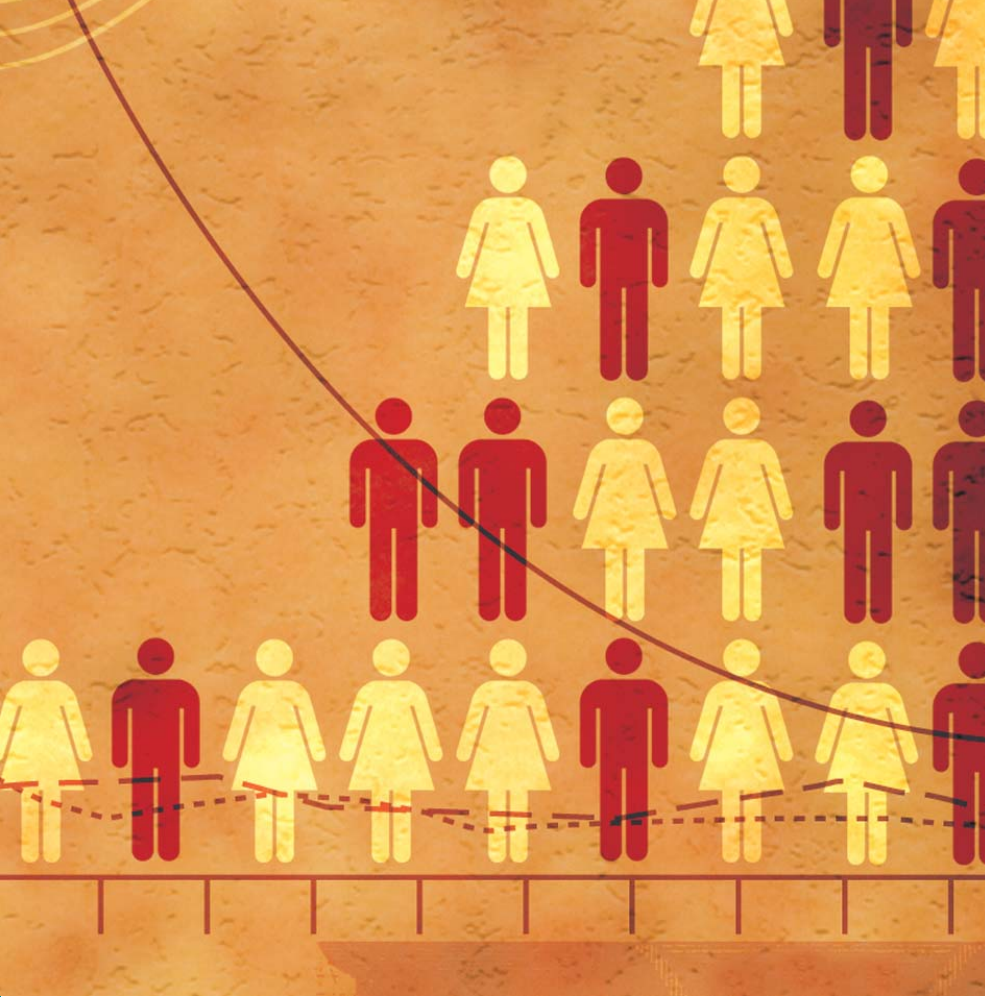


Services and Capabilities



Workforce Reviews and Statistical Audits

How well do you know



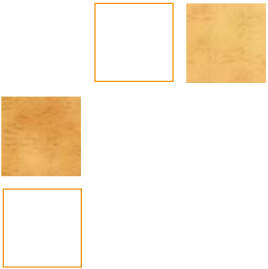
A company's best armor against potentially damaging litigation or government audits is a clear statistical understanding of its workforce.

your workforce?

With full knowledge of the ins and outs of its workforce, a company can more easily reduce the risk of expensive litigation, improve employee morale and meet shareholder expectations. Conversely, when workforce and HR problems go undetected, there are often damaging repercussions to a company's business operations. While many "quick fix" compliance solutions may look tempting to harried business leaders, they fail to answer the kinds of questions that government auditors or plaintiffs' lawyers will be quick to bring up. The workplace today—and employment law worldwide—is already far too complex for such approaches to be anything but shortcuts. Unless you base your workforce assessment on facts properly analyzed, you have no real defense against sizable risk.

Inadequate compliance audits can literally leave companies

The Challenge of Being—and Staying—Compliant



Words such as “discrimination” and “fairness” stir up powerful emotions. They often inflame class-action cases and play well in front of juries—to the detriment of employers. It is therefore critical that businesses turn the drivers of employment-law arguments from emotions to facts, and be in a position to do so prior to litigation or a government audit.

In most companies, HR leaders and chief counsel have no illusions about the need for watertight compliance. They and their fellow executives are keen to avoid the business disruption caused by employment law disputes, whether or not they lead to litigation or penalties and regardless of whether the source is the U.S. Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP) or lawsuits from employees themselves.

Yet even in businesses with well-documented employment law policies and procedures, it is a significant challenge to be compliant—and to stay compliant.

Business leaders face greater turbulence as the workplace grows more complex, privacy issues loom larger, and employment practice liability insurance coverage becomes more problematic. At the same time, federal and state rulings are tightening; U.S. employers are facing an increasing number of EEOC charges and OFCCP audits, as well as more stringent regulations in individual states. Global HR executives often must confront these challenges on multiple continents.

Proactive business leaders understand the value of a “preventive maintenance” approach in minimizing the risks to their businesses. They view workforce reviews and statistical audits as a critical line of defense—and they recognize the value of the right facts in making their case.

NERA’s experts specialize in sound statistical workforce reviews that are based only on the facts. Leading companies in a wide range of industries utilize NERA’s comprehensive workforce analyses to reduce the risks of employee litigation, OFCCP audits and EEOC charges.

Effective January 1, 2003, casualty and umbrella insurers can no longer add employment liability coverage to their policies.

defenseless when it matters most.

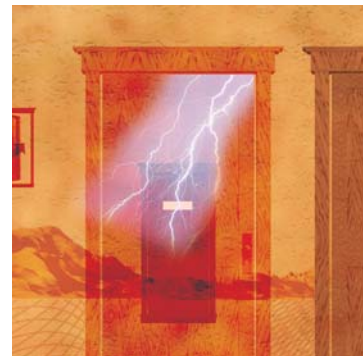
The Lure of the “Two-Minute Audit”

There is no shortage of workforce review offerings designed to appeal to business leaders with no time to spare. These quick fixes range from simple online self-audit checklists—sometimes even literally promoted as a “two-minute audit”—to software tools to quick one-off reviews by outside counsel. Such offerings often look attractive at first glance; some may even be of help to small or start-up businesses.

But for executives of large complex organizations, “two-minute audits” tell little or nothing of value. They leave employers with the same or greater risk of employee litigation, OFCCP audits and EEOC charges, and they lay poor foundations for robust compliance strategies. Should matters come to dispute, government auditors will quickly discount the results, and plaintiffs’ lawyers may neutralize them in court. Inadequate compliance audits can literally leave companies defenseless when it matters most.

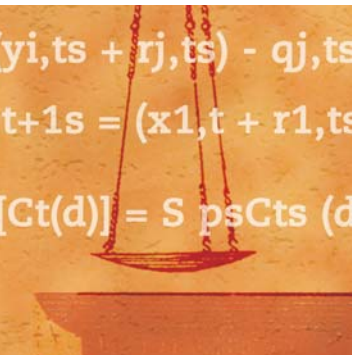
Similarly, company executives may be tempted to benchmark the employment law practices of others. But employment law compliance is not a best-practices game. In most cases, the other company’s solutions will not fit your company’s needs.

Instead, your firm should rely on a deep and customized understanding of the facts. A NERA workforce review can readily uncover areas of potential vulnerability, and can suggest changes which could be made to reinforce employment law practices and reduce the risk associated with future audits.



Employers who engage NERA to perform a statistical review know they have the right facts on their side.

Minimizing Employment Law Risk



NERA's workforce reviews help to minimize employment law risk in several ways. With our detailed statistical analysis of workforce composition, NERA's experts can:

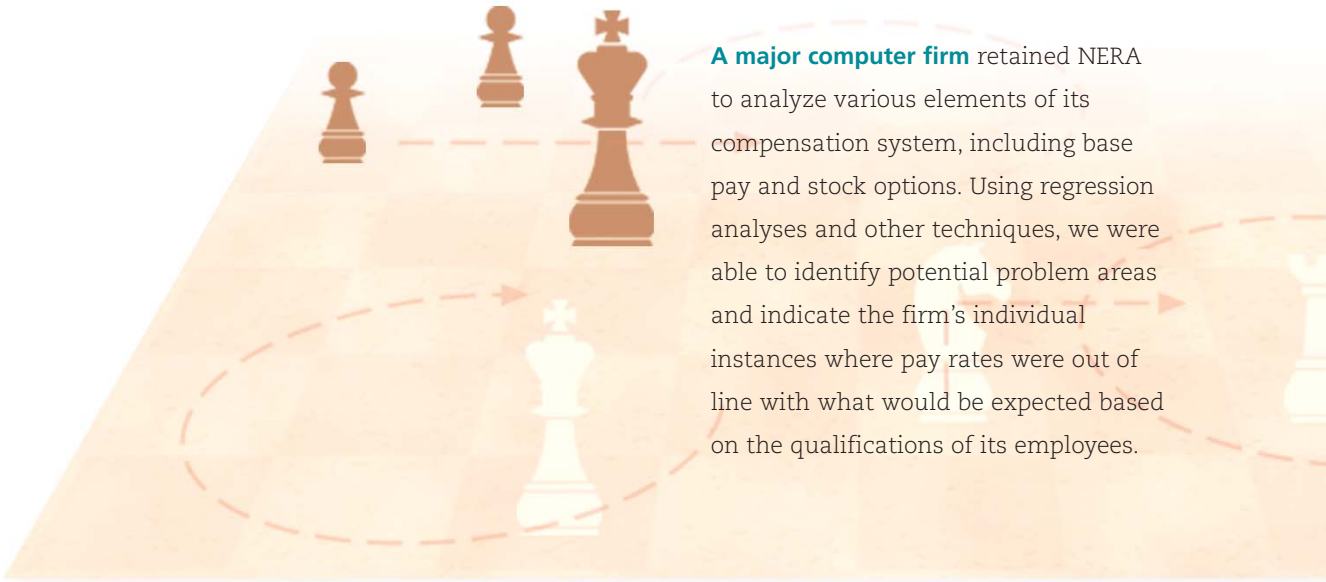
- Assess the impact of proposed reductions in force
- Determine whether statistical disparities exist in salaries, incentive compensation, or other elements of compensation such as stock options
- Review promotional patterns to assure no glass ceilings exist
- Review hiring data to see if screening tests or other mechanisms show an adverse impact
- Create affirmative action programs
- Evaluate existing programs
- Diagnose where changes can be considered to reduce future risk from a lawsuit or government audit

When developing a statistical workforce review, NERA draws on the company's HR fact base as well as external data such as figures from the U.S. Census. We use rigorous statistical tools and proprietary techniques to analyze and compare across company operations, age categories, job positions, salary ranges and more.

Employers who engage NERA to perform a workforce review know they have a statistically rigorous, comprehensive and accurate picture of their HR activities. They can be confident that they have the information necessary to reduce their exposure to misuse of employment law. They have the right facts on their side.



project profile



A major computer firm retained NERA to analyze various elements of its compensation system, including base pay and stock options. Using regression analyses and other techniques, we were able to identify potential problem areas and indicate the firm's individual instances where pay rates were out of line with what would be expected based on the qualifications of its employees.

Our Approach

NERA's statistical and economic experts are fluent in the complex and ever-changing language of employment law, and stay up-to-date on the latest developments and trends. We understand the need for the right data and interpretation and base our statistical analysis upon the facts of a case.

We have extensive experience with rebutting plaintiffs' allegations on many fronts. Workforce reviews developed by NERA are used to protect companies against:

- The use of misleading statistics designed to confuse rather than provide useful evidence upon which to reach an informed decision
- Deliberate number-twisting gambits presented as sophisticated analysis
- Improperly aggregated statistics

This last example occurs regularly in employment discrimination cases, yet is often overlooked. Our experts can quickly isolate the mistake of aggregating unlike units into one figure. One such example might be comparing reduction-in-force rates separated by department (or other business unit), as opposed to a common plaintiff tactic of drawing a global conclusion based on the aggregate.

In addition to our analytical strengths, we place a premium on effective communication with the client. When the issues are as complex as those that often emerge in disputes, business leaders deserve clear explanations of their options. Our experts convey key concepts in simple, everyday business language.

Behind the Numbers: The Need to Scrutinize

Company X's Dilemma:

200 employees

- ▶ 100 men and 100 women
- ▶ 50% of the men are promoted (50/100)
- ▶ 35% of the women are promoted (35/100)
- ▶ Are the company's promotion practices discriminatory against women?

When it comes to employment practices, appearances can be deceiving—and costly. This hypothetical case illustrates the importance of using a rigorous statistical review to “drill down” and gain a clear understanding of a firm's workforce composition. In this case, if **Company X** used a “two-minute audit” calculator to review its promotion statistics, the firm would likely be advised that its promotion practices are discriminatory. Fearing that a lawsuit may be imminent, Company X might be tempted to write a big check and try to keep this as quiet as possible.

However, before taking any drastic measures, Company X should obtain a statistical analysis of the numbers, as there are many possible explanations for the apparent promotion disparity. Although simplified, the examples below illustrate the range of possibilities. In these situations, NERA experts perform the necessary complex statistical analyses and present our findings to the client in clear, understandable terms.

Possible Explanation

Behind the Numbers

Result

Company X has two divisions, A and B. A look at the data by division reveals that there were few promotions available in Division A.

Division A:
6 of 30 men (20%) are promoted
14 of 70 women (20%) are promoted

Division B:
44 of 70 men (63%) are promoted
21 of 30 women (70%) are promoted

The promotion rate for men and women in Division A is identical, and women are actually promoted at a higher rate than men in Division B. In this case there is no problem but rather a statistical illusion.

Company X's administrative workforce, an area in which there are no promotional opportunities, is primarily female.

30 of 35 administrative staff (86%) are women
35 of 70 (50%) non-admin women are promoted
50 of 95 (53%) non-admin men are promoted

Excluding administrative staff (for whom there is clearly no evidence consistent with discrimination), the other positions have virtually identical promotion percentages.

There is in fact a disparity in promotion practices, but only in one of Company X's three locations.

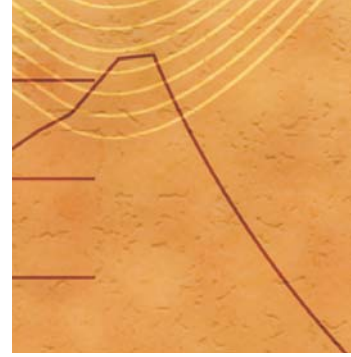
Location One:
20 of 40 men are promoted
20 of 40 women are promoted

Location Two:
10 of 20 men are promoted
10 of 20 women are promoted

Location Three:
20 of 40 men are promoted
5 of 40 women promoted

Company X now knows this is not a company-wide problem; the firm can give the first two locations a clean bill of health and focus on location three. Showing that the problem is not company-wide is often central to defeating a motion for class certification.

In 2002, EEOC charges on grounds of religion soared nearly 21 percent, and on grounds of national origin by almost 13 percent.



The Success of Good Statistics

NERA experts have the skills and insight to see beyond the often-flimsy statistics that plaintiffs use to sway jury members. We are regularly called to testify in contentious litigation cases, and we know exactly how plaintiffs operate—what their tactics are, how they get their data and how they interpret it. NERA has a long and successful history of rebutting the flawed math presented as valid data by plaintiffs' counsel. We know the difference between bad and good statistics so we are easily and quickly able to spot the assumptions and misinterpretations that often put employers at a disadvantage.

project profile

A major transportation business retained NERA in its defense against a suit alleging a failure to promote minorities into management positions. Plaintiffs claimed that the number of regional offices with no minority managers provided statistically significant evidence consistent with race discrimination. NERA performed a computerized simulation analysis of the racial composition of the underlying workforces in the regional offices. The analysis showed that the defendant's promotional practices were exactly what would be expected with race-neutral decision making. The court concurred and granted summary judgment, citing NERA's statistical analysis.

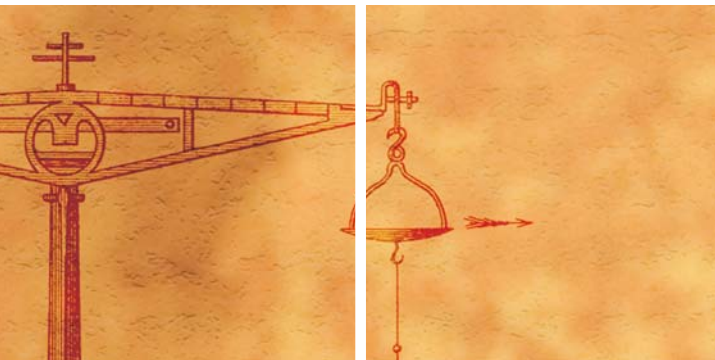
Companies that employ NERA for workforce reviews generally view our experts as long-term compliance partners.

Long-Term Prevention Beats Short-Term Cure

Our workforce analyses span a wide range of industries, from transportation and energy to financial services and computer manufacturing.

Industry leaders who take workforce reviews seriously do not view them as a one-off problem to be solved. The issues are considered crucial enough and the risks great enough that the partnership cannot simply be handed off to outside counsel. It merits hands-on, in-house attention by senior managers within HR or the legal department.

That level of support gives management teams the assurance of knowing they can stay focused on the business of the business, yet still remain informed of any and all potential workforce risks.



NERA's Employment and Labor Practice

Overview

Our Employment and Labor experts advise clients on a wide range of issues both inside and outside the courtroom. We have provided expert testimony on statistical issues both at the class certification phase (on issues of commonality and typicality) and at the liability phase (for class and pattern-and-practice cases). Given our reputation for independence and defensibility, our clients often return to us for calculations of economic loss and damages. In such cases, NERA experts provide a realistic estimate based on the facts relevant to plaintiff and defendant. We have also conducted a series of highly respected studies on affirmative action programs for minority and woman-owned businesses. Outside the courtroom, we frequently analyze employer statistics for potential disparities in hiring, layoffs, promotions, pay and performance assessments.

Our Capabilities

Liabilities/Class Certification

Our work in these areas involves performing statistical analyses of employment discrimination claims both in a pattern and practice and in a class certification context. In pattern and practice cases our work centers on how to most accurately model the actual decision process used by the firm so that any effects of a protected characteristic such as race or gender can be separated from effects of other potentially explanatory factors. In a class context, we have participated extensively at the certification phase, performing statistical analyses to determine whether the commonality and typicality prongs of Rule 23 are met and going beyond the broad-brush types of analyses frequently presented to learn whether any alleged disparity pervades the proposed class, is limited to some subgroup, or does not exist at all.

Labor Economic Loss/Damages

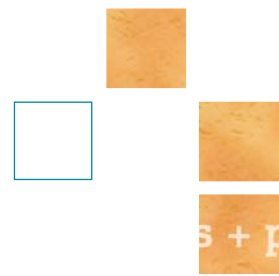
Our experts recognize that accurately calculating economic damages for one or more plaintiffs requires knowledge of each plaintiff's individual situation as well as that of the defendant. Too often, loss estimates based on generalities and economy-wide trends are substituted for information specific to the parties involved. Our approach to finding the correct amount of a plaintiff's economic damages is based on accumulating all information necessary to accurately model earnings but-for the allegedly illegal conduct and expected earnings given such conduct. We have also pioneered a method of assessing the reasonableness of plaintiffs' efforts to mitigate their losses.

Union-Related Analyses

Our experts have conducted studies on labor union issues including the desirability of using union labor, aspects of a union decertification election before the National Labor Relations Board, and the reasonable compensation of various union crafts in the railroad industry.

Workforce/Contracting Affirmative Action

NERA is a leading provider of studies related to historically disadvantaged business enterprise. These studies evaluate goals established by state and local governments and help public agencies to develop effective and lawful affirmative action programs for procuring goods and services from businesses owned by minorities and women.



emerging issues and trends: six questions

1

We use a test widely used in our industry to screen job applicants. But could such a test be biased against some people?

Yes. Statistical testing can reveal if people in a protected group are more or less likely to pass such a test. Should a disparity exist, the testing can reveal which questions or aspects of the scoring system lead to the disparity, telling you whether presumably neutral questions (such as those about previous work experience) happen to favor one group or whether questions that are harder to defend are responsible for the disparity.

2

The make-up of our work force looks quite different from what the 2000 Census shows for the metropolitan area in which our company is located. Is there an explanation?

One possibility is that the skills or qualifications needed at your company are different from those possessed by the general population. You have to make apples-to-apples comparisons instead of comparing your work force with the general population. If you require college education, then you need to compare your work force with people with college education. Another possibility is that you recruit from a market that's not the same as the area from which the Census data are drawn.

4

Many of our managers are women. But few in higher-level management are women. Does our company have a glass ceiling?

It's possible. But it's also possible that few openings have existed to obtain high level positions, or that some female managers lack certain qualifications to go into higher level management. Perhaps your company has aggressively promoted women into managerial positions and hence they may need to stay as managers longer before moving higher.

3

Our company is going to have a large reduction in force. What can we do to reduce our exposure to litigation later on?

Statistical testing can reveal whether proposed selections give rise to disparities that a court would consider statistically significant and therefore evidence which could be admitted in a legal proceeding. Should a disparity exist, the right type of testing can also reveal whether any disparity exists across the entire decision unit, one area, or is a statistical illusion caused by one group having more of a characteristic than another (e.g., it is possible that men in the workforce have more applicable experience than women).



$$x_{j,t+1s} = (x_{j,ts} + r_{j,ts}) - q_j$$

$$x_{1,t+1s} = (x_{1,t} + r_{1,ts}) - S$$

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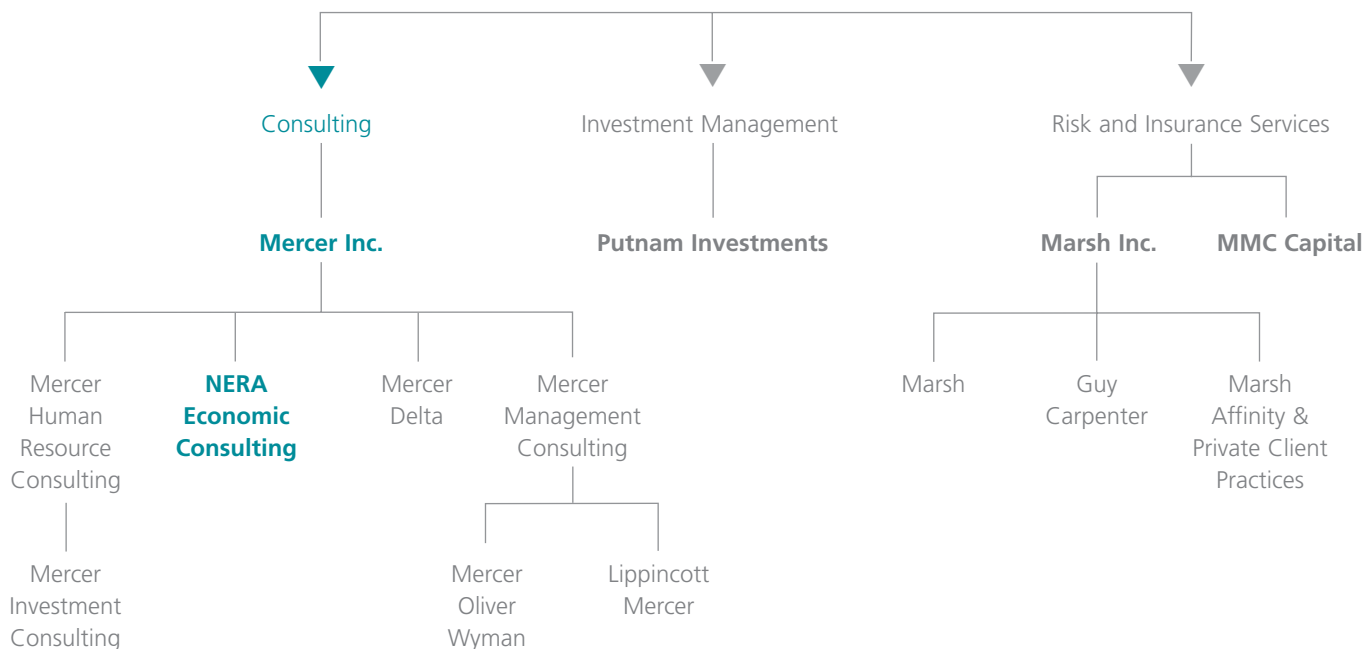
We use clearly specified criteria to set pay raises. But for some reason a particular group of people seem to get bigger raises than other people. Why would that happen?

To find out if there is a problem, you need to define “bigger.” We would not expect all employees to get the same raise any more than we would expect all restaurants to serve the same quality of food. We can use statistical analysis to determine whether one group actually gets bigger raises once we account for differences in qualifications and characteristics that are important to your company.

6

Why do I need to do this statistical testing stuff? We use the EEOC’s 80 percent rule to screen all our decisions so we know if they’re OK.

The 80 percent “rule” is not a statistical test; even the EEOC recognizes this. It’s a rule of thumb designed to give you an idea, not a statistical test that can actually tell you if a statistically significant difference exists at your company. In practice, it is quite common for the 80 percent “rule” to find a disparity where no statistically significant disparity exists or to miss a disparity that does exist. There is no substitute for the real thing.



About NERA

NERA Economic Consulting is an international firm of economists who understand how markets work. Our clients include corporations, governments, law firms, regulatory agencies, trade associations and international agencies. Our global team of 500 professionals operates in 16 offices across North and South America, Europe, Asia and Australia.

NERA economists devise practical solutions to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance and litigation. Founded in 1961 as National Economic Research Associates, our more than 40 years of practical experience creating strategies, studies, reports, expert testimony and policy recommendations reflects our specialization in industrial and financial economics.

Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity; they understand this sometimes calls for their willingness to listen to unexpected or even unwelcome news.

NERA Economic Consulting (www.nera.com) is a Marsh & McLennan company (MMC). MMC is a global professional services firm with annual revenues exceeding \$10 billion. It is the parent company of Marsh Inc., the world's leading risk and insurance services firm; Putnam Investments, one of the largest investment management companies in the United States; and Mercer Inc., a major global provider of consulting services. Approximately 60,000 employees provide analysis, advice and transactional capabilities to clients in over 100 countries.

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