An Affirmity White Paper

Cultivating Fair Pay in the Workplace
Your Guide to Global Pay Equity
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Introduction

When discussing the world of work, it's difficult to come up with a phrase as loaded with meaning and implications as “fair pay”. The idea that fair pay should exist, in at least some form, has swept around the globe. Almost every country has laws and regulations stipulating the need for, and enforcement of, fair pay standards.

While usually related to gender pay differences, internationally we see laws also dealing with other identifiers. The list includes:

- Race
- Ethnicity
- Religion
- Age
- Sexual orientation
- Gender identity
- Citizenship status
- Geography
- Disability
- Veteran status
- Job category

As issues of pay fairness became more widely acknowledged by countries and their individual administrations, laws were developed to address them. They were often developed as a reflection of a society’s ideals. Whatever the catalyst, fair pay tends to be a charged issue.

When you look at statistics describing pay differences, and the reasons for them, it's easy to see why so much attention and energy is put into correcting unfair pay situations. For example, if we consider gender differences, the estimated gap between the average hourly wages of men and women is typically quite high:
The graph above highlights pay gap information from the International Labor Organization Department of Statistics (ILOSTAT) for a selection of countries. The difference is pronounced and may be as large as 33% in some cases. Accounts of the difference can vary significantly, however. In the United States, the Department of Labor estimates that on average women make .68 cents on the dollar compared to men. The Census Bureau estimates that number to be about .81 (using medians).

Within this larger-scale picture are a number of factors where gender-related pay differences are in effect to varying degrees, such as:

- Starting pay
- Pay raises
- Promotion rates and resulting pay increases
- Bonuses
- Hire rates in various economic sectors, and for various position levels
- Tenure differences that occur because of gender-related life choices, and work-life interruptions.

In turn, each of these factors can be traced to one or more gender-related psychological or social issues, which are explored in the sections to follow.

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What Is Fair Pay?

One of the complications when dealing with fair pay issues is that the meaning of fair pay is not universally established. We have a number of concepts that all speak to fair pay in different ways, and are more or less relevant to different societies. Some of the more important concepts are pay gaps, equal pay, pay equity, equal pay for work of comparable worth, and/or equal pay for work of equal value.

Note that some of these exact terms are used differently in different countries. Our definitions here take a US-centric approach.

Defining Different Types of Pay Gaps

Pay gaps describe overall differences in pay between classes of people within a grouping, such as a country, sector, or organization. The differences are typically described in terms of differences in average or median pay, but may also be described by other means such as percentile rank differences.

For example, in the previous chapter, we cited an OFCCP statistic—that women make on average 68 cents on the dollar compared to men. This is an example of a pay gap statistic using averages.

One of the reasons pay gaps are interesting is because they come in two forms: uncorrected and corrected. Uncorrected pay gaps are almost always larger because they aren't taking into account things that may explain the pay gap. Corrected pay gaps are almost always smaller because they represent the gap in pay after various explanatory factors have been accounted for and fed into a statistical model (usually some type of regression).

Explanatory factors may include:

- Economic sector
- Job level
- Experience level
- Company
- Job title or classification
- Tenure

The idea for a corrected pay gap is that you are looking at the equivalent of the aggregation of differences in average pay between classes of people (such as males vs. females), who have the same characteristics (i.e. “explanatory factors”) in common.

So for example, you would look at the differences in average pay between classes who are in the same sector, the same job type, and have the same range of experience for each combination of sector, job type, and experience range. Then take an average or weighted average of those differences to get a controlled pay gap for the larger group.

A recent Glassdoor report looked at corrected and uncorrected overall pay gaps in several countries2,3.

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As can be seen in the table above, the addition of ‘corrected’ controls can dramatically close the visible pay gap. However, both ‘corrected’ and ‘uncorrected’ pay gaps implicitly make different assumptions about what is fair, and should be treated with a certain degree of caution as a consequence:

- Attaching meaning to an uncorrected pay gap implies that all factors that create that gap are contributing to an unfair difference in pay. If we say the gap is unfair and most of the gap is caused by differences in sector participation between men and women, then we are effectively saying that the difference in sector participation has some unfair quality to it.
- Attaching meaning to a corrected pay gap implies that the gap is only unfair in situations where classes of people with similar characteristics still have differences in pay.

These differences in interpretations between pay gap types illustrate the reason for different ethical and regulatory approaches to fair pay, and lead us into the other important fair pay concepts mentioned earlier.

\* When looking at fair pay concepts for compliance reasons, it is important to remember that different policies may have regulations that specify different legitimate or non-legitimate reasons for pay differences.
**Pay Equity Versus Pay Equality**

Pay equity means providing equal compensation for employees who are similar in terms of job duties and important characteristics such as experience, tenure, location, and job performance.

Pay equity is in line with looking at controlled pay gaps. In the United States, fairness in pay is usually considered through the pay equity lens, and is captured in the Equal Pay Act. However, government contractors must abide by regulations that indirectly address pay equality through various affirmative action programs.

Pay equality is a broader concept than pay equity and refers not just to equal pay for people in similar situations, but also to the equality of opportunity, motivating factors, and acceptance that lead to the proportional holding of positions across the pay spectrum.

Pay equality is in line with looking at uncontrolled pay gaps and is more relevant in countries outside of the US. For example:

- France has laws that may hold companies accountable for gender differences in promotion rates and top earner representation, as well as for gender differences in pay and pay increases.
- The UK requires larger companies to disclose uncontrolled pay gaps between all male and female employees, along with the percentage of women in each pay quartile.

**Other Equal Pay Terminology**

The terms “equal pay for work of equal value” and “equal pay for work of comparable worth” are used to illustrate the principle that pay should be based on factors related to the value work brings rather than the exact nature of the work itself. These factors could be working conditions, responsibility levels, preparation requirements, skill level, and required effort. To the extent that work of the same value level is compensated differently, then this principle is violated.

For example, a female-dominated job such as an administrative assistant may, after evaluation, be determined to have the same value to an organization as a higher paying male-dominated job such as truck driver. In such a case, the pay of the administrative assistant positions would need to be increased to adhere to the principle.

This type of fair pay concept is captured in various laws around the globe, and may protect only women, men and women, or various other types of classes, based on groupings such as race or ethnicity:

- In Canada, both Quebec and Ontario have laws (pay equity acts) requiring companies to determine which job classes are associated with either males or females. These must then be evaluated in terms of value, and then pay must be adjusted for female job classes that are underpaid compared to male job classes with similar values.
- The UK’s Equality Act of 2010 also describes the requirement for equal pay between men and women for work that is rated as equivalent in value, even if the nature of the work is quite different.
- In the US, various state laws are in effect that also require equal pay for comparable work. For example, the Massachusetts Equal Pay Act and Oregon’s Pay Equity Law define comparable work/work of comparable character. This is in a similar fashion to the Canadian and British laws which use skill, effort, responsibility, and working conditions to establish similarity.
3 The Mechanisms of Unfair Pay

For many groups, the story of unfair pay begins during the hiring process. In countries like the United States, candidates can positively shape their starting pay via negotiation. Studies have shown that women negotiate less. In the past, it was thought that this was primarily because women were less willing to negotiate when given the chance. However, contemporary research suggests that women are less likely to be given that chance in the first place, and are even penalized for attempting to negotiate.9

Furthermore, starting pay is also affected by previous pay—considering that this tends to be less for women, there is a cumulative negative effect on pay in the long term. A recent ruling by the 9th Circuit Court of Appeals7 captured this specific issue. The defendant (the Fresno County Office of Education) attempted to argue that prior pay was a “factor other than sex” when determining starting pay. The court found in favor of the plaintiff, and ruled that past earnings cannot justify pay disparities between women and men.

How ‘Aggression’ Myths Undermine Women and People of Color

Starting pay is also affected by a whole cocktail of psychological biases that typically (though not solely) undermine the perception of the worth of women and people of color to an organization. In the long term, these biases likewise affect performance metrics, promotion chances, promotion pay increases, pay raises, and bonus distributions.

A 2018 Harvard research study found that women who asked for a raise obtained it 15% of the time. By contrast, men were found to have a 20% success rate. Similarly, a McKinsey & Company study found that women who negotiate for pay and promotions are disproportionately penalized for doing so. This group of women was 30% more likely than men who also negotiated for pay to receive feedback indicating they are ‘intimidating’, ‘aggressive’, or ‘bossy’. They were 67% more likely to receive such feedback when compared with women who don’t negotiate.

Findings in a study in the Journal of Applied Psychology echo these statistics when considering African Americans negotiating for salary increases. The study found that this group is (falsely) perceived as negotiating more frequently than whites. They were more harshly penalized for negotiating too: for every offer or counteroffer an African American employee made, they received $300 less in salary when compared to their white colleagues.

Consider also, that these differences are played out multiple times over the course of these employees' professional lives. Over a whole career, small gaps accumulate and widen into chasms.

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Why Don’t Women Get to Be Leaders?

In many countries, women are less likely to be viewed as leaders or as having leadership qualities. Again, there are multiple biases at work here, which stem from things such as:

- The association between leadership and stereotypically masculine qualities
- The lack of prominent models for what female leadership looks like
- Traditions that cast women in non-leadership roles

These biases decrease the likelihood that women will become prominent in their field, promoted in their organization, or chosen for higher-level positions within an organization. Given that women make up a bit more than 50% of most populations, the disparity with which women are actually represented in leadership roles can be quite striking.

In the chart above, using data from the United Nations Statistics Division\textsuperscript{10}, we can see the percentage of women in senior and middle management positions for selected countries. The lack of women in these positions in the countries of Europe is particularly striking—as low as 22% in Italy.

The issue is even more pronounced at the very top, as shown by this second graph revealing the percentage of female CEOs or top-level managers by major region\(^\text{11}\). Worldwide, only around 18.5% of top-flight executives are women—and in the available data, only in the East Asia & Pacific region does this percentage rise significantly above the worldwide trend.

In the United Kingdom, we have already seen that around one-third of senior and middle management positions are filled by women. As a counterpoint, the chart above\(^\text{12}\) shows the percentage of women within the UK’s top income groups: as we get closer to the highest 0.1% of earners, the proportion of women in those groups decreases steadily. This suggests that even where women have access to higher positions, they don’t have access to the same levels of compensation.

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\begin{array}{|c|c|}
\hline
\text{Share of women in top 10\%} & 28.3 \\
\text{Share of women in top 5\%} & 25.1 \\
\text{Share of women in top 1\%} & 18.9 \\
\text{Share of women in top 0.5\%} & 17.1 \\
\text{Share of women in top 0.25\%} & 15.3 \\
\text{Share of women in top 0.1\%} & 12.7 \\
\hline
\end{array}
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Source: Atkinson, Casarico and Voitchovsky (2018)
Note: The income concept in general does not include capital gains, but the degree to which this holds varies between countries.

The Gendered Profession Pipeline

In many countries, women are also steered away from many higher-paying fields. Sometimes male-dominated fields can become actively hostile to women through a mix of cultural norms and in-group practices: unsociable hours and excessive overtime requirements may be incompatible with childcare responsibilities, for example. Or industries may have a ‘boy’s club’ mentality rife with outright sexism, or a tendency to close ranks whenever negative behavior is called out\(^\text{13}\).

Often, the process is less overt and shaped over many years by society at large. Young girls and women get certain messages from advertisements, pictures, cultural depictions, and role models. The signals imply that they are better suited to certain professions, while their presence in others would be at best a notable exception.

Typically the fields that women are steered away from are those that are higher-paid, and the fields that come to be dominated by women tend to become undervalued over time. Once gender becomes a predominant factor for a field, the education level, effort, conditions, and level of responsibility required by available positions tend to correlate poorly with the degree to which that work is valued and compensated by society.

In fact, several examinations of this effect have demonstrated that pay levels associated with formerly male-dominated roles start to drop when women begin to dominate them.\(^\text{14}\)

We can again look at ILOSTAT's data\(^\text{15}\) for a variety of countries showing the percentage of low pay earners who are women, and see that even in countries with an egalitarian ethos and strong fair pay laws, women make up the majority of this group.


Family Business? None of Our Business

Women sometimes have children. This is perhaps central to the web of reasons that women are lower paid. Why the further continuation of the human race is quite so under-appreciated by the majority of societies is beyond the scope of this document. Suffice it to say, the immediate reason the ability to have children negatively affects pay is that many companies and the people in them have been, and to some degree still are, resistant to taking on part of the burden associated with child-rearing.

For a large part of their working lives, women will be considered a more risky hiring proposition because they are perceived as being more likely to:

• Require maternity leave
• Request flexible hours
• Go through periods of lowered availability
• Cause the business to incur additional insurance coverage costs
• Leave for family reasons

Additionally, women do not seem to get credit for the non-professional experience they gain when they do decide to stay out of the workplace in order to raise their children. This time is often viewed as entirely devoid of work experience worthy of compensation. Considering that the process of returning to work is itself a challenge that requires skill to navigate (especially in the United States), this perspective can add insult to financial injury.

Reasons for pay differences between other groups of people are similarly complicated, and overcoming these causes of pay inequality is daunting. Yet, for most people and for most societies, the principles they follow make both the pay inequalities and the reasons for such pay inequalities unacceptable. This is why fair pay matters in the larger sense, but it also matters for a number of very practical reasons.
Why Should Organizations Care About Fair Pay?

The push for various forms of fair pay is intensifying around the world. Companies seen as having unfair pay practices are increasingly likely to suffer in the form of:

- Regulatory intervention and oversight
- Poorer talent choice
- Higher turnover
- Negative reputations

Workers are increasingly sensitive to fair pay issues. Often those with the greatest talent, particularly when they are workers in historically underpaid groups, will go where companies are known to pay fairly. This creates both competitive advantages for fair paying companies and competitive disadvantages for companies with lesser reputations.

PR, Compliance, and Trust

HR leaders, shareholders, and CEOs are increasingly recognizing the impact these factors are having on their ability to remain competitive. We see organizations not only taking pay equity measures but ensuring that those measures are part of PR messaging. Intel, for example, has recently made public announcements of its efforts on gender pay equity and Starbucks has increasingly become an advocate of gender pay gap closures.

In a study conducted by Korn Ferry, it was found that 60% of companies are actively addressing pay equity issues. Most others (33%) have pay equity management on their radar, though they have not yet taken action. The same study also found that multinational organizations typically address pay equity across all of the countries in which they operate.

Further, this study found that the two primary reasons for engaging in pay equity management are legal compliance and building or maintaining a culture of trust. Trust is after all, especially important to the C-Suite, as 41% of C-Suite respondents stated this as their primary reason for pursuing pay equity.

The Cooling Effect of Unfair Pay

Companies with a reputation for unfair pay practices will find that that reputation can also undermine any other initiative that requires the cooperation and goodwill of its employees. People simply will not put forth the same amount of effort, enthusiasm, and support for the things an employer would like to do when they believe they are being underpaid compared to others who are doing the same things, and have the same qualifications.

This is not yet a problem for all businesses: it requires employees to know what their colleagues are paid. However pay laws are increasingly targeting the idea of pay transparency. In the United States for example, federal contractors cannot retaliate against employees for discussing their own pay or the pay of others (EO 11246). And, in several states similar laws offer comparable protections for all employees.

Then there’s the Lilly Ledbetter Fair Pay Act of 2009, which treats each paycheck that contains discriminatory compensation as a separate violation and is retroactive in terms of liability for up to two years. In 2019, the EEOC resolved 1,310 charges under the Equal Pay Act, and arguably, this is just the beginning. In combination, these laws will likely result in greatly increased activity around equal pay related litigation in companies with unfair pay practices.

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20 Map available here.
Around the world, even stronger pay transparency laws are becoming the trend:

- In Norway, tax records are publicly available. This has resulted in newspapers and apps grabbing this information and making it easily available to everyone. Employees are now able to make pay comparisons between themselves and specific colleagues.

- In Germany, the Wage Transparency Act allows employees to obtain information about the remuneration of the opposite sex for comparable jobs. This information includes pay averages of at least six comparable co-workers, and the criteria and procedures used to set pay.

- In Ontario, Canada, the Pay Transparency Act will require employers with 100 employees or more to track and publish compensation gaps that are based on gender.

According to a 2018 Willis Towers Watson survey\(^{21}\), 67% of employers reported that they have made, or planned to make, their pay decisions more transparent within the next three years. This measure would be taken along with revising annual incentives, boosting base pay, increasing the use of technology in making pay decisions and implementing recognition programs. This will undoubtedly help reduce pay gaps over time, as research is showing that better availability of salary information and ranges is likely to help close pay gaps\(^{22,23}\).

### Diversity Pays

Studies also show that greater diversity in higher level/paid positions is associated with better company performance. A study by the Peterson Institute\(^{24}\) of 22,000 firms globally found that profitability increases an estimated 15% for firms with at least 30% women in the C-suite (as compared to firms with none). Similarly, a study from McKinsey & Company\(^{25}\) supports this by finding:

1. Top quartile companies on executive team gender diversity were 21% more likely to have above average profitability than companies in the bottom quartile. They were also 27% more likely to have industry-leading performance on long-term value creation.

2. Top quartile companies on executive team ethnic/cultural diversity were 33% more likely to have above average profitability than companies in the bottom quartile.

3. Higher profits are 43% more likely for companies with the greatest ethnic/cultural diversity on their boards.

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The Non-Compliance Costs of Unfair Pay

Finally, unfair or discriminatory pay practices can hurt financially. Over the past three years the OFCCP has collected $81 million in monetary relief\(^\text{26}\) for various forms of discrimination and adverse impact, with about half of that amount collected in 2019 alone. A significant portion of this was for pay discrimination, for which cases have tripled from 2015 to 2019 (and gone up by 83% from 2018 to 2019).

The OFCCP collected a record $40 million in class settlements during 2019\(^\text{27}\). This included:

- Goldman Sachs agreeing to pay 10 million due to alleged gender- and race-based pay discrimination\(^\text{28}\)
- Dell agreeing to pay 7 million due to alleged gender- and race-based pay discrimination\(^\text{29}\)
- Intel agreeing to pay 5 million due to alleged gender- and race-based pay discrimination\(^\text{30}\)

Similar action is expected to continue for the foreseeable future. Already this year, Cisco Systems has agreed to pay 2 million due to alleged gender- and race-based pay discrimination, and make 2.75 million in pay equity adjustments\(^\text{31}\).

Global Variation

Globally, most governments are concerned with gender pay issues (which may include issues related to sexual orientation and gender identity). A fair number are concerned with race, religion, and ethnicity pay issues as well as issues related to disability, and a few are concerned with more uncommon issues such as protecting veterans, protecting locals, protecting temporary, part-time, and contingent workers, and protecting people based on geographic location.

Several countries, such as France, have laws preventing discrimination against anyone who is similarly situated to others within a job category. So, if two people in the same job are identical in almost every way, and one makes less than the other, then this would be considered a form of discrimination, even if they are identical on categories such as gender, race, religion, etc. In effect, a job class or category in such cases is a protected class.

So, fair pay is not a clear black and white concept, and people will disagree about what it means. Additionally, laws and regulations for different states will take different approaches to establishing fair pay and will aim these approaches at different classes of people. As a result, what constitutes fair pay in a practical sense will need to be defined for each organization.

However, the general consensus seems to be that there is something wrong with uncorrected pay gaps between significant groups of people. The question then becomes: what does paying fairly look like for different organizations? And how much can organizations contribute to fair pay in the larger societal sense?

Five Steps for Organizations Who Want to Contribute to Fair Pay

Step 1: Define What Fair Pay Means to Your Organization

The first step to paying fairly is to figure out what that means for an organization and what its standards need to be. How does fair pay relate to the ethics, ethos, and mission of the organization? And, what does fair pay mean in terms of the various legal responsibilities an organization is subject to in different parts of the world?

Depending on the size and geographic presence of an organization, this task may be simple, or it may need to involve several high ranking executives along with a variety of HR professionals and legal counselors who are familiar with different societal and legal landscapes.

Step 2: Perform Analyses That Show Where You Come up Short

The second step is to see where the organization may be falling short of the created standards. This can be done through a variety of statistical analyses and work analyses, including:

- Overall pay gap analyses
- Corrected pay gap analyses
- Pay equity analyses looking within specific job classes
- Pay equity analyses between comparable job classes
- Various job valuations systems
- Various workforce analytics

Note that as part of this process, an organization will be creating a great deal of information that could be used against it. It is recommended that these analyses be done under privilege where possible, and that the organization become familiar with safe harbor provisions with respect to compensation analyses in the various regions it operates. Safe harbor laws provide various forms of legal protection in response to some action taken, such as a compensation analysis.

Step 3: Account for Explanatory Factors

The third step is to figure out if potential fair pay issues are explainable in a way that does not violate the created standards for pay fairness. This may involve a great deal of investigation, and for larger companies that see a lot of potential issues, should involve a commensurate outlay of resources.

This is one of the reasons high-ranking people should be involved with this process from the beginning. Where differences in pay between classes of people cannot be explained by reasonable and acceptable causes, the organization should investigate the causes of unacceptable pay differences. This will allow such causes to be strategically addressed.
Step 4: Design and Implement Your Corrective Programs

The fourth step is to create programs designed to overcome the various causes of unacceptable pay differences. These programs can take a variety of forms:

• Simple pay increases for people determined to be underpaid due to unknown factors.

• Recruitment campaigns designed to attract underrepresented classes to specific positions or levels within the organization.

• Changes to policies and procedures that allow for more needed flexibility and acceptance of class-based requirements.

• Mentorship programs designed to facilitate leadership qualities and skills in a greater diversity of people.

• The establishment of diversity and inclusion programs, and purposeful consideration of people in more than one category (males and females for example) when granting promotions.

While an almost infinite number of things can be done to address fair pay issues in an organization, it’s important to consider local anti-discrimination and compensation laws when creating these programs.

For example, in the United States, it’s illegal to make any employment decision based on gender status, and discrimination against both females and males can be litigated. This would make a program that explicitly favors females for promotion unlawful. Similarly, many countries have provisions in their fair pay laws that prevent companies from lowering the pay of employees as a means of eliminating pay differences between classes.

Step 5: Validate & Reiterate

The fifth step is to validate the programs designed to increase fair pay by running analytics from Step 2 on some recurring schedule, usually once a year. If no or very small positive effects are occurring, then it may be prudent to re-examine both the assumed cause of the fair pay issues, and the efficacy of the programs designed to address the issue, and make adjustments. In this way, resources can be continually directed to greatest effect.
A Concluding Note on Establishing Fair Pay

Organizations can make substantial contributions to fair pay in societies where they operate by adjusting how they operate and interact with people. However, some issues will be out of any organization’s immediate span of control.

For example, an organization that primarily employs engineers (who are its highest-paid employees) will have a very hard time closing its uncorrected pay gap between men and women if they operate in a society that produces very few female engineers. To close this gap, the organization would need to employ a highly unrepresentative number of female engineers, which is difficult to do, would likely not help the societal pay gap in the short term, and would, in some polities, bring accusations of discrimination against men.

However, the organization can do things that will help solve this pay gap issue in the long term by projecting the need for female engineers. It can set about creating model organizational climates that engender women to become engineers. It could also join with other companies that are trying to solve the same issue, create groups dedicated to the issue, and otherwise do things to make a male-dominated occupation attractive to women.

Similarly, when addressing unfair pay situations affecting other classes of people, organizations are both limited in what they can do in the immediate term and highly influential in establishing what can be done in the long term. While fair pay issues are complex and can involve equally complex and difficult solutions, the research done on this topic indicates that the benefits of achieving fair pay are many and go to everyone. The resulting enhancement of diversity seems to make businesses function better, people who are paid equitably are more likely to be motivated, and to place greater trust in their organization, and a given society is seen as more just.
About Affirmity

Affirmity provides expert analysis, consulting, training, and software to optimize affirmative action and diversity and inclusion programs. Our team of experts delivers diversity metrics and data-driven insights to manage and mitigate risk. Drawing on more than 40 years of experience, we guide HR and compliance teams through diversity goal setting. Affirmity empowers leaders with tools and dashboards to measure progress, and we help clients capture and communicate the positive business impacts of diversity initiatives.

A part of Learning Technologies Group plc (LTG), Affirmity serves more than 1,100 organizations—including global corporations, mid-sized organizations, and small businesses.

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