October 2015 Compensation Connections

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And The Answer Is...

We are again at that time of year that many employers look at what has been and is predicted to happen to wages so that they can put salary budget recommendations together.

So – it's 3% again for the US in 2016. Drama over. Even if your sources average out a tenth of a percent plus or minus that, you'll be close enough to maintain your strategy using 3%.

But beyond the headlines, consider a couple of other questions:

1. Does 3% allow you to maintain or enable a change to your human capital strategy such that you can ensure your top performers and crucial talent are being paid as intended?
2. Does 3% consider what you'd need to fund promotions for your entry and intermediate level employees, typically promoted with more frequency than the rest of the workforce?
3. Does 3% take into account employees in other countries where not only are the market forces different but currency differences could cost you more than 3%?

If you are concerned about these questions, read on.

There still isn't significant economic pressure on wages to drive increases much beyond what we've seen for the last several years. Yet this can still become a test of wills between finance and HR on what percentage of payroll that will go into the budget. Consider though what should really be the concern, that being the total cost of payroll.

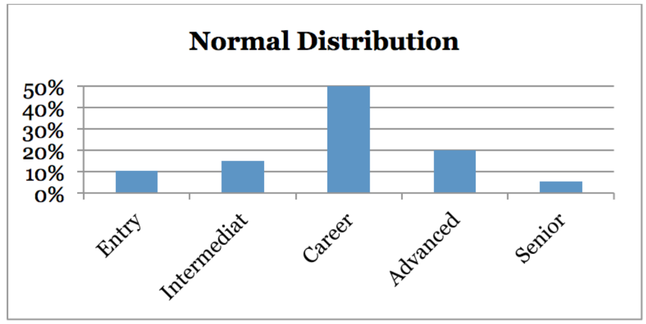
Mgr - WACOM

Sr Compensation Mgr - Adidas Group

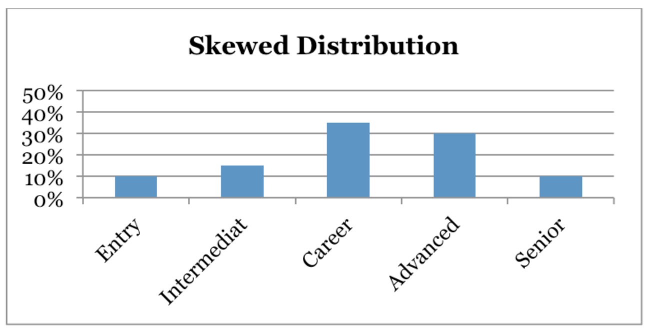
Jim Harvey is Founder and Principal Consultant for Columbia Compensation Consulting LLC. His 30+ years' experience encompasses high-tech, aerospace, utility and health care industries, specializing in leading companies in the formulation and execution of their rewards strategies in support of business objectives. His global work experience and collaborative reputation includes translating business needs and ideas into tangible and measurable deliverables, and a hands-on results-oriented attitude with a strong track record of driving large-scale projects through to delivery and implementation.

At Columbia Compensation Consulting, you are working with someone with over 30 years of expertise in executive, equity, incentive, sales and base

For example, if your total salary budget was $10M, at 3% you'd be budgeting $300,000. Having a better (and more strategic) understanding of what makes up the mix of the $10M can open up doors to what is actually affordable to put into a salary adjustment budget. Have you considered the mix of levels of employees doing the work? For example, a normal distribution of job levels making up that $10M payroll across a function like engineering might look like this:



If your distribution was to be skewed to more employees occupying the higher levels of a job family, it might instead look like the graphic below, and assuming the same number of employees, the payroll cost of this distribution would be more than in the prior example.



Making strategic decisions about how your labor dollars are spent **on an ongoing basis** takes the discussion of whether you have $300,000 (3%) to spend or you get 3.5% or something else that better fits your human capital strategies. And this sort of problem can be compounded if you are "behind market" at the higher career levels, because now not only do you have fewer low-cost resources employed, you could underpaying those in the higher levels.

So, think about if the answer to the question is "3%" or if the right question is being asked in the first place!

compensation. My consultative style includes a D-T-S approach to working with clients: D for Do, since most clients have already identified the need and are looking for specific deliverables; T for Teach, where those opportunities present themselves and transferring knowledge to the client can enable self-sufficiency in the future, and S for Support either through ongoing retainer support or coaching of those then delivering. For more information please visit **www.columbiacomp.com**.

This is the first of a two-part series on recent changes being made by the US Department of Labor (DOL) that change how employers should be thinking about their employees and pay. It is not legal advice.

Independent Contractors

As an entrepreneur and principal consultant for my firm, I operate in every sense of how most of us would perceive the term, "Independent Contractor." I am an employee of my own company, not of the companies that hire my company for compensation consultation.

Although most companies probably are not stepping over the line on how they classify their workforce, the DOL has decided that in keeping with other decisions to give America a raise, one way to force that to happen is to narrow the definition of independent contractor. This goes beyond the original guidance given several years ago of the list of 20 questions that would determine that status. Instead of the focus being the work, the shift is now to something called "economic realities" which essentially opens up the determination to a more subjective list of six factors:

- The extent to which the work performed is an integral part of the employer's business.
- The worker's opportunity for profit or loss depending on his or managerial skill.
- The extent of the relative investments of the employer and the worker.
- Whether the work performed requires special skills and initiative.
- The permanency of the relationship.
- The degree of control exercised or retained by the employer.

"In undertaking this analysis, each factor is examined and analyzed in relation to one another, and no single factor is determinative," the DOL noted. "The 'control' factor, for example, should not be given undue weight."

Continuing the increased move to subjectiveness, the DOL stated, “The factors should not be applied as a checklist, but rather the outcome must be determined by a qualitative rather than a quantitative analysis.”

The above seems to be bureaucratic-speak for “We’ll tell you what’s most important in our determination after we’ve decided how to apply it to you and your case.” It seems to be the picture attached to the Wikipedia definition of Slippery Slope! And in a recent advisory opinion in Oregon, Labor Commissioner Brad Avakian pre-informed ride-sharing company Uber that their drivers are employees because they work for the company’s benefit and are economically dependent on the company.

Adding to this are legislative proposals sponsored by organized labor to establish the crime of “misclassification of employee.” How about that, I guess it may be time to check your Liabilities and Omissions coverage before going to work now!

What to Do

In many companies, the basic 20-question test of independent contractor status might have been owned by human resources, but not necessarily administered and managed that way. It seems that may be the next threat that HR has to manage though -- understand the law, know which contractors have been engaged and monitor compliance. Maintaining basic records on the independent contractor determination process, and the facts used to make that determination. Entering into independent contractor agreements or hiring a business entity (rather than a person) does not necessarily protect you from liability under the Fair Labor Standards Act. A job-analysis review of the type and scope of work being performed might be necessary before beginning the relationship of any non-employee.

Some simple changes to consider include:

- Avoid giving contractors rights or access that would push against contractor determination. For example, contractors should not have internal e-mail accounts, should not be given server access and should not be invited to employee functions.
- Periodically audit existing contractors to make sure they have not inadvertently slipped from contractors to employees. If an otherwise-valid contractor arrangement becomes economically dependent on the work, then the relationship may convert to an employee entitled to overtime.

Coming Part II: Proposed Overtime Rule Changes