

# BLACK WOMEN'S EQUAL PAY DAY: A REMINDER TO REVIEW YOUR DIVERSITY AND PAY PRACTICES

Insights  
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Closing the gender pay gap has become more challenging in recent years, especially since the COVID-19 pandemic has disproportionately affected women – who must juggle work, childcare, eldercare, and other demands. And research shows that women of color have felt the greatest impact. Notably, today is Black Women's Equal Pay Day – the day that symbolizes how long into the current year black women must work to earn what men did in the previous year. The deepened pay gap for 2022 is hopefully temporary, as factors primarily attributed to the pandemic pushed many women out of the workforce or into part-time and seasonal jobs. But there are proactive steps employers can take to attract and retain women in the workplace and ensure improved pay equity now and in the future. What can you do to promote pay equity and help close the gender pay gap?

## Recognize the Obstacles Women Face

By 2019, the U.S. Census Bureau reported that the gender pay gap was closing, even though disparities remained. However, due to the COVID-19 pandemic, women's labor force participation dropped to [a 35-year low](#) in April 2020, according to the U.S. Department of Labor (DOL). Moreover, unemployment rates throughout the pandemic have been consistently higher for Latina and Black women than White women, according to the Bureau of Labor Statistics. As of [August 2022](#), the unemployment rates were 2.8% for White women, 4.3% for Latina women and 5.9% for Black women.

"The nature of this national public health crisis forced widespread shutdowns in industries such as leisure and

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hospitality and childcare; left students to learn at home remotely; and created stark lines between essential work and remote work," the DOL said.

DOL also noted that disparities are even more significant for Black, Hispanic, and some subsets of Asian American and Native Hawaiian and Pacific Islander women. "Too often, workers of color suffer disproportionate harm in economic downturns, and face intersecting discrimination and devaluation in the labor market that exacerbated pre-existing vulnerabilities," the DOL said.

In fact, Black Women's Equal Pay Day falls seven weeks later in 2022 than in 2021 and six months after National Equal Pay Day. Native Women's Equal Pay Day and Latina's Equal Pay Day fall even later in the year, on November 30 and December 8, respectively.

Persistent disparities likely exist because women, specifically women of color, are overrepresented in high-stress positions in industries such as healthcare, hospitality, and education – industries hit harshly during the pandemic. For example, [a study published by Health Affairs](#) found that Black women are the most overrepresented demographic group in healthcare and primarily work in the industry's lowest-wage and most hazardous jobs.

Additionally, the economic impact of inflation has resulted in many women being [unable to find or pay for costly childcare](#) and likely continues to keep them out of the workforce. If women remain out of the workforce, the pay gap will continue to widen, which makes it essential for employers to review whether their policies on scheduling, paid time off, and other practices are equitable to women.

### **Perform a Pay Equity Audit**

You should note that just about every state in the country has passed legislation to complement the federal Equal Pay Act, which mandates equal pay for equal work.

Under federal law, employees must be compensated the same when they perform "substantially equal" work in the same "establishment" on jobs requiring equal skill, effort, and responsibility, and performed under similar working conditions. Equality in pay includes all forms of compensation, including base salary or wages, overtime, bonuses, benefits, and any other perks or remuneration.

Notably, most states have pay equity laws that are more far-reaching than federal law and may require equal pay for “substantially similar” work. Moreover, some states – such as California, New York and New Jersey – have enacted robust pay equality statutes covering all protected classes of employees, including race and ethnicity, in addition to gender. Other states – like Massachusetts, Colorado and Oregon – have unique safe-harbor provisions for employers who conduct pay equity audits. You can explore the pay equity laws in your jurisdictions through Fisher Phillips’ [Pay Equity Interactive Map](#) by simply clicking on each state.

You should be aware of the potentially significant financial consequences of pay equity claims and **consider conducting a pay audit** to determine which employees perform comparable work, ensure employees are being paid fairly, and determine whether your policies and practices comply with new laws.

Before embarking on this analysis, however, it is recommended you work with counsel so that the results of the audit are protected by the attorney-client privilege.

### **Focus on DEI and Flexibility**

Now is a good time to take a look at your **diversity, equity, and inclusion (DEI) programs**. Employers that embrace racial and gender diversity on their executive teams and publicly commit to supporting and advancing women in the workplace are more likely to attract and retain women in their workforce. Other women will invariably view those organizations as places where they will be valued and empowered.

Flexibility is also important. While **flexible work arrangements** can take many forms, the most common is remote work. Remote work may not be practical for every job, but employers that offer flexible work arrangements can likely attract a broader and more diverse workforce that includes women with competing obligations. In fact, recent data shows that [more women have returned to the workforce](#) in the last few months due to the rise in flexible work arrangements.

Many jobs, particularly in healthcare and hospitality, require in-person work – but employers can still look for ways to offer flexibility through compressed workweeks, flexible hours, job sharing programs, and other benefits.

Providing employees with **education, training, and promotion opportunities** is also critical for retention and closing gender pay gap.

## **Conclusion**

We will continue monitoring developments that impact gender pay equity in the workplace. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Pay Equity Practice Group](#).