

CHAPTER 2

Contextual Influences on Compensation Practice

Learning Objectives

1. Various laws that influence private sector companies' and labor unions' compensation practices
2. Contextual influences on the federal government's compensation practices
3. Labor unions' influence on companies' compensation practices
4. Market factors' impact on companies' compensation practices

Outline

I. Employment Laws that Influence Compensation Practices

- A. Legislative Actions
- B. Four Amendments to the U.S. Constitution
- C. Government Makeup
- D. Four Key Legislative Themes
- E. Income Continuity, Safety, and Work Hours Laws
- F. FLSA of 1938
- G. Pay Discrimination Legislation
- H. Equal Pay Act of 1963
- I. Title VII of Civil Rights Act of 1964
- J. Bennett Amendment
- K. Executive Order 11246
- L. ADEA of 1967
- M. OWBPA
- N. Executive Order 11141
- O. Civil Rights Act of 1991
- P. Accommodating Disabilities and Family Needs
- Q. PDA of 1978
- R. ADA of 1990
- S. FMLA of 1993
- T. Prevailing Wage Laws
- U. Davis–Bacon Act of 1931
- V. Walsh–Healey Contracts Act of 1936

- II. Laws that Guide Discretionary Employee Benefits**
 - A. Internal Revenue Code (IRC)
 - B. Employee Retirement Income Security Act of 1974 (ERISA)
 - C. Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
 - D. Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - E. Pension Protection Act of 2006
 - F. Patient Protection and Affordable Care Act of 2010
- III. Contextual Influences on the Federal Government as an Employer**
- IV. Labor Unions as Contextual Influences**
 - A. Labor Unions Overview
 - B. National Labor Relations Act of 1935
 - C. Compensation Issues in Collective Bargaining
- V. Market Influences**
 - A. Inter-Industry Wage/Compensation Differentials
 - B. Companies in Product Markets with Little Competition
 - C. Capital Intensity
 - D. Outsourcing
- VI. Discussion Questions Suggested Answers**
- VII. End of Chapter Case; Instructor Notes and Suggested Student Responses**
- VIII. Additional Cases from the Student Companion Website; Instructor Notes and Suggested Student Responses.**

Lecture Outline

- I. Employment Laws that Influence Compensation Tactics**
 - A. Legislative Actions
 - 1. Four Amendments to the U.S. Constitution
 - i. Article I, Section 8
 - ii. First Amendment
 - iii. Fifth Amendment
 - iv. Fourteenth Amendment, Section 1
 - 2. Income continuity, safety, and work hours
 - 3. Fair Labor Standards Act of 1938
 - 4. Work Hours and Safety Standards Act of 1962
 - 5. McNamara–O’Hara Service Contract Act of 1965
 - 6. Pay Discrimination Legislation
 - 7. Equal Pay Act of 1963
 - 8. Title VII of the Civil Rights Act of 1964

9. Bennett Amendment to Title VII
 10. Executive Order 11246
 11. Age Discrimination in Employment Act of 1967 (ADEA)
 12. Older Workers Benefit Protection Act (OWBPA)
 13. Executive Order 11141
 14. Civil Rights Act of 1991
 15. Lilly Ledbetter Fair Pay Act of 2009
 16. The Paycheck Fairness Act
 17. Americans with Disabilities Amendments Act of 2008
 18. The American Recovery and Reinvestment Act of 2009 (ARRA)
- B. Four Amendments to the U.S. Constitution
1. Article 1, Section 8 (“The Congress shall have the power...to regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes...”)
 2. First Amendment (“Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”)
 3. Fifth Amendment (“No person shall...be deprived of life, liberty, or property without due process of law...”)
 4. Fourteenth Amendment, Section 1 (“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law.”)
- C. Government Makeup
1. Three levels
 - a. Federal
 - b. State
 - c. Local
 - i. County
 - ii. City
 2. Most compensation laws are federal
 3. State and local legislations may be concurrent or exist in absence of similar federal laws
 4. Three branches
 - a. Legislative—makes laws
 - b. Executive—enforces laws
 - c. Judicial—interprets laws

- D. Four Key Compensation-Related Legislative Themes
 - 1. Income continuity, safety, and work hours
 - 2. Pay discrimination
 - 3. Accommodating disabilities and family needs
 - 4. Prevailing wage laws
- E. Income Continuity, Safety, and Work Hours Laws
 - 1. Three main factors
 - a. Great Depression
 - b. Family businesses to large factories
 - c. Division of labor
 - 2. The Great Depression of the 1930s led to:
 - a. Large scale business failures
 - b. Chronic unemployment
 - c. Passage of the Social Security Act of 1935 (Title IX)
 - d. Passage of workers' compensation programs
 - 3. The 20th century switch from an agrarian to industrial society led to:
 - a. Families moving from small farms to urban areas for factory jobs
 - b. Individuals losing control over their earnings and working conditions
 - 4. Industrialization also led to:
 - a. A division of labor characterized by differences in skills and responsibilities
 - b. Companies sacrificing living wages and safe working conditions for short-term profits
 - c. Passage of the Fair Labor Standards Act of 1938
- F. Fair Labor Standards Act of 1938 (FLSA)
 - 1. Addresses three main issues
 - a. Minimum wage
 - b. Overtime pay
 - c. Child labor provisions
 - 2. Enforced by the U.S. Department of Labor
 - 3. Minimum wage
 - a. Designed to ensure wages for a minimally acceptable standard of living
 - b. Originally set at \$0.25 per hour
 - c. In 1996, was set at \$5.15
 - d. In 2009, Congress passed an increase in federal minimum wage from \$5.15 in increments to \$7.25
 - e. 24 states specify higher minimum wage rates than federal level since 2009

- f. Workers can legally earn less than minimum wage if they are:
 - i. Students employed in retail or service businesses, on farms, or in institutions of higher education
 - ii. Trainees
 - iii. Mentally or physically disabled

Example: FLSA Definition of Trainees

- The training, even though it includes actual operation of the employer's facilities, is similar to that which would be provided in a vocational school
- The training is for the benefit of the trainee
- The trainee does not displace regular employees but works under closer supervision
- The employer providing the training gains no immediate advantage from the trainees' activities; on occasion, the employer's operation may in fact be hindered
- The trainee is not guaranteed a job at the completion of the training
- The employer and the trainee understand that the employer is not obligated to pay wages during the training period

4. Overtime pay provisions
 - a. Defined in FLSA
 - b. Most employers must pay time and one-half for over 40 hours work in a period of 7 consecutive days
 - c. FLSA Exempt Positions
 - i. Executive
 - ii. Administrative
 - iii. Learned professional
 - iv. Creative professional
 - v. Computer system analyst, programmer, software engineer, or similarly skilled workers
 - vi. Outside sales
 - d. Classifying jobs as either exempt or nonexempt is not always clear-cut

Example: Supreme Court Case: Exempt or Nonexempt Position

- Aaron v. City of Wichita, Kansas ruling on whether fire chiefs were exempt

5. Exempt positions
 - a. Redefined by U.S. Department of Labor's Fair Pay Rules in 2004
 - i. Employees were considered exempt if they earned more than minimum wage and exercised independent judgment when working
 - ii. Now, employees earning less than \$23,660 per year, or \$455 per week are guaranteed overtime protection

- iii. More information available at <http://www.dol.gov>
- 6. Scope of FLSA broadened twice since 1938
 - a. Portal-to-Portal Act of 1947
 - i. Defined the term “hours worked”
 - ii. For example, time spent by state correctional officers caring for police dogs at home is compensable (*Andres v. DuBois*)
 - b. Equal Pay Act of 1963, which prohibits sex discrimination in pay for employees performing equal work
- 7. Compensable work activities
 - a. Waiting time
 - b. On-Call time
 - c. Rest and meal periods
 - d. Sleeping time and certain other activities
 - e. Lectures, meetings, and training programs
 - f. Travel time
 - i. Home to work travel
 - ii. Home to work on a special one day assignment, including employer-mandated training, in another city
 - iii. Travel that is all in a day’s work
 - iv. Travel away from home community
- 8. Child labor provisions
 - a. Intended to protect children from:
 - i. Being overworked
 - ii. Working in a hazardous setting
 - iii. Having their education jeopardized due to excessive work hours
 - b. Children younger than age 14 usually cannot be employed
 - c. Children ages 14 and 15 may work in safe occupations outside school hours, as long as their work does not exceed:
 - i. 3 hours on a school day
 - ii. 18 hours per week while school is in session
 - iii. 40 hours when school is not in session
 - d. Children ages 16 and 17
 - i. Do not have hourly restrictions
 - ii. Cannot work in hazardous jobs (e.g., running heavy industrial equipment, working around harmful substances)
- G. Pay Discrimination Legislation
 - 1. Came out of the Civil Rights Movement of the 1960s
 - 2. Was designed to protect designated classes of employees, and to uphold their rights individually against discriminatory employment decisions

3. Equal Pay Act of 1963
 4. Civil Rights Act of 1964
- H. Equal Pay Act of 1963
1. Enforced by the Equal Employment Opportunity Commission (EEOC)
 2. Applies to jobs of equal worth according to the Department of Labor's definition of compensable factors, such as:
 - a. Levels of skill
 - b. Effort
 - c. Responsibility
 - d. Working conditions

Example: Equal jobs?

- EEOC v. Madison Community Unit School District #12 court ruling
- Female coaches of female sports teams were paid less than male coaches of male sports teams

3. Jobs must have “similar”, not necessarily the “same” working conditions
 4. Pay differentials are not always illegal; are legal where such payments are made pursuant to:
 - a. A seniority system
 - b. A merit system
 - c. A system which measures earnings by the quantity or quality of production
 - d. A differential based on any factor other than gender
- I. Title VII of the Civil Rights Act of 1964
1. Legislators designed Title VII of this Act to promote equal employment opportunities for underrepresented minorities
 2. Title VII distinguishes two types of discrimination
 - a. Disparate treatment
 - b. Disparate impact
 3. Disparate treatment
 - a. Represents intentional discrimination, occurring whenever employers intentionally treat some workers less favorably than others because of:
 - i. Race
 - ii. Color
 - iii. Religion
 - iv. Sex
 - v. National origin
 - b. Example: awarding pay increases to blacks based on seniority whereas basing increases on performance for whites

4. Disparate impact
 - a. Represents unintentional discrimination that occurs whenever an employer applies employment practices to all employees
 - b. The practice leads to unequal treatment of protected employee groups
5. Title VII applies to:
 - a. Companies with 15 or more employees
 - b. Employment agencies
 - c. Labor unions
 - d. Labor management committees controlling apprenticeship and training

Example: Title VII mandates

- “It shall be an unlawful employment practice for employers to:
 - Fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to that individual’s compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin
 - Limit, segregate, or classify a company’s employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect that individual’s status as an employee, because of such individual’s race, color, religion, sex, or national origin”

In 2009, Congress passed two major Acts to help further close the pay gap between men and women:

- The Lilly Ledbetter Pay Act restored prior law—providing that a pay discrimination charge must simply be filed within 180 days of a discriminatory paycheck. This helped to reverse the Supreme Court Ledbetter decision, which made it harder for women and other workers to pursue pay discrimination claims
- The Paycheck Fairness Act helps to strengthen the Equal Pay Act of 1963 by strengthening the remedies available to put sex-based pay discrimination on par with race-based pay discrimination. That is, employers are now required to justify unequal pay by showing that the pay disparity is not sex based, but, rather, job related. This Act also prohibits employers from retaliating against employees who share salary information with their coworkers

J. Bennett Amendment (to Title VII)

1. Allows female employees to charge employers with Title VII violations regarding pay only when the employer has violated the Equal Pay Act of 1963
2. Added to Title VII because legislators could not agree on:

- a. Whether or not Title VII incorporates both the Equal Pay Act of 1963's equal pay standard and the four defenses for unequal work
 - i. Seniority system
 - ii. Merit system
 - iii. Earnings based on quality or quantity of production
 - iv. Pay differential not based on gender
- b. Whether or not Title VII includes only the aforementioned four Equal Pay Act of 1963 exceptions

K. Executive Order 11246

- 1. Extends Title VII standards to companies holding federal government contracts worth more than \$10,000 per year
- 2. Requires companies with federal contracts worth more than \$50,000 per year and 50 or more employees to develop a written affirmative action plan that will specify how the companies will avoid or reduce Title VII discrimination violations over time

L. Age Discrimination in Employment Act of 1967 (ADEA)

- 1. Amended in
 - a. 1978
 - b. 1986
 - c. 1990
- 2. Designed to protect workers age 40 and older ("baby boomers") from age discrimination
 - a. "Baby boomers" are those born between 1942 and 1964
 - i. Represent the largest generation of the U.S. population
 - ii. Will probably work past age 67
 - b. United States Census Bureau predicts that
 - i. By 2001, those older than 65 will number about 25 million (12.4 percent of the population)
 - ii. By 2050, that number will reach about 77 million (20.3percent of the population)

Example: ADEA specifies that it is unlawful for an employer to:

- Fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of age
- Limit, segregate, or classify a company's employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect that individual's status as an employee, because of age
- Reduce the wage rate of any employee in order to comply with ADEA (29 USC 623; Section 4)

ADEA applies to benefit practices as well:

- Any employer must provide that any employee aged 65 or older, and any employee's spouse aged 65 or older, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, under age 65 (29 USC 623, Section 4, paragraph (g)(1))

3. Sets limits on the development and implementation of employers' early retirement practices

- a. Offered to employees age 55 or older
- b. Employee participation must be voluntary (EEOC v. Chrysler)

M. Older Workers Benefit Protection Act (OWBPA)

1. 1990 amendment to ADEA
2. Places additional restrictions on employers' benefits practices
 - a. Employers may require older employees to pay more for health insurance or life insurance coverage if the cost is significantly greater than the cost for younger workers because these costs generally rise with age
 - b. Equal benefit or equal cost principle which specifies that employers do not have to provide equal benefits to older workers if it costs them more to do so

Example: OWBPA

- Company has 3,000 employees
- 750 employees (25 percent) are age 40 or older, 2,250 (75 percent) are under age 39
- Annual contribution of all employees is \$120,000
- Workers age 40 and older paid \$84,000 (70 percent) of contributions, workers age 39 and younger contributed \$36,000 (30 percent)
- Older workers paid disproportionately more (25 percent of the workforce paid 70 percent of the total contributions)
 - c. An older employee may not be required to pay more for the benefit as a condition of employment

- d. An older employee may be offered the option of paying—or paying more—for the benefit in order to avoid otherwise justified reductions in coverage
 - e. An older employee who chooses to participate in a voluntary plan can be required to pay more for the benefit, but only if the employee does not pay a greater percentage of his or her premium cost than younger employees do
 - f. Enacts the equal benefits or equal costs principle
 - i. Employers must offer benefits to older workers equal to or more than the benefits given younger workers if the costs to do so are greater than it is for the younger workers
 - g. Employers may make across-the-board cuts in benefits to save costs
 - h. Covers:
 - i. Private employers with 20 or more employees
 - ii. Labor unions with 25 or more members
 - iii. Employment agencies
3. Enforced by EEOC
- N. Executive Order 11141 which extends ADEA to federal contractors
- O. Civil Rights Act of 1991
- 1. Designed to overturn several Supreme Court rulings
 - a. Atonio v. Ward Cove Packing Company
 - i. Ruling required employees to prove which employment practice created the disparate impact
 - ii. Shifted the burden of proof from the employee to the employer
 - b. Lorance v. AT&T Technologies
 - i. Ruling allowed employees to challenge the use of seniority systems within 180 days from the system's implementation date
 - ii. Allows employees to file a discrimination claim when the system is implemented or whenever the system negatively affects them
 - c. Boureslan v. Aramco
 - i. Ruling stated that federal job discrimination laws did not apply to U.S. citizens working for U.S. companies in foreign countries (expatriates)
 - ii. Allows expatriates to file discrimination lawsuits
 - 2. Provides coverage to the same groups protected under the Civil Rights Act of 1964
 - 3. This Act extends coverage to U.S. Senate employees and political appointees of the federal government's Executive Branch
 - 4. EEOC
 - i. Enforces law

- i. Assists employers avoid discrimination practices through the Technical Assistance Training Institute
- P. Accommodating Disabilities and Family Needs
 1. Pregnancy Discrimination Act of 1978 (PDA)
 2. Americans with Disabilities Act of 1990 (ADA)
 3. Family and Medical Leave Act of 1993 (FMLA)
- Q. Pregnancy Discrimination Act of 1978 (PDA)
 1. An amendment to Title VII of the Civil Rights Act of 1964
 2. Prohibits disparate impact discrimination against pregnant women for all employment practices
 3. Employers must not treat pregnancy less favorably than other medical conditions covered under employee benefits plans
 4. Employers must treat pregnancy and childbirth the same way they treat other causes of disability
 5. PDA protects women's rights who take leave for pregnancy-related reasons
 - a. Credit for previous service
 - b. Accrued retirement benefits
 - c. Accumulated seniority
- R. Americans with Disabilities Act of 1990 (ADA)
 1. Prohibits discrimination against individuals with mental or physical disabilities within and outside employment settings including:
 - a. Public services
 - b. Transportation
 - c. Public accommodations
 - d. Employment
 2. Applies to employers with 15 or more employees
 3. EEOC is the enforcement agency

Example: ADA and employment

- The ruling states the ADA:
 - "...prohibits covered employers from discriminating against a 'qualified individual with a disability' in regard to job applications, hiring, advancement, discharge, compensation, training, or other terms, conditions, or privileges of employment. Employers are required to make ; 'reasonable accommodations' to the known physical or mental limitations of an otherwise qualified individual with a disability unless to do so would impose and 'undue hardship'"
 4. "Reasonable accommodations" may include such efforts as:
 - a. Making existing facilities readily accessible
 - b. Job restructuring

- c. Modifying work schedules
- 5. A “qualified individual with a disability” must be able to perform the “essential functions” of a job, which are those job duties that are critical to the job

Example: ADA and reasonable accommodations

- Producing printed memoranda is a key duty of a clerical worker’s job
- Most clerical workers manually key the information into the computer
- An employee comes down with crippling arthritis
- Employer acquires voice recognition software for this employee to input information

In September 2008, President George W. Bush signed into law the Americans with Disabilities Act of 2008. The main effect of this legislation is that it is now easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

- S. Family and Medical Leave Act of 1993 (FMLA) (more in chapter 12)
 - 1. FMLA was designed to provide employees with job protection in cases of family or medical emergency
 - 2. Guarantees unpaid leave and the right to return to either the same position or a similar position with the same pay, conditions, and benefits
- T. Prevailing Wage Laws
 - 1. Davis–Bacon Act of 1931
 - 2. Walsh–Healey Contracts Act of 1936
- U. Davis–Bacon Act of 1931
 - 1. Established employment standards for construction contractors holding federal government contracts valued at more than \$2,000, including:
 - a. Highway building
 - b. Dredging
 - c. Demolition
 - d. Cleaning, painting, and/or decorating public buildings
 - 2. Applies to laborers and mechanics who are employed on-site
 - 3. Requires contractors to pay the prevailing wage in the local area
 - 4. U.S. Secretary of Labor
 - a. Determines prevailing wage rates
 - b. Based on compensation surveys
 - 5. Prevailing wage is the typical hourly wage paid to more than 50 percent of all laborers and mechanics employed in the local area
 - 6. Requires contractors to offer fringe benefits equal in scope and value to those offered in the local area

V. Walsh–Healey Contracts Act of 1936

1. Applies to contractors and manufacturers who sell supplies, material, and equipment to the federal government with contracts worth at least \$10,000
2. Covers both construction and non-construction activities
3. Covers all contractor employees except:
 - a. Office workers
 - b. Supervisors
 - c. Custodial workers
 - d. Maintenance workers
4. Requires contractors to meet guidelines relating to:
 - a. Wages
 - b. Work hours
 - c. Child labor
 - d. Convict labor
 - e. Hazardous working conditions
5. Contractors must observe the minimum wage and overtime provisions of FLSA
6. Prohibits employment of individuals
 - a. Younger than 16 years old
 - b. Convicted criminals
7. Prohibits contractors from exposing workers to conditions that violate the Occupational Safety and Health Act of 1970
8. Passed to assure safe and healthful working conditions for workers by authorizing enforcement of the standards

II. Laws that Guide Discretionary Employee Benefits

A. Internal Revenue Code (IRC)

1. Regulations pertaining to taxation in the United States
2. Main source of revenue for funding federal, state, and local government programs
3. Internal Revenue Services
 - a. Implements the IRC
 - b. Levies penalties against companies and individuals who violate the IRC
4. Since 1916, the federal government has encouraged employers to provide retirement benefits to employees with tax breaks or deductions, thus reducing the amount of a company's required tax payment
5. The IRC contains multiple regulations for legally required and discretionary benefits
 - a. Federal Insurance Contributions Act (FICA)
 - b. Federal Unemployment Tax Act (FUTA)

- c. FICA taxes employees and employers to finance the Social Security Old-Age, Survivor, and Disability Insurance Program (OASDI)
- d. Unemployment insurance benefits are financed by federal and state taxes levied on employers
- e. Federal taxes are levied on employers under FUTA
- 6. Incentives for employers and employees
 - a. An employee may deduct the cost of benefits from annual income, thereby reducing tax liability
 - b. Employers may also deduct the cost of benefits from their annual income as a business or trade expense when the cost is an ordinary and necessary expense of the company's trade or business
 - c. Payroll costs and benefits costs also qualify as ordinary and necessary business expenses
 - d. Companies can deduct these costs only during the current tax period. benefits costs incurred during 2008 may be deducted only for the 2008 tax year
 - e. Benefits qualify for tax deductibility when they meet nondiscrimination rules set forth by the Employee Retirement Income Security Act of 1974
- 7. Nondiscrimination rules
 - a. Prohibit employers from giving preferential treatment to key employees and highly compensated employees
 - b. A key employee is one who at any time during a given year is:
 - i. A five percent owner of the employer
 - ii. A one percent owner of the employer having an annual compensation from the employer of more than \$160,000
 - iii. An officer of the employer having an annual compensation greater than \$160,000 in 2011 (indexed for inflation in increments of \$5,000 beginning in 2003)
 - c. The IRS defines a highly compensated employee as one of the following during the current or preceding year
 - i. A five percent owner at any time during the year or the preceding year
 - ii. For the preceding year had compensation from employer in excess of \$ 110,000 in 2011
 - iii. If the employer elects the application of this clause for a plan year, was in the top-paid group of employees for the preceding year

U.S. Treasury Regulations define the term officer as follows:

Generally, the term officer means an administrative executive who is in regular and continued service. The term officer implies continuity of service and excludes those employed for a special and single transaction. An employee who merely has the title of an officer but not the authority of an officer is not considered an officer for purposes of the key employee test. Similarly, an employee who does not have the title of an officer but has the authority of an officer is an officer for purposes of the key employee test. In the case of one or more employers treated as a single employer under sections 414(b), (c), or (m), whether or not an individual is an officer shall be determined based upon his responsibilities with respect to the employer or employers for which he is directly employed, and not with respect to the controlled group of corporations, employers under common control, or affiliated service group.

B. Employee Retirement Income Security Act of 1974 (ERISA)

1. Established to regulate the implementation of various employee benefits programs, including:
 - a. Medical
 - b. Life
 - c. Disability
 - d. Pension
2. ERISA addresses:
 - a. Employers' reporting and disclosure duties
 - b. Funding of benefits
 - c. Fiduciary responsibilities of programs
 - d. Vesting rights
3. Companies must:
 - a. Provide their employees with straightforward descriptions of their employee benefit plans
 - b. Provide updates when substantive changes to the plan are implemented
 - c. Provide annual synopses on the financing and operation of the plans
 - d. Provide advance notification if the company intends to terminate the benefits plan
 - e. Meet strict guidelines to ensure having sufficient funds when employees reach retirement
 - f. Not engage in transactions with parties having interests adverse to those of the recipients of the plan and not deal with the income or assets of the employee benefits plan in the company's own interests
4. Vesting refers to an employee's acquisition of non-forfeitable rights to an employer's contributions to fund pension benefits
 - a. Employees often must be 100 percent vested within three to six years of service, depending on the vesting schedule
 - b. One hundred percent vested means that an employee cannot lose the pension benefits even if the employee leaves the job before retirement
 - c. Two minimum criteria for eligibility under ERISA:

- i. Employees must be allowed to participate in a pension plan after they reach age 21
 - ii. Employees must have completed 1 year of service based on at least 1,000 hours of work
 - d. Since the passage of ERISA, there have been a number of amendments:
 - i. Tax Equity and Fiscal Responsibility Act of 1982
 - ii. Deficit Reduction Act of 1984
 - iii. Tax Reform Act of 1986
 - iv. Economic Growth and Tax Relief Reconciliation Act of 2001
- C. Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
 - 1. Enacted to provide employees with the opportunity to continue receiving their employer-sponsored medical care insurance temporarily under their employer's plan if their coverage otherwise ceases due to:
 - a. Termination
 - b. Layoff
 - c. Other change in employment status
 - 2. Employers exempt from COBRA
 - a. Companies with fewer than 20 workers
 - b. Church plans
 - c. U.S. government plans
 - 3. Coverage
 - a. Individuals may continue their coverage, as well as coverage for their spouses and dependents, for up to 18 months
 - b. Coverage may extend for up to 36 months for spouses and dependents facing a loss of employer-provided coverage because of an employee's:
 - i. Death
 - ii. Divorce
 - iii. Legal separation
 - iv. Other qualifying events (termination, retirement, layoff)
 - c. Companies are permitted to charge COBRA beneficiaries a premium for continuation coverage of up to 102 percent of the cost of the coverage to the plan
 - 4. COBRA violations
 - a. Employers that violate COBRA requirements are subject to an excise tax per affected employee for each day that the violation continues
 - b. Plan administrators who fail to provide required COBRA notices to employees may be personally liable for a civil penalty for each day the notice is not provided
 - 5. COBRA was signed into law on April 7, 1986
 - 6. COBRA went into effect for members and their dependents on July 1, 1986

- a. The employer must provide covered members and their dependents that would lose coverage under the plan the option to continue coverage
 - b. The mandate is restricted to certain conditions under which coverage is lost, and the election to continue must be made within a specified election period
- D. Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - 1. Four main provisions
 - a. The first provision is intended to guarantee that employees and their dependents that leave their employer's group health plan will have ready access to coverage under a subsequent employer's health plan, regardless of their health or claims experience
 - b. The second provision sets limits on the length of time that health plans and health insurance issuers may impose preexisting conditions, and identify conditions to which no preexisting condition may apply
 - c. The third provision counts periods of continuous coverage under another form of comprehensive health coverage toward a preexisting condition limit
 - d. The fourth provision protects the transfer, disclosure, and use of health care information
- E. Pension Protection Act of 2006
 - 1. Designed to strengthen protections for employees' company-sponsored retirement plans in at least two ways
 - a. The first consideration refers to defined benefit plans (guarantee monthly income for the duration of a retiree's life)
 - i. Law should strengthen the financial condition of the PBGC by requiring that private sector companies that underfund their defined benefit plans pay substantially higher premiums (that is, cost to provide insurance protection) to insure retirement benefits
 - ii. The increase in underfunded plans poses a greater risk to the financial solvency of the PBGC
 - iii. Aims to shore up the PBGC's financial condition by making it more difficult for companies to skip making premium payments
 - iv. Raises the amount that employers can contribute to pension funding with tax advantages, creating an additional incentive to adequately fund pension plans
 - b. The second refers to defined contribution plans (savings plans that employees may contribute to for use during their retirement)
 - i. Makes it easier for employees to participate in such employer-sponsored defined contribution plans as 401(k) plans
 - ii. Millions of workers who are eligible to participate in their employers' defined contribution plans do not contribute to them because they feel they do not have sufficient knowledge about how to choose investment options (e.g., a high-risk mutual fund versus a fixed rate annuity) that will help them earn sufficient money for retirement

- iv. Pension Protection Act enables companies to enroll their employees automatically in defined contribution plans and provides greater access to professional advice about investing for retirement
 - v. Requires that companies give multiple investment options to allow employees to select how much risk they are willing to bear
- F. Patient Protection and Affordable Care Act of 2010
 - 1. PPACA was signed into law by President Barack Obama on March 23, 2010
 - 2. The act was amended by the passage of the Health Care and Education Reconciliation Act of 2010
 - 3. These laws provide the basis for health care reform in the United States
 - 4. The goal of the health care reform
 - a. To reduce the number of uninsured U.S. residents by 32 million in 2016
 - b. These reforms have given Americans new rights and benefits by:
 - i. Helping more children get health coverage,
 - ii. Ending lifetime and most annual limits on care
 - iii. Allowing young adults under age 26 to stay on their parent's health insurance
 - iv. Giving patients access to recommended preventive services without cost

III. Contextual Influences on the Federal Government as an Employer

- A. Federal Government Employees are not Protected by:
 - 1. Title VII of the Civil Rights Act
 - 2. ADEA
 - 3. Equal Pay Act of 1963
- B. Federal Workers Include:
 - 1. Civilian military service employees
 - 2. Executive agency employees
 - 3. U.S. Postal Service employees
 - 4. Library of Congress employees
 - 5. Federal Judicial and Legislative Branch employees
- C. Executive Orders and Laws that Cover Federal Employees Include (refer to Table 2-5):
 - 1. Executive Order 11478, which prohibits employment discrimination on the basis of race, color, religion, sex, national origin, handicap, and age (401 FEP Manual 4061)
 - 2. Executive Order 11935, which prohibits employment of nonresidents in U.S. civil service jobs (401 FEP Manual 4121)

3. Rehabilitation Act, which mandates that federal government agencies take affirmative action in providing jobs for individuals with disabilities (401 FEP Manual 325)
4. Vietnam Era Veterans Readjustment Assistance Act, applies the principles of the Rehabilitation Act to veterans with disabilities and veterans of the Vietnam War (401 FEP Manual 379)
5. Government Employee Rights Act of 1991, which protects U.S. Senate employees from employment discrimination on the basis of race, color, age, and disability (401 FEP Manual 851)
6. Family and Medical Leave Act of 1993, which grants civil service employees, U.S. Senate employees, and U.S. House of Representatives employees a maximum 12-week unpaid leave in any 12-month period to care for a newborn or a seriously ill family member (401 FEP Manual 891)

IV. Labor Unions as Contextual Influences

A. Labor Unions Overview

1. Workers join unions to influence employment-related decisions, especially when they are dissatisfied with:
 - a. Job security
 - b. Wages
 - c. Benefits
 - d. Supervisory practices
2. From 1954 when union representation was at its highest, the percentage of civilian workers in both the public and private sectors represented by unions has steadily declined
 - a. In 1954, union representation of civilian workforce was 28.3 percent
 - b. In 1983, union representation of civilian workforce was 20.1 percent
 - c. In 2010, union representation of civilian workforce was 11.9 percent

B. National Labor Relations Act of 1935 (NLRA)

1. Designed to remove barriers to free commerce and to restore equality of bargaining power between employees and employers
 - a. Employers were denying workers collective bargaining rights on:
 - i. Wages
 - ii. Hours
 - iii. Working conditions
 - b. Employees experienced:
 - i. Poor working conditions
 - ii. Substandard wage rates
 - iii. Excessive work hours

2. Section I, NLRA states that "...by encouraging the practice and procedure of collective bargaining and by protecting the exercise of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of employment..."
 3. Section 8(a)(5), NLRA provides that it is unfair labor practice for an employer "...to refuse to bargain collectively with the representatives of the company's employees subject to the provisions of Section 9(a)"
 4. Section 8(d), NLRA defines the phrase "to bargain collectively" as the "performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment..."
 5. Section 9(a), NLRA declares that "representatives designated or selected for the purposes of collective bargaining by the majority of employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment..."
 6. The President appoints members to the National Labor Relations Board (NLRB)
 - a. To oversee enforcement of NLRA
 - b. For a five year term
- C. Compensation Issues in Collective Bargaining
1. Union influence
 - a. They negotiate with management for general pay increases and cost-of-living adjustments to maintain memberships' loyalty and support
 - b. Through the early 1980s, union members earned as much as 30 percent more than nonunion workers
 - c. Negotiated for sound retirement income programs
 2. Cost-of-living-adjustments (COLAs)
 - a. Automatic pay increases based on changes in prices, as indexed by the consumer price index (CPI)
 - b. Enables workers to maintain their standards of living by adjusting wages for inflation
 3. Union influence has declined because:
 - a. Union companies demonstrated consistently lower profits than nonunion companies
 - b. Major employment cuts in highly unionized companies, like:
 - i. Automobile industry
 - ii. Steel industry
 - c. Foreign automobile manufacturers produced high quality vehicles

4. Spillover effect, the benefit packages that are similar to local union benefits that nonunion employers give employees in the hopes of keeping their employees from unionizing
5. Union switch to concessionary bargaining where the bargaining focuses more heavily on promoting job security than on securing large pay increases

Effects of the Recession on Ford Motor Company

Companies with labor unions often try to avoid instituting mass layoffs whenever possible because of recall features in the collective bargaining agreement. In other words, management is expected to rehire most of its laid off workers when business conditions rebound. However, with the deep recessionary period that began in December 2007 and ended in June 2009, companies still are trying to make permanent cuts to their workforces for substantial labor force savings.

In early 2009, in response to this dire situation, Ford Motor Company announced to local union leaders that it would make buyout or early retirement offers to all of its 42,000 U.S. hourly workers. These cuts were part of a series of contract concessions in a tentative agreement reached between the United Auto Workers union and Ford Motor Company's management. In addition, the union agreed to a suspension of cost-of-living pay raises and lump-sum performance bonuses in the remaining three years of the recently negotiated collective bargaining agreement.

Example: General Motors Corporation

In 2011, the management of General Motors Corporation argued the need to adopt pay-for-performance programs for its union workforce. Pay-for-performance systems apply to nonunion salaried workers; thus, the union workforce is not being singled out within the company. If the United Auto Workers were to agree to the use of a pay-for-performance program, this change would represent yet another noteworthy concession.

V. Market Influences

A. Inter-Industry Wage/Compensation Differentials

1. The differences in wages and benefits across industries
2. Attributed to:
 - a. The industry's product market
 - b. The degree of capital intensity
 - c. The profitability of the industry

- d. Unionization
- e. Gender mix of the workforce

| Industry | 2002 | 2005 | 2007 | 2010 |
|---------------|-------|-------|-------|--------|
| Mining | \$756 | \$800 | \$946 | \$1237 |
| Construction | 711 | 750 | 794 | 949 |
| Manufacturing | 618 | 673 | 707 | 959 |
| Services | 488 | 526 | 545 | 643 |
| Retail trade | 360 | 377 | 380 | 489 |

B. Companies in Product Markets with Little Competition

1. Generally pay higher wages
2. Exhibit substantial profits
3. Exhibit limited new competition because of:
 - a. Higher barriers to entry
 - b. Insignificant influence of foreign competition
4. Government regulations and extremely expensive equipment represent entry barriers
5. Examples
 - a. U.S. defense industry
 - b. Public utilities

C. Capital Intensity

1. Defined as the extent to which companies' operations are based on the use of large-scale equipment
2. The amount of average pay varies with the degree of capital intensity
 - a. Generally manufacturing jobs are capital intensive, service jobs are not
 - b. Generally, the more profitable the industry, the higher the compensation

D. Outsourcing

1. Jobs to people from other companies have had a significant impact on compensation in the United States
2. Done because of lower labor costs, and fewer government regulations
3. Factory jobs go to places like Mexico and Southeast Asian countries
4. Professional and white collar jobs go to places like India where the labor costs are one-fifth as high as in the United States

VI. Discussion Questions Suggested Answers

- 1. Identify the contextual influence that you believe will pose the greatest challenge to companies' competitiveness and identify the contextual influence that will pose the least challenge to companies' competitiveness. Explain your answer.**

This is a very subjective question and answers can include things ranging from discussions of laws, politics, economics or other contextual influences.

- 2. Should the government raise the minimum wage? Explain your answer.**

Answers can be pro or con. 'Yes' answers should discuss living or competitive wages among other things. 'No' answers should include impact on business and employment levels.

- 3. Do unions make it difficult for companies to attain a competitive advantage? Explain your answer.**

Unions do make it difficult for companies to attain competitive advantage in some regards because companies must abide by certain rules and regulations and are prohibited from forcing their workers to do work beyond their agreed quota, and for benefits or wages that are lower than their quota. Also, competition between a company that is housed within the United States and a company in another country without a union could result in difficulties for U.S. companies. However, such policies are declining as the percentage of overall U.S. civilian worker representation in labor unions continue to fall. Although unions make it difficult, their effect does not limit the capabilities of a company to any great extent.

- 4. Select one of the contextual influences presented in this chapter. Identify a company that has dealt with this influence, and conduct some research on the company's experience. Be prepared to present a summary of the company's experience in class.**

A sample answer: There have been many compensation issues in collective bargaining, such as the steady decline in wages after the 1980s. Delta Air Line pilots went on strike to try and increase their wages, but ended up agreeing to substantial cuts in base pay as well as in future retirement income in order to help the company avoid dissolution. This sort of agreement is called concessionary bargaining, for the company spent more heavily on job security than large pay increases. The main reason why the pilots agreed to these terms was because they did not want to lose their jobs.

- 5. Some people argue that there is too much government intervention, whereas others say there is not enough. Based on the presentation of laws in this chapter, do you think there is too little or too much government intervention? Explain your answer.**

One could argue that the government doesn't do enough to intervene based on the fact that although many laws, acts, and decrees protect employees and employers alike, it is difficult to focus attention on some matters. Increases in wages, for example, may be something that the government ought to look into more closely and with more severity. Wages are a great source of struggle and anguish for many people. If the government increases wages in line with living costs, then all would be well, but this is not always the case. However, one could also argue that the government gets involved in such issues too readily, and that sometimes it's best for the employees and employers to work out their differences on their own.

VII. End of Chapter Case; Instructor Notes and Suggested Student Responses

Case Name: Exempt or Nonexempt?

Questions:

- (1) Why did Amy classify the shift leaders as exempt? Are there any advantages to Jones Department Store to having the shift leaders classified as exempt?
- (2) Do you think that the shift leaders are properly classified as exempt? Why or why not?
- (3) What are some factors that Amy should consider when determining if shift leaders are exempt or nonexempt?

Instructor Notes

The Fair Labor Standards Act (FLSA) addresses the issues of minimum wage, overtime pay and child labor. The FLSA requires employers to properly classify employees as Non-exempt (covered by the Act) or Exempt (not covered by the Act). Many companies want to classify workers as Exempt to avoid the requirement to pay overtime. While the company has the responsibility to properly classify employees, the decision needs to be made based on the responsibilities of the job. The Department of Labor (DOL) has interpreted Exemptions from the Fair Labor Standards Act (FLSA) narrowly. Students can find more details on the exemptions on the DOL's website at <http://www.dol.gov>. Many companies wrongly assume that all supervisors or managers in an organization are

Exempt from the FLSA. *Aaron v. City of Wichita* provides some guidance on classifying supervisors:

- Relative importance of management as opposed to other duties
- Frequency with which they exercised discretionary powers
- Relative freedom from supervision
- Relationship between their salaries and wages paid to other employees offer similar nonexempt workers.

In examining all of these factors, it is clear that Jane Swift and the other Shift Leaders should be classified as Non-exempt.

Student Responses

1. Why did Amy classify the Shift Leaders are Exempt? Are there any advantages to Jones Department Store to having the Shift Leaders classified as Exempt?

Amy most likely assumed that the Shift Leaders met the Executive exemption under the FLSA. Classifying the Shift Leaders as Exempt was advantageous to the store management, as they did not have to pay the Shift Leaders overtime pay. Further, management saved some extra administrative work because they did not need to track the hours of the Shift Leaders.

2. Do you think that the Shift Leaders are properly classified as Exempt? Why or why not?

Most likely the Shift Leaders should be Non-exempt. Under the guidance set forth by *Aaron v. City of Wichita*, the Shift Managers do not meet the criteria to be classified as Exempt.

3. What are some factors that Amy should consider when determining if Shift

Leaders are Exempt or Non-exempt?

Amy should consider the fact that the Shift leaders spend a majority of their time working as Associates and their pay rate is closer to the Associates than the Assistant Managers. While they are involved in employment related decisions, their decision-making ability is limited.

VIII Additional Case from the Student Companion Website; Instructor Notes and Suggested Student Responses.

Case Name: Preparing for Growth at Waxman Candles

Questions:

1. What are some competitive forces that human resource management consultant will consider in conducting a strategic analysis to determine compensation practices?
2. How will being in the growth stage impact the company's compensation practices?

Instructor Notes

In determining a company's compensation strategy, a company must analyze both external and internal factors that may impact the strategy. Such an analysis can help support a company's compensation tactics and ensure effective practices are in place to attract and retain the right talent. This is especially important for companies that are in the growth stage as they can ensure that compensation decisions are made deliberately and the company is positioned well for future growth.

Student Responses

1. What are some competitive forces that human resource management consultant will consider in conducting a strategic analysis to determine compensation practices?

The consultant should examine the external market environment. In searching for some experienced staff, such as marketing professionals, it is important to understand how to position the company to compete for talent. The consultant should also make an assessment of the labor market. As many of the positions require little skill, understanding the available labor pool and typical earnings ranges will help determine the compensation strategy. Internally, the consultant should examine the necessary capabilities for the different functional areas. For example, because the customization of the product is what differentiates the product from competitors, the customer service function is crucial to business success. Further, the financial condition of the company will help set the parameters of the compensation strategy.

2. How will being in the growth stage impact the company's compensation practices?

Even though the company appears to be financial stable, as a company in the growth stage they must still be aware of cash flow concerns as they determine compensation tactics. Further, they will likely limit discretionary benefits as they have a high cost. The company may choose to emphasize incentive pay, which ties pay to the company's profitability as they grow.