

Candidate Compensation History Legislation

How organizations are preparing.



Introduction

A number of cities and states across the United States are at various stages of enacting legislation to restrict the use of job candidates' compensation history in making pay offers. The consequent imperative for employers goes beyond changing current practices, to concerns on the potential impact on labor costs and perceptions of fairness of incumbents.

The rationale underlying such legislation stems from the idea that basing compensation offers for new hires on previous pay packages could perpetuate inequities for individuals. While opinions on the legislation's efficacy are divided, the movement to address gender pay inequity has seen leading firms coming together to support efforts such as the White House Equal Pay Pledge and the Paradigm of Parity consortium. This is further corroborated by an adjacent study by the Korn Ferry Institute that analyzed the sentiments of 1,400 tweets related to the topic of equal pay and pending legislation. Tweets collected revealed a high proportion of positive sentiments across states affected by the legislation (e.g., California, New York, and Massachusetts) and a general anticipation of the passing of new regulations concerning pay equity.¹

To understand how organizations are responding to new legislation and tapping the opportunities therein, Korn Ferry conducted an in-depth survey of HR leaders across the country from July to August 2017 to uncover:

- The readiness of organizations in complying with the legislation;
- The concerns of organizations about the impact of legislation; and
- How companies are preparing for the legislation.

¹ The machine learning technique used for the Twitter analysis study is outlined in a later section.

Highlights of responses and findings

Surveyed organizations.

Responses from 108 companies were received from a broad range of industries and company sizes (Figure 1). Over a third of the companies (39%) have more than 5,000 employees, and 33% of the companies have significant operations abroad. Companies from the financial and the life science and healthcare industries form the largest groups (39%) of organizations; the rest are from other sectors. A considerable proportion (63%) of respondents were either CHROs or other C-suite executives.

Awareness of legislation.

Findings indicate that a large majority (81%) of respondents are aware of the legislation surrounding the pay history ban (Figure 2). A smaller but significant majority (65%) of respondents felt that their organizations are affected by the pending legislation, with a small but considerable proportion (11%) of respondents unsure if their organizations are affected (Figure 3).

Legislation and gender pay equity.

A majority (58%) of respondents indicated that they think gender pay equity is a minor issue or non-issue for their organization, with slightly above a quarter (26%) indicating that gender pay equity is an issue to a “moderate extent” (Figure 4). A majority (65%) of respondents felt that the proposed legislation will not, or only to a small extent, improve the gender pay equity situation in their organization (Figure 5).

Impact of legislation.

With regards to how positively or negatively they think the legislation will affect their organization in areas such as business effectiveness and business costs, results indicated that (Figure 6):

- On average, most respondents do not think there will be a positive or negative impact.
- On specific items, more respondents indicated that they think the legislation will positively impact business effectiveness, the appropriateness of a compensation offer for new employees, and employee engagement.
- However, a sizeable proportion indicated that they think business costs and pay equity between new hires and incumbents will be negatively impacted.

Compliance and response to the legislation.

Due to the regional implementation of a pay history ban legislation, participants were asked to indicate how they would comply with regulations if they have operations in various locations across the country. We found that while 11% were unsure and another 11% indicated that their operations were not affected, 46% noted that they will comply to the requirements of the most stringent location, while 32% indicated they will comply to each region as locally required (Figure 7). To understand how organizations will change the way they develop the appropriate offer for a new hire, we asked participants to allocate the weights they would place on five considerations when determining a pay offer. We found that (Figure 8):

- Market pricing (or salary range of the open role) is the consideration with the highest weight given, indicating this will be a major factor in deriving an appropriate offer for a new hire. An average weight of 36% was given to this factor.
- The next most important consideration (average weight of 26%) is the candidate's qualifications, skills, and experience relative to the open role.
- The market price of a candidate's current role and the candidate's compensation expectations were given smaller and approximately similar average weights at 13% and 16%, respectively.

Readiness for compliance and addressing pay equity issues.

While 31% of respondents indicated that they are not prepared for the legislation, 44% of respondents indicated that their organizations have at least “some preparations” for the pending legislation (Figure 9). About 5% of respondents indicated that it is already their current practice to not ask about a candidate’s pay history. In response to the question regarding “amount of resources, such as time, budget, and manpower” the organization will use in preparation for compliance to the legislation, results revealed that (Figure 10):

- Respondents expect more resources will be required for revising the management and talent management processes, the training of staff in pay equity management and the new legislation, and the addressing of unconscious bias in managers and recruiters.
- Promotion processes, information systems, and the use of legal counsel were areas the respondents will likely spend lesser resources.

Auxiliary findings.

With information collected, we investigated opinions between industry groups, organization size, and the relationships between these opinions. In this deeper dive, we found that:

- Organizations that are larger, with employees numbering more than 5,000, compared to those with smaller organizations, are more likely to indicate spending more resources on revising management and talent management processes to comply with the legislation and address pay equity issues.
- Non-profit and government-linked organizations, compared to financial and life science and healthcare companies, are more likely to spend incremental resources to address unconscious biases in processes and in managers.
- Life science and healthcare companies are also more likely to spend more resources obtaining assistance from legal counsel. This is significantly more so than that of financial or non-profit companies.

- Organizations that are more concerned about pay equity between incumbents and new hires will also more likely spend resources on legal counsel to comply with the legislation.
- Organizations that are more prepared also tended to hold the opinion that the legislation will have a less negative impact on the cost of doing business.

What should you do now?

Two issues underlie the implementation of the candidate pay history ban for organizations.

First, we acknowledge the legislation is designed to provide greater pay parity, yet 65% of organizations do not believe legislation will improve gender pay equity even to a moderate extent. It implies that organizations need to go beyond compliance with this legislation if they aspire to achieve greater pay parity and reap its benefits within their organizations. Many organizations feel that while closing pay equity gaps may be a good move forward in general, it will likely create pay equity issues with other company employees.

Given the pending legislation, organizations will be relying more heavily than ever before on market information and the candidate's job qualifications and experience. This underscores the importance of having relevant benchmark compensation data. To manage compensation costs, this data needs to be as reliable, relevant, and accurate as possible. A job measurement methodology that takes into account unique job designs and supplements traditional market benchmarking processes is strongly advised.

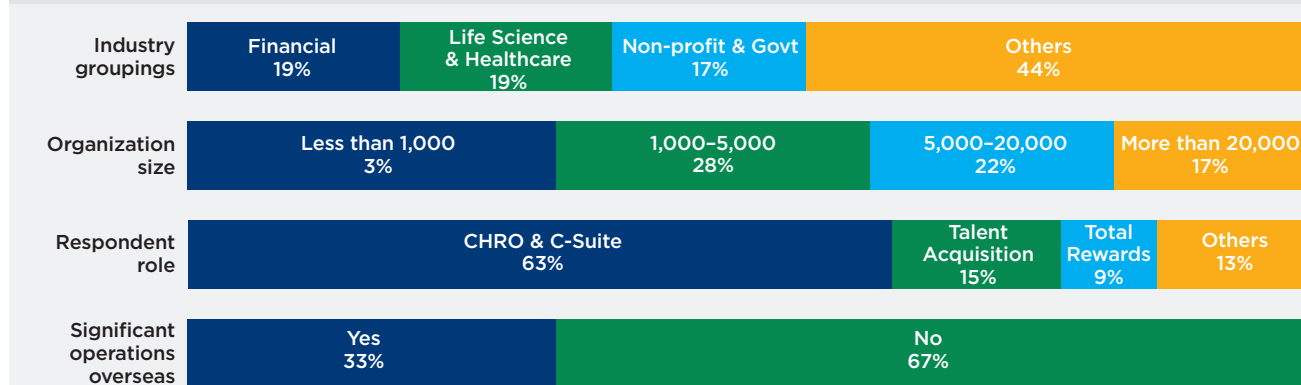
To mitigate equity issues between new hires and current employees, a more comprehensive approach to pay equity and potential remediation is necessary. A strategy and process firmly grounded on the rule of equal pay for equal work is the order of the day. And such effort needs to be communicated well to signal management's resolve to pay fairly.

Rx for addressing pay equity

Organizations that are serious about ensuring pay equity will do well to take a holistic approach to the issue and incorporate some key steps, which Korn Ferry highlighted in a recent report.² Specifically, the study outlined five prescriptive steps for organizations to adopt if they seek to improve gender pay equity in their management practices—namely:

- Charter a small team to identify and resolve pay equity issues.
- Understand perceptions of pay equity from stakeholders.
- Establish consistent gender-neutral processes, tools, and capabilities in job measurement and rewards management and governance.
- Conduct periodic pay equity studies, including:
 - Annual review of significant statistical differences in pay between genders
 - Periodic (e.g., three years) development of models to identify and resolve inequities
 - Multiyear adjustments for the most extreme cases
 - Incorporation of equity adjustments into periodic compensation processes, such as base salary increases, promotions, and variable pay treatment
 - Consideration of inclusive eligibility criteria (e.g., males or females) for equity adjustments
- Understand drivers of pay differences between gender, including:
 - Job staffing distribution differences
 - Performance rating distributions
 - Promotion frequency
 - Human capital governance processes and unconscious bias
- Provide transparent communications to employees on pay equity practices.

Figure 1.
Organization profiles



² Cameron, R., McMullen, T., Franek, L., Orr, E., Jamesley, K., Stark, M., Johnson, P., Tapia, A., Kantor, R., Wesselkamper, B., 2017. Pay equity: A cause worth pursuing. Korn Ferry: Los Angeles.

Questions

Awareness of legislation

Figure 2.

Were you aware that some locations (i.e., cities, states) in the U.S. may be implementing legislation to ban companies from inquiring about a job candidate's pay history?

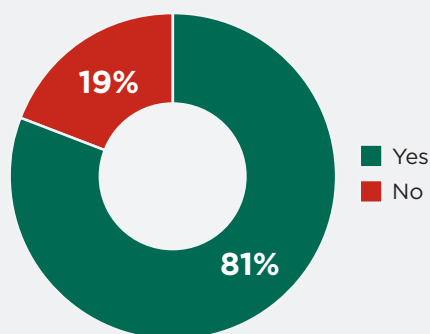
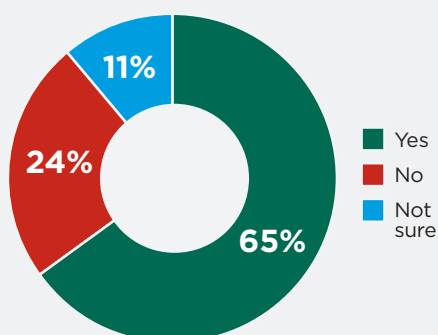


Figure 3.

Is your organization affected by the pending legislation?



Legislation and gender pay equity

Figure 4.

To what extent is gender pay equity an issue for your organization?

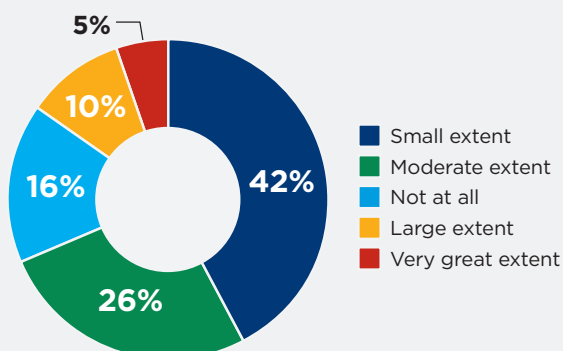
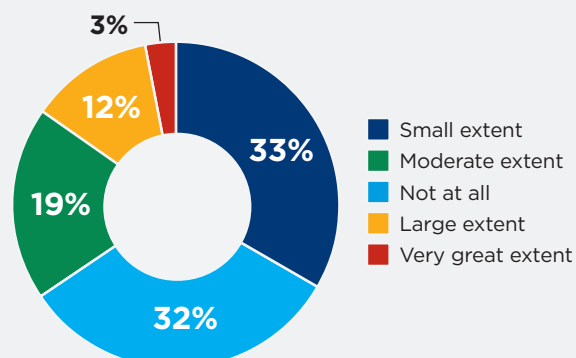


Figure 5.

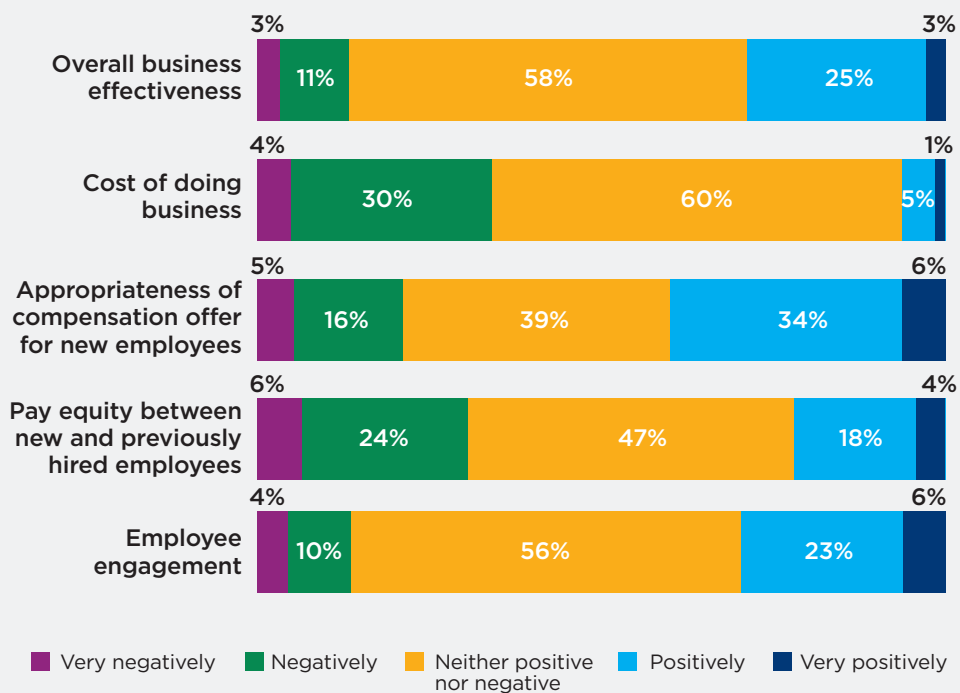
To what extent do you think the proposed legislation will improve pay equity in your organization?



Impact of legislation

Figure 6.

In the long-term, how positively or negatively do you think this legislation will affect your organization in each of the following areas?



Compliance and response to the legislation

Figure 7.

If your organization has operations in various locations (i.e., cities, states) that may be affected by this potential legislation, do you intend to:

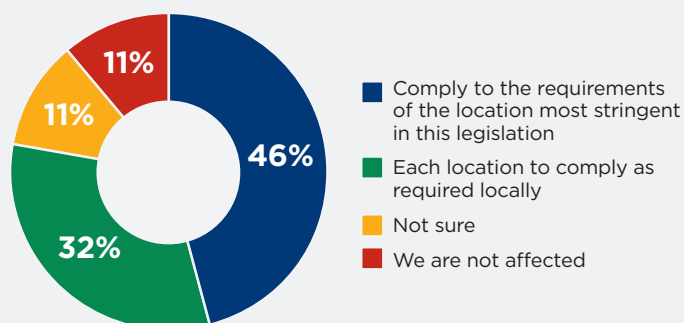
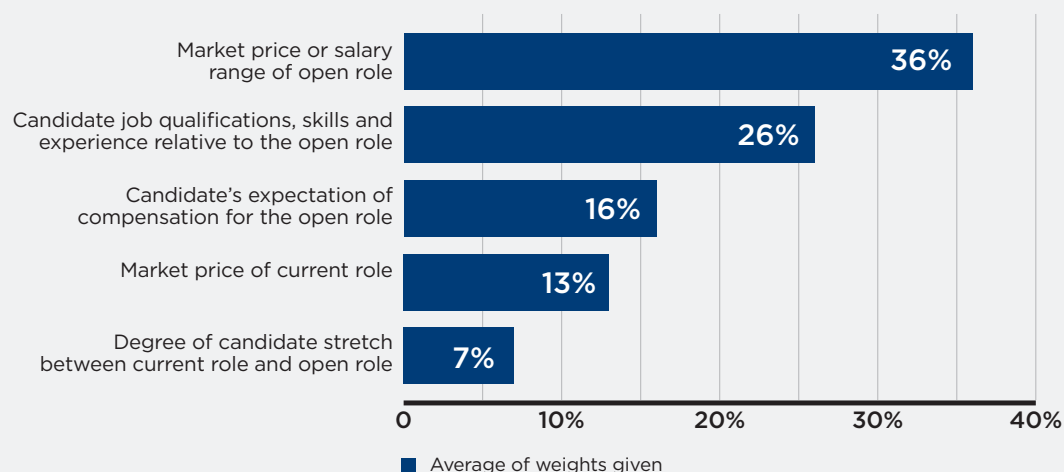


Figure 8.

In the absence of the candidate's compensation history, how will you determine an appropriate offer to make to a new hire? Indicate the relative weight you will likely allocate to each of the following:



Readiness for compliance and addressing pay equity

Figure 9.

What stage of preparation are you at in terms of complying with the legislation?

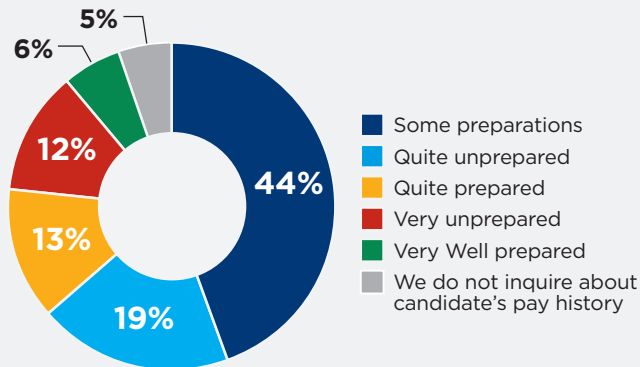
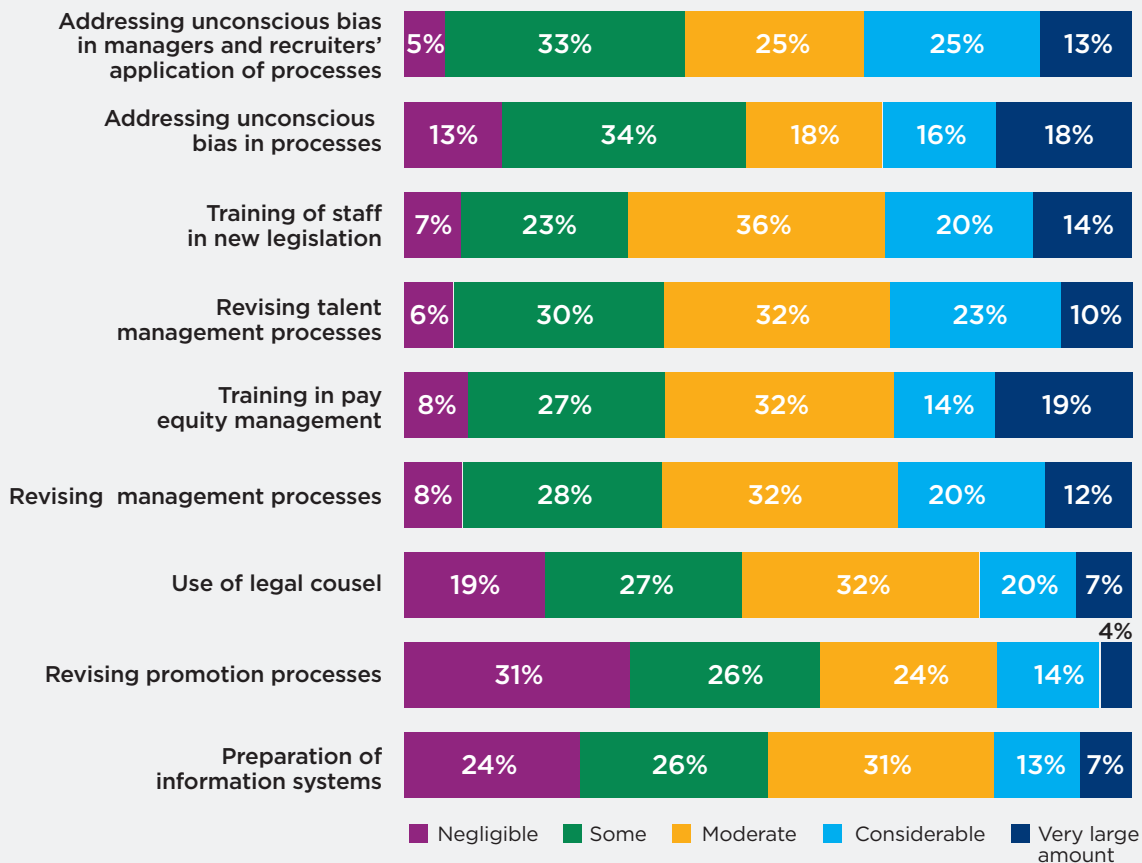


Figure 10.

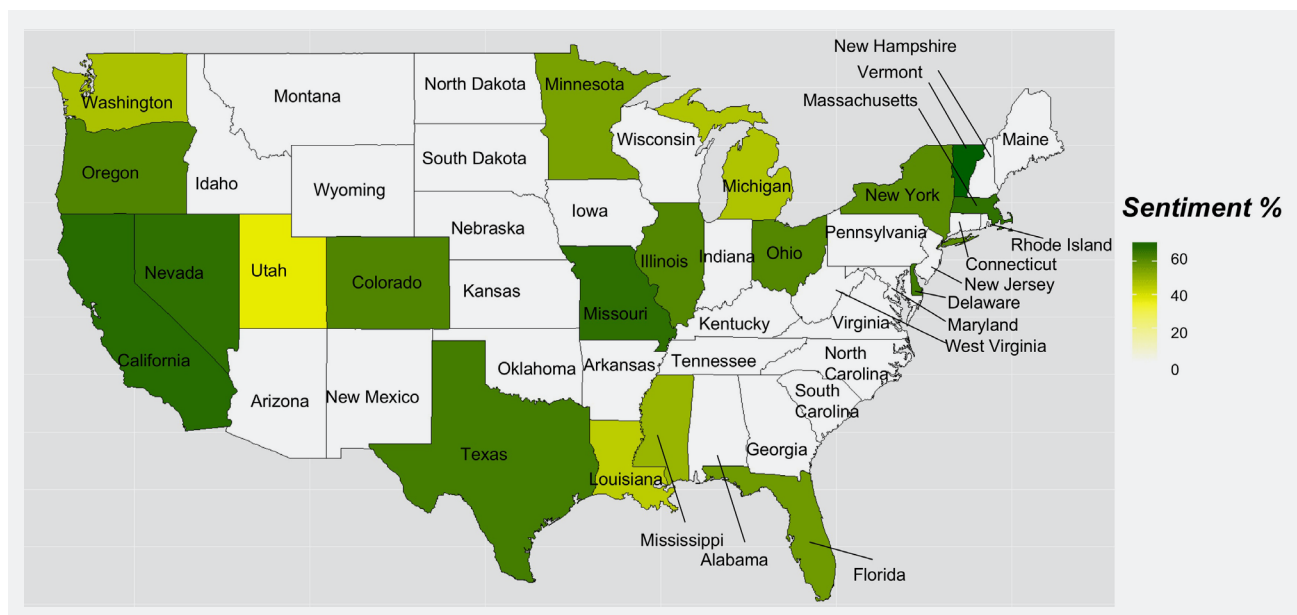
When preparing to comply with this legislation, how much in resources (e.g., time, financial, human capital) do you think will be spent on the following:



Twitter sentiment analysis reveals an overall positive public and workforce view of the legislation

In addition to the organizational-level survey, this study also explored the latest sentiments on the subject in social media. Namely, Korn Ferry Institute conducted an analysis of individual sentiments by parsing the tweets extracted from Twitter during the period of May 26 to August 21, 2017. To determine the feelings expressed by individuals via a popular social media platform, relevant hashtags (e.g., #equalpay) and keywords (e.g., legislation-related words and state names) were used to identify 1,400 tweets related to the pay parity legislation during the target period. Using supervised machine learning with 1.6 million classified tweets as input, KFI developed a model that is able to assign a highly accurate sentiment percentage to every tweet.

The map below presents the net sentiment of various states. Sentiment percentage above 50% indicates net positive sentiment. The results showed California, Nevada, Missouri, Massachusetts, Texas, and Vermont, as being generally positive towards the law surrounding pay history ban. Louisiana, Michigan, and Washington are neutral, while Utah showed negative sentiments. States in white shades have insufficient tweets ($n > 10$) for analysis. The positive sentiment states (green) tended to be those where the law has passed and are awaiting implementation. For instance, during the tweet collection period, Delaware signed into law a bill to ban the asking of candidate pay history. The net positive sentiment score corresponds to this event reflecting the public, and likely workforce, positive view of the legislation.



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About The Korn Ferry Institute

The Korn Ferry Institute, our research and analytics arm, was established to share intelligence and expert points of view on talent and leadership. Through studies, books, and a quarterly magazine, *Briefings*, we aim to increase understanding of how strategic talent decisions contribute to competitive advantage, growth, and success. Visit kornferryinstitute.com for more information.