

# The Covid-19 Pandemic's Effect on Determining the Earning Capacity of Spouses

by

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The Covid-19 pandemic has affected the lives of millions of people around the world. In addition to having grave health consequences, the pandemic has upended lifestyles and undermined the stability of the economy. Changes in the economy caused by the pandemic have had a major impact on the labor market, including shifts in demand for workers in a variety of occupations, the structure of the workplace, and how and what people are paid. In 2020, nonfarm payroll employment in the United States declined by 9.4 million.<sup>1</sup> As the world enters the third year of the pandemic/post-pandemic era, with new Covid variants surfacing, the continued instability in the labor market complicates the identification and analysis of employment and compensation data by vocational experts to provide opinions on the earning capacity of spouses in family law matters.

This article discusses labor market trends that directly affect the development of earning capacity opinions, and solutions to this dilemma. Part I will discuss the rise of remote work situations which has transformed the structure of the workplace in many organizations. Starting as an initiative to provide a temporary fix to maintain organizations' sustainability during the early days of the pandemic, remote work is continuing to gain acceptance by employers and employees and is becoming more of a permanent factor in the makeup of the workplace. Issues regarding compensation policies for remote workers add complexity to the earning capacity of spouses in family law matters. Part II will

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<sup>1</sup> Ryan Ansell & John P. Mullins, *COVID-19 Ends Longest Employment Recovery and Expansion in CES History, Causing Unprecedented Job Losses in 2020*, U.S. BUREAU OF LABOR STATISTICS 2021, <https://www.bls.gov/opub/mlr/2021/article/covid-19-ends-longest-employment-expansion-in-ces-history.htm>.

examine the increasing role that contingent workers play in the labor market as employers seek to bring more flexibility to their workforce in order to be more competitive and react effectively to external issues including the pandemic. Determining the earning capacity of contingent workers, including independent contractors, brings challenges on several fronts to vocational evaluators. Part III will look at the pandemic's effect on wages and salaries, starting with decreases in pay at the beginning of the pandemic followed by dramatic increases in compensation due to changes in the economy caused by a number of factors, including supply chain challenges, worker shortages, and inflation. Swings in the rate of wages and salaries paid to employees at all levels of the workforce are a continuing challenge in determining the earning capacity of spouses. Part IV will focus on the dramatic changes in compensation for minimum wage and lower level wage earners. While political and socioeconomic factors have played a part in increasing the minimum wage well before the Covid-19 pandemic, the economic upheavals during the pandemic and the post-pandemic periods have accentuated that trend and require special attention by vocational evaluators in determining the relevant empirical data needed to opine on earning capacity. Part V will present solutions to the challenges brought about by the pandemic on determining the earning capacity of spouses.

## **I. Remote Work**

A major change in the structure of the workplace caused by the coronavirus pandemic has been the shift to remote work arrangements for employees. As “shelter-in-place” orders flourished and facilities closed, employers scrambled to set up employees to work at home to maintain business productivity and keep employees safe. Before the pandemic, 17% of U.S. employees worked from home five days or more per week, a share that increased to 44% during the pandemic.<sup>2</sup> This affected individuals at all levels of the organization. Lower level customer service workers moved from assisting customers face-to-face and

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<sup>2</sup> Kimberly Mlitz, *Remote Work Frequency Before and After COVID-19 in the United States 2020*, STATISTICA (Apr. 9, 2021), <https://www.statista.com/statistics/1122987/change-in-remote-work-trends-after-covid-in-usa/>.

from call centers to interfacing with clients remotely from their homes utilizing the telephone and the Internet. Knowledge workers at various levels continued to administer and manage sales, marketing, finance, accounting, operations, human resources, and administrative functions. The management of companies, including members of the C-Suite, quickly learned the ins and outs of conducting meetings on virtual platforms, and “Zoom-Fatigue” was added to the vernacular.

### A. *The Future of Remote Work*

While remote work initiatives have varied greatly from company to company and industry to industry as the pandemic has progressed, the concept of remote work has been widely accepted by employers and employees. Willis Towers Watson, an international compensation and benefits consulting firm, reports that 61% of organizations could make remote work a permanent policy through 2024 as its various advantages continue to be realized.<sup>3</sup> The report also states that around half of organizations expect significant reductions to real estate and transportation costs in the coming years.<sup>4</sup> Some companies have diverted budgets for commuter allowances, company cars, and business travel to support optimizing pay for essential workers and to restructuring the rewards of a distributed workforce. Organizations also realize that workforce engagement and well-being increase when employees have choices about where and when they work.<sup>5</sup>

Eighty percent of U.S. workers expect their employers to allow them to work remotely multiple days a week and 82% expect flexibility in their hours, according to a July 2021 survey of 1,000 employees by beqom, a cloud-based compensation software provider.<sup>6</sup> PayScale, a compensation data and software firm, observes in its *2021 State of Remote Work Report* that 43% of

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<sup>3</sup> *Flexible Work and Rewards Survey: 2021 Design and Budget Priorities*, WILLISTOWERSWATSON (Nov. 19, 2020), <https://www.willistowerswatson.com/en-US/Insights/2020/11/flexible-work-and-rewards-survey-2021-design-and-budget-priorities>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Employee Expectations Hiring Report: Rethinking Compensation Strategies to Attract Talent in the 2021 Job Market*, BECOM, INC. (July 4, 2021), <https://www.beqom.com/employee-expectations-in-hiring-report>.

workers overall expect remote work options to increase after the pandemic; and, in functions like technology and marketing, the expectation for remote work options rises to over 70%.<sup>7</sup>

### B. *Remote Work's Effect on Compensation*

As companies move forward with remote work initiatives, some are rethinking how they compensate employees. If a job can be done outside the office, should the pay range for that position be determined by the local labor market or should it be pegged to the regional or national market? Why pay a Silicon Valley salary to an employee sitting in their home office in Idaho? Some companies are reducing the salaries of employees who switch to remote work permanently if they move to an area with a lower cost of living. The consideration for pay differentiation associated with remote workers seems to be focused mainly in high cost of living and corresponding high wage metropolitan areas like San Francisco, New York, Los Angeles, and Chicago. It makes sense that remote work compensation discussions would take place in these very expensive cost-of-living metro areas where the cost of housing can decrease considerably by living in surrounding suburbs or locations further from the center city area.<sup>8</sup>

In August 2021 Google announced that employees' pay would be lowered if they switch to working from home permanently and the remote location has lower labor costs than where their former offices are located.<sup>9</sup> Google will not change employees' pay if they work fully remotely from the same city. But if they previously commuted from a location an hour away with lower costs and now plan to work from home permanently, for instance, their pay would be reduced.<sup>10</sup> This announcement has

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<sup>7</sup> *2021-State-of-Remote-Work-Employer-Survey-Report* ↗ Payscale (Aug. 3, 2021), <https://www.payscale.com/research-and-insights/remote-work/>.

<sup>8</sup> Blair Johanson & Bruce Johanson, *Compensation Trends for 2021 and COVID-19 Impacts*, HR PROFESSIONALS MAG. (Dec. 2020) <https://hrprofessionalsmagazine.com/2020/12/01/compensation-trends-for-2021-and-covid-19-impacts/>.

<sup>9</sup> Stephen Miller, *Google's Salary Cuts for Remote Workers Renew Location-Based Pay Debate*, SOC'Y HUM. RESOURCE MGMT. (Aug. 18, 2021), <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/google-re-news-location-based-pay-debate.aspx>.

<sup>10</sup> *Id.*

reinvigorated debate over the fairness of geographic-based pay for remote workers and the effects such pay policies have on employee hiring, retention, and engagement. High-profile social media firms Facebook and Twitter also cut pay for remote employees who moved to less expensive areas, while smaller technology companies, including Reddit and Zillow, have compensation models tied to specific jobs, not location.<sup>11</sup>

Remote Google employees could experience pay cuts without changing their address if they live in and formerly commuted from areas with lower labor costs. Google's Internal Salary Calculator, which allows employees to see the effects of a move, show that an employee living in Stamford, Connecticut, an hour from New York City by train, would be paid 15% less if they worked from home, while a colleague from the same office living in New York City would see no pay reduction if working from home.<sup>12</sup>

PricewaterhouseCoopers LLP (PwC), an international accounting and consulting firm, announced in October 2021 that most of its U.S. employees can now live anywhere in the country, another sign that the pandemic is upending traditional working arrangements in a variety of white-collar roles.<sup>13</sup> PwC says it will give its roughly 40,000 client-facing employees in the U.S. the option to work remotely from a continental U.S. location of their choice. The employees who opt in to such a role will primarily do their jobs from home, but may need to attend a client site or company office from time to time.<sup>14</sup> Pay will be determined based on an employee's geography so those moving to a lower-cost area could see their compensation affected.<sup>15</sup>

Despite decisions by some high profile companies to tie compensation to a remote worker's location, Willis Towers Watson reports that 77% of organizations have decided that pay will be the same for remote and on-site workers in 2021, and only 10% are paying based on a remote worker's location for all

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Chip Cutter, *PricewaterhouseCoopers Says Most U.S. Staffers Can Now Live Anywhere*, WALL ST. J. (Oct. 1, 2021), <https://www.wsj.com/articles/pricewaterhousecoopers-says-most-u-s-staffers-can-now-live-anywhere-11633125172>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

jobs.<sup>16</sup> PayScale indicates that 81% of employers do not have a compensation strategy that encompasses remote work. While most employers are not planning to lower pay for employees who work remotely, that could change as location-based compensation strategies become more popular, PayScale reports.<sup>17</sup> As the post-pandemic period continues, companies will face challenges regarding the structure of their workplaces, the make-up of their workforce, and how they compensate employees. The debate as to whether remote workers who relocate should be paid based on their location versus whether employees should be paid what their work is worth no matter where they live will certainly continue.

### C. *Remote Work Compensation Issues Effect on Earning Capacity Analysis*

With the increased uncertainties in the labor market and how individuals are compensated, vocational evaluators face challenges in determining the earning capacity of spouses in family law matters. Utilizing sources of empirical compensation data and determining its relevancy can be difficult, especially if the issue of remote work must be considered. Using compensation data from the U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics Program,<sup>18</sup> here are three examples of how geographical pay issues for remote workers affect the determination of earning capacity. Three occupations in three different metropolitan areas were selected to show the differences in compensation using the median salaries for the local metropolitan area, a location away from the center city area, and nationally.

#### 1. *Human Resource Manager*

<b><u>Location</u></b>	<b><u>Median Salary</u></b>
San Francisco, CA	\$160,210
Santa Cruz, CA	\$131,760
United States	\$121,220

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<sup>16</sup> WILLISTOWERSWATSON, *supra* note 3.

<sup>17</sup> PAYSACLE, *supra* note 6.

<sup>18</sup> *Occupational Employment and Wage Statistics Program*, U.S. BUREAU OF LABOR STATISTICS, <http://www.bls.gov/oes> (last visited Dec. 2, 2021).

### 2. Sales Manager

<b><u>Location</u></b>	<b><u>Median Salary</u></b>
New York, NY	\$189,000
Stamford, CN	\$142,670
United States	\$132,290

### 3. Purchasing Manager

<b><u>Location</u></b>	<b><u>Median Salary</u></b>
Los Angeles, CA	\$139,510
Riverside, CA	\$102,990
United States	\$125,940

There can be a large pay differential depending on a company's compensation policy regarding remote workers, and this adds to the challenges faced by vocational evaluators in determining earning capacity.

## II. The Pandemic's Expansion of the Contingent Workforce

The pandemic has created fertile ground for individuals to consider self-employment and entrepreneurship. The U.S. Department of Labor states that the number of unincorporated, self-employed workers has risen by 500,000 since the start of the pandemic, to 9.44 million.<sup>19</sup> This total amounts to an increase of 6% in the self-employed, representing 5.9% of U.S. workers versus 5.4% in February 2020.<sup>20</sup> This supports a trend toward the increase of contingent positions, also known as gig jobs, which are project-oriented, part-time to full-time, and usually do not include benefits. Independent contractors are included in this category.

Contingent positions started to proliferate in the late 1990s when the outsourcing of jobs in a number of functions became a major employment trend. The growth of information technology-enabled services is linked to the availability of large amounts of reliable and affordable communication infrastructure following the telecommunication and Internet expansion of the late 1990s.

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<sup>19</sup> *Current Employment Statistics (National)*, U.S. DEP'T OF LABOR, <http://www.bls.gov/ces> (last visited Dec. 2, 2021).

<sup>20</sup> *Id.*

Coupled with the digitization of many services, it was possible to shift the actual production location of services, either to low-cost countries or to external, U.S.-based companies. Services include administrative functions such as finance, accounting, and human resources; customer service, marketing, and sales call centers; IT infrastructure and application development; and other knowledge services including engineering support, product design, research and development, and analytics.

Human resources executive are discussing the increased need for on-demand workers in part-time, project, seasonal, and interim jobs including rideshare drivers, warehouse and store shelf stockers, restaurant workers, and sales representatives.<sup>21</sup>

According to a survey conducted by McKinsey & Company, an international consulting firm, a vast majority of companies plan on hiring more contingent workers after the pandemic than they did before Covid-19 struck. The McKinsey Global Business Executives Survey of July 2020 stated that 70% of the 800 executives surveyed expect to use more temporary workers and contractors onsite at their companies than they did before the crisis.<sup>22</sup> Covid-19 already has dramatically changed the way many jobs are done, and employers are now planning how best to extract benefits from those changes as they prepare for business after the pandemic subsides. Greater digitization and automation, more demand for independent contractors, and increased reliance on remote work have the potential to deliver better productivity, lower costs, and enhance resilience.<sup>23</sup>

#### A. *Challenges to Determining Employability*

The Vocational Evaluation Process starts by determining an individual's current employability: what occupation or occupations are they qualified to do. Issues that need to be addressed in determining employability include constraints and restrictions on the individual in the workplace due to health issues,

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<sup>21</sup> Jen Colletta, *Shifting for the Gig Economy*, HR EXECUTIVE (Sept. 11, 2018), <https://hrexecutive.com/shifting-for-the-gig-economy/>.

<sup>22</sup> Andre Dua et al., *What 800 Executives Envision for the Postpandemic Workforce*, MCKINSEY.COM (Sept. 23, 2020), <https://www.mckinsey.com/featured-insights/future-of-work/what-800-executives-envision-for-the-postpandemic-workforce>.

<sup>23</sup> *Id.*



their tenure of unemployment or underemployment, and the need for additional training. What can complicate this assessment is determining the vocational readiness of an individual who has not followed a traditional career path in the past, and a contingent worker's background is often characterized by changing jobs and shifting career focus from one function to another or going from one industry to another. This provides challenges to the vocational evaluator in matching up their talent base and experience with the qualifications for traditional jobs.

Another challenge in evaluating contingent workers, including independent contractors, is that they are entrepreneurs. They are hired under contract by an organization to provide a service or produce a product, earn income in the form of an hourly fee or project fee, do not receive benefits in most situations, and do not get reimbursed for any or most of the expenses they incur in their work. They in effect are running their own business. Vocational evaluators are not experts in business valuation, and it is beyond the scope of their expertise to determine the earning capability of a business owner due to the variable nature of the revenues and expenses that business owners incur in the course of their work. However, vocational evaluators are called upon to determine the earning capacity of an individual whose work history includes being an independent contractor by matching their talent base and experience to the qualifications of comparable occupations.

## B. *Challenges to Determining Earning Capacity*

Using the example of an independent contractor who is an IT professional and provides programming services to companies, the vocational evaluator would conduct a labor market analysis to determine what a programmer providing services in a specific software application earns per hour in a specific geographical region. Three main sources of compensation data can be utilized to determine a programmer's earning capacity.

### 1. *Wage and Salary Surveys*

Compensation surveys from a number of sources provide income data on a variety of occupations. Examples include the U.S. Department of Labor's Bureau of Labor Statistics' Occupational

Employment and Wage Statistics Program;<sup>24</sup> private compensation consulting firms including Mercer, Economic Research Institute, Willis Towers Watson, FMI Consulting, and CompAnalyst/Salary.com;<sup>25</sup> employee survey companies such as PayScale.com and Glassdoor.com;<sup>26</sup> and nonprofit organizations including trade and professional associations.

## 2. *Benchmarking Surveys of Published Jobs*

An analysis of current job postings which include compensation data can provide a range of income for a number of occupations. Descriptions of full-time jobs may list salary ranges, while descriptions of part-time jobs may state hourly wage ranges.

If the work of an independent contractor can be matched to a traditional programming occupation that has empirical compensation data available and if related jobs can be identified, then a foundation exists for opinions of the earning capacity of the independent contractor. However, if the work of the individual cannot be matched with a traditional occupational category and similar jobs are not published, then additional benchmarking needs to take place to determine if compensation data exists.

## 3. *Benchmarking Surveys of Employers*

By researching companies to determine if they employ individuals in programming jobs that match the scope of responsibilities of the individual being evaluated, the compensation that they report can be used as a basis for developing opinions on earning capacity. Recruiting firms and staffing agencies can also be surveyed by identifying a select number of firms and inquiring about recent placements they have made and the corresponding compensation.

However, the issue of the programmer working as an independent contractor and running their own business still needs to be considered.

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<sup>24</sup> U.S. BUREAU OF LABOR STATISTICS, *supra* note 18.

<sup>25</sup> SALARY.COM, <http://www.salary.com> (last visited Feb. 10, 2022).

<sup>26</sup> GLASSDOOR, INC., <https://www.glassdoor.com> (last visited Feb. 10, 2022).

### C. Reasonable Compensation

The amount of time independent contractors who are programmers spend producing services and getting paid for them needs to be measured over a certain time span, as does the time an independent contractor spends in non-earning, yet essential functions such as administration and sales/marketing. Based on a full-time work-year of 2,080 hours (40 hours per week x 52 weeks), a self-employed programmer who charges \$95 per hour but is only able to provide services 60% of the time over a one-year period would have gross annual earnings of \$118,560 compared to a programmer who is an employee earning \$95 per hour on a full-time basis, resulting in annual earnings of \$197,600. However, independent contractors typically earn more per hour than employees earn in the same function due to the fact that independent contractors are not receiving benefits and may not work full-time. Other factors that complicate the actual earning capability of independent contractors are the costs that they personally incur in providing their services.

## III. The Pandemic's Effect on Wages and Salaries

Beginning at the start of the pandemic in March 2020 and continuing into 2021, employers made drastic changes to employee pay as stay-at-home orders proliferated, business activity dried up, and uncertainty reigned. A survey of 2,800 senior managers at U.S. companies conducted by staffing firm Robert Half during the second half of 2020 found that 57% of respondents had suspended salary increases as a result of the Covid-19 pandemic.<sup>27</sup> As companies began to feel more confident about their prospects in the second half of 2020, 27% said their organizations would provide salary increases by the end of 2020 and 43% expected to raise pay during the first half of 2021.<sup>28</sup>

In its Summer 2021 report *Why Wages Are Growing Rapidly Now— And Will Continue to in the Future*, The Conference Board, an economic and business research organization, stated that in the Spring of 2021 the United States saw the fastest wage

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<sup>27</sup> Robert Half, *Compensation Trends Amid COVID-19*, MEDIAROOM (Sept. 10, 2020), <https://rh-us.mediaroom.com/2020-09-10-New-Research-Compensation-Trends-Amid-COVID-19>.

<sup>28</sup> *Id.*

growth in twenty years and that the trend continued into the middle of 2021.<sup>29</sup> According to the U.S. Bureau of Labor Statistics' 2021 second quarter Employment Cost Index report, wages and salaries for private industry workers increased at a 4.3% annualized rate for the six-month period ending in June 2021.<sup>30</sup> This was much higher than the growth rate over the past two decades, which had stayed mostly in the 2 to 3% range.<sup>31</sup> The acceleration in wages is most noticeable in blue-collar and manual services occupations.

The Conference Board's report forecasts that wage growth in the United States through 2022 and beyond fits into three distinct phases: 1) strong wage growth in the spring and summer of 2021; 2) moderating wage growth by late 2021 and during 2022; and 3) renewed acceleration of wages in 2023 and beyond, most notably in blue-collar and manual services.<sup>32</sup>

According to The Conference Board's *2022 U.S. Salary Increase Budget Survey*, salary increase budgets and salary structure adjustments were lower in 2020 and 2021 than in the years before the pandemic. At the same time, organizations estimate that budgets and pay adjustments for 2022 will be higher and may return to pre-pandemic rates.<sup>33</sup> Almost all the responses to the survey arrived in April and early May 2021. Since then, the rapid acceleration in wages and inflation has become more apparent. Therefore, salary increase budgets for 2022 may end up being even larger in 2022 than organizations estimated in the survey.<sup>34</sup>

Major shifts in the deceleration and acceleration of pay increases can have a detrimental effect on the relevancy of compensation surveys utilized by vocational evaluators in

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<sup>29</sup> Gad Levanon & Frank Steemers, *Why Wages Are Growing Rapidly Now—and Will Continue to in the Future*, CONFERENCE BOARD (2021), <https://www.conference-board.org/pdfdownload.cfm?masterProductID=34781>.

<sup>30</sup> *Employment Cost Index*, U.S. BUREAU OF LABOR STATISTICS (2021), <https://data.bls.gov/search/query/results?cx=013738036195919377644%3A6ih0hfrgl50&q=employmentcostindex>.

<sup>31</sup> *Id.*

<sup>32</sup> Levanon & Steemers, *supra* note 29, at 2-3.

<sup>33</sup> Judit Torok, *2022 U.S. Salary Increased Budget Survey*, CONFERENCE BOARD (June 2021), <https://www.conference-board.org/research/US-Salary-Increase-Budgets/US-salary-increase-budgets-2022>.

<sup>34</sup> *Id.*

determining the earning capacity of spouses. Priya J. Kapila, a partner and Compensation & Rewards Leader at FMI Consulting, an advisory and consulting firm, recommends that vocational evaluators and other professionals who are determining wage and salary ranges for individuals in a variety of occupations utilize a benchmarking strategy to develop relevant compensation data. She suggests comparing two or more compensation surveys for the same occupation to gain statistical validation of the data.<sup>35</sup>

## **IV. Minimum Wage and Lower-level Wage Increases**

### *A. Minimum Wage Trends*

The trend to increase the minimum wage began well before the Covid-19 pandemic. While the federal minimum wage of \$7.25 has not been raised since 2009, many states and localities have increased their own minimum wages. The Economic Policy Institute reports that the effective minimum wage increased in 30 states and the District of Columbia since January 2014 with 20 states raising their minimum wages on January 1, 2021.<sup>36</sup> Increases range from an \$0.08 inflation adjustment in Minnesota to a \$1.50 per hour raise in New Mexico, the equivalent of an annual increase ranging from \$166 to \$3,120 for a full-time, full-year minimum wage worker.<sup>37</sup> Increasing complexity to the minimum wage map is the fact that 45 localities in 10 states have adopted minimum wages above their state's minimum wage.<sup>38</sup>

### *B. The Effect of Compensation Rate Changes on Earning Capacity Analysis*

Dramatic shifts in employee pay during the pandemic and post-pandemic periods have presented challenges to the ability of vocational evaluators to accurately determine the earning capacity of spouses in family law matters. One major issue is the accu-

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<sup>35</sup> Interview by Brad Taft with Priya J. Kapila, Compensation Practice Leader, FMI, Raleigh, North Carolina (Nov. 8, 2021).

<sup>36</sup> *Minimum Wage Tracker*, ECON. POL'Y INST. (Aug. 3, 2021), <https://www.epi.org/minimum-wage-tracker/>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

racy of the wage and salary data utilized, since time has typically elapsed from when the compensation information was collected and the survey was published. One example is the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics Program (OEWS) which produces employment and wage estimates annually for nearly 800 occupations. These estimates are available for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas.<sup>39</sup> At the time this article was written, the most recent OEWS data had been compiled in May 2020 and released in March 31, 2021.<sup>40</sup>

One example of inaccuracies with the OEWS data involves the range of compensation information for the occupation of childcare workers in Arizona. The minimum wage in Arizona was raised to \$12.80 per hour on January 1, 2022. However, the low end of the compensation range for childcare workers in the OEWS survey was listed below that amount in all seven metropolitan areas in Arizona.<sup>41</sup> Additional research, including conducting a benchmarking survey into current job postings in an occupation, such as childcare workers in a specific geographical area, can reveal fresh and different compensation ranges from established sources such as the OEWS which has older and potentially outdated data.

## V. Solutions

By taking advantage of a variety of sources of wage and salary data, vocational evaluators can utilize the resources necessary to gain relevant information to effectively opine on the earning capacity of spouses. The pandemic has shown the need to react quickly to changes in order to survive. By understanding the economic, workplace, and workforce factors that affect how and what people are paid, vocational evaluators can “survive” the turmoil in the labor market and set a solid foundation for their opinions of earning capacity. Here are the tools and resources necessary to successfully navigate the challenging post-pandemic compensation landscape:

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<sup>39</sup> U.S. BUREAU OF LABOR STATISTICS, *supra* note 18.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

### A. Wage and Salary Surveys

As previously discussed, compensation surveys from traditional sources including the U.S. Department of Labor's Bureau of Labor Statistics' Occupational Employment and Wage Statistics Program can be effective. However, other sources of compensation data can provide more focused and relevant information.

An example of another challenge in determining the earning capability of an individual occurs when their job title fits a certain occupation but their level of responsibility results in a differential of typical earnings for that position. For example, while the compensation range for a controller of a small company in the retail industry differs from that of a controller at a large company in the high technology sector, some widely used compensation surveys only provide one compensation range for controllers. The Bureau of Labor Statistics' Occupational Employment and Wage Statistics Program is criticized because the occupational categories in its surveys are sometimes too broad. Its survey for controllers also lists reported job titles including Comptroller, Corporate Controller, Corporate Treasurer, Regional Controller, and Treasurer.

Vocational evaluators need to identify other compensation surveys which utilize more specific parameters to define the compensation range of a position based on the scope of its responsibilities, the size of the company, and its industry. As previously stated, sources of these compensation surveys include private compensation and benefits consulting firms, trade and professional associations, and companies that report data from a large number of employees in different organizations.

As previously mentioned, Priya Kapila recommends that vocational evaluators and other professionals who are determining wage and salary ranges for individuals in a variety of occupations utilize a benchmarking strategy to develop relevant compensation data. Comparing two or more compensation surveys for the same occupation can result in a consensus of the compensation data. If so, then statistical validation of the data can be achieved.<sup>42</sup> If a consensus cannot be gained, then other benchmarking actions need to take place.

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<sup>42</sup> Priya J. Kapila, *supra* note 35.

### *B. Benchmarking Surveys of Published Jobs*

An analysis of current job postings which include compensation data can provide a range of income for a number of occupations. Descriptions of full-time jobs may list salary ranges while descriptions of part-time jobs may state hourly wage ranges. Sources include online job posting compilers including Indeed.com, an Internet search engine that compiles job postings of occupations in specific geographical locations, Zip-Recruiter.com, CareerBuilder.com, Monster.com, Jobing.com, and Dice.com.

### *C. Benchmarking Surveys of Employers*

By researching companies to determine if they employ individuals in specific occupations that match the scope of responsibilities of the individual being evaluated, the compensation that they report can be used as a basis for developing opinions on earning capacity. Recruiting firms and staffing agencies can also be surveyed.

## **VI. Conclusion**

The main lesson learned from experiencing the Covid-19 pandemic and its aftermath is that change is an on-going constant. When it comes to determining the earning capacity of spouses in divorce cases, changes to the structure of the workplace in the form of remote work, modifications to the make-up of the workforce by an increase in contingency workers, and changes in the rates of wages and salaries paid to individuals at all levels wreak havoc on the accuracy and relevancy of the compensation data utilized by vocational experts. A variety of sources of compensation information must be identified, understood, and utilized effectively to set a solid foundation for the development of opinions relating to the earning capacity of spouses.