At A Glance

Workforce Reviews: Statistical Audits and Reduction-in-Force Analyses

Overview

A company's best armor against potentially damaging litigation or government audits is a clear statistical understanding of its workforce. Such reviews can be particularly important when a company is considering a reduction in force (RIF).

With statistical and economic experts who are fluent in the complex and ever-changing language of employment law, NERA offers workforce reviews that provide a detailed analysis of a firm's workforce composition. Drawing on the company's HR information, we use rigorous statistical tools and accepted techniques to analyze and compare key metrics (such as salaries, promotions, or layoffs) across company operations, age categories, job positions, salary ranges, and more.

In litigation, NERA experts are familiar with the types of analyses typically introduced by plaintiff experts and frequently provide expert testimony demonstrating where such analyses are unfounded or unreliable. In addition, NERA's workforce studies are often used by companies to ensure compliance with federal and state regulations, as well as to determine if proposed actions will meet such guidelines. NERA's analyses have been used in the following areas:

- Liability and class certification assessments
- RIF analyses
- Workforce and contracting affirmative action studies
- Economic loss and damages calculations
- Union-related analyses

Below we address questions typically posed by companies considering workforce reviews.

Emerging Issues and Trends: Five Questions

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 that could be admitted in a legal proceeding. Should a disparity exist, the right type of testing can also reveal whether the disparity exists across the entire decision unit or just one area, or is a statistical illusion caused by one group having more of a characteristic than another (e.g., younger workers with more technical experience than older workers).

We give 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, indicating whether presumably neutral questions (such as those about previous work experience) happen to favor one group and identifying the questions that may require validation, i.e., demonstrating that they are related to the job and that alternatives with a lesser impact do not exist.

The make-up of our workforce looks quite different from what the 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 with the appropriate sub-group. If you require college education, then you need to compare your workforce with college educated people. Another possibility is that you recruit from a different market than the area from which the Census data are drawn.

Although we use clearly specified criteria to set pay raises, a particular group of employees seems to get bigger raises than others. 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.

Why do I need a statistical analysis? 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.

Client Experience

RIF Analysis
A pharmaceutical company hired NERA experts to determine whether a proposed RIF disproportionately affected any protected groups. NERA found segments of the company with statistical disparities and provided guidance as to the magnitude and significance of these disparities. The company continued to retain NERA prior to subsequent RIFs.

Pay Practice Review
A technology firm engaged NERA to review its pay practices to determine whether any statistically meaningful differences existed by race or gender. NERA identified areas with disparities of potential concern, as well as areas with apparent disparities that were attributable to factors other than race or gender.

Statistical Analysis of Employment Practices
An information services firm engaged NERA for a comprehensive review of employment practices including pay, promotions, and assignment of performance ratings. Based on semi-annual reviews, NERA found areas of statistical concern and recommended changes to proposed measures at each juncture.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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