



EXHIBIT H

Google Deliberately Confuses Its Employees

SUBSCRIBE

BUSINESS CULTURE DESIGN GEAR SCIENCE SECURITY TRANSPORTATION

TELEVISORY

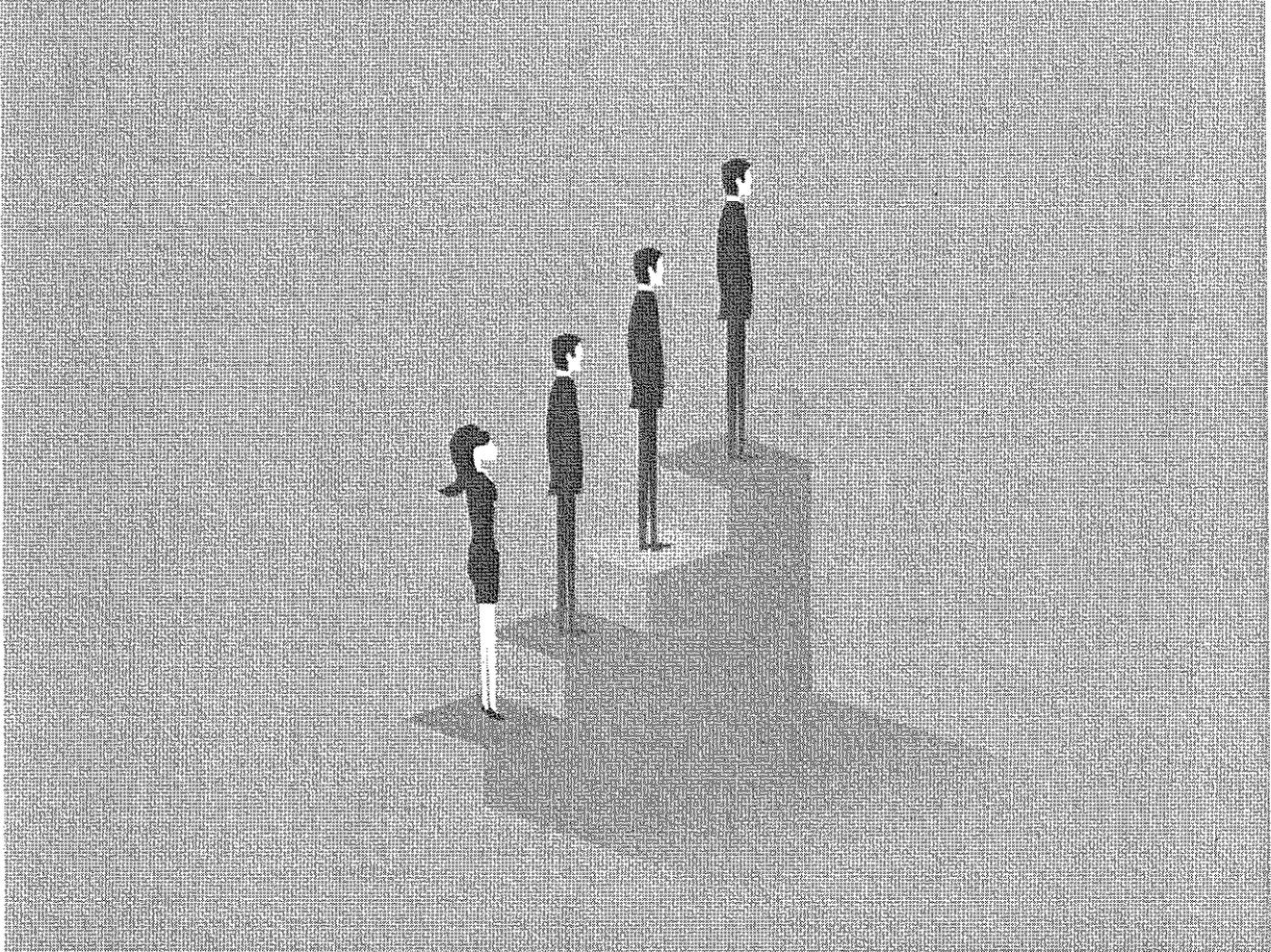
FIRST

To give you operational benchmarking against your key competitors.

KNOW MORE

NITASHA TIKU BUSINESS 07.25.17 03:21 PM

GOOGLE DELIBERATELY CONFUSES ITS EMPLOYEES, FED SAYS



GETTY IMAGES

SHARE

1198

THE DEPARTMENT OF Labor's increasingly heated dispute with Google over a gender pay gap began, innocently enough, with a routine audit.

As a federal contractor, Google must comply with the US government's nondiscrimination and affirmative action statutes. In 2015, Google's number randomly came up for inspection by the Office of Federal Contractor Compliance Programs, a division of the Department of Labor that audits government vendors on their diversity practices. Google turned over a "snapshot" of employment data, including job title, gender, race, salary, bonuses, and incentives for about 21,000 workers located at its headquarters in Mountain View, California, that year. During the audit, however,

the agency found “systemic compensation disparities against women pretty much across the entire workforce,” according to testimony from a DoL official.

But a pay gap does not necessarily indicate discrimination, and Google said its own internal annual analysis on pay equity shows no gender pay gap. So in order to determine whether the agency’s findings were the result of unlawful practices, the Department of Labor asked for more data. For a year or so, Google complied with the agency’s requests, but last June the agency asked for another huge haul of compensation data—notably salary histories for 25,000 employees dating back to when they first joined Google. That time, the tech giant balked. So in January 2017 the DoL sued Google to hand over the data.

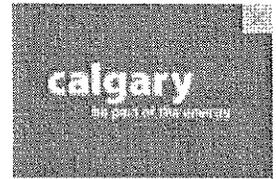
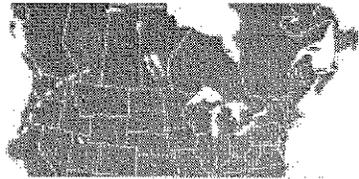
On July 14, the judge issued a decision in the case. The order, which has yet to be finalized, denied the government’s request on salary histories but instructed Google to hand over another “snapshot,” this time from 2014, which will include employment data on 19,500 employees located at Google’s headquarters that year.

After the decision, Google posted an update about the case on its company blog, highlighting critiques from the judge’s 43-page report, including comments that the DoL’s theories were based on “speculation” and that the agency had not “accurately understood” how Google’s compensation policies worked. Google also noted that it will only have to provide contact information for up to 8,000 employees, not 25,000 (the total number of employees from the 2014 and 2015 snapshots).

Janet Herold, a regional solicitor for the OFCCP, tells WIRED that this is Google in active spin mode. Through its media outreach and conversations with reporters, the company is confusing both the press and its own employees, she says.

Close to
perfect

We're a 2.5 hour flight from
San Francisco and 1 time
zone away from the coast.
✦ Wish you were here



“Google’s response to the judge’s order appears to be a deliberate effort to confuse the media and their own employees about what the judge did and did not rule,” Herold says. The lawsuit was about accessing data, not the merits of the DoL’s arguments, she says, pointing out that the government has yet to present its case. Yet Google is framing the judge’s decision as a ruling in the case, Herold says. Her concern is that Google wants to make it appear as though “the judge cast shade on the merits of the government’s case in order to discourage people from participating” in the DoL’s investigation into potential gender discrimination, she says.

Herold also says Google is downplaying the fact that the judge granted a 2014 snapshot, which will include employment data on 19,500 employees. (In other words, if the DoL was able to find indications of systemic pay disparity from a 2015 snapshot, a snapshot from 2014 could be similarly revealing.) Instead, Herold says, Google is emphasizing the fact that it will only have to provide contact information for 8,000 employees, not 25,000, which makes it seem as though the government got less than a third of the information it requested.

Negative public perception could affect the next phase of the investigation, Herold says. The agency has already spoken with more than 20 Google managers and executives, and it will soon conduct direct interviews with individual Google employees to hear their stories and gather anecdotal evidence behind the pay disparity numbers. For Google to undermine the government’s case now, before officials reach out to Google employees, “feels like discouragement,” Herold says.

Plaintiffs and defendants routinely use the press to try to wage a proxy battle, and both Google and the government have accused each other of manipulating the media.

A spokesperson for Google called Herold's allegations untrue and claimed that the government is the one spinning the press, not Google. "The OFCCP's lawyer is running a kangaroo court trial through the press," Google said in a statement to WIRED. "The OFCCP claims were largely rejected and they were criticized by the court, and now they're trying to spin a different version of that decision."

The tit for tat between the DoL and Google comes at a bad time for the tech behemoth, which is facing increasing scrutiny around other alleged attempts to interfere with employees exercising rights. Google is currently fielding two cases that revolve around whether its confidentiality agreements violate federal laws like the National Labor Relations Act and state laws like the California Fair Employment and Housing Act. A complaint against Google was filed with the NLRB in May 2016 for unlawful surveillance and interrogation in order to chill and restrict employee rights. A John Doe lawsuit against Google was filed in San Francisco Superior Court seven months later over the company's "spying program" against leakers. (The Information confirmed that the complaint and lawsuit were filed by the same anonymous product manager.) John Doe's lawsuit mentions an internal email written by Google's director of global investigations threatening leakers. "If you're considering sharing confidential information to a reporter—or to anyone externally—for the love of all that's Googley, please reconsider! Not only could it cost you your job, but it also betrays the values that makes us a community," the email says. The confidentiality charges in the John Doe suit have been deferred since the National Labor Review Board is actively pursuing a case on Google's policies. Google claims that it already revised the policies before the NLRB case was filed. The updated version makes

employee freedom to talk about workplace conditions more explicit.

The same DoL compliance office suing Google has also recently locked horns with other major tech players. The office sued Oracle for discriminatory pay practices in January, and it reached a settlement with Palantir for racial discrimination in April. (The Trump administration's budget proposes shutting down this office.)



Where work happens.

Get started

Adding to the tension is the fact that the government's investigation into gender pay gap at Google is developing in the midst of a backlash against Silicon Valley's treatment of women in the workplace. As female founders and engineers break their silence, confidentiality clauses—like nondisclosure agreements and nondisparagement agreements that prevent tech workers from speaking out—have come under fire.

Herold, who previously represented the Service Employees International Union, first raised concerns about the “chilling effect” of Google's confidentiality agreements to *The Guardian*, which has been closely following the government's lawsuit. She tells WIRED that government officials have already seen the effects of Google's policies in interviews. “We see [confidentiality agreements] as a concern in the tech industry generally, but it's very unusual” to have employees concerned about cooperating with a government investigation, Herold says. “We don't have many people say, ‘Can I talk to you? Is it okay if I talk to you?’ It's really rare.”

A Google spokesperson tells WIRED that employees can share information about their salary in public and private. In a statement,

the company said: "Assuming the decision becomes final, of course they'll be able to contact and speak freely with the identified set of employees, as outlined in the decision. Claiming otherwise underscores the recent decision, which concluded that OFCCP has 'little understanding of our workforce practices,' has 'not taken sufficient steps to learn about them,' and that it appears to have 'an animus that is difficult to understand.'"

Even without the anecdotes, Herold says her office could bring a statistical-based enforcement using the data. She told WIRED that preliminary analysis showed 6 to 7 standard deviations between pay for men and women in nearly every job classification. (In Oracle's case, the DoL found a standard deviation between 7 and 10, she says.)

Google says it learned about the standard deviation estimates for the first time from WIRED, and that this is another example of the agency not being transparent.

Complaints about transparency go both ways. Herold says Google's recent statements promising freedom to speak about workplace conditions don't clarify the matter for employees, especially in the context of the company's longtime policies or emails like the one about leakers. "When an employer is saying two things at once, it doesn't dissolve the chill. It doesn't warm it up sufficiently," Herold says. "Employees are still asking us questions: 'Which thing am I supposed to believe?'"

RELATED VIDEO
