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COMMENTARY

If sex discrimination in pay is still a societal problem, job evaluation is the answer

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Abstract
Strah et al. (2021) claimed "pay inequality between men and women remains a salient societal issue" (p. 1). We agree that it is a societal issue, but we believe this issue has already been solved by existing job evaluation procedures. Job evaluation procedures have shown to be reliable and valid methods for assessing whether an organization can meet equal pay standards. The authors presented no scientific evidence that this was inaccurate. In fact, nearly 50 years ago there was considerable evidence that equal pay standards, both scientific and legal, were met by job evaluation.

Strah et al. (2021) stated,

> Although job evaluation can potentially decrease unfair pay differentials across different types of jobs, research has noted that job evaluation methods can still perpetuate sex discrimination (Alksnis et al., 2008; Arvey, 1986), suggesting that care be taken when applying such methods. For example, organizations should carefully consider whether important elements of a job may be overlooked due to these elements not being included in many standard job analysis inventories. Researchers have argued that essential work(er) characteristics surrounding elements such as emotional labor, interpersonal communication, and appropriate relationship maintenance may be left out, underspecific, or underdescribed. (p. 38)

This may occur because [subject matter experts] (SMEs) do not believe that stereotypical feminine tasks require legitimate work-related knowledge, skills, or abilities as opposed to knowledge, skills, or abilities that should come naturally to the workers. Ensuring the inclusion of essential-but-potentially overlooked job analysis descriptors is important for understanding the jobs in question and paying that job fairly, in general. However, addressing these overlooked descriptors becomes particularly important in the context of fair pay for men and women, more generally, because the descriptors that are most overlooked are more often stereotypically associated with women as compared with men." (Strah et al., p. 39).

In their review of past research Alksnis et al. (2008) stated, "in studies that specified the gender of the job incumbent in a particular position, no significant effect of the job incumbent's gender was found" (p. 1421). This would appear to verify that job evaluation is not affected by the job incumbent's gender.

In Arvey's (1986) review of sex bias there is a section titled "systematic bias against female jobs" (p. 330) where Arvey reviewed four empirical investigations. The first was Arvey et al. (1977). They reported that for the job of administrative assistant, job evaluation points were not biased by the sex of employee, "thus no bias was found" (p. 330). The second empirical study (Grams and Schwab, 1985) "indicated little evidence to suggest gender composition of jobs influenced the

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evaluation of a target job" (p. 330). The third study by Mahoney and Blake (1979) did find some small but statistically significant gender effects in the perceived worth of "20 occupations" (p. 330). Finally, and most important, Schwab and Grams (1985) stated that from 103 compensation practitioners "no significant effects were observed for incumbent sex or sex of the evaluation" (p. 330). The scientific evidence is clear that job evaluation systems had no systemic bias against women.

Is there a "limited amount of case law"?

Strah et al. (2021) stated, "previous work has been invaluable in summarizing equal pay employment litigation and (a limited amount of) case law" (p. 3). In 1989, we published the article "Equal pay and gender: Implications of court cases for personnel practices" in the *Academy of Management Review* (Cooper & Barrett, 1989). The review was of over 150 court cases, of which nearly 100 were referenced and discussed. In contrast, nearly 40 years later the focal authors referenced fewer than 60 court cases.

Equal work was fully described in *Corning Glass Works v. Brennan* (1974) as based on the four factors embedded in job evaluation systems used by most private organizations in the 1950s

In *Corning Glass Works v. Brennan* (1974), the Supreme Court clearly describes the requirements of the Equal Pay Act of 1963 as

> To make out a case in an action brought by the Secretary of Labor to enjoin an employer's violations of the Equal Pay Act of 1963 (29 USCS 206(d)(1)), the Secretary must show that an employer pays different wages to employees of opposite sexes for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions; once the Secretary has carried this burden of proof, the burden shifts to the employer to show that the differential is justified under one of the Act's four exceptions, which allow different payment made pursuant to (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any other factor other than sex. (p. 195)

Strah et al. (2021) do not sufficiently expand upon the significance that *Corning Glass Works v. Brennan* (1974) has had on establishing standards for a nondiscriminatory system. We believe that this major teaching from the court case was overlooked by the authors.

Link between the Equal Pay Act of 1963 and Title VII of The Civil Rights Act of 1964

The link between The Equal Pay Act of 1963 and Title VII is the Bennett Amendment to Title VII which reads "it shall not be unlawful employment practice under this subchapter for any employee to differentiate upon the basis of sex" (The Equal Pay Act, 1983; Civil Rights Act, 1964).

The Supreme Court decided in *Washington v. Gunther* (1981) that the Bennett Amendment does not require jobs to be equal as does the Equal Pay Act. Therefore, the plaintiff need only show that pay discrimination exists.

The Supreme Court ruled in *Washington v. Gunther* (1981) that "The Bennett Amendment was offered as a "technical amendment" designed to resolve any potential conflicts between Title VII and the Equal Pay Act" (p. 170). The Supreme Court also stated,

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> The fourth affirmative defense of the Equal Pay Act, however, was designed differently, to confine the application of the Act to wage differentials attributable to sex discrimination. H. R. Rep. No. 309, 88th Cong., 1st Sess., 3 (1963) ... Equal Pay Act litigation, therefore, has been structured to permit employers to defend against charges of discrimination where their pay differentials are based on a bona fide use of "other factors other than sex." Under the Equal Pay Act, the courts and administrative agencies are not permitted to "substitute their judgment for the judgment of the employer ... who [has] established and applied a bona fide job rating system," so long as it does not discriminate on the basis of sex." (*County of Washington v. Gunter*, 1981, p. 170)

The court continued, "We therefore conclude that only differentials attribute to the four affirmative defenses of the Equal Pay Act are "authorized" by that Act within the meaning of 703 (h) of Title VII" (*County of Washington v. Gunter*, 1981, p. 171).

Sims-Fingers v. City of Indianapolis, 493 F.3d 786 (2007)

Strah et al. (2021) cited and discussed *Sims-Fingers v. City of Indianapolis* (2007). We want to reinforce the court's statement that

> Title VII does not require equal work, but neither does it allow for recovery on the basis of the theory of comparable worth. So merely showing that a man and a woman who perform different jobs for the same employ[ee] are paid differently does not get a Title VII plaintiff to first base. (p. 772)

The important point that was made by the court was that you cannot win a case based on comparable worth theory. It would seem the focal authors are trying to revive that theory.

General Accounting Office (GAO) comparison of job content with federal factor evaluation system

Approximately 25 years ago, we were the contractor for the General Accounting Office to develop a job content questionnaire based on the Factor Evaluation System primary standard. We received responses from 1,639 incumbent/supervisor pairs along with conducting 78 desk audits. Based on our work, The GAO reported that "the validity coefficient between the grades resulting from the desk audits and those from the questionnaire was 0.80" (GAO, November, 1995, p. 4). This again reinforces validity and reliability of a federal job evaluation procedure.

Do we need a solution to practically categorize jobs and prevent pay discrimination?

Strah et al. (2021) presented Table 6 as steps in a job analysis and job identification to prevent pay discrimination. This has no practical scientific or legal value because we already have had well developed job evaluation procedures for at least 50 years. This includes point-factor plans that fully meet scientific, practical, and legal requirements that can prevent systematic pay discrimination (Barrett & Doverspike, 1989; Cooper & Barrett, 1984; Doverspike & Barrett, 1984; Doverspike et al., 1983). It would appear that the authors are presenting a solution to a problem where there is already a solution: Job evaluation. The problem of equivalent jobs was solved 100 years ago with the development of job evaluation. *Daubert v. Merrell Dow Pharmaceuticals Inc.* (1993) clearly states scientific evidence requires fit with the legal issues. This is consistent with job evaluation procedures.

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Conclusion

For industrial-organizational psychology there is a perfect "fit" between point-factor job evaluation and the law. No evidence was presented that has changed our perspective of 30 years ago. Our review has indicated no systemic bias against women in job evaluation systems.

The focal authors' suggestion to use cluster analysis to group jobs is a macro level that has no practical scientific or legal value. Bona fide job evaluation procedures are effective for developing a fair and equitable nondiscriminatory compensation system for an organization (establishment). They were not designed to be a comparable worth system across organizations or to equalize the voluntary choice of jobs based on gender.

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