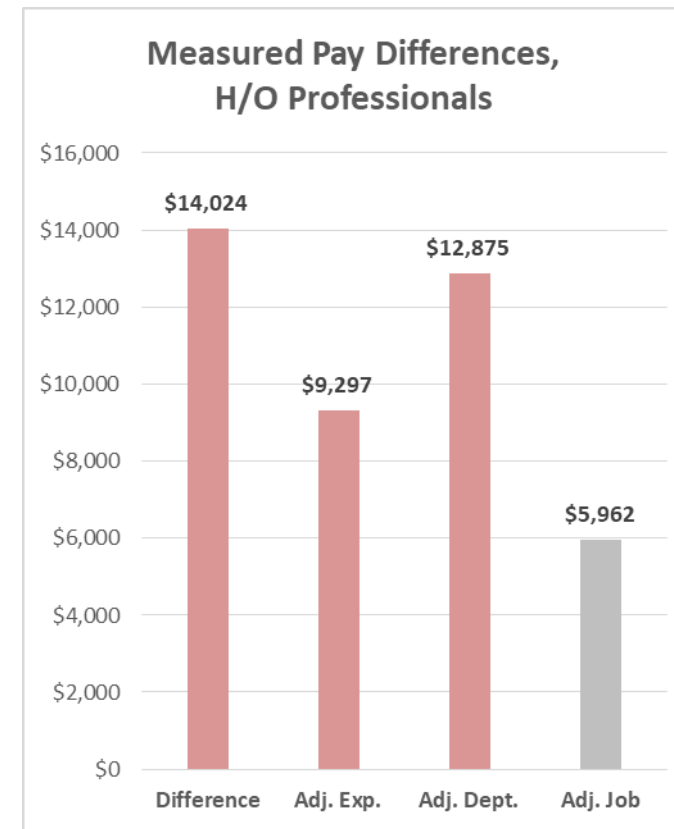


Accounting for Each Home Office Professionals

Years of Experience + Dept. + Title

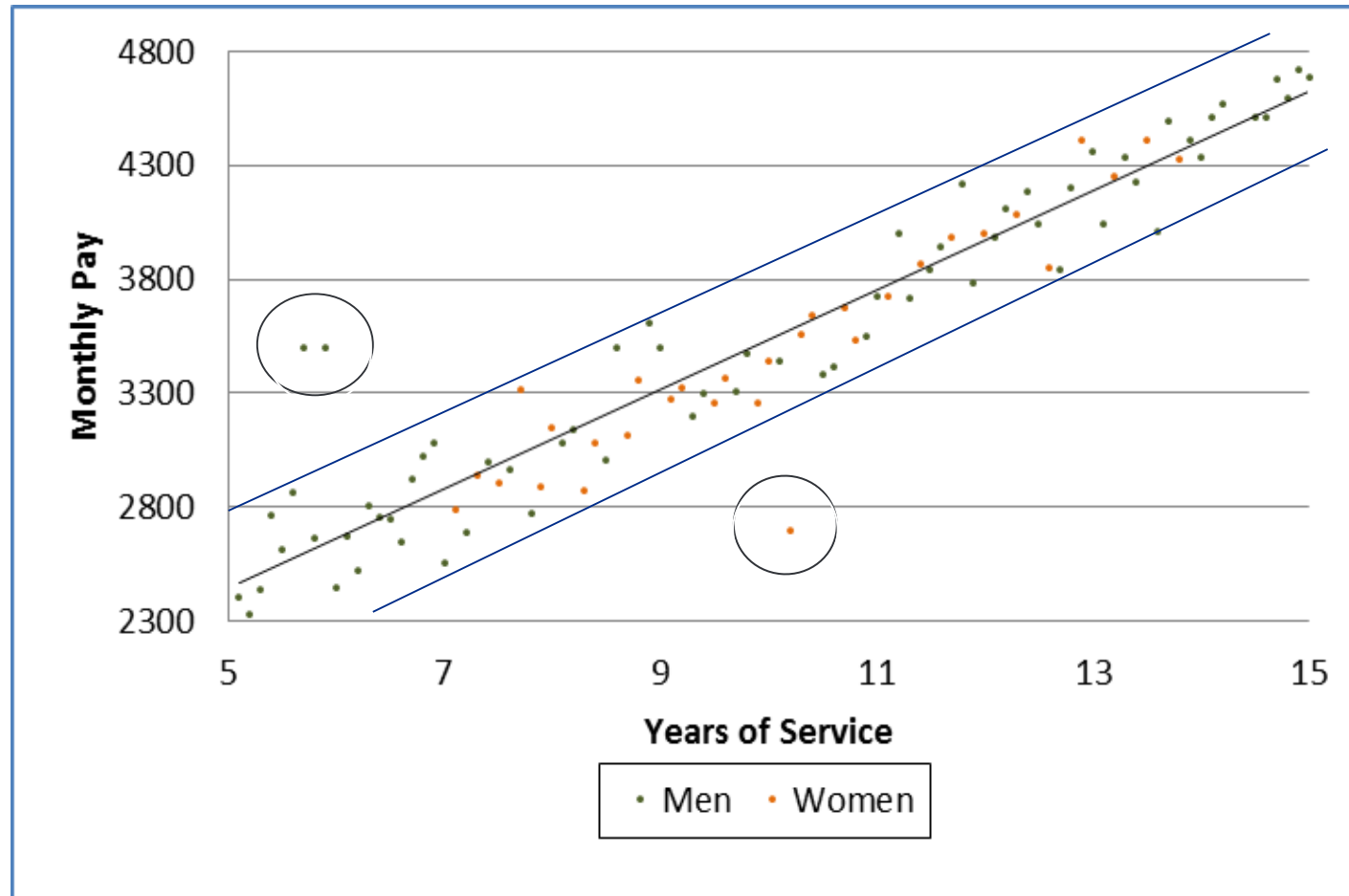
*Experience, Dept.
+ Job Title*

Organization/Job Category	Coeff	SD
Home Office		
1.2 - First/Mid-Level OAMs		
2 - Professionals	-\$5,962	-1.47
4 - Sales Workers	-\$2,864	-0.67
5 - Administrative Support Workers		
Overall	-\$5,482	-1.61
Professionals, National		
1.2 - First/Mid-Level OAMs	-\$5,567	-0.50
2 - Professionals		
Overall	-\$5,313	-0.86
Managers, National		
1.2 - First/Mid-Level OAMs		
2 - Professionals	-\$2,668	-0.85
Overall	-\$2,960	-1.05
Directors, National		
1.1 - Executive/Senior Level OAMs		
1.2 - First/Mid-Level OAMs		
Overall		



Regressions Can Reveal “Outliers”:

Male, Female H.O. Professional Monthly Salaries



Takeaway: Address Individual Pay Differences

- Before making group adjustments to similarly-situated employees, address individual differences within group.
- Document why legitimate differences (person-specific effects) exist.
- Only when significant individual effects have been addressed should you address average male/female pay differences within an employment group.

A reminder about the benefits of ACC membership...

- Free CLE, like the one you're attending right now
- Roundtables
- Networking meetings
- Special events
 - Spring Fling, Fall Gala, Diversity Summer Program, Golf Outing, Pro Bono clinics, Charity Softball Game & Family Fun Day, and more!
- Access to ACC resources, including:
 - ACC Newsstand (customizable updates on more than 40 practice area)
 - ACC Docket Magazine
 - InfoPAKs
 - QuickCounsel Guides
- **For more information or to refer a new member, see your hosts today or contact Chapter Administrator, Chris Stewart, at ChrisStewart@ACCglobal.com.**

