

financial consequences if their behavior (or lack of it) hurt their firm. Liability insurance for this provision is now available. To what extent does insuring against “clawback” subvert the point of the law?

Conduct research on the law and determine whether there are any new studies that have assessed the effects of the new law. Section 954 of the Dodd-Frank Act requires national securities exchanges (meaning, for instance, the NYSE, Amex, and Nasdaq) to adopt rules as directed by the SEC. The rules will require issuers to develop and implement a policy providing for disclosure of an issuer’s policy on incentive compensation that is based on financial information required to be reported under securities laws, and that, if an accounting restatement is prepared, the issuer will recover any excess incentive-based compensation from any current or former executive officer who received such incentive-based compensation in the 3 preceding years.

4. Should “say on pay” be mandatory for all executive pay packages? Should corporate boards alone continue to make decisions with respect to executive pay packages or should consent of a majority of shareholders be required? Suggest one or two advantages and disadvantages.
5. Do you agree with the recommendation to require full disclosure regarding pay consultants? Explain your answer.
6. What about the argument that CEO pay is no more out of line than the compensation of movie stars or star athletes?

*Contributed by Harry Schwartz and John Bernardin.

¹Crystal, G. (1991). *In search of excess* (p. 3). New York, NY: Norton.

²Retrieved from <http://www.aflcio.org/corporatewatch/paywatch/>; See also, Morgenson, G. (2011, June 18). Paychecks as big as Tajikistan. *The New York Times* online.

³Rich, F. (2010, March 21). Obama, Lehman and ‘The Dragon Tattoo.’ *The New York Times* on line. <http://www.nytimes.com/2010/03/21/opinion/21rich.html?scp=1&sq=Obama,%20Lehman%20and%20E2%80%98The%20Dragon%20Tattoo%E2%80%99%20&st=cse>

⁴Bebchuk, L., Cohen, A. & Spamann, H. (2010). The wages of failure: Executive compensation at Bear Stearns and Lehman 2000–2008. *Yale Journal on Regulation*, 27, 257–282.

⁵Retrieved from <http://www.accountingobserver.com/Reports/tabid/59/Default.aspx S.&P. 500 Executive Pay: Bigger Than . . . Whatever You Think It Is>

⁶Morgenson, G. (2009, August 15). The Quick Buck Just Got Quicker. *The New York Times* on line. <http://www.nytimes.com/2009/08/16/business/16gret.html?pagewanted=all>

⁷Equilar (2010). 2010 *Clawback policy report: An analysis of compensation recovery policies at Fortune 100 companies*. Available at www.equilar.com.

⁸Finger, R. B. (2011, October 25). Why America’s highest paid CEOs are insanely overpaid. <http://www.forbes.com/sites/christopherhelman/2011/10/25/why-americas-highest-paid-ceos-are-insanely-overpaid/>

⁹Ibid.

CRITICAL THINKING APPLICATION 10-B

Illegal Pay Discrimination, Bad Pay Policy, or Both?

The following letter was written by Ms. Julia Kate, a female associate, and addressed to the director of the clinical counseling center.

Dear Dr. Boseman:

The purpose of this letter is to request an assessment of my salary in the context of my performance and responsibilities and the salary levels that have been set for three staff members recently hired by the Counseling Center. In the past year, the Center hired one male Ph.D. at \$10,000 more than I earn and two unlicensed counselors (both male) at almost my identical salary rate.

I believe my salary is extremely low given the following facts: (1) My job performance has been rated at the highest level for all six years I have been on staff; (2) the recently hired Ph.D., a male, had no experience and performs the identical work I perform; (3) the recently hired M.Ed., a male, who is paid at the same level as I, had no experience in counseling. As you know, with the exception of the referrals to which I refer below, assignments of clients to staff members are based strictly on space available and not the possession of a particular staff member’s credentials.

While I recognize that credentials do translate into higher salaries for persons performing identical work, so too do other credentials such as the possession of an applicable license and qualifications and experience in supervising graduate student interns. I receive no additional compensation for this license despite the fact that it enables me to supervise interns while the two Master’s level associates hired do not possess such a license and thus cannot (and do not) supervise students. I have supervised graduate students since 1997. In addition, I have a Master’s in Social Work (MSW), a terminal degree that, as a credential, has far more external marketability than the degrees possessed by the two new hires.

I am also the designated specialist who receives all referrals from the county regarding sexual assault and rape. I have had to use my expertise in this highly sensitive area on several occasions.

Rational (and legal) compensation systems set and adjust pay levels based on a number of factors, including the credentials, experience, supervisory responsibilities, and, of course, the job performance of the incumbents. Based on these factors, my salary is difficult to explain, especially when compared to the new staff of the Counseling Center.

Thank you for considering these issues. I look forward to your response. Ms. Julia Kate

Assignment

Write a one-page position paper. Is this a violation of the EPA? What about a Title VII violation? Does Ms. Kate have a case? If Dr. Boseman feels Ms. Kate has an EPA case, can he reduce the pay of the newly hired PhD to match Ms. Kate’s salary to erase the problem? Does it matter that the Counseling Center hired the male PhD 8 months ago? If so, how is this relevant in a Title VII claim? If you cannot take a position on the allegations, stipulate what specific additional information you need to reach a conclusion. The legal implications aside, what should Dr. Boseman do?