



WORKPLACE JUSTICE

## ADVANCING EQUAL PAY: INNOVATIVE EMPLOYER APPROACHES

In the over 50 years since the passage of the Equal Pay Act, the gender wage gap has narrowed, but stubbornly persists in nearly every occupation, even when controlling for factors such as education and experience. In addition to strong public policies and robust enforcement of equal pay laws, concerted efforts by employers to address gender wage gaps in their own workforces are essential to achieving equal pay.

More and more employers are recognizing the need to take action. In recent years, a number of companies have acted not only to identify and remedy gender wage disparities within their own workforces, but also to establish innovative employment policies and procedures to prevent them. And new research is helping to identify effective employer interventions. Strategies and safeguards to ensure fairness in compensation decisions at critical points – including recruitment, hiring, performance evaluations and promotions, allocation of assignments and opportunities, and leadership development – help prevent the perpetuation of gender pay disparities and their magnification over time. The promising strategies described below are a few of the approaches for employers to explore, adapt, test, and adopt, in order to advance equal pay.

### Regularly Conduct Equal Pay Audits

You can't manage what you don't measure—and ignorance of wage disparities is no defense to a pay discrimination claim under the Equal Pay Act. An analysis of pay patterns within an organization is essential for identifying and remedying any gender wage disparities. This type of analysis is also critical to the development of benchmarks to evaluate implementation of remedial measures and to guide efforts to prevent future inequities.

- Engage a third-party expert to conduct the analysis; do not use Human Resources (HR) staff or the company's attorneys.
- Utilize multiple regression analysis to control for factors such as employee education, experience, hours worked, and seniority.<sup>1</sup> It is important to note, however, that an analysis can be completed in multiple and/or iterative steps. For example, the first step may be a simple analysis of available payroll data by gender to discover red flags.
- Consider both race and gender together in the analysis; analyze whether women of color face different or larger wage gaps within the organization than women overall.
- Account for the availability of different types of compensation in addition to the base wage in measuring pay: bonuses, commissions, stock options, overtime, etc.<sup>2</sup>
- Include data that allows an analysis of pay of employees in comparable jobs; comparable jobs include those requiring similar job duties, skills, experience, and qualifications, even if they differ in title or specific role.<sup>3</sup>
- In addition to comparing pay data for employees in comparable jobs, identify any wage gaps within the organization overall that may be created by women's overrepresentation in lower-paying roles and underrepresentation in higher-paying roles.
- Repeat the analysis regularly—at least once a year. It is especially important to conduct equal pay analyses following a major reorganization, such as a merger or restructuring. Companies or divisions may have different or conflicting compensation policies and practices that can create wage disparities upon integration.<sup>4</sup>

### Promote Transparency About Compensation and Pay-Setting Policies and Practices

Secrecy about pay and pay practices not only masks gender pay gaps, it perpetuates them. Providing employees with compensation information and allowing them to discuss compensation helps uncover disparities and unfair practices



and promotes employee loyalty and productivity.<sup>5</sup> Transparency also provides companies with an opportunity to proactively review and evaluate their compensation practices and address any unjustified disparities between employees.

- Permit all employees to discuss, disclose, and inquire about their compensation without fear of retaliation (as will typically be required by law). Do not ask or require employees to waive their rights to discuss and disclose compensation information, and do not implement workplace rules that undermine employees' ability to speak to each other about their compensation.
- Define and communicate the criteria and process for determining compensation as well as evaluation and promotion processes to employees at all levels.
- Make available to employees the salary ranges for every level within a job type so that employees can evaluate whether they are being paid fairly and see job progression and career earning potential within the organization.<sup>6</sup> Alternatively, provide employees with the salary range for their own job type, so that they can see where they fall.
- Encourage open communication with supervisors and management about compensation and compensation-setting, evaluation, and promotion practices.

### Level the Negotiation Playing Field

Using negotiation to set compensation can lead to gender wage gaps. Women are less likely to negotiate their salaries than men, and in many instances, that may be for good reason. Indeed, studies show that employers react more favorably to men who negotiate salaries, while women who negotiate may be perceived negatively and penalized for violating gender stereotypes.<sup>7</sup> In addition, women who do negotiate often ask for less when they negotiate than men.<sup>8</sup> Limiting the use and scope of negotiation can narrow wage disparities between male and female employees, as can addressing hiring managers' unconscious bias (further discussed below)—and taking these steps will also help avoid liability under the Equal Pay Act, which can arise when employers rely on negotiation as a primary method of pay setting.

- Consider whether there is a compelling business justification for using salary negotiation as a mechanism for setting compensation in the organization and in the absence of such a justification, instead rely on standardized pay scales.
- If negotiation will be permitted, be transparent about the negotiability of compensation in the job posting and at the point of a salary offer. Data show women are more likely to negotiate when it is made explicit that pay is negotiable.<sup>9</sup>

- Set negotiation parameters to provide structure and limits.
  - o Provide the context for the position, including the types of compensation, benefits, or conditions that are negotiable, and those that are not or are provided by default to all employees. Studies have shown that where applicants are clearly informed about the context for negotiations, the gender pay gap is significantly reduced.<sup>10</sup>
  - o Level the negotiating playing field by making benefits like parental leave or schedule flexibility available to all employees, so that no woman must choose between higher pay and family sustaining benefits.
  - o Do not let demands drive the compensation offered outside the predetermined range or scale, as this can lead to gender disparities because women typically ask for less than men. Anchor compensation negotiations to the going market rate offered by competitors in the industry and relevant internal comparators.<sup>11</sup>

### Tie Compensation to Consistent, Measurable, and Objective Standards

Studies show that unconscious gender bias is pervasive and leads men's skills, experience, and performance to be overvalued by employers, while those of women are undervalued.<sup>12</sup> Women who have children and women of color often face additional unconscious (and conscious) biases. Unconscious bias can drive gender pay disparities, particularly where pay is primarily based on subjective, discretionary decisions.<sup>13</sup> Structured compensation systems and objective criteria help reduce or eliminate ambiguity that can result in biased decisions at important points, including hiring and promotion.<sup>14</sup>

- Conduct training for all managers to help ensure they are able to identify and correct implicit or unconscious bias in decision-making.
  - o Training can take place during existing training opportunities such as annual leadership training or new manager training.<sup>15</sup>
  - o A well-designed training should focus not only on participants' perceptions or attitudes, but also on behavior. It should demonstrate how implicit bias arises in everyday interactions relevant to that specific workplace, and offer concrete actions for identifying and correcting for bias.<sup>16</sup>
- Test assumptions that may drive inequity in pay setting, including assumptions about what constitutes relevant experience and necessary qualifications, which may track gendered expectations. For example, if gender pay inequities are arising because male employees are more



likely to have particular types of leadership experience for which the compensation system awards a pay premium, evaluate whether this experience has actually predicted or actually correlated with better performance within the organization.

- Do not ask job candidates for their prior salary history and do not use it to set their starting salary. Reliance on previous salary in pay setting can replicate discrimination and wage gaps from past employment and create disparities between new hires, or between new hires and current employees. Moreover, reliance on past salary does not legally justify a gender disparity in compensation.<sup>17</sup> Instead of basing compensation on past salary, tie salary ranges to neutral factors relevant to the job, such as skill level, education, competencies, and job description.
- Establish compensation structures focused on standardized, objectively measurable performance outcomes.<sup>18</sup> Pay employees for their performance, not for face time.<sup>19</sup>
- On an annual basis, evaluate whether compensation scales and criteria need to be revised.
- Ensure equal gender representation on compensation committees and engage senior management, compliance officers, and employees *not* responsible for hiring in the development of compensation policies and procedures and in the setting of pay.<sup>20</sup>
- Reduce the impact of bias in evaluating performance.
  - o Reduce managers' discretion in performance evaluations and setting compensation by establishing clear, measurable criteria for performance evaluations. Avoid relying on subjective, vague criteria like employee "potential" that can introduce gender bias.<sup>21</sup>
  - o Ensure that performance measurements actually reflect employee performance and are not a reflection of factors outside employee control such as market swings or assignment of projects or clients.
  - o Do not rely on employee self-evaluations in setting pay or, at the very least, do not allow supervisors and managers to see an employee's self-evaluation before completing the employee's performance evaluation, as women tend to evaluate themselves more harshly.<sup>22</sup>
  - o Conduct "comparative evaluations" to simultaneously compare the work of all employees in a job category to determine evaluations and promotions. Studies indicate such an evaluation technique makes it more likely that promotion decisions will be based on performance rather than gender, racial, or ethnic stereotypes.<sup>23</sup>

## Empower Managers and Hold Them Accountable

An equitable compensation system will not result in equal pay if it is not implemented correctly or consistently. An organization's leadership at the highest levels must repeatedly and consistently communicate to managers and employees that equity is a top priority, and reinforce that message with a system that motivates managers to properly implement equitable compensation policies and practices.

- Budget to allow managers access to funds to address wage disparities within their department or team.<sup>24</sup>
- In managers' own performance evaluations, and in their own eligibility for raises and promotions, take into account their success in identifying and remedying wage disparities among employees they supervise as a relevant performance measure.<sup>25</sup>

## Coordinate and Integrate Organizational Systems

In many companies, particularly large ones, several different departments may be responsible for areas affecting compensation, including recruitment, hiring, promotions and performance evaluations, and compliance. Failure to develop a common compensation system and coordinate implementation among the HR, compliance, diversity, and compensation departments can create and perpetuate gender wage inequities.

- Coordinate among the relevant departments and systems to develop common practices, criteria, and benchmarks to help avoid wage disparities. For instance, HR's recruiting and hiring practices should be aligned with the organization's diversity and compensation benchmarks.
- Develop shared recordkeeping and data storage policies.
- Support the professional development of HR, compliance, and diversity staff regarding the creation and implementation of compensation policies.

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We all have much to gain from achieving equal pay. Eliminating gender disparities in pay will not only help women receive fair compensation, it will help employers' bottom line and reduce liability. Equal pay increases employee loyalty, productivity, and performance.<sup>26</sup> It also helps boost the national economy.<sup>27</sup> But it will take employers' commitment and innovation to make equal pay a reality.



- 1 See U.S. DEP'T OF LABOR, OFFICE OF FED. CONTRACT COMPLIANCE PROGRAMS, DIRECTIVE No. 307: PROCEDURES FOR REVIEWING CONTRACTOR COMPENSATION SYSTEMS AND PRACTICES § 8.B (Feb. 28, 2013), available at <https://www.dol.gov/ofccp/regs/compliance/directives/dir307.htm> (indicating use of multiple regression analysis to detect compensation discrimination) [DIRECTIVE No. 307]; NAT'L RESEARCH COUNCIL OF THE NAT'L ACADS., COLLECTING COMPENSATION DATA FROM EMPLOYERS 62 (2012), available at <http://www.nap.edu/catalog/13496/collecting-compensation-data-from-employers> (discussing regression models for compensation analysis). See also Exponential Talent LLC, *Gap Inc. Pay Equity by Gender Project: In-Depth Compensation Analysis Conducted to Validate Women and Men Employees Receive Equal Pay for Equal Work*, <http://www.exponentialtalent.com/gap-inc-pay-equity-by-gender-project.html> (last visited June 7, 2016) (utilizing regression analysis which controlled for various factors including tenure and full-time employee status).
- 2 See DIRECTIVE No. 307, *supra* note 1 § 8.B; EQUAL EMPLOYMENT OPPORTUNITY COMM'N, COMPLIANCE MANUAL, No. 915.003 § 10-III(C) (Dec. 2000), available at <https://www.eeoc.gov/policy/docs/compensation.html> [EEOC COMPLIANCE MANUAL].
- 3 See DIRECTIVE No. 307, *supra* note 1 § 7.
- 4 See Susan J. Wells, *Merging Compensation Strategies*, 49 HR MAGAZINE (May 1, 2004), available at <https://www.shrm.org/publications/hrmagazine/editorialcontent/pages/0504wells.aspx>.
- 5 See Andrew Chamberlain, *Is Salary Transparency More Than a Trend?*, GLASSDOOR (Apr. 27, 2015), <https://www.glassdoor.com/research/studies/is-salary-transparency-more-than-a-trend/>; Deborah Thompson Eisenberg, *Money, Sex and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 ARIZ. STATE L.J. 951, 1001-15 (2011).
- 6 Some companies are leading in embracing pay transparency. For example, Whole Foods allows employees to easily access salary information about every employee. See Alison Griswold, *Here's Why Whole Foods Lets Employees Look Up Each Other's Salaries*, BUSINESS INSIDER (Mar. 3, 2014), <http://www.businessinsider.com/whole-foods-employees-have-open-salaries-2014-3>. Buffer, a tech start-up, makes public each employee's salary and the formula by which they derive employees' pay. See *Introducing Open Salaries at Buffer: Our Transparent Formula and All Individual Salaries*, BUFFER (Nov. 25, 2015), <https://open.buffer.com/introducing-open-salaries-at-buffer-including-our-transparent-formula-and-all-individual-salaries/>. At SumAll, a New York City-based company that provides analytics to businesses, employees have access to pay information. See David Burkus, *Why SumAll Became a Champion for Salary Transparency*, FORBES (May 2, 2016), <http://www.forbes.com/sites/davidburkus/2016/05/02/why-sumall-became-a-champion-for-salary-transparency/>. Jet.com publicizes its salary structure to its employees. See Erika Morphy, *Jet.com Is Making Its Employees' Salaries Transparent—and Non-Negotiable*, FORBES (July 21, 2015), <http://www.forbes.com/sites/erikamorphy/2015/07/21/jet-com-is-making-its-employees-salaries-transparent-and-non-negotiable/#5d9eada62f89>.
- 7 See Linda Babcock & Sara Laschever, *WOMEN DON'T ASK: THE HIGH COST OF AVOIDING NEGOTIATION—AND POSITIVE STRATEGIES FOR CHANGE* (2007); Hannah Riley Bowles, Linda Babcock & Lei Lai, *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 84 (2007).
- 8 See Linda Babcock & Sara Laschever, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* (2003) (finding that women ask for less when they do negotiate and that women business school graduates who negotiate fare 30 percent worse than their peers who are men); Jenny Save-Soderbergh, *Are Women Asking for Low Wages? Gender Differences in Wage Bargaining Strategies and Ensuing Bargaining Success*, SWEDISH INST. SOC. RES. WORKING PAPER SERIES 7/2007 10 (2007), available at [https://ideas.repec.org/p/hhs/sofiwp/2007\\_007.html](https://ideas.repec.org/p/hhs/sofiwp/2007_007.html).
- 9 See Andreas Leibbrandt & John A. List, *Do Women Avoid Salary Negotiations? Evidence from a Large-Scale Natural Field Experiment*, 61 MGMT. SCI. 2016, 2023 (2014) (finding women more willing to negotiate when the job posting indicated that wages are negotiable); Iris Bohnet, *WHAT WORKS: GENDER EQUALITY BY DESIGN* 68-69 (2016).
- 10 See, e.g., Hannah Riley Bowles, Linda Babcock & Kathleen L. McGinn, *Constraints and Triggers: Situational Mechanics of Gender in Negotiations*, 89 J. PERSONALITY & SOC. PSYCH. 951, 955-56 (2005).
- 11 Bohnet, *supra* note 9, at 73-74.
- 12 Iris Bohnet et al., *When Performance Trumps Gender Bias: Joint Versus Separate Evaluation*, HARV. BUS. SCH. WORKING PAPER 12-083 4 (Mar. 16, 2012), available at <http://www.hbs.edu/faculty/publication%20Files/12-083.pdf>; Shelley J. Correll, S. Benard & I. Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC. 1297 (Mar. 2007), available at [http://gender.stanford.edu/sites/default/files/motherhoodpenalty\\_0.pdf](http://gender.stanford.edu/sites/default/files/motherhoodpenalty_0.pdf).
- 13 See Marta M. Elvira & Mary E. Graham, *Not Just a Formality: Pay System Formalization and Sex-Related Earnings Effects*, 13 ORG. SCI. 601, 613-14 (2002).
- 14 See *id.* at 614.
- 15 For instance, Chubb conducted its bias awareness training together with performance management training and found it increased effectiveness. Cook Ross, *Diversity Best Practices: Proven Strategies for Addressing Unconscious Bias in the Workplace, Special Case Study: Chubb*, 2 CDO INSIGHTS 1, 7 (Aug. 2008), available at <http://www.cookross.com/docs/UnconsciousBias.pdf>.
- 16 See Bohnet, *supra* note 9, at 58; Dana Wilkie, *Rooting Out Hidden Bias*, 59 HR MAGAZINE (Dec. 1, 2014), available at <https://www.shrm.org/publications/hrmagazine/editorialcontent/2014/12/14/pages/1214-hidden-bias.aspx> (describing how specific companies have implemented implicit bias training).
- 17 EEOC COMPLIANCE MANUAL, *supra* note 2, at section 10-IV.F.2.g ("Prior salary cannot, by itself, justify a compensation disparity. This is because prior salaries of job candidates can reflect sex-based compensation discrimination.")
- 18 See Elvira & Graham, *supra* note 13, at 614 (finding increased gender disparities in less formalized forms of pay).
- 19 See Bohnet, *supra* note 9, at 155; Uwe Jirjahn & Gesine Stephan, *Gender, Piece Rates and Wages: Evidence from Matched Employer-Employee Data*, 28 CAMBRIDGE J. ECON. 683 (2004) (study of blue-collar workers finding that there was a smaller gender wage gap in piece-rate schemes compared to time-wage regimes).
- 20 See Taekjin Shin, *The Gender Gap in Executive Compensation: The Role of Female Directors and Chief Executive Officers*, 639 ANNALS AM. ACAD. POL. & SOC. SCI. 258 (Jan. 2012), available at <http://ann.sagepub.com/content/639/1/258.full.pdf+html> (finding that the gender wage gap reduced at public companies when compensation committee included women).
- 21 See Emilio J. Castilla, *Gender, Race and the New (Merit-Based) Employment Relationship*, 51 INDUS. REL. 528, 536 (2012) (finding that even where salary increases were linked to performance ratings, managerial discretion in awarding bonuses resulted in gender and racial



disparities); Elvira & Graham, *supra* note 13, at 614-15 (finding increased gender disparities in forms of pay involving increased managerial discretion); Bohnet, *supra* note 9, at 113.

22 See Bohnet, *supra* note 9, at 187-88.

23 Bohnet et al., *supra* note 12.

24 See Kim Bhasin, *How Gap Instituted Equal Pay for Men and Women*, THE HUFFINGTON POST (Sept. 5, 2014), [http://www.huffingtonpost.com/2014/09/05/gap-equal-pay\\_n\\_5768780.html](http://www.huffingtonpost.com/2014/09/05/gap-equal-pay_n_5768780.html) (Gap Inc. used funds set aside for good performance to correct wage disparities revealed by equal pay audit); Kristen Bellstrom, *Salesforce Spent \$3 Million to Close the Gender Pay Gap. Here's Why That's Big Deal*, FORTUNE (Nov. 7, 2015), <http://fortune.com/2015/11/07/salesforce-3-million-close-pay-gap/> (Salesforce spent \$3 million to correct gender wage disparities revealed by equal pay audit).

25 See *Feature Model Practice, Equal Pay for Equal Work: Gap, Inc.*, GENDER EQUALITY PRINCIPLES (last visited June 7, 2016), <http://genderprinciples.org/index.php?p=107> (during annual pay reviews, managers are provided with employees' pay ranges and held accountable for deciding and adjusting pay).

26 Eisenberg, *supra* note 5.

27 INST. FOR WOMEN'S POLICY RESEARCH, THE ECONOMIC IMPACT OF EQUAL PAY BY STATE (Feb. 2016), available at <http://www.iwpr.org/initiatives/pay-equity-and-discrimination/#publications> (finding that if women in the United States received equal pay with comparable men, poverty for working women would be reduced by half and the U.S. economy would have added \$482 billion (equivalent to 2.8 percent of 2014 GDP) to its economy).





WORKPLACE JUSTICE

# EQUAL PAY FOR ASIAN AMERICAN AND PACIFIC ISLANDER WOMEN

MORGAN HARWOOD

Asian women who work full time, year round are typically paid only 85 cents for every dollar paid to white, non-Hispanic men. This gap, which amounts to a loss of \$9,010 a year, means that Asian women have to work more than 14 months—until early March this year—to make as much as white, non-Hispanic men did last year alone. Many communities of Asian American and Pacific Islander (AAPI) women experience much larger wage gaps compared to white, non-Hispanic men.

**Asian women working full time, year round are typically paid only 85 cents for every dollar paid to their white, non-Hispanic male counterparts - but the wage gap is substantially larger for some communities of Asian American and Pacific Islander women.**

The gap between Asian women's and white, non-Hispanic men's earnings is five cents smaller than the wage gap for all women compared to all men: women working full time, year round in the United States are typically paid only 80 cents for every dollar paid to their male counterparts. However, the gap between Asian women's and Asian men's earnings is larger: Asian women working full time, year round in the United States are typically paid just 76 cents for every dollar compared to Asian men.

*This factsheet uses two main data sources from the U.S. Census Bureau to examine data on Asian American and Pacific Islander (AAPI) women. One source allows us to only conduct an analysis of women who identify as Asian alone while the other source permits an analysis of AAPI women. For more information see endnote 1.*

### The wage gap is substantially wider for some communities of AAPI women.

- Some communities of AAPI women experience a larger wage gap than is reflected in the 85 cent wage gap for Asian women overall. Among full time, year round workers in 2017:
  - o Burmese, Hmong and Laotian women typically make less than 60 percent—50 percent, 57 percent and 58 percent respectively—of what white, non-Hispanic men make.
  - o Bangladeshi, Guamanian/Chamorro, Fijian, Vietnamese, Hawaiian, Samoan, Cambodian and Thai women all typically make less than 80 cents for every dollar made by white, non-Hispanic men.
  - o A few communities of AAPI women typically make more than white, non-Hispanic men: Indian, Taiwanese, and Chinese women were respectively paid \$1.21, \$1.16, and \$1.03 for every dollar paid to white, non-Hispanic men. However, Indian, Taiwanese, and Chinese women still experience a gender wage gap: they make just 77, 74, and 86 cents compared to their Indian, Taiwanese, and Chinese male counterparts. And while Sri Lankan women are typically paid the same as white, non-Hispanic men, compared to Sri Lankan men, they are paid just 83 cents on the dollar.



## AAPI Women's Wage Equality by Community

Community	AAPI women's earnings	What AAPI women make for every dollar white, non-Hispanic men make	What AAPI women make for every dollar AAPI men make
Indian	\$70,000	\$1.21	76.9¢
Taiwanese	\$67,000	\$1.16	74.4¢
Chinese	\$60,000	\$1.03	85.7¢
Sri Lankan	\$58,000	\$1.00	82.9¢
Japanese	\$55,000	94.8¢	78.6¢
Korean	\$50,000	86.2¢	83.3¢
Pakistani	\$50,000	86.2¢	83.3¢
Filipino	\$48,000	82.8¢	96.0¢
Indonesian	\$47,000	81.0¢	78.3¢
Bangladeshi	\$40,000	69.0¢	\$1.00
Guamanian/Chamorro	\$40,000	69.0¢	80.0¢
Fijian	\$39,500	68.1¢	66.5¢
Vietnamese	\$37,000	63.8¢	75.8¢
Hawaiian	\$36,000	62.1¢	80.0¢
Samoan	\$36,000	62.1¢	85.7¢
Cambodian	\$35,000	60.3¢	85.4¢
Thai	\$35,000	60.3¢	77.8¢
Laotian	\$33,400	57.6¢	83.5¢
Hmong	\$33,000	56.9¢	89.2¢
Burmese	\$29,100	50.2¢	97.0¢

NWLC calculations based on 2017 American Community Survey 1-Year Estimates using IPUMS-USA available at <https://usa.ipums.org/usa/> (IPUMS). Figures are based on women's and men's median earnings for full time, year round workers. The typical white, non-Hispanic man earned \$58,000 in 2017. Indian women represent those who self-selected "Asian Indian" as their race.

[www.nwlc.org](http://www.nwlc.org) 

**Asian Women's/ White, non-Hispanic Men's Earnings Ratio**  
Ratio of Median Earnings of Full-Time, Year-Round Workers



Source: Census Bureau, Current Population Survey.

[www.nwlc.org](http://www.nwlc.org) 



**The wage gap between Asian women and white, non-Hispanic men has narrowed – but there’s still work to be done to close it.**

- In 1988, the earliest year for which data are available, an Asian woman working full time, year round typically made only 68 cents for every dollar paid to her white, non-Hispanic male counterpart. By 2017, this figure stood at 85 cents—adding up to a wage gap that is 17 cents smaller than it was a quarter of a century ago.
- While the wage gap has narrowed somewhat over the last few decades, Asian women still typically lose \$360,400 to the wage gap over a 40-year career. This means Asian women typically have to work 47 years to make what white, non-Hispanic men were paid in just 40 years.

**In some states, Asian women lose \$700,000 or more over their lifetime.**

- In many states, Asian women starting their careers today stand to lose \$700,000 or more over a 40-year career as compared to white, non-Hispanic men.
- In Alaska, the state with the largest lifetime losses for Asian women due to the wage gap, Asian women stand to lose nearly \$1.2 million over a 40-year career. The typical Asian woman living in Alaska would have to work until nearly 94 years old to make what white, non-Hispanic men made by age 60.

**Ten Worst States for Asian Women’s Lifetime Losses Due to Wage Gap**

	State	What Asian women make for every dollar white, non-Hispanic men make	Lifetime Losses Due to Wage Gap	Age at which an Asian woman’s career earnings catch up to white, non-Hispanic men’s career earnings at age 60
	<i>United States</i>	85.1¢	\$360,400	65.7
10	Nevada	69.3¢	\$684,920	77.7
9	Hawaii	70.5¢	\$686,040	76.7
8	Colorado	70.6¢	\$713,160	76.7
7	Utah	67.4¢	\$740,120	79.4
6	Vermont	60.6¢	\$776,880	86.0
5	Wyoming	64.8¢	\$784,320	81.7
4	California	73.5¢	\$785,000	74.4
3	District of Columbia	75.2¢	\$969,120	73.2
2	Louisiana	56.5¢	\$991,640	90.8
1	Alaska	54.1¢	\$1,198,840	93.9

Source: State wage gaps calculated by National Women’s Law Center (NWLC) are based on 2013-2017 American Community Survey Five-Year Estimates (<http://www.census.gov/acs/www/>). National wage gap calculated by NWLC is based on 2018 Current Population Survey, Annual Social and Economic Supplement. “What an Asian woman makes for every dollar a white, non-Hispanic man makes” is the ratio of Asian women’s and white, non-Hispanic men’s median earnings for full time, year round workers. “Lifetime losses due to wage gap” or the “Lifetime Wage Gap” is what an Asian woman would lose, based on today’s wage gap, over a 40-year career. Figures are not adjusted for inflation. Earnings are in 2017 dollars. Ranks based on unrounded data. “Age at which an Asian woman’s career earnings catch up to white, non-Hispanic men’s career earnings at age 60” assumes all workers begin work at age 20. Assuming white, non-Hispanic men have a 40-year career, this is the age at which Asian women are able to retire with the same lifetime earnings as their male counterparts. Asian women in both surveys are those who self-identified as Asian. White, non-Hispanic men in both surveys refer to those who have self-identified as white but who are not of Hispanic, Latino, or Spanish origin.

**AAPI women experience a wage gap at every education level, and it is wider among those with less education.**

- Among full time, year round workers, AAPI women without a high school diploma typically make only 80 cents for every dollar white, non-Hispanic men without a high school diploma make. AAPI women with an associate’s degree typically make less—by about \$2,500 each year—than white, non-Hispanic men with only a high school diploma (about 94 cents for every dollar).

- While the wage gap for AAPI women declines as they obtain more education, AAPI women must obtain a bachelor’s degree or more before their typical wages exceed those of white, non-Hispanic men with an associate’s degree.



## AAPI Women's Wage Equality by Educational Attainment

Educational Attainment	AAPI women's earnings	White, non-Hispanic men's earnings	What AAPI women make for every dollar white, non-Hispanic men make	Wage gap
At least 9th grade but no high school diploma	\$28,000	\$35,000	80.0¢	20.0¢
High school diploma	\$28,000	\$45,000	64.0¢	36.0¢
Some college, no degree	\$34,000	\$51,000	66.7¢	33.3¢
Associate's degree	\$42,250	\$57,000	74.6¢	25.4¢
Bachelor's degree or more	\$70,776	\$83,000	85.3¢	14.7¢
Bachelor's degree	\$60,000	\$75,000	80.0¢	20.0¢
Master's degree	\$80,000	\$92,000	87.7¢	13.0¢
Professional degree	\$127,000	\$130,000	97.7¢	2.3¢
Doctorate degree	\$95,000	\$120,000	79.2¢	20.8¢

"What a woman makes for every dollar a man makes" is the ratio of female and male median earnings for full time, year round workers. Earnings are in 2017 dollars. The "wage gap" is the additional money a woman would have to make for every dollar made by a man in order to have equal annual earnings. NWLC Calculations based on U.S. Census Bureau, 2018 Current Populations Survey using IPUMS, available at <https://cps.ipums.org/cps/>. AAPI women are those who self-identified as Asian and/or Native Hawaiian or Pacific Islander. White, non-Hispanic men self-identified as white but who are not of Hispanic, Latino, or Spanish origin.

### AAPI women's wage gap is widest among older women.

- Among full time, year round workers ages 25–44, AAPI women typically make 95 cents for every dollar white, non-Hispanic men make—but older AAPI women experience far larger wage gaps. AAPI women ages 45–64 make 74 cents for every dollar made by their white, non-Hispanic male counterparts, and AAPI women 65 and older make only 56 cents for every dollar made by white, non-Hispanic men. These larger gaps mean that AAPI women are falling behind at the very time they need additional resources to invest in their families and save for retirement.

### Motherhood widens the wage gap for working AAPI women.

- AAPI mothers who work full time, year round typically make 74 cents (\$52,000) for every dollar paid to white, non-Hispanic fathers (\$70,000) – more than the 66 cents they make for every dollar paid to AAPI fathers (\$79,000).

### The wage gap persists regardless of where AAPI women live, but is the largest for those living in cities.

- AAPI women living in cities typically make about 74 cents for every dollar white, non-Hispanic men make, a gap of \$18,000 per year.
- By contrast, AAPI women living in suburban areas typically make 85 cents for every dollar white, non-Hispanic men make, a gap of \$10,000 per year.

## AAPI Women's Wage Equality by Metropolitan Status

	AAPI women's earnings	White, non-Hispanic men's earnings	What AAPI women are paid to white, non-Hispanic men	Wage gap
Rural	\$35,000	\$45,000	77.8¢	22.2¢
City	\$50,000	\$68,000	73.5¢	26.5¢
Suburban Areas	\$55,000	\$65,000	84.6¢	15.4¢

NWLC calculations based on 2017 American Community survey using IPUMS. Figures are in 2017 dollars. Median earnings are for full time, year round workers. "Rural" refers to those whose households were located outside of a metro area. "City" refers to those whose households were located inside a metro area and in a central/principal city. "Suburban" refers to those whose households were located inside a metro but outside central/principal city. Asian American and Pacific Islander women are those who self-identified as Chinese, Japanese, and/or other Asian or Pacific Islander. White, non-Hispanic men self-identified as white but who are not of Hispanic, Latino, or Spanish origin.



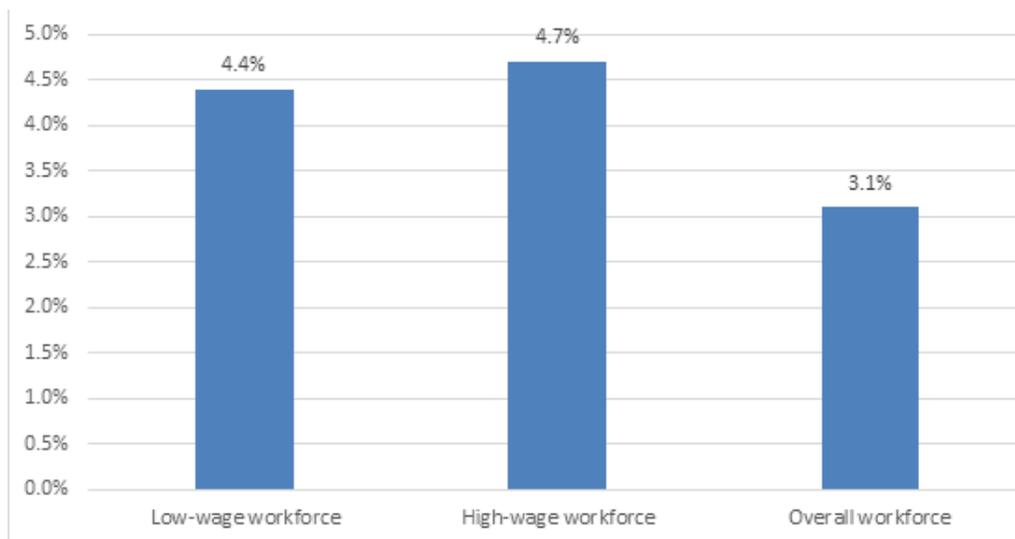
## AAPI women are overrepresented in both the low-wage and high-wage workforces, and experience a wage gap in both.

- In addition to wage gaps within occupations, AAPI women are overrepresented in the most poorly paid jobs in the nation. AAPI women's share of the low-wage workforce, or jobs that typically pay less than \$11.50 per hour (4.4 percent), is nearly 1.5 times larger than their share of the overall workforce (3.1 percent).
- In low-wage occupations, AAPI women working full time, year round experience a wage gap, making 81 cents for every dollar white, non-Hispanic men make.
- Interestingly, AAPI women are also overrepresented in the high-wage workforce: their share of jobs that typically pay a wage of \$48 or more an hour is over 1.5 times larger than their share of the overall workforce (4.7 percent versus 3.1 percent). AAPI women working in the high-wage workforce full time, year round still experience a wage gap, however, making only 91 cents for every dollar white, non-Hispanic men make.

## In a variety of occupations—those that are well-paid and poorly paid, those that are female-dominated and those that are non-traditional for women—AAPI women experience a wage gap.

- AAPI women working as customer service representatives—a female-dominated, mid-wage occupation—make 88 cents for every dollar paid to their white, non-Hispanic male counterparts.
- AAPI women working as hand laborers and freight, stock, and material movers—a male-dominated, low-wage occupation—make 80 cents for every dollar paid to their white, non-Hispanic male counterparts.
- AAPI women working as non-restaurant food servers—a female-dominated, low-wage occupation—make 96 cents for every dollar paid to their white, non-Hispanic male counterparts.
- AAPI women who are physicians and surgeons—a male-dominated, high-wage occupation—make 62 cents for every dollar paid to their white, non-Hispanic male counterparts.

### AAPI Women's Share of Low-Wage, High-Wage and Overall Workforce



Source: NWLC calculations based on 2018 Current Population Survey using IPUMS. This analysis defines low-wage jobs as those that paid a median hourly wage of less than \$11.50 in 2017. High-wage is defined as jobs that have a median wage of \$48.00 or more per hour, based on BLS, Occupational Employment Statistics. AAPI women are those who self-identified as Asian and/or Native Hawaiian or Pacific Islander. White, non-Hispanic men self-identified as white but who are not of Hispanic, Latino, or Spanish origin.



- 1 Data in this analysis comes from the U.S. Census Bureau Current Population Survey and American Community Survey and U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey. Because we are analyzing data from multiple data sources, there are some instances where the data refers to Asian women alone, which we refer to as “Asian women” throughout this analysis, and others where the data refers to Asian American or Pacific Islander women, which we refer to as “AAPI women.” Asian women alone include those who only identified themselves in one of the above surveys to be Asian alone. AAPI women are those who self-identified as Asian, Hawaiian/Pacific Islander, or Asian Hawaiian/Pacific Islander in the ACS survey and Asian and/or Native Hawaiian or Pacific Islander in the CPS Survey. Please reference the individual sources cited for further detail.
- 2 This fact sheet only addresses the wage gap for Asian women and AAPI women, but the wage gaps for other groups of women compared to white, non-Hispanic men are also substantial. Among full time, year round workers, Black women make only 61 cents for every dollar made by white, non-Hispanic men, white, non-Hispanic women, 77 cents, Native women, 58 cents, and Latinas, 53 cents. Wage gap figures are calculated by taking the median earnings of women and men working full, time year round. Median earnings describe the earnings of a worker at the 50th percentile - right in the middle.
- 3 AAPI women make only 83 cents for every dollar made by white, non-Hispanic men. This gap, which amounts to a loss of \$10,000 a year, means that AAPI women have to work more than 14 months to make as much as white, non-Hispanic men did last year alone. NWLC Calculations based on U.S. Census Bureau, Current Populations Survey, Annual Social and Economic Supplement 2018 (CPS ASEC) using CPS Table Creator, *available at* <https://www.census.gov/cps/data/cpstablecreator.html> (last visited Feb. 13, 2019).
- 4 In 2017, the median earnings of women working full time, year round was \$41,977 and for men it was \$52,146. The ratio of these earnings was 80.499 cents. When rounded to a whole number, this ratio was 80 cents. In 2016, the median earnings of women working full time, year round was \$41,554 and for men it was \$51,640. The ratio of these earnings was 80.47 cents. When rounded to a whole number, this ratio was also 80 cents. For this reason, the rounded wage gap ratio remained at 80 cents in 2017.
- 5 National Women’s Law Center (NWLC) calculations from U.S. Census Bureau, Current Population Survey, 2018 Annual Social and Economic Supplement (2018 CPS\_ASEC), Table PINC-05: Work Experience in 2017—People 15 Years Old and Over by Total Money Earnings in 2017, Age, Race, Hispanic Origin, and Sex, *available at* <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html>.
- 6 NWLC calculations based on American Community Survey (ACS) 2017 (1-year average) using Steven Ruggles, Sarah Flood, Ronald Goeken Grover, Erin Meyers, Jose Pacas, and Matthew Sobek, *Integrated Public Use Microdata Series (IPUMS): Version 8.0* [Machine-readable database]. Minneapolis: University of Minnesota, 2018 *available at* <https://usa.ipums.org/usa/> (IPUMS). Figures are for full time, year round workers. The American Community Survey allows respondents to select from several race categories. See generally <https://www.census.gov/programs-surveys/acs/methodology/questionnaire-archive.2017.html>. Women in each specific race subgroup self-selected into that race category in the American Community Survey. Insufficient data due to small sample size prevented inclusion of Malaysian women and men working full time, year round.
- 7 Indian women are those who self-selected “Asian Indian” as their race in the 2017 ACS, *supra* note 6.
- 8 NWLC calculations based on U.S. Census Bureau, Current Population Survey, Historical Data, Table P-38: Full-Time, Year-Round Workers by Median Earnings and Sex, *available at* <http://www.census.gov/hhes/www/income/data/historical/people/>. Median earnings are in 2017 dollars. Figures may differ from those in other NWLC reports due to rounding or updated Census estimates. Data for white, non-Hispanic men are for “white alone, not Hispanic” from 2002-2017 and “white, not Hispanic” from 1988-2001. Data for Asian women are for “Asian alone” from 2002-2017 and “Asian” from 1988-2001.
- 9 Figure assumes a wage gap of \$9,010—the gap in median earnings between full time, year round working Asian women (\$51,378) and white, non-Hispanic men (\$60,388) in 2017—each year for 40 years. Figures are not adjusted for inflation.
- 10 State wage gaps calculated by National Women’s Law Center (NWLC) are based on 2013-2017 American Community Survey Five-Year Estimates using IPUMS. National wage gap calculated by NWLC is based on 2018 Current Population Survey, Annual Social and Economic Supplement (<http://www.census.gov/hhes/www/income/>). Figures are based on women’s and men’s median earnings for full time, year round workers. “Lifetime losses due to wage gap” is what Asian women would lose, based on today’s wage gap, over a 40-year career, compared to white, non-Hispanic men. Figures are not adjusted for inflation. Earnings are in 2017 dollars. Ranks based on unrounded data.
- 11 NWLC calculations based on U.S. Census Bureau, 2018 Current Population Survey 1-year averages using IPUMS. Figures are for full time, year round workers. AAPI women are those who self-identified as Asian and/or Native Hawaiian or Pacific Islander.
- 12 *Id.*
- 13 *Id.*
- 14 *Id.* This analysis defines low-wage jobs as those that paid a median hourly wage of less than \$11.50 in 2017. High-wage is defined as a median wage of \$48.00 or more per hour, based on BLS, Occupational Employment Statistics, data for May 2017, *available at* [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).
- 15 *Id.* Figures are for full time, year round workers.
- 16 *Id.* Figures are for full time, year round workers. Female-dominated occupations are more than 60 percent female and male-dominated occupations are more than 60 percent male based on Bureau of Labor Statistics, Current Population Survey Annual Averages for 2017, Table 11: Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, *available at* <http://www.bls.gov/cps/cpsaat11.pdf>. Wage level was determined by examining 820 detailed occupations with annual mean earnings categorized by the Occupational Employment Statistics data for May 2017, *available at* [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm). High-wage jobs were in the top one-fifth, mid-wage jobs were in the middle three-fifths, low-wage jobs were in the bottom one-fifth.





WORKPLACE JUSTICE

## EMPLOYER LEADERSHIP TO ADVANCE EQUAL PAY: EXAMPLES OF PROMISING PRACTICES

MAYA RAGHU & CAITLIN LOWELL

In the United States, women are paid only 80 cents for every dollar paid to men, comparing all women working full-time, year-round with their male counterparts. When we compare women of color with white, non-Hispanic men, this gap is much larger. But employers are recognizing that equal pay is a key part of fair employment practices and diverse workforces, which are not only essential for avoiding costly litigation, but also to gain a market advantage. Competitive – and fair – pay is critical for recruiting and retaining a diverse workforce and high performers, particularly for younger women.<sup>1</sup> Consequently, employers of different sizes and in different sectors have begun to implement innovative policies and practices to identify and close gender wage gaps, and advance equal pay for their employees. By modeling proactive approaches, including conducting equal pay audits, embracing salary transparency, and banning the use of negotiation, these employers demonstrate that corporate leadership can make a difference in changing workplace culture to put equal pay at the forefront.

### Conducting Equal Pay Audits

The companies and public employers below have announced that they have conducted equal pay audits to uncover and remedy wage gaps. In some cases, the analysis examined both gender and race. Some audits looked at wage gaps within job titles, and others organization-wide wage gaps; some analyses also reviewed the distribution of men and women in jobs across the organization. A few employers have acknowledged the existence of a wage gap or disclosed steps they have taken to correct any pay disparities. Unfortunately, although several companies have announced that they have undertaken equal pay audits, very few have shared details

regarding their methodology, making it difficult to assess the rigor and quality of their analyses. **Unless otherwise noted, the below companies did not provide information about their methodology.**

### Companies

**Amazon:** In 2016, Amazon completed an equal pay audit, and announced that women earn 99.9 cents for every dollar earned by men at the company, and people of color earn 100.1 cents for every dollar earned by white employees at the company.<sup>2</sup>

**Apple:** Apple conducted an equal pay audit in 2016, and announced that it has achieved equal pay for women and people of color on its staff.<sup>3</sup>

**Buffer:** Buffer, a tech start-up, conducted a pay data analysis in 2016 which revealed a gender wage gap – men's average salaries were \$98,705, compared to women's average salaries of \$89,205. Buffer announced steps to address its wage gap, including examining its process for determining how employees are placed at an "experience" level, which determines compensation, and hiring more women to address the gender imbalance in its workforce.<sup>4</sup>

**Cisco:** Cisco, a technology conglomerate, has a unit that regularly reviews employee salaries for gender pay disparities. It announced that its initial gender gap was "a very small percentage" and that it has adjusted pay accordingly.<sup>5</sup>

**DDB:** DDB, an advertising agency, hired an outside gender-equity certification firm to conduct an equal pay audit that examined pay, promotions, and hiring practices.<sup>6</sup>

**Delta Airlines:** Delta Airlines conducted an equal pay audit which it says indicated that for administrative employees, women earned 98 cents for every dollar earned by men. For frontline staff, Delta announced that there was pay parity.<sup>7</sup>

**Eastern Bank:** Massachusetts-based Eastern Bank announced that it regularly reviews its compensation data to ensure that differences in pay among employees in comparable positions



can be accounted for based on experience and performance.<sup>8</sup>

**Expedia:** Expedia, which owns several online travel brands, announced that it conducted an equal pay audit and that it had no gender pay gap. The audit took into account base salary, bonus and stock-based compensation, and compared employees to those with similar position grades, tenure, and geographic locations.<sup>9</sup>

**Facebook:** In 2016, Facebook announced that it completed a statistical analysis of its pay data, which revealed that men and women are paid the same.<sup>10</sup>

**Gap:** Gap conducted an internal pay analysis led by its compensation team, which it states was subsequently validated by an outside consultant. The data analyzed by the consultants included annualized salary (in US dollars), gender, full time or part time status (FTE), employee tenure, span of control, level, job code, and geography for all Gap employees worldwide.<sup>11</sup> Gap announced that it was paying its employees equal pay for equal work. Gap also has dedicated money to use to make pay adjustments in the event of a wage gap.<sup>12</sup>

**Glassdoor:** Glassdoor, a job search engine and review site, conducted an equal pay audit and published its methodology and data. Although the analysis revealed a pay gap when comparing all men to all women on staff, Glassdoor stated that when the analysis adjusted for age, performance, department, seniority level, and job title, women had a statistically insignificant advantage. Glassdoor also released the percentage of women on staff overall, in senior leadership and technical positions, and disclosed that the lack of women in senior leadership and technical positions contributed to its overall gender pay gap.<sup>13</sup>

**GoDaddy:** GoDaddy, a web hosting company, conducted an equal pay audit in September 2015, and announced that on average women were paid 0.28 percent more than men. However, the analysis also revealed that women in management were paid 3.58 percent less than their male counterparts.<sup>14</sup>

**Intel:** Intel, a multinational technology corporation, conducted an equal pay audit in 2015, comparing employees by job type and level education level, experience, performance, and responsibility. Intel reported that it had found no gender wage gap.<sup>15</sup>

**Microsoft:** Microsoft completed an equal pay audit in April 2016 and stated that its female employees make 99.8 cents for every dollar made by male employees, and that racial and ethnic minorities earn \$1.004 for every dollar earned by white employees.<sup>16</sup>

**Nitsch Engineering:** Nitsch Engineering, a Massachusetts-based woman-owned engineering company, states that it reviews pay equity during annual salary review

periods. The company compares an employee's salary to those with similar education, years of experience, job titles, and professional registrations. Managers are required to justify any salary differences, and if needed the executive team will make salary adjustments.<sup>17</sup>

**Raytheon:** Raytheon, a defense contractor, has conducted equal pay analyses over the past 14 years, and states that it has achieved equal pay for men and women. Raytheon also provides managers with on-screen pay comparison tools to assist them in making salary decisions for new hires.<sup>18</sup>

**Redfin:** Redfin, a real estate company, conducted an equal pay analysis that examined every job level with at least five employees in a single location. Redfin published the results of these findings on its website, and reported it did not have a gender pay gap.<sup>19</sup>

**Salesforce:** Salesforce, a cloud computing company, conducted an equal pay audit in 2015. Upon discovering that some women were being paid less than men, Salesforce spent roughly \$3 million to ensure that compensation was equal between men and women on staff. Approximately six percent of employees received salary adjustments, and roughly half of those who received salary adjustments were women.<sup>20</sup>

**SAP:** SAP, a software corporation, announced that it had conducted a pay audit of its U.S.-based employees in August 2016 with the assistance of a third-party firm, and found that over 99 percent of its employees in the U.S. are paid equally based on gender. SAP stated that for the less than one percent where the pay was unequal, it increased the compensation of these employees – two-thirds of which were woman and one-third of which were men.<sup>21</sup>

## *Public Employers*

**United States:** In 2014, the United States Office of Personnel Management (OPM) conducted an equal pay audit of all white collar federal employees. OPM's analysis found that from 1992 through 2012, the gender wage gap in the federal workforce shrank from 30 percent to 13 percent. OPM reviewed the occupational distribution of male and female employees, and determined that the differences in distribution accounted for much of its gender wage gap.<sup>22</sup>

**California:** In 2016, the state conducted a pay audit of the state workforce which found that women make 79.5 cents on the dollar compared to their male counterparts. The analysis did not compare the earnings of men and women in specific occupations.<sup>23</sup>

**Alexandria, VA:** In September 2016, the city of Alexandria, VA, released the results of its equal pay audit of its workforce, which found that on average, female employees earn 94 cents for every dollar earned by male employees. In



leadership positions, women earn two percent more than men. The city released the full data tables from the report.<sup>24</sup>

**Austin, TX:** In 2014, Austin released a pay analysis of city employees by gender, ethnicity, and age including analysis broken down by city profession. On average, female employees earned 87 cents for every dollar earned by male employees. The report did not control for performance or seniority within roles.<sup>25</sup>

**Boston, MA:** At the behest of its mayor, Boston conducted an analysis of the city workforce, including extensive analysis by department, race, and gender, as well as other factors. The analysis revealed gender and racial wage gaps in several departments, which the city made public.<sup>26</sup>

**New York City, NY:** In 2016, New York City's Public Advocate released a report which revealed a gender wage gap in each of the top 20 municipal agencies; these data were publicly released.<sup>27</sup>

**Seattle, WA:** In 2013, Seattle's mayor convened a Gender Equity in Pay Task Force to work towards equal pay in the city government, and conducted a gender pay audit finding gender and racial wage gaps, which were publicly disclosed. The Task Force issued a report, which included recommendations outlining how to close gender and racial wage gaps, reduce occupational segregation, reduce implicit bias, hire and retain more female employees, and increase city contracting with women-owned businesses.<sup>28</sup>

**Spokane, WA:** Spokane conducted an equal pay audit of city employees and published the data. The analysis revealed a gender pay gap in some areas of city government.<sup>29</sup>

## Promoting Pay Transparency

A culture of secrecy around pay is bad for business not only because it gives cover to discrimination, but also because it leads to poorer performance, employee dissatisfaction and lower motivation, and mistrust of management. Conversely, increasing transparency by allowing employees to discuss compensation, and providing employees with information about pay scales and pay-setting practices, increases the likelihood that employees will believe they are paid fairly, which in turn promotes employee engagement and productivity.<sup>30</sup> The following companies have promoted pay transparency through various approaches, including allowing employees to discuss compensation, publishing employee salaries, and creating and disclosing salary ranges or levels for jobs.

**Buffer:** Buffer has posted each employee's salary in a publicly available spreadsheet, as well as the formula it uses to determine each salary.<sup>31</sup>

**Elevations:** Elevations, a Boulder, Colorado credit union, posts

its salaries online and sets salaries based on title.<sup>32</sup>

**GoDaddy:** Employees at GoDaddy can compare their salary to that of coworkers in the same position. Each employee's pay statement indicates the salary level and range for their position.<sup>33</sup>

**Jet.com:** In June 2015, Jet.com, an e-commerce company, made its salary data available to its employees and investors on an app.<sup>34</sup>

**Namaste Solar:** Namaste Solar, a Colorado-based solar panel installation company, has made salaries transparent and pays every employee the same bonuses.<sup>35</sup>

**SumAll:** SumAll, a marketing analytics company based in New York, has posted all employee salaries on an internal network accessible to its employees.<sup>36</sup>

**Whole Foods:** Since 1986, Whole Foods has permitted employees to look up the salaries and bonuses of anyone in the company, including the CEO.<sup>37</sup>

## Standardizing Compensation-Setting and Eliminating Salary Negotiation

Setting compensation based on negotiation, rather than predetermined, objective standards and metrics can exacerbate gender and racial wage gaps, and create disparities between new and current employees. The companies below are examples of those that have established compensation structures and practices to increase transparency and reduce discretion in pay-setting, including the use of salary ranges and objective criteria to set compensation, creating fixed salaries based on position or title, and prohibiting negotiation.

**Accenture:** Accenture, a professional services company, has announced that it has shifted its compensation structure so that certain salaries are now assigned based on job title in a standardized way.<sup>38</sup>

**Elevations:** Elevations sets salaries based on title, which has improved retention and recruitment efforts for the company and reduced complaints from employees.<sup>39</sup>

**Fog Creek Software:** Fog Creek Software, a project management software company, created eight salary levels for employees. An employee's level is calculated based on experience, scope of responsibility, and skill set. Everyone at the same level makes the same salary. Each employee's level is reviewed annually and recalibrated if necessary.<sup>40</sup>

**GoDaddy:** GoDaddy developed a new compensation structure which strives to pay the 70th percentile of the market rate for each position, and contains salary brackets for each position. After switching to the new system, GoDaddy adjusted salaries where necessary.<sup>41</sup>



**Google:** Google created a compensation system with salary levels for each position in the company, and pays employees according to those scales. Google reports that although recruiters may ask about a candidate's prior salary as a data point, it does not drive calculation of the salary offer. In 2015, the women who were hired received, on average, a 30 percent larger salary increase than the men hired.<sup>42</sup>

**Jet.com:** In June 2015, Jet.com developed a compensation structure with ten levels that sets all employee salaries based on position, and eliminates the use of negotiation for new hires. If job candidates believe their offers are low, Jet.com directs them to the LinkedIn profiles of other employees hired at the same salary level so that job candidates can compare their qualifications.<sup>43</sup>

**Magoosh Inc.:** Magoosh, an online test prep company, has a no-negotiation policy for salaries. The company reviews salaries on a quarterly basis and compares its compensation to the market rate at similar firms. Magoosh also raises pay for employees when the company hits revenue milestones.<sup>44</sup>

**Mission Produce:** Mission, an avocado production and distribution company, has implemented a pay scale using a computer algorithm that flags salaries that are outliers. When implementing the pay scale, it brought all employees up to a set minimum salary.<sup>45</sup>

**Reddit:** Reddit, a social news aggregation and discussion website, created a pay scale for employees that maps market compensation data against Reddit's existing compensation, jobs and experience levels. Reddit increased its salary cap to ensure that job offers would include salaries on the high end of market rates. Candidates who receive job offers can choose to receive a mix of cash and equity, to provide flexibility without changing the amount of compensation offered. Reddit adjusted the salaries of existing employees with raises or bonuses as needed during the annual review process.<sup>46</sup>

**SumAll:** SumAll assigns new hires to one of nine salary brackets, which are fixed based on position. SumAll prohibits negotiation during the hiring process; offers are fixed based on the salary formula and are "take it or leave it."<sup>47</sup>

**Threshold:** At Threshold, a Seattle-based wealth management firm, when new employees are hired, existing employees' salaries are adjusted to ensure that pay remains fair within the company.<sup>48</sup>

## Eliminating Unconscious Bias

The companies below are among those that have implemented processes to mitigate the role unconscious bias can play in important employment practices that affect compensation, such as hiring, negotiation, setting starting salaries, and determining promotions.

**Chubb:** Chubb, an insurance company, has paired its sessions on unconscious bias with performance management training, and uses this training to teach managers how to objectively link performance with business goals.<sup>49</sup>

**DDB:** DDB has hired a firm to provide unconscious bias trainings to 2,000 of its North American employees.<sup>50</sup>

**Facebook:** Facebook has developed training materials for its employees to mitigate the effects of unconscious bias, and has made these materials publicly available online. The material covers stereotypes and performance bias, performance attribution bias, competence/likability tradeoff bias, and maternal bias.<sup>51</sup>

**Google:** Google has created the voluntary training Unconscious Bias @ Work, which relies on internal examples and external research to discuss bias in the workplace. Google's training is available online to the public.<sup>52</sup>

**Pfizer:** Pfizer, a pharmaceutical company, has given a three-hour workshop on hidden bias to company leaders. Managers are given a "tip sheet" prior to interviewing job candidates to help limit the role unconscious bias plays in the hiring process.<sup>53</sup>

**State Street:** State Street, a financial services holding company, began conducting unconscious bias training, for its managers in 2011. Members of the selection committee, which determines executive promotions, are required to participate in the training.<sup>54</sup>

## Other Promising Corporate Practices to Advance Equal Pay

**Accenture:** Accenture has ensured that female employees are part of the board compensation committee, which determines and reviews salaries.<sup>55</sup>

**Baker Tilly:** Baker Tilly, an accounting and advisory firm, regularly evaluates the compensation of female part-time employees, to ensure they are still being paid at the market rate.<sup>56</sup>

**Kimberly-Clark:** Kimberly-Clark, a personal care corporation, has an analytics team that conducts regular pay equity analyses. When an analysis revealed that female employees' promotions and pay increases often stalled at the level before director, Kimberly-Clark increased the percentage of women in director-level jobs to 30 percent, from 17 percent in 2010.<sup>57</sup>

**Work & CO:** Work & CO, a Brooklyn-based digital project design company, requires recruiters to find two strong female job candidates for every male candidate. Recruiting tests for software programmers do not collect gender or race information until applicants complete the technical test online and move onto the next stage of the hiring process.<sup>58</sup>



## Public-Private Partnerships

In the last few years, employers, non-profit organizations, governments, and academic institutions have created initiatives to work together to address equal pay, including by conducting equal pay audits, sharing promising practices, and providing expert assistance.

**Alaska:** In May 2014, the YWCA of Alaska began EconEquity Initiative: Eliminating the Gender Pay Gap in the State of Alaska by 2025. The initiative has engaged businesses, non-profits, organizations, and individuals around the issue of equal pay in Alaska, and released a report about the work completed in the first year of the project.<sup>59</sup>

**Boston:** The Mayor's office established an initiative known as 100% Talent: the Boston Women's Compact, whereby over 50 companies in Boston pledged to work to close the gender pay gap, and evaluate successes and challenges together.<sup>60</sup>

**Seattle:** 100% Talent is a five-year initiative of the Seattle Metropolitan Chamber of Commerce and Women's Funding Alliance to increase gender equity in King County. The initiative is designed to engage employers in Seattle to address the wage gap, and has a goal of 500 employer pledges by the end of the initiative.<sup>61</sup>

**National:** In 2016, the Obama Administration announced an initiative to encourage private sector companies to express their commitment to equal pay. Businesses that signed the Equal Pay Pledge committed to conducting an annual gender pay analysis, reviewing hiring and promotion practices, addressing implicit bias in their companies, and working towards closing the national gender wage gap. Nearly 100 companies across sectors have signed the pledge, including Accenture, GoDaddy, and Salesforce.<sup>62</sup> Several of the pledge signers have formed a consortium known as Employers for Pay Equity.

- 1 A recent study found that "pay and financial benefits drive Millennials' choice of organization more than anything else." THE 2016 DELOITTE MILLENNIAL SURVEY: WINNING OVER THE NEXT GENERATION OF LEADERS 19 (2016), available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-millennial-survey-2016-exec-summary.pdf>; Noel, L. & Hunter Arscott, C., *Millennial Women: What Executives Need to Know About Millennial Women 4*, ICEDR (2015), available at [http://www.icedr.org/research/documents/14\\_millennial\\_snapshot.pdf](http://www.icedr.org/research/documents/14_millennial_snapshot.pdf) (Millennial women leave jobs primarily for more compensation).
- 2 Mari Saito, "Amazon says its female workers paid equally as men," *Reuters*, Mar. 23, 2016, available at <http://www.reuters.com/article/us-amazon-com-pay-idUSKCN0WP2B4>.
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WORKPLACE JUSTICE

# EQUAL PAY FOR LATINAS

MEIKA BERLAND AND MORGAN HARWOOD

Latinas<sup>1</sup> who work full time, year round are paid just 53 cents<sup>2</sup> for every dollar paid to white, non-Hispanic men.<sup>3</sup> This gap, which amounts to an annual loss of \$28,386, means that to make as much as white, non-Hispanic men typically do in one 12-month calendar year, Latinas have to work 22 months—until the beginning of November in the following calendar year.<sup>4</sup> The wage gap between Latinas and white, non-Hispanic men is far larger than the wage gap between all women and all men; women overall working full time, year round in the United States are typically paid 80 cents for every dollar paid to their male counterparts.<sup>5</sup> The wage gap between Latinas and white, non-Hispanic men has barely budged over the past 30 years and actually increased by one cent in 2017.

## Some Latinas<sup>6</sup> experience substantially wider wage gaps than the wage gap for Latinas overall.<sup>7</sup>

- Latinas of Central American origin experience the highest wage gap and typically make less than half—47.3 percent—of what white, non-Hispanic men typically make. And Mexican and Dominican women typically make barely more than half of what white, non-Hispanic men make (50.9 percent and 54.5 percent, respectively).
- Cuban (57.1 percent), South American (63.6 percent), and Puerto Rican (65.5 percent) Latinas all make less than two thirds of what white, non-Hispanic men make.
- Latinas of various origins also earn less than their Latino counterparts, although the disparity in pay is less than that between Latinas and white, non-Hispanic men.

***Latinas working full time, year round are typically paid only 53 cents for every dollar paid to their white, non-Hispanic male counterparts.***

### Latinas' Wage Equality by Subgroup

Nationality	Latinas' Earnings	Latinas' Earnings/White, non-Hispanic Men's Earnings	Latinas' Earnings/ Latino Men's Earnings (within subgroup)
Central American	\$26,000	47.3%	86.7%
Mexican	\$28,000	50.9%	85.9%
Dominican	\$30,000	54.5%	83.3%
Cuban	\$31,400	57.1%	80.5%
South American	\$35,000	63.6%	80.3%
Puerto Rican	\$36,000	65.5%	90.0%

NWLC calculations based on 2016 American Community Survey One-Year sample using IPUMS-USA available at <https://usa.ipums.org/usa/> (IPUMS). Figures are based on women's and men's median earnings for full-time, year-round workers. The median income for white, non-Hispanic men is \$55,000. Figures are not adjusted for inflation. Earnings are in 2016 dollars. Origin is defined by the Census Bureau as ancestry, lineage, heritage, nationality group, or country of birth.



## The wage gap between Latinas and white, non-Hispanic men was virtually the same in 2017 as it was in 1987.<sup>8</sup>

- The wage gap for Latinas grew in 2017—up one cent from 2016.
- In 1987 Latinas were paid 53.5 percent of what white, non-Hispanic men were paid; in 2017 Latinas were paid 53.0 percent.<sup>9</sup>
- The wage gap between Latinas and white, non-Hispanic men was the smallest in 2013, and even then Latinas were paid only 55.6 percent of what white, non-Hispanic men were paid.

### Latinas' Earnings Compared to White, non-Hispanic Mens' Earnings Over Time



NWLC calculations based on U.S. Census Bureau, Current Population Survey, Historical Data, Table P-38: Full-Time, Year-Round Workers by Median Earnings and Sex, available at <http://www.census.gov/hhes/www/income/data/historical/people/> (last visited Oct.17, 2018). Median earnings are in 2017 dollars. Figures may differ from those in other reports due to rounding or updated Census estimates. Data for white, non-Hispanic men are “white alone, not Hispanic” from 2002-2017, “white, not Hispanic” from 1987-2001. Hispanic people may be of any racial group.

## In twelve states (New Jersey, California, Texas, Alabama, Connecticut, Utah, Maryland, Washington, Illinois, Georgia, North Carolina, and Oklahoma) Latinas are typically paid less than half of what their white, non-Hispanic male counterparts are paid.<sup>10</sup>

- While Latinas nationally are paid just 53 cents for every dollar paid to white, non-Hispanic men, they can face even steeper wage gaps depending on where they live. In New Jersey and California, the worst states for Latinas’ wage equality, Latinas typically make close to 60 percent less than white, non-Hispanic men (58 percent and 57 percent, respectively).
- Latinas in 19 states<sup>11</sup> and the District of Columbia lose over \$25,000 in wages every year due to the wage gap. In three of these states—Alabama, North Carolina, and Georgia<sup>12</sup>—Latinas lose more to the wage gap than they are paid in a year.

### Ten Worst States for Latinas’ Wage Equality

Rank	State	Latinas’ Earnings	White, non-Hispanic Men’s Earnings	What a Latina Makes for Every Dollar a White, non-Hispanic Man Makes	Wage Gap
	<i>United States</i>	\$32,002	\$60,388	\$0.53	\$0.47
10	Georgia	\$24,729	\$51,520	\$0.48	\$0.52
9	Illinois	\$29,000	\$60,758	\$0.48	\$0.52
8	Washington	\$28,851	\$60,758	\$0.47	\$0.53
7	Maryland	\$32,708	\$70,000	\$0.47	\$0.53
6	Utah	\$25,316	\$54,682	\$0.46	\$0.54
5	Connecticut	\$32,442	\$70,885	\$0.46	\$0.54
4	Alabama	\$22,278	\$50,227	\$0.44	\$0.56
3	Texas	\$26,734	\$60,828	\$0.44	\$0.56
2	California	\$30,379	\$70,966	\$0.43	\$0.57
1	New Jersey	\$31,361	\$74,007	\$0.42	\$0.58

NWLC calculations for the national wage gap for Latinas is based on U.S. Census Bureau, Current Population Survey, 2018 Annual Social and Economic Supplement, Table PINC-05 Work Experience in 2017--People 15 Years Old and Over by Total Money Earnings in 2017, Age, Race, Hispanic Origin, and Sex. Educational Attainment, People 25 years old and over, by total money earnings in 2017. Women’s and men’s median earnings are for full-time, year-round workers. Earnings are in 2017 dollars. NWLC calculations based on 2012-2016 American Community Survey Five-Year sample using IPUMS-USA available at <https://usa.ipums.org/usa/>. “What a woman makes for every dollar a white, non-Hispanic man makes” is the ratio of women’s and men’s median earnings for full-time, year-round workers. Earnings are in 2016 dollars. The “wage gap” is the additional money a woman would have to make for every dollar made by a white, non-Hispanic man in order to have equal annual earnings. Ranks based on unrounded data.



## Latinas living in cities and suburban areas are paid less than half of what white, non-Hispanic men are paid.<sup>13</sup>

- Latinas who live in cities and suburban areas are paid more than 50 percent less than their white, non-Hispanic male counterparts, making 46 cents and 49 cents respectively for every dollar paid to white non-Hispanic men.
- Latinas living in rural areas make just over half (56 percent) of what white, non-Hispanic men living in rural areas make.
- Typically, people working in cities have higher incomes than those in rural areas, resulting in an income premium. The income premium for Latinas living in cities is \$5,000 compared to their Latina counterparts living in rural areas, who typically earn \$25,000. While white, non-Hispanic men living in cities receive a premium 4 times that (\$20,000), compared to their white, non-Hispanic counterparts living in rural areas, who typically earn \$45,000.

### Latinas' Wage Equality by Metropolitan Status

	Latinas' Earnings	White, non-Hispanic Men's Earnings	What Latinas Are Paid for Every Dollar Paid to white, non-Hispanic Men	Wage Gap
Rural	\$25,000	\$45,000	\$0.56	\$0.44
City	\$30,000	\$65,000	\$0.46	\$0.54
Suburban Areas	\$31,400	\$64,000	\$0.49	\$0.51

NWLC calculations based on 2016 American Community Survey One-Year sample using IPUMS-USA available at <https://usa.ipums.org/usa/>. Figures are based on women's and men's median earnings for full-time, year-round workers. Figures are not adjusted for inflation. Earnings are in 2016 dollars. "Rural" refers to households located outside of a metro area. "City" refers to households located inside a metro area and in a central/principal city. "Suburban" refers to households located inside a metro area, but outside of a central/principal city.

## Latinas experience a wage gap at every education level, and the wage gap is greatest for Latinas with a Bachelor's degree.<sup>14</sup>

- Among full-time, year-round workers, Latinas without a high school diploma typically make only 64 cents for every dollar white, non-Hispanic men without a high school diploma make.
- Latinas have to obtain a Bachelor's degree to get paid only slightly more than white, non-Hispanic men with only a high school diploma (\$46,932 and \$45,458, respectively).
- Latinas with an Associate's degree make only slightly more (\$36,871) than what white, non-Hispanic men without a high school diploma are typically paid (\$35,096).
- Latinas with a Bachelor's degree or higher are typically paid almost \$30,000 less than their white, non-Hispanic male peers.

### Latinas' Wage Equality by Educational Attainment

Educational Attainment	Latinas' Earnings	White, non-Hispanic Men's Earnings	What a Latina Makes for Every Dollar a White, non-Hispanic Man Makes	Wage Gap
No high school diploma	\$22,405	\$35,096	\$0.64	\$0.36
High school diploma	\$29,176	\$45,458	\$0.64	\$0.36
Some college, no degree	\$32,857	\$51,845	\$0.63	\$0.37
Associate's degree	\$36,871	\$56,007	\$0.66	\$0.34
Bachelor's degree or more	\$52,207	\$81,985	\$0.64	\$0.36
Bachelor's degree	\$46,932	\$75,282	\$0.62	\$0.38
Master's degree	\$65,167	\$91,901	\$0.71	\$0.29

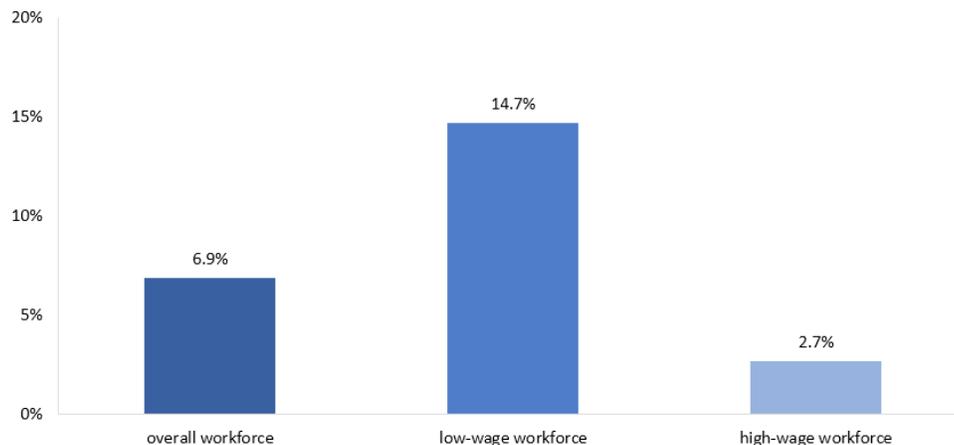
NWLC calculations based on U.S. Census Bureau, Current Population Survey, 2018 Annual Social and Economic Supplement, Table PINC-03. Educational Attainment, People 25 years old and over, by total money earnings in 2017. "What a Latina makes for every dollar a white, non-Hispanic man makes" is the ratio of female and male median earnings for full-time, year-round workers. Earnings are in 2017 dollars. The "wage gap" is the additional money a woman would have to make for every dollar made by a white, non-Hispanic man in order to have equal annual earnings.



## Latinas are overrepresented in low-wage jobs and underrepresented in high-wage jobs, but this alone does not explain why they are typically paid less than their white, non-Hispanic male peers.<sup>15</sup>

- Latinas are overrepresented in the low-wage workforce—jobs that typically pay less than \$11.50 per hour, or \$23,920 or less annually. Their share of the low-wage workforce is more than twice than their share of overall workforce—14.7 percent and 6.9 percent, respectively.
- Among workers in low-wage jobs, Latinas typically make 67 cents for every dollar paid to white, non-Hispanic men. Latinas who work full time, year round in these occupations are typically paid \$19,990 annually, compared to \$30,000 typically paid to white, non-Hispanic men in the same occupations. This translates to a typical loss of \$10,010 each year to the wage gap—enough to pay for about ten months' worth of rent or about a year and a half of childcare costs.<sup>16</sup>
- Latinas' share of high-wage jobs—those jobs paying \$48 or more per hour, or at least \$100,000 annually—is staggeringly low, at 2.7 percent.
- Among workers in high-wage occupations—such as lawyers, engineers, and physicians or surgeons—Latinas are typically paid just 59 cents for every dollar paid to white, non-Hispanic men in the same occupations. Latinas who work full time, year round in these occupations are typically paid \$61,823 compared to the \$104,536 typically paid to white, non-Hispanic men in these same jobs. This amounts to a typical annual loss of \$42,713 each year, or more than \$1.7 million dollars over a 40-year career.<sup>17</sup>

### Latina's Share of the Low-Wage and High-Wage Workforces



NWLC calculations based on 2012-2016 American Community Survey Five-Year sample using IPUMS-USA available at <https://usa.ipums.org/usa/>. Figures are for employed workers in 2016. The low-wage workforce and high-wage workforce is defined here as occupations with median wages of \$11.50 or less per hour, or median wage of \$48.00 or more per hour, based on BLS, Occupational Employment Statistics.

## Six of the ten occupations that Latinas are concentrated in pay a low wage, and Latinas are paid less than white, non-Hispanic men in every one of these occupations.<sup>18</sup>

- While Latinas are employed in nearly every occupation, just under half (46 percent) are concentrated in the ten occupational categories in the table below.
- Latinas working as janitors, building cleaners, maids, housekeepers and supervisors of retail sales workers are paid less than two thirds of what white, non-Hispanic men in these occupations are paid. Latinas working as cashiers and retail salespeople fare even worse—making just over half (52 percent) of what white, non-Hispanic men in these occupations make.
- The single most common occupation for Latinas is that of janitors, building cleaners, maids, or housekeepers; they make up 22.8 percent of people employed in those jobs.
- Even in supervisory roles (supervisors of retail sales workers) Latinas are paid only slightly more than a low wage (\$11.50 per hour), whereas white, non-Hispanic men in the same occupation make twice that.



## Common Occupations for Latinas

Rank	Occupation	Percent of Latinas Employed in Occupation	Percent of Workers in Occupation Who Are Latinas	Median Hourly Wage for Latinas in Occupation	Median Hourly Wage for white, non-Hispanic Men in Occupation	What a Latina Makes for Every Dollar a white, non-Hispanic Man Makes
1	Janitors, building cleaners, maids, and housekeepers	9.0%	22.8%	\$9.62	\$15.77	\$0.61
2	Cashiers and retail salespeople	8.0%	11.9%	\$9.74	\$18.60	\$0.52
3	Secretaries, administrative assistants, office clerks, receptionists, and information clerks	7.1%	12.6%	\$14.62	\$19.23	\$0.76
4	Nursing, psychiatric, home health, and personal care aides	4.8%	14.3%	\$10.90	\$13.07	\$0.83
5	Childcare workers and teacher assistants	3.9%	17.6%	\$9.62	\$12.56	\$0.77
6	Pre-K, K-12, and special education teachers	3.6%	7.3%	\$21.63	\$25.83	\$0.84
7	Customer service representatives	2.8%	11.0%	\$14.07	\$19.23	\$0.73
8	Cooks	2.7%	11.9%	\$8.65	\$10.05	\$0.86
9	Waiters and waitresses	2.6%	12.0%	\$9.11	\$9.62	\$0.95
10	Supervisors of retail sales workers	1.8%	6.0%	\$14.86	\$22.91	\$0.65

NWLC calculations based on 2012-2016 American Community Survey Five-Year sample using IPUMS-USA available at <https://usa.ipums.org/usa/>. Median hourly wages are for full-time, year-round workers. Hourly wages are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.

### The wage gap persists for Latinas of all ages - and is widest for working women nearing retirement.<sup>19</sup>

- Among full-time, year-round workers ages 15 to 24, Latinas typically make 79 cents for every dollar white, non-Hispanic men make, but this figure is far worse for older women.
- Among workers age 25 to 44, Latinas typically make 58 cents for every dollar their white, non-Hispanic male peers make, and among those age 45 to 64 Latinas are paid just over half (52 percent) of what their white, non-Hispanic male peers are paid.
- These larger gaps mean that Latinas are falling even further behind at the very time they need additional resources to invest in their families and save for retirement.

### Over her career, the typical Latina loses over \$1 million to the wage gap.

- Annual losses due to the wage gap compound over time. Based on today's gap, over the course of a 40-year career, the typical Latina loses \$1,135,440. This means, assuming both began their careers at age 20, a Latina would typically need to work until she is 95 years to make what a white, non-Hispanic man would typically make by age 60.<sup>20</sup>
- In some states, the situation is even worse. In the ten worst states for Latinas' lifetime losses, Latinas lose more than \$1.1 million over a 40-year career. In the District of Columbia, Latinas lose more than \$1.8 million over a 40-year career.<sup>21</sup>



## Ten Worst States for Latinas' Lifetime Losses Due to Wage Gap

Rank	State	Latinas' Earnings	White, non-Hispanic Men's Earnings	Lifetime Losses Due to Wage Gap	Age at Which a Latinas Career Earnings Catch Up to White, non-Hispanic Men's Career Earnings at Age 60
	<i>United States</i>	<i>\$32,002</i>	<i>\$60,388</i>	<i>\$1,135,440</i>	<i>95</i>
10	Virginia	\$31,361	\$60,758	\$1,175,880	97
9	Illinois	\$29,000	\$60,758	\$1,270,320	104
8	Washington	\$28,851	\$60,758	\$1,276,280	104
7	Massachusetts	\$33,900	\$66,975	\$1,323,000	99
6	Texas	\$26,734	\$60,828	\$1,363,760	111
5	Maryland	\$32,708	\$70,000	\$1,491,680	106
4	Connecticut	\$32,442	\$70,885	\$1,537,720	107
3	California	\$30,379	\$70,966	\$1,623,480	113
2	New Jersey	\$31,361	\$74,007	\$1,705,840	114
1	District of Columbia	\$47,649	\$93,000	\$1,814,040	98

NWLC calculations for the national wage gap for Latinas is based on U.S. Census Bureau, Current Population Survey, 2018 Annual Social and Economic Supplement, Table PINC-05 Work Experience in 2017--People 15 Years Old and Over by Total Money Earnings in 2017, Age, Race, Hispanic Origin, and Sex. Educational Attainment, People 25 years old and over, by total money earnings in 2017. Women's and men's median earnings are for full-time, year-round workers. Earnings are in 2017 dollars. NWLC calculations based on 2012-2016 American Community Survey Five-Year sample using IPUMS-USA available at <https://usa.ipums.org/usa/>. Figures are based on women's and men's median earnings for full-time, year-round workers. "Lifetime Losses Due to Wage Gap" is what Latinas would lose, based on today's wage gap, over a 40-year career, compared to white, non-Hispanic men. Figures are not adjusted for inflation. Ranks based on unrounded data. Earnings are in 2016 dollars.

### Latina mothers typically lose more to the wage gap annually than they make in a year and would have to work past age 100 to catch up to their white, non-Hispanic male counterparts make by age 60.<sup>22</sup>

- Latinas who work are more likely to be moms (41.2 percent) than women overall (33.4 percent).
- In 2016, Latina mothers who worked full time, year round made just 46 cents for every dollar paid to white, non-Hispanic fathers who worked full time year round (\$30,000 annually versus \$65,000 annually).
- The wage gap accumulates to an annual loss of \$35,000, which is more than Latina mothers are typically paid in an entire year.
- Over their lifetimes, Latina mothers stand to lose \$1.4 million compared to white, non-Hispanic fathers, and would have to work until age 107 to catch up to their white, non-Hispanic male counterparts make by age 60.

### Union membership is especially important for closing the wage gap for Latinas.<sup>23</sup>

- Among full-time workers who are union members, the wage gap between Latinas and white men is 24 percent smaller, at 29 cents, than the 38 cent wage gap between non-union Latinas and white male workers.
- Latinas who belong to unions typically make about \$810 per week compared to the \$583 per week typically made by non-union Latinas—that is, 39 percent more.
- Despite higher incomes among union members, Latinas are the least likely racial or ethnic group of women to be union members. In 2017, just 9.1 percent of employed Latinas were members of unions, compared to 9.7 percent of white and Asian women and 11.7 percent of Black women.



## Foreign-born Latinas face an even larger wage gap than Latinas overall.<sup>24</sup>

- Latinas who are foreign born are paid just 43 cents for every dollar made by foreign-born white, non-Hispanic men, which is a whopping \$37,000 more per year than foreign-born Latinas.
- Native-born white, non-Hispanic men typically make \$25,000 more each year than native-born Latinas.
- The largest wage gap is between noncitizen Latinas and noncitizen white, non-Hispanic men: noncitizen Latinas make 42 cents for every dollar paid to noncitizen white, non-Hispanic men
- Latinas who are naturalized citizens are typically paid half (\$35,000) of what naturalized white, non-Hispanic men are typically paid (\$70,000), which leads to an annual loss that is equal to naturalized Latinas' typical annual income.

### Latinas' Wage Gap by Immigration Status

Immigration Status	Latinas' Earnings	White, non-Hispanic Men's Earnings	What Latinas Make for Every Dollar a White, non-Hispanic Man Makes	Wage Gap
Native Born	\$35,000	\$60,000	\$0.58	\$0.42
Foreign Born	\$28,000	\$65,000	\$0.43	\$0.57
Naturalized Citizen	\$35,000	\$70,000	\$0.50	\$0.50
Noncitizen	\$25,000	\$60,000	\$0.42	\$0.58

Figures are based on women's and men's median earnings for full-time, year-round workers. Figures are not adjusted for inflation. Earnings are in 2017 dollars. Wage gaps calculated by NWLC are based on 2018 Current Population Survey, Table Creator <https://www.census.gov/cps/data/cpstablecreator.html>.

- Data for Latinas in this analysis comes from the U.S. Census Bureau and U.S. Department of Labor, Bureau of Labor Statistics. In these sources, Latinas include people of any race who identified themselves to be female and of Hispanic, Latino, or Spanish origin.
- The wage gap for Latinas increased in 2017. In 2017, the median earnings of Latinas working full time year round were \$32,002 and for white, non-Hispanic men it was \$60,388. The ratio of these earnings is 52.99. When rounded to a whole number, this ratio was 53 cents. In 2016, the median earnings of Latinas working full time year round were \$ 31,522 and for white, non-Hispanic men it was \$57,925. The ratio of these earnings was 54.42. When rounded to a whole number, this ratio was 54 cents. So in 2017 the wage gap for Latinas increased by one cent - up to 0.47 cents in 2017 from 0.46 cents in 2016.
- This fact sheet only addresses the wage gap for Latinas, but the wage gaps for other groups of women compared to white, non-Hispanic men are also substantial. Among full-time, year-round workers, Black women make only 61 cents for every dollar made by white, non-Hispanic men, Asian women, 85 cents, white, non-Hispanic women, 77 cents, and Native women, 58 cents. Wage gap figures are calculated by taking the median earnings of women and men working full time year round. Median earnings describe the earnings of a worker at the 50th percentile - right in the middle.
- National Women's Law Center (NWLC) calculations based on U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY, 2018 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT [hereinafter CPS, 2018 ASEC], Table PINC-05, available at <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html> (last visited Oct. 9, 2018).
- Id.* In 2017, the median earnings of women working full time, year round was \$41,977 and for men it was \$52,146. The ratio of these earnings was 80.50 cents. When rounded to a whole number, this ratio was 80 cents. In 2016, the median earnings of women working full time, year round was \$41,554 and for men it was \$51,640. The ratio of these earnings was 80.47 cents. When rounded to a whole number, this ratio was also 80 cents. For this reason, the rounded wage gap ratio remained at 80 cents in 2017.
- The U.S. Census Bureau, American Community Survey collects data from respondents about their Hispanic, Spanish, or Latino origin. Origin is defined by the CENSUS BUREAU as ancestry, lineage, heritage, nationality group, or country of birth. "Central American" includes those who identified as Costa Rican, Guatemalan, Honduran, Nicaraguan, Panamanian, and Salvadoran. "South American" includes those who identified as Argentinean, Bolivian, Chilean, Colombian, Ecuadorian, Paraguayan, Peruvian, Uruguayan, and Venezuelan.
- NWLC calculations based on American Community Survey 2016 One-Year sample using Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D010.V8.0>.
- NWLC calculations based on U.S. Census Bureau, Current Population Survey, Historical Data, Table P-38: Full-Time, Year-Round Workers by Median Earnings and Sex, available at <http://www.census.gov/hhes/www/income/data/historical/people/> (last visited Oct.17, 2018). Median earnings are in 2017 dollars. Figures may differ from those in other reports due to rounding or updated Census estimates. Data for white, non-Hispanic men are "white alone, not Hispanic" from 2002-2017, "white, not Hispanic" from 1987-2001.



Hispanic people may be of any racial group.

9. In 1987 Latinas were paid a median annual income of \$30,066 and white, non-Hispanic men were paid \$56,249. In 2017 Latinas were paid a median annual income of \$32,002 and white, non-Hispanic men were paid \$30,388. Figures in 2017 dollars.
10. NWLC calculations based on American Community Survey 2012-2016 Five-Year sample using Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D010.V8.0>.
11. The nineteen states include New Jersey, California, Connecticut, Maryland, Texas, Massachusetts, Washington, Illinois, Virginia, Utah, Rhode Island, Alabama, Colorado, New York, Georgia, Minnesota, Louisiana, North Carolina, and Oregon.
12. The annual income for Latinas in Alabama is \$22,278, in North Carolina Latinas make \$24,043 annually, and in Georgia Latinas are paid \$24,729 every year – in all of these states Latinas lose more to the wage gap than they are paid in a year.
13. NWLC calculations based on American Community Survey 2016 One-Year sample using Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D010.V8.0>. The U.S. Census Bureau, American Community Survey collects data from respondents about the location of their household. “Rural” refers to those whose households were located outside of a metro area. “City” refers to those whose households were located inside a metro area and in a central/principal city. “Suburban” refers to those whose households were located inside a metro but outside a central/principal city.
14. CPS, 2018 ASEC, *supra* note 3, Table PINC-03: Educational Attainment, People 25 years old and over, by total money earnings in 2017, *available at* <http://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-03.html> (last visited Oct. 12, 2017). Figures are for full-time, year-round workers.
15. NWLC calculations based on American Community Survey 2012-2016 Five-Year sample using Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D010.V8.0>. Figures are for employed workers. The low-wage workforce is comprised of workers in occupations that typically pay less than \$11.50 per hour or 23,920 or less, and the high wage workforce is comprised of workers in occupations that typically pay \$48 or more per hour – the equivalent of at least \$100,000 per year.
16. *Id.* Median gross rent for U.S. is \$1,012 per month and comes from U. S. Census Bureau, 2017 American Community Survey (ACS) Table B25064, One-Year sample. Gross rent is the contract rent plus the estimated average monthly cost of utilities (electricity, gas, and water and sewer) and fuels (oil, coal, kerosene, wood, etc.) if these are paid by the renter (or paid for the renter by someone else). Average costs for child care in a center in Tennessee for a four-year-old (\$7,290 annually in 2016 or \$607.50 per month). Tennessee’s cost for this type of child care falls at the median of all state averages (including the District of Columbia). Estimates come from Child Care Aware of America, Parents and the High Cost of Child Care: 2017 Report, (2017), Appendix VII, *available at* [http://usa.childcareaware.org/wp-content/uploads/2018/01/2017\\_CCA\\_High\\_Cost\\_Appendices\\_FINAL\\_180112\\_small.pdf](http://usa.childcareaware.org/wp-content/uploads/2018/01/2017_CCA_High_Cost_Appendices_FINAL_180112_small.pdf).
17. *Id.* Figure assumes a wage gap of \$42,713—the gap in median earnings between full-time, year-round working Latinas (\$61,823) and white, non-Hispanic men (\$104,536) in high wage occupations in 2016—each year for 40 years. Figures are not adjusted for inflation.
18. NWLC calculations based on American Community Survey 2012-2016 Five-Year sample using Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D010.V8.0>.
19. NWLC calculations based on CPS, 2017 ASEC, *supra* note 3, Table PINC-05.
20. NWLC calculations for the national wage gap for Latinas is based on U.S. CPS, 2018 ASEC, Table PINC-05 Work Experience in 2017--People 15 Years Old and Over by Total Money Earnings in 2017, Age, Race, Hispanic Origin, and Sex. Educational Attainment, People 25 years old and over, by total money earnings in 2017. Women’s and men’s median earnings are for full-time, year-round workers. Earnings are in 2017 dollars. Figure assumes a wage gap of \$28,386—the gap in median earnings between full-time, year-round working Latinas (\$32,002) and white, non-Hispanic men (\$60,388) in 2017—each year for 40 years. Figures are not adjusted for inflation.
21. *Id.*
22. NWLC calculations based on American Community Survey 2016 One-Year sample using Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D010.V8.0>. Figures are for full-time, year-round workers. Mothers and fathers have at least one related child under 18 at home.
23. NWLC calculations based on Bureau of Labor Statistics (BLS), Union Members 2017, Table 1: Union Affiliation of Employed Wage and Salary Workers by Selected Characteristics, 2016-2017 Annual Averages 2016-2017 and, Table 2: Median Weekly Earnings of Full-Time Wage and Salary Workers by Union Affiliation and Selected Characteristics, 2016-2017 Annual Averages, *available at* <http://www.bls.gov/news.release/union2.nr0.htm>. Figures include workers represented by unions. Data are also available for workers whose jobs are covered by a union contract but are not reported here. Wage gaps are calculated based on median weekly earnings. These data differ slightly from the often-used measure of median annual earnings for full-time, year-round workers.
24. NWLC calculations based on CPS, 2017 ASEC, *supra* note 3, using Table Creator. Figures are for full-time, year-round workers.
25. *Id.* Figure assumes a wage gap of \$35,000—the gap in median earnings between full-time, year-round working Latinas who are non citizens (\$35,000) and white, non-Hispanic men who are non citizens (\$70,000) in 2017—each year for 40 years. Figures are not adjusted for inflation.





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JUNE 2019 | FACT SHEET

# Equal Pay for Mothers Is Critical for Families

**JASMINE TUCKER**

Nearly 25 million mothers with children under 18 are in the workforce, making up nearly 1 in 6—or 16.1 percent—of all workers.<sup>1</sup> And a record number of these mothers – about 3 in 4 mothers in the workforce (75.6 percent)—are working full time.<sup>2</sup> As a result, families are increasingly relying on their earnings. In 2017, 41 percent of mothers were the sole or primary breadwinners in their families, while 23.2 percent of mothers were co-breadwinners.<sup>3</sup> While women in the U.S. who work full time, year round are typically paid just 80 cents for every dollar paid to their male counterparts,<sup>4</sup> the wage gap between mothers and fathers is even larger. Mothers working full time, year round outside the home are paid just 69 cents for every dollar paid to fathers, [a gap that translates to a loss of \\$18,000 annually.](#)<sup>5</sup> The wage gap between mothers and fathers exists across race, state, and occupation, and compromises families' economic security.

## Mothers of every race are typically paid less than white, non-Hispanic fathers.

While overall, mothers are paid less than fathers, the wage gap is even wider for many mothers of color as compared to white, non-Hispanic fathers. Asian American and Pacific Islander mothers are paid 92 cents;<sup>6</sup> white, non-Hispanic mothers are paid 72 cents; Black mothers are paid 54 cents; Native mothers are paid 48 cents; and Latina mothers are paid just 46 cents for every dollar paid to white, non-Hispanic fathers.<sup>7</sup>



Source: U.S. Census Bureau, 2017 American Community Survey using IPUMS-USA. Mothers and fathers have at least one related child under 18 at home. Figures are median annual earnings for full time, year round workers in 2017

## Mothers experience a wage gap in every single state.

Nationwide, mothers are paid just 69 cents for every dollar paid to fathers. But the wage gap varies by state. In Vermont, where the wage gap between mothers and fathers is smallest, mothers are paid 80 cents for every dollar paid to fathers, translating to a typical loss of about \$10,500 annually.<sup>8</sup> In Louisiana and Utah, where the gap is largest, mothers are paid just 59 cents and 61 cents respectively for every dollar paid to fathers. In these states, mothers typically lose more than \$23,000 annually.<sup>9</sup> Many mothers of color experience even wider gaps [depending on their state](#). For example, in the District of Columbia, Black mothers lose about \$85,000 and Latina mothers lose more than \$98,000 annually compared to white, non-Hispanic fathers.

## Mothers experience a wage gap across occupations.

In a wide variety of occupations—those that are well-paid and poorly paid, those that are female-dominated and those that are non-traditional for women—mothers working full time, year round are paid less than fathers.

Nearly 2 in 5 mothers (38.1 percent) are employed in one of ten occupations; in every one of those occupations, mothers are paid between 51 cents and 85 cents for every dollar paid to fathers. In addition, two of the common occupations for mothers—janitors, building cleaners, maids and housekeepers and cashiers and retail salespeople—typically pay mothers a low wage—less than \$11.50 per hour. Of the top ten most common occupations for mothers, these two occupations are where mothers face the steepest wage gaps compared to fathers.<sup>10</sup>

Lower wages can leave families below or dangerously close to the poverty line, particularly when mothers support children on their own. A single parent with two children needs to make \$20,231 per year – about \$9.72 per hour for someone working full time, year round—just to lift their family above the poverty line.<sup>11</sup> Indeed,

### COMMON OCCUPATIONS FOR WORKING MOTHERS

	Occupation	Percent of mothers employed in occupation	Median hourly wage for mothers in occupation	Median hourly wage for fathers in in occupation	What a mother makes for every dollar a father makes
1	Pre-K, K-12, and special education teachers	7.5%	\$23.08	\$27.40	84¢
2	Secretaries, administrative assistants, office clerks, receptionists, and information clerks	6.1%	\$15.87	\$19.23	83¢
3	Registered nurses	4.6%	\$30.29	\$35.58	85¢
4	Nursing, psychiatric, and home health, and personal care aides	4.4%	\$12.02	\$14.42	83¢
5	Cashiers and retail salespeople	3.9%	\$11.06	\$21.63	51¢
6	Janitors, building cleaners, maids, and housekeepers	3.2%	\$9.62	\$15.38	63¢
7	Misc. managers such as postmasters, mail super intendants, and funeral service managers	2.3%	\$34.13	\$44.71	76¢
8	Customer service representatives	2.3%	\$15.38	\$21.63	71¢
9	Retail sales supervisors	1.9%	\$16.83	\$24.04	70¢
10	Accountants and auditors	1.9%	\$28.85	\$43.75	66¢

Source: NWLC calculations based on 2017 American Community Survey using IPUMS. Figures are in 2017 dollars. Median hourly wages are for full time, year round workers. Mothers and fathers have at least one child under 18 at home. Hourly wages for mothers and fathers are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.

nearly one in eight unmarried mothers who held full time jobs throughout 2017 were poor.<sup>12</sup> Nearly six in ten poor children lived in families headed by women in 2017, and female-headed households with children were much more likely to be poor in 2017 (34 percent) than households headed by unmarried fathers (16 percent) or households headed by married couples (6 percent).<sup>13</sup>

Meanwhile, fathers tend to be concentrated in occupations that are more highly paid. In the ten most common occupations for fathers, none typically pay fathers less than \$14.42 per hour. And while there is overlap between the most common occupations for mothers and fathers, fathers are more likely than mothers to be in high paying occupations and mothers are more likely to be in lower paid occupations. For example, fathers are 3.5 times more likely than mothers to be a CEO or legislator. In contrast, mothers are 11 times more likely than fathers to be nursing, psychiatric, home health, and personal care aides. And, again, when fathers and mothers work in the same occupation, fathers are nearly always paid more; in nine out of ten most common occupations for fathers, mothers are typically paid between 63 and 86 cents for every dollar paid to fathers.

### COMMON OCCUPATIONS FOR WORKING FATHERS

	Occupation	Percent of mothers employed in occupation	Median hourly wage for mothers in occupation	Median hourly wage for fathers in occupation	What a mother makes for every dollar a father makes	What a mother makes for every dollar a father makes
1	Misc. managers such as postmasters, mail super intendants, and funeral service managers	7.5%	\$23.08	\$27.40	84¢	76¢
2	Truck drivers and driver sales workers	6.1%	\$15.87	\$19.23	83¢	67¢
3	Construction Laborers	4.6%	\$30.29	\$35.58	85¢	86¢
4	Retail sales supervisors	4.4%	\$12.02	\$14.42	83¢	70¢
5	Carpenters	3.9%	\$11.06	\$21.63	51¢	70¢
6	Janitors, building cleaners, maids, and housekeepers	3.2%	\$9.62	\$15.38	63¢	63¢
7	Software developers	2.3%	\$34.13	\$44.71	76¢	83¢
8	Laborers and freight, stock, and material movers	2.3%	\$15.38	\$21.63	71¢	71¢
9	Grounds maintenance workers	1.9%	\$16.83	\$24.04	70¢	\$1.00
10	CEOs and legislators	1.9%	\$28.85	\$43.75	66¢	79¢

Source: NWLC calculations based on 2017 American Community Survey using IPUMS. Figures are in 2017 dollars. Median hourly wages are for full time, year round workers. Mothers and fathers have at least one child under 18 at home. Hourly wages for mothers and fathers are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.

**Families can't afford for mothers to be shortchanged any longer. It's time to close the gap.**

- 1 NWLC calculations based on U.S. Census Bureau, 2018 Current Population Survey using IPUMS-USA, University of Minnesota, <https://ipums.org/>. The wage gap is calculated as the median earnings of mothers working full time year round as a percentage of the median earnings of fathers working full time year round, provided they have at least \$1 in earnings. Median earnings are the earnings made by an individual at the 50<sup>th</sup> percentile – the worker right in the middle. Mothers and fathers have at least one related child under 18 at home.
- 2 Ibid. 65.1 percent of working mothers were employed full time in 1976.
- 3 Center For American Progress, Breadwinning Mothers Continue to be the U.S. Norm (May 2019), <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/>
- 4 NWLC, The Wage Gap: The Who, How, Why, and What to Do (Sept. 2018), <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/>
- 5 NWLC calculations of U.S. Census Bureau, 2017 American Community Survey using IPUMS-USA, University of Minnesota, *available at* <https://usa.ipums.org/usa/>. Mothers and fathers have at least one related child under 18 at home. Figures are median annual earnings for full time, year round workers in 2017.
- 6 Some communities of Asian American and Pacific Islander mothers experience a larger wage gap than is reflected in the figure for Asian American and Pacific Islander mothers overall. For more information on the wage gap for AAPI women by subgroup. For more information, NWLC, Equal Pay for Asian American and Pacific Islander Women (Mar. 2019), <https://nwlc.org/resources/equal-pay-for-asian-pacific-islander-women/>.
- 7 NWLC calculations of U.S. Census Bureau, 2017 American Community Survey using IPUMS-USA, University of Minnesota, *available at* <https://usa.ipums.org/usa/>. Mothers and fathers have at least one related child under 18 at home. Figures are median annual earnings for full time, year round workers in 2017. Black mothers are those who self identified in the survey as Black or African American. Native mothers are those who self identified as American Indian or Alaskan Native. Asian American and Pacific Islander mothers are those who self identified as Asian and/or Pacific Islander. Latina mothers are those who self identified as being of Hispanic, Latino, or Spanish origin and may be of any race. White, non-Hispanic mothers and fathers are those who self identified as white and not of Hispanic, Latino, or Spanish origin.
- 8 NWLC, The Wage Gap for Mothers, State by State (May 2019), <https://nwlc.org/resources/the-wage-gap-for-mothers-state-by-state/>.
- 9 Ibid.
- 10 NWLC calculations of U.S. Census Bureau, 2017 American Community Survey using IPUMS-USA, University of Minnesota, *available at* <https://usa.ipums.org/usa/>. Mothers and fathers have at least one related child under 18 at home. Figures are median annual earnings for full time, year round workers in 2017. Hourly wages are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.
- 11 U.S. Census Bureau, Poverty Thresholds for 2018 by Size of Family and Number of Related Children Under 18 Years (Sept. 2018), <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.
- 12 Meika Berlan and Morgan Harwood, NWLC, National Snapshot: Poverty Among Women & Families, 2018 (Sept. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/National-Snapshot.pdf>.
- 13 Ibid.



WORKPLACE JUSTICE

## THE PAYCHECK FAIRNESS ACT: CLOSING THE “FACTOR OTHER THAN SEX” LOOPHOLE TO STRENGTHEN PROTECTIONS AGAINST PAY DISCRIMINATION

When the Equal Pay Act became law more than fifty years ago, it made it illegal for employers to pay unequal wages to men and women who perform substantially equal work. At the time of the Equal Pay Act's passage in 1963, women were paid a mere 59 cents to every dollar paid to men. Although the Equal Pay Act and other civil rights laws have helped to narrow the gender wage gap, stronger legal protections are necessary to help to close the significant disparities that remain.

Today, women working full time, year-round typically are paid only 80 cents for every dollar paid to their male counterparts – and compared to white, non-Hispanic men, women of color face even larger wage gaps.<sup>1</sup> Study after study shows that those disparities cannot be fully accounted for by factors such as differences in education, work experience, industry or occupation.<sup>2</sup> And unfortunately, some courts have opened loopholes in the Equal Pay Act, interpreting it in ways that undermine its basic goal. The Paycheck Fairness Act (H.R. 7, S. 270) would update and strengthen the Equal Pay Act in several critical ways, including by closing the “factor other than sex” loophole.<sup>3</sup>

### A “Factor Other Than Sex”

In cases brought under the Equal Pay Act, a plaintiff has the substantial initial burden of establishing that she is being paid less than a male employee for performing substantially equal work, requiring equal skill, effort and responsibility under similar working conditions. If she makes this showing, an employer still may avoid liability for pay discrimination

by proving that a wage disparity is justified by one of four affirmative defenses.<sup>4</sup> One of the affirmative defenses is that the difference in wages is based on a “factor other than sex.”

Some courts have interpreted the “factor other than sex” defense in ways that create a large loophole in the guarantee of equal pay for women. In contrast, other courts have recognized that the Equal Pay Act requires that any “factor other than sex” that justifies paying a woman less than a man for the same work must be closely tied to an employer's business needs. The Paycheck Fairness Act would resolve this uncertainty in the law and ensure that employers would no longer be able to justify paying women less for the same work as men based on faulty and invalid justifications that are not related to the job or any business necessity.

### Relying on Prior Salaries

Often employers will base a job applicant's starting salary on what he or she made at a prior job, rather than the applicant's relevant skills, training, or experience.<sup>5</sup> This can lead to an employee with equal or superior qualifications making less than another employee in the same position, simply because she happened to make less in her prior job. And it can mean that the pay discrimination and disparities that a woman, and particularly a woman of color, faces at one job can follow her to the next and result in lower pay throughout her career.<sup>6</sup>

#### Expanding the Loophole

When Marybeth Lauderdale began serving as the Superintendent of the Illinois School for the Deaf (ISD) in 2006, her starting salary was \$77,388. Her male counterpart at the Illinois School for the Visually Impaired (ISVI) earned a starting salary of \$93,336. He left his position to become the Superintendent of a local school district, where he received a higher salary. When he returned to the ISVI in 2008 as Superintendent, the State relied on his current salary from the school district to set his new salary at \$121,116. In 2010, the Superintendent positions were merged and Lauderdale



was selected to serve as the Dual Superintendent for the ISVI and the ISD. Despite her expanded responsibilities and attempts to negotiate a higher salary, she still was paid \$15,000 less than her male colleague. When Lauderdale filed an Equal Pay Act claim, the state argued that that the pay disparity was the result of the state's compensation system, which automatically relied on an individual's prior salary when determining pay, even when an employee received a new title or took on more responsibilities. The district court judge agreed and dismissed Lauderdale's suit, concluding that relying on prior salary in setting pay is a permissible "factor other than sex."<sup>7</sup>

Christina Sparrock started working at the New York Post as a senior financial analyst in 2002. Her starting salary was \$59,000, and by 2004 she was earning a salary of \$77,250. However, that year the Post hired another senior financial analyst at a starting salary of \$80,000. The court dismissed Sparrock's Equal Pay Act claim, finding that the employer permissibly paid her less as a result of its decision to match her male coworker's prior salary. The court did not require the Post to show that the male colleague's prior experience prepared him for the senior financial analyst position in a way that warranted his higher pay as compared to Sparrock, or that the higher pay was actually necessary to lure him to the Post. Sparrock's claim was discarded before she even had a chance to present her case to a jury.<sup>8</sup>

#### Applying Scrutiny to Employer Justifications<sup>9</sup>

Kathy Riser sued her employer, QEP Energy, for violating the Equal Pay Act after it created two new positions based on her duties, hired two men for the positions, and paid them each a higher salary. After Riser trained one of the new hires, she was fired. QEP Energy argued that the pay disparity between Riser and the two new male hires was justified by factors other than sex: its gender-neutral pay classification system and the prior salaries of the male comparators. The Tenth Circuit rejected these arguments, holding that while a gender-neutral pay classification system can constitute a "factor other than sex," such a system serves as a defense only where any resulting difference in pay is "rooted in legitimate business-related differences in work responsibilities and qualifications for the particular position at issue."<sup>10</sup> In this case, Riser's pay grade in the system was not based on the duties she was actually performing. Similarly, the Court rejected QEP Energy's claim that the male comparators' prior salary provided a legitimate explanation for the pay disparity. The Tenth Circuit held that employers cannot rely solely upon prior salary to justify a pay disparity, and reversed the lower court's

grant of summary judgment on Riser's Equal Pay Act claim.

Three female employees of General Motors -- Sheila Ann Glenn, Patricia Johns, and Robbie Nugent -- worked as "follow ups," ensuring that adequate supplies of tools and operating materials were on hand in the company's plants. They claimed General Motors violated the Equal Pay Act, alleging that they earned less than their male counterparts, and that they received lower starting salaries than men hired around the same time for the position. The district court found that the women established a prima facie case, and rejected General Motors' argument that the pay disparity was justified by a "factor other than sex." General Motors claimed that since the men, unlike the women, had transferred from hourly jobs to salaried positions, its "longstanding, unwritten, corporate-wide policy against requiring an employee to take a cut in pay when transferring to salaried positions" resulted in the pay disparity. The district court rejected this argument, as did the Eleventh Circuit Court of Appeals, observing that the women had been hired at lower starting salaries and continued to be paid less than their male counterparts. On appeal, General Motors also argued that the legislative history of the Equal Pay Act supported its contention that prior salary can be a "factor other than sex." The Eleventh Circuit rejected this argument, noting that the disparity did not result from unique characteristics of the same job; from the men's experience, training, or ability; or from special exigent circumstances connected with the business. The court held that prior salary alone cannot justify a pay disparity.<sup>11</sup>

#### Relying on Employee Salary Negotiation

Some employers attempt to justify pay disparities between equally-qualified male and female employees doing the same job by arguing that the male employee was simply a more effective negotiator. Relying on negotiation to set salaries tends to work to the disadvantage of female employees; research has documented that employers react more favorably to men who negotiate salaries, while women who ask for higher pay (using the same negotiation strategies as men) are often penalized for violating gender stereotypes.<sup>12</sup>

#### Expanding the Loophole

Over two years, Lorrie Muriel, a Location Manager for SCI Arizona Funeral Services, received raises increasing her starting salary to \$54,363. She then requested and received a transfer to a Funeral Director position, for which she was paid \$21 per hour. Daniel Beaver, Muriel's male successor for the Location Manager position, rejected SCI's initial salary offer of \$53,000,



and negotiated a starting salary of \$58,000. Muriel's male successor to the Funeral Director position, Terry McCormack, was paid \$22 per hour. When Muriel filed an Equal Pay Act lawsuit challenging the wage disparity in both positions, SCI argued that in both cases, the disparity was justified by a "factor other than sex," and the court agreed. SCI argued that Beaver, the male successor to the Location Manager position, was paid a higher salary because of his prior salary and because he negotiated. The court did not analyze the requirements of the position or compare Muriel and Beaver's qualifications. With regard to the Funeral Director position, the court accepted without scrutiny SCI's argument that McCormack's higher hourly wage was justified because of his prior earnings, and the urgency of finding a replacement for Muriel. The court dismissed Muriel's case.<sup>13</sup>

#### Applying Scrutiny to Employer Justifications

Margaret Thibodeaux-Woody was hired for one of two open program manager positions at Houston Community College (HCC) in 2008. During her interview, she was informed of the annual salary for the position and attempted to negotiate for a higher salary. The interviewer told her the salary was non-negotiable, although that was not the case. A male applicant for the same position successfully negotiated a higher salary after his interviewer sent his salary request to Human Resources. When Thibodeaux-Woody filed an Equal Pay Act claim, HCC argued that the salary difference between Thibodeaux-Woody and the male applicant was due to their "approaches" to salary negotiation, which it contended was a "factor other than sex." Although the court declined to decide whether negotiation qualified as a "factor other than sex," it reasoned that such a practice could not be a bona fide "factor other than sex" if it was discriminatorily applied. Because Thibodeaux-Woody was denied the same opportunity to negotiate as her male counterpart, the court allowed her claim to proceed.<sup>14</sup>

Wendy Dreves worked as the general manager of the Hudson News retail shop at the Burlington International Airport. When she left the general manager position she was earning \$48,230. The male employee who replaced her had fewer years of retail management experience and was given a starting salary of \$52,500. Dreves brought an Equal Pay Act lawsuit. The employer argued that factors other than sex explained the pay disparity between Dreves and her male successor; specifically, that it had to pay the male successor more to induce him to take the job and to relocate his family to a new city, and to satisfy his demands when he negotiated for

even more money than initially offered. However, the court determined that the pay disparity could not be explained away by the employer's argument that it had to pay more to obtain a candidate with the necessary experience and qualifications. The court also stated that the successor's need to move his family to take the new job was not related to the job itself or the general business of the company, and so was not a valid justification of the pay disparity. Finally, the court recognized that the successor's ability to negotiate a higher salary was not a business-related justification for paying him more than Dreves for doing the same job. The court therefore permitted Dreves's case to go forward.<sup>15</sup>

#### Deferring to "Market Forces" in Setting Pay

Employers often argue that they are simply acting consistently with "market forces" when they pay two employees differently for doing the same work. However, the compensation market has been influenced in numerous ways by sex stereotyping and other discrimination over time.<sup>16</sup> Relying on vague or ill-defined assertions of "market forces" to recruit or pay a man more can perpetuate this discrimination when an employer does not adjust the pay of other employees doing substantially equal work to meet the market.

#### Expanding the Loophole

Patrice Tavernier was one of 47 CEOs heading regional hospitals for Health Management Associates (HMA). In 2007, she earned \$157,000 leading a regional hospital, while Gary Lang, CEO of a smaller hospital, earned \$200,000. The gender pay disparity was part of a larger trend in the organization: males CEOs were paid a higher median salary than females CEOs, even though the hospitals headed by females were slightly larger in terms of number of beds. Tavernier brought a lawsuit against HMA which included an Equal Pay Act Claim. The employer argued that it offered Lang a higher salary in part to recruit him to the position. The employer did not adjust Tavernier's salary to match Lang's higher salary. In rejecting Tavernier's Equal Pay Act claim, the court characterized the employer's offer of a higher salary to attract Lang to the position as "market forces," and accepted it as "a factor other than sex" justifying the pay disparity.<sup>17</sup>

Christine Drury was promoted to become one of four vice presidents at Waterfront Media. At the time of her promotion, Drury was the only female vice president, and her salary and bonus were lower than those of the male vice presidents. Drury brought a lawsuit alleging a violation of the Equal Pay Act, among other claims. The district court accepted the employer's argument that



higher pay for the male comparator was necessary to “lure him away from his prior employer.”<sup>18</sup> The district court dismissed all of her claims.

### Applying Scrutiny to Employer Justifications

Mary Jane Saucedo became an associate professor teaching accounting at the University of Texas at Brownsville’s School of Business in 1994. Saucedo was paid \$10,000 to \$20,000 less annually for a period of at least three years than two other male School of Business faculty members who performed substantially equal work. When Saucedo brought an Equal Pay Act lawsuit, the University argued that it had paid these male faculty members more in order to attract them to the school away from other institutions as part of a strategy to help the school qualify for accreditation. However, the court found that evidence regarding faculty salary levels – such as the school’s practice of paying less to non-tenure track professors – could actually be inconsistent with the school’s assertion that it paid more purely to attract professors with the necessary qualifications for accreditation. The court also stated that the University failed to show that the market for new faculty with the qualifications of Saucedo’s male colleagues was not shaped by sex discrimination and stereotyping. Saucedo was allowed to proceed to a trial on her claims of unequal pay.<sup>19</sup>

## The Paycheck Fairness Act Closes the Loophole

The Paycheck Fairness Act closes the “factor other than sex” loophole by adding a requirement that the factor proffered by the employer be “bona fide,” ensuring that the factor actually is neutral and unrelated to sex. The Paycheck Fairness Act makes clear that the “factor other than sex” affirmative defense only excuses a pay differential when that factor is related to the position in question, forwards a business necessity, and accounts for the entire pay differential. In addition, the Paycheck Fairness Act would ensure that if an employee demonstrates that there is an alternative practice that would serve the employer’s same business purpose without producing the pay disparity, which the employer has refused to adopt, the employee can succeed in her Equal Pay Act claim. Finally, the Paycheck Fairness Act explicitly prohibits employers from relying on a job applicant’s prior salary during the hiring process, so that pay discrimination and disparities do not follow women and people of color from job to job.

Through these robust protections, the Paycheck Fairness Act would help ensure that the Equal Pay Act’s promise of equal pay for equal work is not swallowed by a loophole that allows the wage gap to persist.

- 1 NAT’L WOMEN’S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO (Oct. 2018), <http://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/>.
- 2 AMERICAN ASSOCIATION OF UNIV. WOMEN (AAUW), GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE (2012), [www.aauw.org/research/graduating-to-a-pay-gap/](http://www.aauw.org/research/graduating-to-a-pay-gap/) (concluding that just one year after graduation, women were paid 82 percent of what their similarly educated and experienced male peers were paid). See also Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends and Explanations*, NAT’L BUREAU OF ECONOMIC RESEARCH (Jan. 2016), <http://www.nber.org/papers/w21913.pdf>.
- 3 NAT’L WOMEN’S LAW CTR., HOW THE PAYCHECK FAIRNESS ACT WILL STRENGTHEN THE EQUAL PAY ACT (Jan. 2019), <https://nwlc.org/resources/how-the-paycheck-fairness-act-will-strengthen-the-equal-pay-act/>.
- 4 29 U.S.C. § 206 (2012). The employer may avoid liability by proving that the pay differential is the product of: 1) a seniority system, 2) a merit system, or 3) a system which measures earnings by quantity or quality of production.
- 5 The Equal Employment Opportunity Commission (EEOC) Compliance Manual on compensation discrimination has instructed since 2000 that reliance on prior salary alone cannot justify a compensation disparity. The EEOC explains that “permitting prior salary alone as a justification for a compensation disparity ‘would swallow up the rule and inequality in compensation among genders would be perpetuated.’” U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, COMPLIANCE MANUAL, NO. 915.003 § 10-IV.F.2.g (Dec. 2000), <https://www.eeoc.gov/policy/docs/compensation.html>. See also NAT’L WOMEN’S LAW CTR., ASKING FOR SALARY HISTORY PERPETUATES PAY DISCRIMINATION FROM JOB TO JOB (Dec. 2018), <https://nwlc.org/resources/asking-for-salary-history-perpetuates-pay-discrimination-from-job-to-job/>.
- 6 See, e.g., *Beck v. The Boeing Co.*, No. C00-0301P (W.D. Wash., consent decree entered 2004), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1072&context=condec>. Boeing set the salaries of newly hired employees as their immediate past pay plus a hiring bonus which was set as a percent of their past salary. Raises were also set as a percentage of an employee’s salary. Boeing claimed it set pay based on a neutral policy, but since women had lower average prior salaries than men, a class of female employees alleged these pay practices led to significant gender disparities in earnings that compounded over time and could not be justified by performance differences or other objective criteria. See Josh Goodman, *Boeing Settles for \$72 million*, SEATTLE TIMES, Nov. 12, 2005, [http://old.seattletimes.com/html/boeingaerospace/2002619603\\_boeing12.html](http://old.seattletimes.com/html/boeingaerospace/2002619603_boeing12.html).
- 7 When Lauderdale appealed her case, the Court of Appeals for the Seventh Circuit affirmed the grant of summary judgment for the employer, relying on its prior decision in *Wernsing v. Dep’t of Human Servs.*, 427 F.3d 466 (7th Cir. 2005), where the court upheld the State of Illinois’s practice of using prior salary to set pay. *Lauderdale v. Ill. Dep’t of Human Servs.*, 876 F.3d 904 (7th Cir. 2017).



- 8 *Sparrock v. NYP Holdings, Inc.*, No. 06 Civ. 1776(SHS), 2008 WL 744733 (S.D.N.Y. Mar. 4, 2008).
- 9 In 2018, the Ninth Circuit Court of Appeals held that prior salary history is not “a factor other than sex” because “it is not a legitimate measure of work experience, ability, performance, or any other job related quality.” *Rizo v. Yovino*, 887 F.3d 453 (9th Cir. 2018), *petition for a writ of certiorari granted, vacated and remanded on other grounds* (S. Ct. Feb. 25, 2019 (*per curiam*)). The Supreme Court later vacated the Ninth Circuit’s decision for a procedural reason and did not address the merits of the case.
- 10 *Riser v. QEP Energy*, 776 F.3d 1191, 1198 (10th Cir. 2015).
- 11 *Glenn v. General Motors Corp.*, 841 F.2d 1567 (11th Cir. 2018).
- 12 See, e.g., LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON’T ASK: NEGOTIATION AND THE GENDER DIVIDE* (Princeton Univ. Press, 2003). See also Hannah Riley Bowles & Kathleen L. McGinn, *Gender in Job Negotiations: A Two-Level Game*, 24 *NEGOT. J.* 393, 395 (2008); Deborah A. Small et al., *Who Goes to the Bargaining Table? The Influence of Gender and Framing on the Initiation of Negotiation*, 93 *J. PERSONALITY & SOC. PSYCHOL.* 600 (2007); Hannah Riley Bowles, Linda Babcock, and Lei Lai, *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 84 (2007); Lisa Barron, *Ask and You Shall Receive?: Gender Differences in Negotiators’ Beliefs About Requests for a Higher Salary*, 56 *HUM. RELATIONS* 635 (2003).
- 13 *Muriel v. SCI Ariz. Funeral Servs., Inc.*, No. CV-14-0816, 2015 WL 6591778 (D. Ariz. Oct. 30, 2015).
- 14 *Thibodeaux-Woody v. Houston Cmty. Coll.*, 593 F. App’x 280, 283 (5th Cir. 2014).
- 15 *Dreves v. Hudson Group (HG) Retail, LLC*, No. 2:11-cv-4, 2013 WL 2634429 (D. Vt. June 12, 2013). Dreves and her employer ultimately reached a settlement.
- 16 See, e.g., Philip N. Cohen, *Devaluing and Revaluing Women’s Work*, *HUFFINGTON POST* (May 25, 2011, 3:20 PM), [http://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w\\_b\\_444215.html](http://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w_b_444215.html).
- 17 *Tavernier v. Health Mgmt. Assocs., Inc.*, No. CIV.A. 0:10-1753-MBS, 2012 WL 1106755, at \*10 (D.S.C. Mar. 1, 2012), *report and recommendation adopted sub nom. Tavernier v. Healthcare Mgmt. Assocs., Inc.*, No. CIV.A. 0:10-01753, 2012 WL 1106751 (D.S.C. Mar. 30, 2012), *aff’d sub nom. Tavernier v. Health Mgmt. Assocs., Inc.*, 498 F. App’x 349 (4th Cir. 2012) (considering only an age discrimination claim). See also *Glunt v. GES Exposition Servs., Inc.*, 123 F. Supp. 2d 847 (D. Md. 2000) (denying summary judgment on Equal Pay Act claim where employer paid female employee less than a male Account Executive subordinate to her, but also accepting employer’s argument that paying another male employee a higher salary than plaintiff to defeat a competitor’s offer was a factor other than sex).
- 18 *Drury v. Waterfront Media, Inc.*, No. 05 Civ. 10646, 2007 WL 737486, at \*4 (S.D.N.Y. Mar. 8, 2007).
- 19 *Sauceda v. Univ. of Texas at Brownsville*, 958 F.Supp.2d 761 (S.D. Tex. 2013). The parties settled the case during a jury trial.



WORKPLACE JUSTICE

## THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO

Women in the U.S. who work full time, year round are typically paid only 80 cents for every dollar paid to their male counterparts.<sup>1</sup> The wage gap has stagnated, with very little change since 2007.<sup>2</sup> This gap in earnings translates into \$10,169 less per year in median earnings, leaving women and their families shortchanged. This disparity is the top concern of working women.<sup>3</sup> Although enforcement of the Equal Pay Act and civil rights laws and other progress, including increased access to reproductive health care, have helped narrow the wage gap over time, addressing the significant pay disparities that remain is critical for women and their families.

### Equal Pay is Crucial for All Women

Women of color are paid less than white, non-Hispanic men.

- Black women working full time, year round typically make only 61 cents for every dollar paid to their white, non-Hispanic male counterparts.
- For Latinas this figure is only 53 cents, for Native Hawaiian and Pacific Islander women it is 62 cents, and for Native women it is 58 cents.<sup>5</sup>
- While Asian women working full time, year round are typically paid only 85 cents for every dollar paid to their white, non-Hispanic male counterparts, the wage gap is substantially larger for some subgroups of Asian women.<sup>6</sup>
- The wage gap translates into an annual loss of \$23,653 for Black women, \$28,386 for Latinas, \$24,443 for Native women, and \$9,010 for Asian women. Closing the wage gap is, therefore, particularly important for Black, Latina, and Native women who have lower incomes, and are more likely to be in poverty than white, non-Hispanic women and Asian women.<sup>7</sup>

Mothers are paid less than fathers.

- Mothers who worked full time, year round typically had lower earnings than fathers (\$40,000 compared to \$56,000) – mothers were paid only 71 cents for every dollar paid to fathers.<sup>8</sup> Mothers of every race are typically paid less than white, non-Hispanic fathers.<sup>9</sup>

The wage gap affects single women without children, as well.

- Women who were never-married and without children were paid 83 cents for every dollar their male peers were paid.<sup>10</sup>

NOTES
<i>What closing the wage gap would mean to me this year:<sup>4</sup></i>
• Three months' supply of groceries \$1,933.20
• Three months' child care payments \$2,274.00
• Three months' rent \$3,085.23
• Three months' health insurance premiums \$1,304.49
• Four months' student loan payments \$1,088.00
• About ten tanks of gas \$484.62
<b>Total: \$10,169</b>



*Women are affected by the wage gap as soon as they enter the labor force and the gap continues to expand over the course of a woman's career.*

- The wage gap is smaller for younger women than older women, but it begins right when women enter the labor force. Women ages 15 to 24, working full time, year round are typically paid 92 cents for every dollar their male counterparts are paid.
- Among older women the gap is larger. Women ages 45 to 64 working full time, year round are typically paid only 76 cents for every dollar their male counterparts are paid.
- For women still working at age 65 or older the figure is 77 cents.<sup>11</sup>

*Older women also experience a wage gap in retirement income, due in large part to the wage gap they experienced during their working years.*

- Based on today's wage gap, a woman who worked full time, year round would typically lose \$406,760 over a 40-year career.<sup>12</sup> This woman would have to work nearly ten years longer than her male counterpart to make up this lifetime wage gap. These lost wages severely reduce women's ability to save for retirement and threaten their economic security later in life.
- As a result of lower lifetime earnings and different work patterns, the average Social Security benefit for women 65 and older is about \$14,753 per year, compared to \$18,918 for men of the same age.<sup>13</sup>

*Lesbian women make less than men, regardless of their sexual orientation.*

- According to the most recent analysis available, women in same-sex couples have a median personal income of \$38,000, compared to \$47,000 for men in same-sex couples and \$48,000 for men in different-sex couples.<sup>14</sup>

*Transgender women make less after they transition.*

- One study found that the average earnings of transgender women workers fall by nearly one-third after transition.<sup>15</sup>

*Women with disabilities also experience a wage gap.*

- Women with disabilities working full time, year round are typically paid just 83 cents when compared to their male counterparts with disabilities.<sup>16</sup>

*Women at all education levels experience a wage gap.*

- Among full time, year round workers, women who started, but did not finish high school, make 74 cents for every dollar their male counterparts make.<sup>17</sup>
- In 2017, women in the United States with only high school diplomas working full time, year round were typically paid only 76 cents for every dollar paid to their male counterparts.

- Among workers with a Bachelor's degree or higher, women typically make 75 cents for every dollar men make.<sup>18</sup>
- Even when women earn a Bachelor's degree, they still make less than what men with an Associate's degree make (\$52,439 and \$54,700, respectively)—and men with only a high school degree but no college education typically make more than women with an Associate's degree (\$42,440 and \$40,641, respectively).<sup>19</sup>

*Women in nearly every occupation face a wage gap.*

- There is a gender wage gap in 97 percent of occupations.<sup>20</sup>
- Even workers in low-wage occupations<sup>21</sup> face a wage gap – based on the most recent year of data women who work full time, year round in low-wage occupations typically make only 85 percent of what men working in low-wage occupations make.<sup>22</sup>

## Causes of the Wage Gap

Despite the fact that women have made enormous gains in educational attainment and labor force involvement in the last several decades—gains which have helped close the wage gap over time<sup>23</sup>—unequal pay remains pervasive. Below are some of the reasons why.

*Women are paid less for the same work.*

- Numerous research studies show that compared to men, women are less likely to be hired, particularly for high-wage jobs, or are likely to be offered lower salaries.<sup>24</sup> For example, a recent experiment revealed that when presented with identical resumes, one with the name John and one with the name Jennifer, science professors offered the male applicant for a lab manager position a salary of nearly \$4,000 more, additional career mentoring, and judged him to be significantly more competent and hireable.<sup>25</sup>
- Recent research reveals that even controlling for race, region, unionization status, education, work experience, occupation, and industry leaves 38 percent of the pay gap “unexplained.”<sup>26</sup> Discrimination is thought to be a major cause of this unexplained gap.

*Women are overrepresented in low-wage jobs and underrepresented in high-wage ones.*

- In 2016, women made up nearly two-thirds of the 24 million workers in low-wage jobs that typically pay less than \$11.50 per hour. They disproportionately hold low-wage jobs like personal care aides, home health aides, and fast food workers.<sup>27</sup>
- Conversely, women are underrepresented in higher wage occupations.<sup>28</sup> This underrepresentation is due in part to the fact that women are discouraged



from entering better paying fields, such as STEM.<sup>29</sup> Sometimes this discouragement is subtle, but other times it is very overt, in the form of harassment and other forms of discrimination.

*Women's work is devalued because women do it.*

- “Women’s” jobs often pay less precisely because women do them.<sup>30</sup> A study of more than 50 years of data revealed that when women moved into a field in large numbers, wages declined, even when controlling for experience, skills, education, race and region.<sup>31</sup>

*Caregivers are discriminated against and face barriers that result in lower pay.*

- Mothers are paid less than fathers and the motherhood wage penalty, which grows by an estimated seven percent for each child,<sup>32</sup> is larger for low-wage workers.<sup>33</sup>
- Employers’ negative stereotypes about mothers harm mothers’ job and salary prospects. In comparing equally qualified women candidates, one study revealed that mothers were recommended for significantly lower starting salaries, perceived as less competent, and less likely to be recommended for hire than non-mothers. The effects for fathers were just the opposite—fathers were recommended for significantly higher pay and were perceived as more committed to their jobs than men without children.<sup>34</sup>
- Mothers’ wages are also affected by a lack of support for women’s disproportionate caregiving responsibilities. The high cost of child care and a lack of paid leave make it less likely that women with caregiving responsibilities are able to stay in the workforce.<sup>35</sup> This time out of work negatively impacts mothers’ wages,<sup>36</sup> though policies like paid leave make it more likely that women will continue to work after having children, strengthening their connection to the workforce.<sup>37</sup>
- Relatedly, increased access to contraception is one reason the gender wage gap closed in the last few decades of the 20th century. This access allowed women to control their fertility so that they could invest in education and increase their representation in non-traditional occupations, resulting in higher wages.<sup>38</sup>

*Women in unions experience smaller wage gaps—but rates of unionization are low.*

- Less than 11 percent of the workforce belongs to a union, but those women who are members of unions experience greater wage equality. Female union members make 88 cents for every dollar paid to male union members, compared to female non-union members who make only 82 cents for every dollar paid to their male counterparts. Wages for women who are members of unions, especially white and Latina women, are higher than those of their female counterparts who are not represented by unions.<sup>39</sup>
- Unions not only bargain for higher wages, they reduce inequality by increasing pay transparency. For example, a recent analysis by a journalists’ union of their wage data revealed pervasive pay inequality in the industry,<sup>40</sup> prompting a promise of immediate action by at least one national newspaper.<sup>41</sup>

## What We Need To Do To Achieve Equal Pay

In order to finally achieve equal pay we need to:

- Strengthen our equal pay laws so that women are better able to fight back against pay discrimination.<sup>42</sup>
- Build ladders to better paying jobs for women by removing barriers to entry into male-dominated fields.<sup>43</sup>
- Lift up the wages of women in low-wage jobs by raising the minimum wage and ensuring that tipped workers receive at least the regular minimum wage before tips.<sup>44</sup>
- Increase the availability of high-quality, affordable child care.<sup>45</sup>
- Help prevent and remedy caregiver discrimination and protect workers from pregnancy discrimination.<sup>46</sup>
- Establish fair scheduling practices that allow employees to meet their caregiving responsibilities and other obligations.<sup>47</sup>
- Provide paid family and medical leave.<sup>48</sup>
- Ensure women’s access to the affordable reproductive health care they need.<sup>49</sup>
- Protect workers’ ability to collectively bargain.

**Every Woman Matters. Every Dollar Matters. Equal Pay Matters.**



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2. In 2017, the median earnings of women working full time, year round was \$41,997 and for men it was \$52,146. The ratio of these earnings was 80.50 cents. When rounded to a whole number, this ratio was 80 cents. In 2016, the median earnings of women working full time, year round was \$41,554 and for men it was \$51,640. The ratio of these earnings was 80.47 cents. When rounded to a whole number, this ratio was also 80 cents. For this reason, the rounded wage gap ratio remained at 80 cents in 2017.
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WORKPLACE JUSTICE

## WOMEN EXPERIENCE A WAGE GAP IN NEARLY EVERY OCCUPATION

By Jasmine Tucker

Women who work full time, year round in the United States are paid just 80 cents for every dollar paid to their male counterparts.<sup>1</sup> This gap, which amounts to a typical loss of \$10,086 per year for a working woman—or \$403,440 over a 40-year career—means that women have to work 15 months, until April 10, to make what men did in the previous 12-month calendar year.<sup>2</sup>

Despite the fact that women have made enormous gains in educational attainment and labor force involvement in the last several decades, unequal pay remains pervasive in 97 percent of occupations,<sup>3</sup> showing that no matter what their job, women are paid less than men doing the same job in nearly every sector of work.

### Women are overrepresented in low-wage jobs, and underrepresented in high-wage jobs.

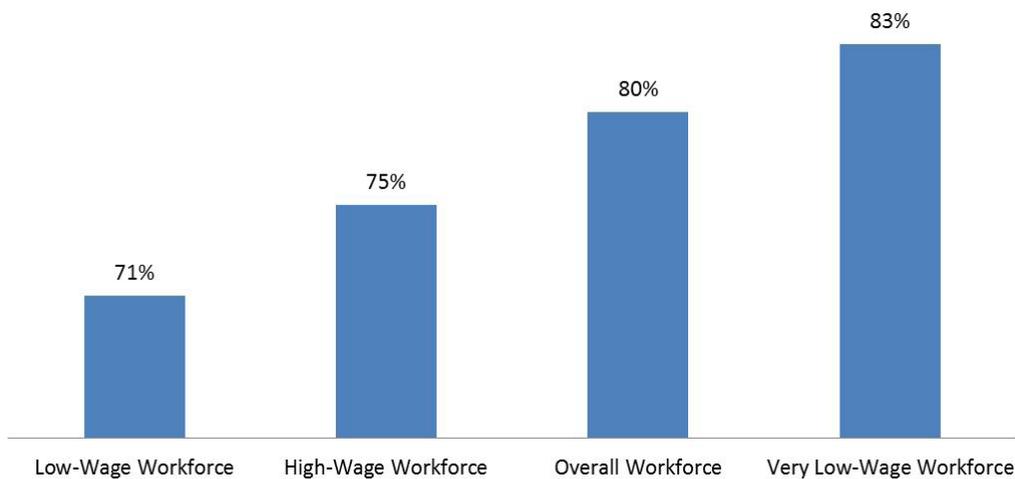
- Women make up about 47 percent of the overall workforce, yet make up 58 percent of the low-wage workforce, defined as those working in jobs that typically pay less than \$11 per hour, or about \$22,880 annually.<sup>4</sup> And they make up an overwhelming 69 percent of the very low-wage workforce—those working in jobs that typically pay less than \$10 per hour.<sup>5</sup>
- In addition, women's share of the high-wage workforce—those working in jobs that pay more than \$48 per hour, or about \$100,000 annually—is less than their share of the overall workforce. Women make up only 35 percent of workers in high-wage jobs.<sup>6</sup>

### Whether they work in low-wage or high-wage occupations, women are typically paid less than men in the same occupations.

- Among full time, year round workers in low-wage jobs—such as childcare workers, bartenders, and personal care aides—women make just 71 cents for every dollar paid to men.<sup>7</sup>
  - Women in these occupations are typically paid about \$22,000 annually, compared to the \$31,200 typically paid to men.
  - This gap translates to a loss of \$9,200 each year to the wage gap—more than enough to pay for nine months' worth of rent or more than 13 months of childcare costs.<sup>8</sup>
  - This wage gap adds up to a loss of \$368,000 after a 40-year career.
- Among full time, year round workers in high-wage occupations—such as lawyers, engineers, and physicians or surgeons—women are paid 75 cents for every dollar paid to men in the same occupations.<sup>9</sup>
  - Women in these occupations are typically paid about \$83,000, compared to the \$110,000 typically paid to men in these same jobs.
  - This wage gap amounts to a staggering annual loss of \$27,000 each year, or nearly \$1.1 million dollars over a 40-year career.



## Women's Earnings as Compared to Men's Earnings in the High-Wage, Overall, Low-Wage, and Very Low-Wage Workforces



Source: NWLC calculations based on U.S. Census Bureau, 2016 American Community Survey using IPUMS.

### Women experience a wage gap across occupations.<sup>10</sup>

- Women working as travel agents—a mid-wage, female dominated occupation—make 87 cents for every dollar paid to men working as travel agents.
  - Women in this occupation lose \$6,000 per year – or \$240,000 over a 40-year career.
- Women working as construction laborers—a traditionally male, mid-wage occupation—make 94 cents for every dollar paid to men working as construction laborers.
  - Women in this occupation lose \$2,000 per year – or \$80,000 over a 40-year career.
- Women working as physicians and surgeons—a traditionally male, high wage occupation—make 66 cents for every dollar paid to men working as physicians and surgeons.
  - Women in this occupation lose \$85,000 per year—or \$3.4 million over a 40-year career.

### Women experience a wage gap even in occupations where they are overrepresented.

- Nearly two in five women (38.6 percent) are employed in one of ten occupations; in every one of those occupations, women are typically paid less than men.<sup>11</sup>
- Among the ten most common occupations for women, two of those occupations—waiters and waitresses and janitors, building cleaners, maids, and housekeepers—typically pay women earnings that are defined as low-wage (less than \$11 per hour), while typically men in these same occupations are not.<sup>12</sup>
- Four of these common occupations typically pay women less than \$12 per hour while none of them typically pays men less than \$12.
- Even in better paying jobs where women make up a substantial share of the workforce, such as pre-K, K-12, and special education teachers, or registered nurses, women are paid less than their male counterparts.



## Common Occupations for Women

	Occupation	Percent of Women Employed in Occupation	Percent of Workers in Occupation Who Are Women	Median Hourly Wage for Women in Occupation	Median Hourly Wage for Men in Occupation	What a Woman Makes for Every Dollar a Man Makes
1	Secretaries, administrative assistants, office	7.2%	90.5%	\$16.44	\$18.41	.89¢
2	Cashiers and retail salespeople	5.9%	62.1%	\$11.01	\$16.83	.65¢
3	Pre-K, K-12, and special education	5.7%	78.4%	\$22.60	\$25.48	.89¢
4	Nursing, psychiatric, home health, and personal care aides	4.1%	85.7%	\$11.54	\$12.98	.89¢
5	Registered nurses	3.9%	89.3%	\$30.77	\$33.65	.91¢
6	Janitors, building cleaners, maids, and housekeepers	3.1%	54.4%	\$10.10	\$14.42	.70¢
7	Customer service representatives	2.5%	65.1%	\$15.38	\$16.83	.91¢
8	Waiters and waitresses	2.2%	69.3%	\$9.62	\$12.02	.80¢
9	Misc. managers, incl. funeral service managers, postmasters, and mail superintendents	2.1%	35.6%	\$32.69	\$39.90	.82¢
10	First line supervisors of retail salespeople	2.0%	45.2%	\$16.25	\$21.63	.75¢

Source: NWLC calculations based on 2016 American Community Survey 1-year estimates using IPUMS. Figures are in 2016 dollars. Median hourly wages are for full time, year round workers. Hourly wages are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.

1. National Women's Law Center (NWLC) calculations based on U.S. Census Bureau, Current Population Survey, 2016 Annual Social and Economic Supplement [hereinafter CPS, 2016 ASEC], Table PINC-05, available at <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html>.
2. NWLC calculations based on CPS, 2016 ASEC, *supra* note 1, Table PINC-05. The gap in median earnings between full time, year round working women (\$41,554) and men (\$51,640) is \$10,086. Earnings losses over a 40-year career or the "Lifetime Wage Gap" is what a woman would lose, based on today's wage gap, over a 40-year career. The figure assumes an annual wage gap of \$10,086 each year for 40 years. Figures are not adjusted for inflation. Earnings are in 2016 dollars.
3. NWLC calculations based on U.S. Census Bureau, Table Packages, (2016), Table 1, Full-Time, Year-Round Workers and Median Earnings, available at <https://www.census.gov/data/tables/time-series/demo/industry-occupation/median-earnings.html>.
4. NWLC calculations based on American Community Survey 2016 1-year averages using Steven Ruggles, Katie Genadek, Ronald Goeken, Josiah Grover, and Matthew Sobek, Integrated Public Use Microdata Series: Version 7.0 [dataset]. Minneapolis: University of Minnesota, 2017, available at <https://usa.ipums.org/usa/>. Data are for 2016. Figures are for employed workers. "Low-wage jobs" or the "low-wage workforce" could be defined in many different ways. This analysis defines low-wage jobs as those that paid a median hourly wage of less than \$11 in 2016. Median hourly wages for occupations were determined using U.S. Department of Labor, Bureau of Labor Statistics, May 2016 National Occupational Employment and Wage Estimates, available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm). Similarly, "very low-wage jobs" are those that pay a median hourly wage of less than \$10 and "high-wage jobs" are those that pay a median hourly wage of \$48 - or \$100,000 annually.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* Median gross rent for U.S. is \$981 per month and comes from U. S. Census Bureau, 2016 American Community Survey (ACS) Table B25064, 1-year estimate, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>. Gross rent is the contract rent plus the estimated average monthly cost of utilities (electricity, gas, and water and sewer) and fuels (oil, coal, kerosene, wood, etc.) if these are paid by the renter (or paid for the renter by someone else). Average costs for child care in a center in Arizona for a four-year-old (\$8,275 annually in 2016 or about \$690 per month). Arizona's cost for this type of child care falls at the median of all state averages (including the District of Columbia). Estimates come from Child Care Aware of America, Parents and the High Cost of Child Care: 2017 Report, (2017), Appendix 1, available at <http://www.usa.childcareaware.org/advocacy-public-policy/resources/reports-and-research/costofcare/>.
9. *Id.*
10. *Id.* Figures are for full time, year round workers. Female dominated occupations are more than 60 percent female. Male-dominated occupations are more than 60 percent male. Earnings losses over a 40-year career or the "Lifetime Wage Gap" is what a woman would lose, based on today's wage gap, over a 40-year career. Figures are not adjusted for inflation. Earnings are in 2016 dollars.
11. *Id.*
12. *Id.* Figures are in 2016 dollars. Median hourly wages are for full time, year round workers. Hourly wages are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.





## THE WAGE GAP FOR BLACK WOMEN: WORKING LONGER AND MAKING LESS

KAYLA PATRICK, MEIKA BERLAN, MORGAN HARWOOD

When comparing all men and women who work full time, year round in the United States, women are paid 80 cents for every dollar paid to their male counterparts.<sup>1</sup> But the wage gap is even larger when looking specifically at Black women who work full time, year round: they are paid only 63 cents for every dollar paid to white, non-Hispanic men.<sup>2</sup> This gap, which amounts to a loss of \$21,698 a year, means that Black women have to work more than a year and a half (19 months) to earn as much as white, non-Hispanic men in the previous 12-month calendar year.<sup>3</sup> Over time, the wage gap has a compounding effect on Black women's ability to build wealth (such as liquid savings, retirement savings, investments, real estate or business assets). Recent data shows that single Black women have a median wealth amounting to \$200, which is paltry compared to what single white women (\$15,640) and single white, non-Hispanic men (\$28,900) own.<sup>4</sup> The wage gap plays a pivotal role in contributing to this wealth gap, and is an obstacle to Black women's economic security over the course of their lifetimes.

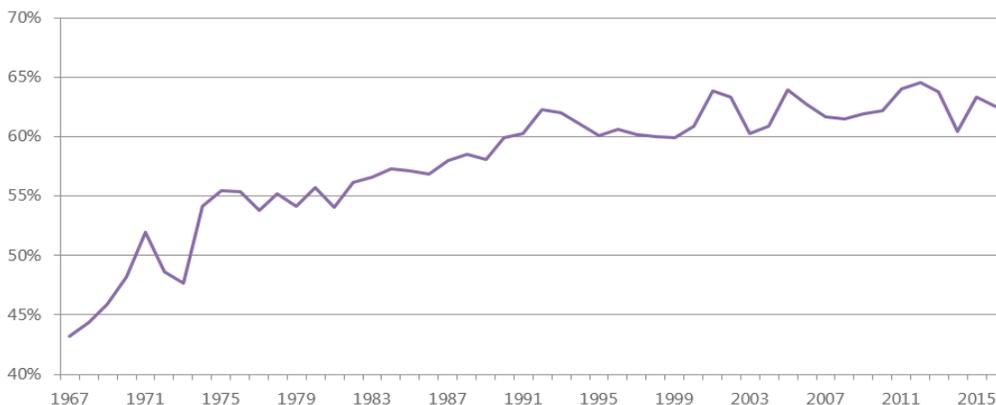
### Black women's wage gap has persisted for decades, decreasing by only 20 cents in nearly 50 years.

- In 1967, the earliest year for which data are available, a Black woman working full time, year round made less than half (43 cents for every dollar) of what white men made.<sup>5</sup>
- By 2016, the most recent year for which data are available, that gap had narrowed by 20 cents, but Black women working full time, year round were still only paid 63 cents for every dollar paid to white, non-Hispanic men.

*Black women working full time, year round are paid only 63 cents for every dollar paid to their white, non-Hispanic male counterparts—leading to a lifetime loss of \$867,920.*

### The Wage Gap Over Time for Black Women Compared to White, Non-Hispanic Men

Ratio of Median Earnings of Full Time, Year Round Workers



The wage gap over time calculated by National Women's Law Center (NWLC) is based on Current Population Survey data (<http://www.census.gov/acs/www/>). "The Wage Gap Over Time for Black Women Compared to White, Non-Hispanic Men" is the ratio of Black women's and white non-Hispanic men's median earnings for full-time, year-round workers. Earnings are in 2016 dollars. The "wage gap" is the additional money a woman would have to make for every dollar made by a man in order to have equal annual earnings. Data for white, non-Hispanic men are "white alone, not Hispanic" from 2002-2014, "white, not Hispanic" from 1987-2001 and "white" for years prior to 1987.



**Black foreign-born women experience an even more dramatic wage gap—earning only slightly more than half of what their white, non-Hispanic, foreign-born male counterparts earn.**

- In 2016, more than 1 in 8 (13 percent) Black women in the workforce were foreign born, earning 55 cents for every dollar paid to white, non-Hispanic foreign-born men.
- This wage gap amounts to a loss of \$29,000 annually for Black foreign-born women; Black foreign-born women who work full time, year round have a median income of \$36,000, compared to \$65,000 paid to white, non-Hispanic foreign-born men.<sup>6</sup>

**Black women’s wage gap is substantially wider in certain states.**

- While Black women nationally are paid just 63 cents for every dollar paid to white, non-Hispanic men, they face even steeper wage gaps in some areas of the country. In Louisiana, the worst state for Black women’s wage equality, Black women are paid slightly less than half (47 cents) of what white, non-Hispanic men are paid.<sup>7</sup>
- Black women in Washington, D.C. have the second highest wage gap in the country, earning 52 cents for every dollar paid to white, non-Hispanic men. This is despite D.C. having a wage gap of only 14 cents (the fourth smallest in the country) when comparing the earnings of all women to the earnings of all men.<sup>8</sup>

**Ten Worst States for Black Women’s Wage Equality**

Rank	State	Black Women’s Earnings	White, non-Hispanic Men’s Earnings	What Black Women Are Paid for Every Dollar Paid to White, non-Hispanic Men	Wage Gap
	<i>United States</i>	<i>\$36,227</i>	<i>\$57,925</i>	<i>0.63¢</i>	<i>0.38¢</i>
10	Texas	\$35,735	\$61,496	0.58¢	0.42¢
9	Alabama	\$29,099	\$50,651	0.58¢	0.42¢
8	South Carolina	\$28,478	\$49,758	0.57¢	0.43¢
7	Connecticut	\$40,412	\$70,724	0.57¢	0.43¢
6	New Jersey	\$42,282	\$74,524	0.57¢	0.43¢
5	North Dakota	\$29,206	\$51,804	0.56¢	0.44¢
4	Mississippi	\$26,558	\$47,328	0.56¢	0.44¢
3	Utah	\$28,706	\$54,814	0.52¢	0.48¢
2	District of Columbia	\$48,929	\$94,774	0.52¢	0.48¢
1	Louisiana	\$26,503	\$55,929	0.47¢	0.53¢

State wage gaps calculated by National Women’s Law Center (NWLC) are based on 2012-2016 American Community Survey Five-Year Estimates (<http://www.census.gov/acs/www/>). “What Black Women Are Paid for Every Dollar Paid to White, non-Hispanic Men” is the ratio of women’s and men’s median earnings for full-time, year-round workers. Earnings are in 2016 dollars. The wage gap is the additional money a woman would have to make for every dollar made by a man in order to have equal annual earnings. Ranks based on unrounded data.

**Black women experience a wage gap at every education level, even when they have earned a graduate degree.<sup>9</sup>**

- Black women working full time, year round who have a high school diploma are paid 61 cents for every dollar paid to white, non-Hispanic men with the same diploma.
- Black women without a high school diploma fare even worse, making 57 cents for every dollar paid to white, non-Hispanic men without a high school diploma.
- Pursuing higher education does little to close the wage gap. Black women with a bachelor’s degree are paid \$45,990, which is less than what white, non-Hispanic men with only some college are paid (\$46,637).
- Black women have to earn a Master’s degree to make slightly more (\$52,108) than white, non-Hispanic men with just an Associate’s degree (\$50,938).



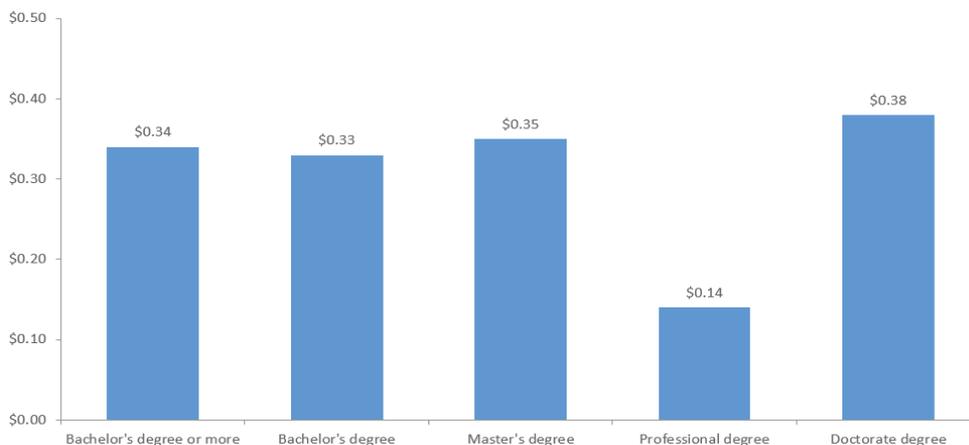
- Also striking is the difference in wages among Black women and white, non-Hispanic men among the top two highest educational degrees—professional degrees and doctorate degrees. Among PhD holders, Black women make 62 percent of what white, non-Hispanic men make—a lifetime loss of over \$1.5 million for Black women. Black women with professional degrees are paid 86 percent of what their white, non-Hispanic male counterparts are paid (leading to a lifetime loss of roughly \$600,000).
- Pursuing higher education is a costly endeavor for Black women, who have the highest student loan debt of any racial or ethnic group. For an undergraduate degree, the average Black woman accrues \$29,000 in debt.<sup>10</sup> The wage gap lessens Black women’s ability to pay off educational debt, creating an additional barrier to saving money that could be used to buy a home, start a business, or for emergencies.

### Black Women’s Wage Equality by Educational Attainment

Educational Attainment	Black Women’s Earnings	White, non-Hispanic Men’s Earnings	What Black Women Are Paid for Every Dollar Paid to White, non-Hispanic Men	Wage Gap
No high school diploma	\$17,221	\$30,403	0.57¢	0.43¢
High school diploma	\$25,038	\$41,378	0.61¢	0.39¢
Some college, no degree	\$29,543	\$46,637	0.63¢	0.37¢
Associate’s degree	\$31,310	\$50,938	0.61¢	0.39¢
Bachelor’s degree or more	\$50,090	\$75,488	0.66¢	0.34¢
Bachelor’s degree	\$45,990	\$68,674	0.67¢	0.33¢
Master’s degree	\$52,108	\$80,362	0.65¢	0.35¢
Professional degree	\$90,273	\$105,386	0.86¢	0.14¢
Doctorate degree	\$66,717	\$107,474	0.62¢	0.38¢

NWLC calculations based on U.S. Census Bureau, Current Population Survey, 2017 Annual Social and Economic Supplement, Table PINC-03, Educational Attainment, People 25 years old and over, by total money earnings in 2016, available at <http://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-03.html>. “What Black Women Are Paid for Every Dollar Paid to White, non-Hispanic Men” is the ratio of Black female and white, non-Hispanic male median earnings for full-time, year-round workers. Earnings are in 2016 dollars. The “wage gap” is the additional money a woman would have to make for every dollar made by a man in order to have equal annual earnings. Workers without a high school diploma exclude those who have not completed at least 9th grade.

### Wage Gap Between Black Women and White, Non-Hispanic Men (Higher Education Degree Holders Only)



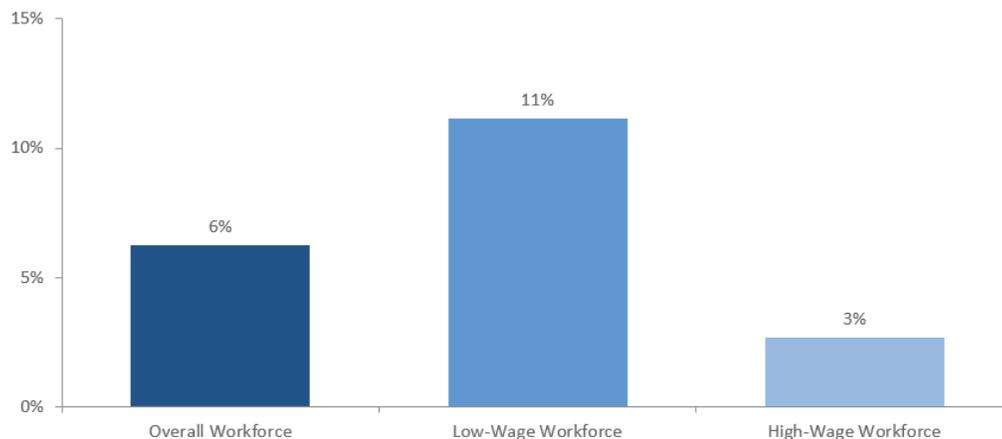
NWLC calculations based on U.S. Census Bureau, Current Population Survey, 2017 Annual Social and Economic Supplement, Table PINC-03, Educational Attainment, People 25 years old and over, by total money earnings in 2016, available at <http://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-03.html>. The “wage gap” is the additional money a woman would have to make for every dollar made by a man in order to have equal annual earnings.



## Black women are overrepresented in low wage jobs, and underrepresented in high wage jobs, but occupational sorting does not explain the wage gap.<sup>11</sup>

- Black women make up 11 percent of the low-wage workforce, defined as jobs that pay less than \$11.50 per hour, or about \$23,900 annually, while they make up just 6 percent of the overall workforce.<sup>12</sup>
- Black women’s share of the high-wage workforce—defined as jobs that pay more than \$48 per hour, or about \$100,000 annually—is only 3 percent, whereas white, non-Hispanic men’s share of the high-wage workforce is 48 percent, while they make up only a third (34 percent) of the overall workforce.<sup>13</sup>
- Among workers in low-wage jobs, Black women make just 73 cents for every dollar paid to white, non-Hispanic men.<sup>14</sup> Black women who work full time, year round in occupations that typically pay less than \$11.50 per hour make about \$22,000 annually, compared to the \$30,000 paid to white, non-Hispanic men in these occupations. This gap translates to a loss of \$8,000 each year due to the wage gap or \$320,000 over a 40-year career.<sup>15</sup>
- Among workers in high-wage occupations—such as lawyers, engineers, and physicians or surgeons—Black women are paid 69 cents for every dollar paid to white, non-Hispanic men in the same occupations. Black women who work full time, year round in these occupations are paid about \$75,000, compared to the \$108,000 paid to white, non-Hispanic men in these same jobs. This amounts to an annual loss of \$33,000 each year, or \$1.32 million over a 40-year career.
- Occupational sorting does not explain away the wage gap between Black women and white, non-Hispanic men. Black women working both in traditionally male-dominated fields and in female-dominated occupations earn less than their white, non-Hispanic male counterparts. For example, Black women working as construction laborers—a traditionally male, mid-wage occupation—make 82 cents for every dollar paid to white, non-Hispanic men working as construction laborers. Black women working as customer service representatives—a female-dominated, mid-wage occupation—make 76 cents for every dollar paid to white, non-Hispanic men working as customer service representatives.<sup>16</sup>

### Black Women’s Share of the Low-wage and High-wage Workforces



NWLC calculations based on IPUMS-ACS. Figures are for employed workers in 2016. The low-wage workforce and high-wage workforce is defined here as occupations with median wages of \$11.50 or less per hour, or median wage of \$48.00 or more per hour, based on BLS, Occupational Employment Statistics.

## Black women are concentrated in ten occupational categories, many of which are low wage.

- More than two in five Black women (43 percent) are employed in one of ten occupations; in every one of those occupations, Black women are paid less than white, non-Hispanic men.<sup>17</sup>
- Among the ten most common occupations for Black women, three of those occupations—cashiers and retail salespeople; janitors, building cleaners, maids, and housekeepers; and childcare workers and teaching assistants—pay Black women a low wage (less than \$11.50 per hour) while they pay white, non-Hispanic men substantially more.<sup>18</sup>
- In better-paying jobs, such as pre-K, K-12, and special education teachers, and counselors and social workers, Black women are also paid less than their white, non-Hispanic male counterparts. However, Black women who work as Registered Nurses (RN) or Licensed Practical Nurses (LPN)—where women overall hold nearly 90 percent of jobs<sup>19</sup>—fare better and make much closer to what white, non-Hispanic men in these same jobs make (though Black women still make less).



## Common Occupations for Black Women

Occupation	Percent of Black Women Employed in Occupation	Percent of Workers in Occupation Who Are Black Women	Median Hourly Wage for Black Women in Occupation	Median Hourly Wage for White, non-Hispanic Men in Occupation	What a Black Woman Makes for Every Dollar a White, non-Hispanic Man Makes
Nursing, psychiatric, home health, and personal care aides	9%	29%	\$12.02	\$12.50	0.96¢
Secretaries and administrative assistants, office clerks receptionists and information clerks	6%	10%	\$15.87	\$19.23	0.83¢
Cashiers and retail salespeople	4%	8%	\$9.62	\$19.23	0.50¢
Pre-K, K-12, and special education teachers	4%	8%	\$20.38	\$26.15	0.78¢
Customer service representatives	4%	13%	\$14.42	\$18.99	0.76¢
Registered nurses	4%	11%	\$29.33	\$32.21	0.91¢
Janitors, building cleaners, maids, and housekeepers	3%	8%	\$10.00	\$15.43	0.65¢
Counselors and social workers	3%	17%	\$19.23	\$22.12	0.87¢
Childcare workers and teacher assistants	3%	17%	\$11.06	\$12.98	0.85¢
Licensed practical and licensed vocational nurses	2%	24%	\$18.27	\$19.23	0.95¢

NWLC calculations based on 2016 American Community Survey using IPUMS. Figures are in 2016 dollars. Median hourly wages are for full time, year round workers. Hourly wages are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.

### The wage gap exists for Black women of all ages and is widest for working women nearing retirement.<sup>20</sup>

- Among young people, 15 to 24 years of age, working full time, year round, Black women make 81 cents for every dollar white, non-Hispanic men of the same age make.
- This wage gap widens as Black women grow older. Black women in their prime working years, 25 to 44 years of age, are paid 65 cents for every dollar that white, non-Hispanic men age 25 to 44 make.
- Among older workers, 45 to 64 years of age, who work full time, year round, Black women are paid 62 cents for every dollar paid to white, non-Hispanic men. These larger gaps mean that Black women are falling behind at the very time they need additional resources to invest in their families and ensure a secure retirement.

### Over her career, the typical Black woman loses over \$860,000 due to the wage gap.

- Over the course of a 40-year career, the typical Black woman loses a staggering \$867,920 to the wage gap. Assuming she and her white, non-Hispanic male counterpart begin work at age 20, this huge wage gap means a Black woman would have to work until she is 84 years old to catch up to what a white, non-Hispanic man has been paid by age 60.<sup>21</sup>
- In some states, a Black woman faces lifetime gaps that exceed the typical lifetime wage gap for Black women nationwide. In seven states (Texas, Utah, Massachusetts, California, Louisiana, Connecticut, and New Jersey) Black women stand to lose more than \$1 million in lifetime earnings, and in the District of Columbia Black women would lose over \$1.8 million in lifetime earnings over a 40-year career compared to white, non-Hispanic men based on the wage gap today. These women would have to work decades longer than white, non-Hispanic men to earn the same amount.
- The lost earnings over a 40-year career also negatively impact Black women's Social Security payments in their retirement years. Social Security payments are based on a person's income; consequently Black women are at an inherent disadvantage due to years of lost wages from the wage gap. Because women generally live longer than men and are more likely than men to rely on Social Security, many must rely on their savings to supplement their retirement income.<sup>22</sup> However, this is problematic for Black women who face many obstacles to saving and building wealth over the course of their lifetime.



## Ten Worst States for Black Women’s Lifetime Losses Due to Wage Gap

Rank	State	What Black women make for every dollar white, non-Hispanic men make	Lifetime Losses Due to Wage Gap	Age at Which a Black Woman’s Career Earnings Catch Up to White, non-Hispanic Men’s Career Earnings at Age 60
	<i>United States</i>	0.63¢	\$867,920	84
10	District of Columbia	0.63¢	\$956,160	83
9	New Jersey	0.60¢	\$987,760	87
8	Connecticut	0.58¢	\$1,030,440	89
7	Louisiana	0.52¢	\$1,044,320	96
6	California	0.61¢	\$1,061,760	86
5	Massachusetts	0.62¢	\$1,097,480	85
4	Utah	0.47¢	\$1,177,040	104
3	Texas	0.57¢	\$1,212,480	90
2	Alaska	0.57¢	\$1,289,680	91
1	Virginia	0.52¢	\$1,833,800	97

State wage gaps calculated by National Women’s Law Center (NWLC) are based on 2012-2016 American Community Survey Five-Year Estimates (<http://www.census.gov/acs/www/>). National wage gap calculated by NWLC is based on 2016 Current Population Survey, Annual Social and Economic Supplement. Earnings are in 2016 dollars. Figures are for full-time, full-year work. “Lifetime Losses Due to Wage Gap” is what a Black woman would lose, based on today’s wage gap, over a 40-year career. Figures are not adjusted for inflation. Ranks based on unrounded data. “Age at which a Black woman’s career earnings catch up to white, non-Hispanic men’s career earnings at age 60” assumes all workers begin work at age 20. Assuming white, non-Hispanic men have a 40-year career, this is the age at which Black women are able to retire with the same lifetime earnings as their male counterparts.

### Black women living in cities experience a larger wage gap compared with Black women living in the suburbs.<sup>23</sup>

- Black women living in cities are paid 55 cents for every dollar paid to white, non-Hispanic men living in cities. This amounts to a loss of \$29,000 a year.<sup>24</sup>
- By contrast, Black women living in suburban areas experience the smallest wage gap, earning 63 cents for every dollar paid to white, non-Hispanic men living in suburban areas.

### Black Women’s Wage Equality by Metropolitan Status

	Black Women’s Earnings	White, non-Hispanic Men’s Earnings	What Black Women Are Paid for Every Dollar Paid to White, non-Hispanic Men	Wage Gap
Rural	\$25,000	\$45,000	0.56¢	0.44¢
City	\$36,000	\$65,000	0.55¢	0.45¢
Suburban Areas	\$40,000	\$64,000	0.63¢	0.38¢

NWLC calculations based on 2016 American Community survey using IPUMS. Figures are in 2016 dollars. Median earnings are for full time, year round workers. Rural is defined as those whose households were located outside of a metro area. City is defined as those whose households were located inside a metro area and in a central/principal city. Suburban is defined as those whose households were located inside a metro area, but outside of a central/principal city.

### Union membership is especially important for closing the wage gap for Black women.

- Among full time workers, Black women who are union members make 23 percent more (\$148 per week) than Black women who are non-union workers.<sup>25</sup>
- Black women are the most likely group of women to be union members and yet in 2017, just 12 percent of employed Black women were members of unions.<sup>26</sup>



1. National Women’s Law Center (NWLC) calculations based on U.S. Census Bureau, Current Population Survey, 2017 Annual Social and Economic Supplement [hereinafter CPS, 2017 ASEC], Table PINC-05, *available at* <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html>.
2. *Id.* Men and women self-identify their sex and race/ethnicity in the CPS. Black women self-identified themselves as Black or African American; the calculations are for Black alone. White, non-Hispanic men self-identified as white and specified that they were not of Hispanic, Latino, or Spanish origin. This fact sheet only addresses the wage gap for Black women, but the wage gaps for other groups of women compared to white, non-Hispanic men are also substantial. Among full time, year round workers, Latina women make only 54 cents for every dollar made by white, non-Hispanic men, Asian American women, 87 cents, white, non-Hispanic women, 79 cents, and Native American women, 57 cents. Data for the wage gap of Native American women was calculated using the 2016 American Community Survey 1 year sample. Wage gap figures are calculated by taking the median earnings of women and men working full, time year round. Median earnings describe the earnings of a worker at the 50th percentile – right in the middle.
3. NWLC calculations based on CPS, 2017 ASEC, *supra* note 1, Table PINC-05. The gap in median earnings between full time, year round working Black women (\$36,227) and white, non-Hispanic men (\$57,925) is \$21,698. Earnings are in 2016 dollars.
4. Mariko Chang, Asset Funders Network, *Women and Wealth Brief* (2015), *available at* [https://www.mariko-chang.com/AFN\\_Women\\_and\\_Wealth\\_Brief\\_2015.pdf](https://www.mariko-chang.com/AFN_Women_and_Wealth_Brief_2015.pdf).
5. NWLC calculations based on U.S. Census Bureau, Current Population Survey, Historical Data, Table P-38: Full-Time, Year-Round Workers by Median Earnings and Sex, *available at* <http://www.census.gov/hhes/www/income/data/historical/people/>. Median earnings are in 2016 dollars. Figures may differ from those in other reports due to rounding or updated Census estimates. Data for white, non-Hispanic men are “white alone, not Hispanic” from 2002-2014, “white, not Hispanic” from 1987-2001 and “white” for years prior to 1987.
6. NWLC calculations based on American Community Survey 2016 using Steven Ruggles, Katie Genadek, Ronald Goeken, Josiah Grover, and Matthew Sobek. Integrated Public Use Microdata Series: Version 6.0 [Machine-readable database]. Minneapolis: University of Minnesota, 2017, *available at* <https://usa.ipums.org/usa/>. Foreign born was defined using citizenship status and includes both naturalized citizens and non-citizens.
7. NWLC, THE WAGE GAP BY STATE FOR BLACK WOMEN (Apr. 2018), *available at* <https://nwlc.org/resources/wage-gap-state-black-women/>.
8. NWLC, THE WAGE GAP BY STATE FOR WOMEN OVERALL (Sept. 2017), *available at* <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/09/Wage-Gap-State-By-State-2017.pdf>.
9. CPS, 2017 ASEC, *supra* note 1, Table PINC-03: Educational Attainment, People 25 years old and over, by total money earnings in 2016, *available at* <http://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-03.html>. Figures are for full time, year round workers.
10. American Association of University Women, *Deeper in Debt* (May 2017), *available at* [https://www.aauw.org/files/2017/05/DeeperInDebt\\_ExecutiveSummary-nsa.pdf](https://www.aauw.org/files/2017/05/DeeperInDebt_ExecutiveSummary-nsa.pdf).
11. NWLC calculations based on American Community Survey 2016 using Steven Ruggles, Katie Genadek, Ronald Goeken, Josiah Grover, and Matthew Sobek. Integrated Public Use Microdata Series: Version 6.0 [Machine-readable database]. Minneapolis: University of Minnesota, 2017, *available at* <https://usa.ipums.org/usa/>. Figures are for full time, year round workers. Female dominated occupations are more than 60 percent female. Male-dominated occupations are more than 60 percent male.
12. NWLC calculations based on American Community Survey 2016 1-year averages using Steven Ruggles, Katie Genadek, Ronald Goeken, Josiah Grover, and Matthew Sobek, Integrated Public Use Microdata Series: Version 6.0 [Machine-readable database]. Minneapolis: University of Minnesota, 2017, *available at* <https://usa.ipums.org/usa/>. Data are for 2016. Figures are for employed workers. The low wage workforce is comprised of workers in occupations that typically pay less than \$11.50 per hour, and the high wage workforce is comprised of workers in occupations that typically pay \$48 or more per hour – the equivalent of about \$100,000 per year.
13. *Id.*
14. *Id.*
15. *Id.* Figure assumes a wage gap of \$33,000—the gap in median earnings between full time, year round working Black women (\$75,000) and white, non-Hispanic men (\$108,000) in high wage occupations in 2016—each year for 40 years. Figures are not adjusted for inflation.
16. *Id.*
17. NWLC calculations based on American Community Survey 2016 using Steven Ruggles, Katie Genadek, Ronald Goeken, Josiah Grover, and Matthew Sobek. Integrated Public Use Microdata Series: Version 6.0 [Machine-readable database]. Minneapolis: University of Minnesota, 2017, *available at* <https://usa.ipums.org/usa/>.
18. *Id.* Figures are in 2016 dollars. Median hourly wages are for full time, year round workers. Hourly wages are derived by dividing median annual earnings by 2,080 hours, which assumes a 40-hour work week for 52 weeks.
19. NWLC calculations based on American Community Survey 2016 using Steven Ruggles, Katie Genadek, Ronald Goeken, Josiah Grover, and Matthew Sobek. Integrated Public Use Microdata Series: Version 6.0 [Machine-readable database]. Minneapolis: University of Minnesota, 2017, *available at* <https://usa.ipums.org/usa/>.
20. NWLC calculations based on CPS, 2017 ASEC, *supra* note 1, Table PINC-05. All calculations are for full time, year round (defined as 50 weeks or more) workers.
21. Figure assumes a wage gap of \$21,698—the gap in median earnings between full time, year round working Black women (\$36,227) and white, non-Hispanic men (\$57,925) in 2016—each year for 40 years. Figures are not adjusted for inflation.
22. *Id.*
23. The U.S. Census Bureau, American Community Survey collects data from respondents about the location of their household. Rural is defined as those whose households were located outside of a metro area. City is defined as those whose households were located inside a metro area and in a central/principal city. Suburban is defined as those whose households were located inside a metro area, but outside of a central/principal city.
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**Testimony of Fatima Goss Graves**

**President and CEO**

**National Women’s Law Center**

**House Committee on Education & Labor**

**Subcommittee on Civil Rights and Human Services and Subcommittee on Workforce  
Protections**

**Joint Subcommittee Hearing on the Paycheck Fairness Act (H.R. 7): Equal Pay for Equal Work**

**February 13, 2019**

Thank you for the opportunity to submit testimony to the Committee and the Subcommittee on Civil Rights and Human Services and Subcommittee on Workforce Protections on H.R. 7, the Paycheck Fairness Act. The National Women’s Law Center has worked for more than 45 years to advance and protect women’s equality and opportunity, and has long worked to remove barriers to women in the workplace. Protecting against pay discrimination is key to addressing longstanding inequality.

**I. INTRODUCTION**

Over the past decade, the push for equal pay has shifted laws across the country and transformed the way companies do business, but Congress has failed to keep up. When in 2007 five members of the Supreme Court held that the law provided no remedy to Lilly Ledbetter for the pay discrimination she suffered for years at Goodyear, because she had not filed a charge within 180 days of Goodyear’s first discriminatory pay decision, it sparked a new movement for equal pay. In 2009, Congress passed the Lilly Ledbetter Fair Pay Act, rejecting the Supreme Court’s decision and making clear in law what is clear to every woman who has been shortchanged by pay discrimination—that every time you receive a paycheck that is smaller because you are a woman, that is a new discriminatory act. But rather than the end of the fight, this was the beginning of a new opportunity to finally make the promise of the Equal Pay Act a reality.

In recent years, polling has consistently shown that equal pay is a priority for voters, regardless of party.<sup>1</sup> The Me Too movement and its focus on gender inequity at work has only heightened public attention to the gender wage gap and increased demand for solutions.<sup>2</sup> Given this, it is perhaps no surprise that in recent years, states and cities have sought to fill the gaps left by

federal law by strengthening protections against pay discrimination.<sup>3</sup> For example, since 2016, six states have enacted legislation prohibiting employers from seeking prior salary history information from job candidates and employees.<sup>4</sup> Since 2017, New Jersey, Oregon, and Washington have all passed laws to tighten and clarify court-created legal loopholes in employers' ability to justify pay differentials based on a "factor other than sex" defense, ensuring that any such pay differentials are job-related.<sup>5</sup> Additionally, these states have increased available relief for employees, recognizing the importance of adequate damages and penalties as a mechanism to incentivize employers to lead the way in tackling wage gaps and to ensure that victims of pay discrimination are fully compensated for their losses.<sup>6</sup>

Key to tackling pay discrimination is increasing pay transparency, including through pay data reporting obligations that allow governments, employers and the public at large to uncover and combat disparities. States and localities across the country have passed laws and adopted executive orders that promote pay transparency, through measures such as pay data reporting requirements<sup>7</sup>, the required provision of salary range information to employees<sup>8</sup> and protection from retaliation for discussing wages and salaries with coworkers. For instance, eighteen states and the District of Columbia have enacted provisions to stop employers from retaliating against employees who discuss their wages with each other.<sup>9</sup>

Corporate leaders are also increasingly recognizing that equal pay just makes business sense. More than 100 major companies took the White House Equal Pay Pledge in 2016, committing themselves to conducting annual company-wide gender pay analyses across occupations, to combatting unconscious bias and structural barriers to women's advancement, and to including equal pay in broader equity initiatives.<sup>10</sup> Companies from Accenture, to Gap, to Raytheon, to name only a few, have instituted measures to identify and close gender wage gaps and to standardize and rationalize salary setting, and have trumpeted these measures, recognizing that equal pay is core to attracting and retaining the talent that they need to succeed.<sup>11</sup> And when companies have failed to lead on equal pay, shareholders have demanded attention to these issues, successfully pushing for companies to conduct and disclose gender pay analyses in multiple high profile efforts across a number of industries.<sup>12</sup> In addition, companies like Glassdoor have not only analyzed and shared information about wage gaps and their plan to close them within their own workforce, they have also created new tools for employees to share and compare pay information.<sup>13</sup>

And the push for equal pay doesn't stop at the borders of the U.S. Countries around the world, from across Europe, to Australia and Canada are also pushing forward on equal pay and adopting legislation mandating pay data reporting and giving employees tools to uncover wage gaps.<sup>14</sup> In the United Kingdom, for instance, since 2017 public and private employers with at least 250 employees are required to annually publish information designed to show whether

there is a difference in the average pay of their male and female employees.<sup>15</sup> Initial data from the first wave of reporting revealed that some large multinational companies, including U.S.-based companies with U.K. operations, have significant gender gaps in earnings and pay.<sup>16</sup> As an early indicator of impact, some companies, including J.P. Morgan, have outlined action plans along with their data, demonstrating that the reporting requirement spurred companies to develop a plan to address disparities.<sup>17</sup>

As of 2017, in Germany, employees working for employers with more than 200 employees can request information from their employer about the salaries of their co-workers,<sup>18</sup> and employers with more than 500 employees are required to submit public reports detailing measures the company has taken to promote gender equality and achieve equal pay, along with the impact of any measures.<sup>19</sup> In France, a new measure requires companies with over 50 employees to measure their gender pay gaps, and to disclose steps taken to remedy the gaps.<sup>20</sup> Companies are required to measure compliance using a 100-point scale, and the resulting score will be posted on company websites,<sup>21</sup> with financial consequences for companies that fail to report or that have scores below a certain metric.<sup>22</sup> All of these initiatives recognize that requiring employers to collect and report pay data is a powerful tool for fighting pay discrimination and closing the wage gap. Pay data reporting by employers promises to shine light on race and gender pay disparities, identify areas of concern for further investigation by enforcement agencies, and increase the likelihood of employer self-analysis and self-correction.

But in the face of a cultural shift that has imbued new urgency to calls for equal pay across the country and, indeed, across the world, Congress has failed to act. It is not enough for some states to act and for some employers to take voluntary steps to close the gender wage gap. It is not enough for international corporations to feel indirect pressure to address their U.S. pay practices because they are subject to strengthened equal pay laws in other countries. Every woman in this country—especially the Black women, Latinas, and Native women who experience exceptionally large wage gaps—deserves robust, baseline equal pay protections in federal law. The Paycheck Fairness Act would provide these core protections.

## **II. THE WAGE GAP IS REAL, WITH DEVASTATING IMPACTS**

### **A. The Wage Gap Harms Women and Their Families**

When comparing women of all races to men of all races, women working full time, year-round typically are paid only 80 cents for every dollar paid to men working full time, year-round.<sup>23</sup> And the wage gap is even worse when looking specifically at women of color: for every dollar paid to white, non-Hispanic men, Black women are paid only 61 cents, Native women 58 cents, and Latinas 53 cents.<sup>24</sup> Asian American and Pacific Islander (AAPI) women are typically paid only 85

cents, but that number masks larger disparities among different communities of AAPI women.<sup>25</sup> For example, Burmese, Samoan, and Hmong women make just over half—51 percent, 56 percent and 59 percent respectively—of what white, non-Hispanic men make.<sup>26</sup>

This wage gap has remained stagnant for nearly a decade.<sup>27</sup> Women are still paid less than men in nearly every occupation,<sup>28</sup> and studies show that even controlling for race, region, unionization status, education, experience, occupation, and industry leaves 38 percent of the pay gap unexplained.<sup>29</sup>

The gender wage gap significantly diminishes the earning power of women. In 2017, women's median earnings were \$10,169 less per year than the median earnings for men. Put another way: that is equal to about three months of rent, three months of child care payments, three months of health insurance premiums, three months of groceries, four months of student loan payments, and eight tanks of gas.<sup>30</sup>

The wage gap affects women as soon as they enter the labor force, expands over time, and leaves older women with a gap in retirement income. Over the course of a 40-year career, a woman beginning her career today stands to lose \$406,760 to the wage gap.<sup>31</sup> To make up this lifetime wage gap, a woman would have to work more than 10 years longer than her male counterpart.<sup>32</sup> Women of color stand to lose the most with Asian women losing \$360,400, Black women losing \$946,120, and Latinas losing \$1,135,440 over their lifetime to the wage gap as compared to white, non-Hispanic men.<sup>33</sup>

When women are shortchanged, families suffer. More than 24.9 million mothers with children under 18 are in the workforce, making up nearly 1 in 6 – or 26 percent – of all workers.<sup>34</sup> The great majority of mothers in the workforce work full time. In 2015, 42 percent of mothers were the sole or primary breadwinners in their families, while 22.4 percent of mothers were co-breadwinners, meaning mothers' earnings are critical to families' financial security.<sup>35</sup> And those working mothers also face a wage gap, paid only 71 cents for every dollar paid to fathers, a gap that translates to a typical loss of \$16,000 annually.<sup>36</sup>

Closing the wage gap would help lift women and children out of poverty. Nearly one in eight women in the U.S. live in poverty, with high rates for women of color, including 11 percent of Asian women, 21 percent of Black women, and 18 percent of Latinas.<sup>37</sup> More than 1 in 3 families headed by unmarried mothers lived in poverty in 2017, and over half of all poor children (58 percent) lived in families headed by unmarried mothers.<sup>38</sup> Closing the wage gap is not only fair, it is urgently needed.

## **B. No Matter the Choices They Make, Women Face a Wage Gap**

Skeptics of the gender wage gap contend that it exists because of differences in women's education or the occupational "choices" that women make. But just one year after college graduation, women are paid 82 percent of what their similarly educated and experienced male peers were paid.<sup>39</sup> Moreover, a wage gap persists across virtually every occupation, whether women work in low-wage jobs like cashiers and retail salespeople; mid-wage jobs like travel agents; or high-wage jobs like lawyers or physicians or surgeons.<sup>40</sup> Data make clear that discrimination is a major driver of the wage gap.

It is well-documented that women, and especially women of color, face overt discrimination and unconscious biases in the workplace which impact pay. For example, in a recent experiment where scientists were presented with identical resumes—one with the name John and the other with the name Jennifer—the scientists offered the male applicant for a lab manager position a salary of nearly \$4,000 more, and judged him to be significantly more competent and hireable.<sup>41</sup> Racial stereotypes compound these effects for women of color,<sup>42</sup> contributing to their overrepresentation in low-paying jobs, and underrepresentation in higher-paying jobs<sup>43</sup> and leadership positions within organizations.<sup>44</sup>

Women with caregiving responsibilities—and mothers in particular—also face persistent discrimination in the workplace, which leads to lower wages. A 2007 study found that when comparing equally qualified women candidates, women who were mothers were recommended for significantly lower starting salaries, perceived as less competent, and less likely to be recommended for hire than non-mothers.<sup>45</sup> The effects for fathers in the study were just the opposite—fathers were recommended for significantly higher pay and were perceived as more committed to their jobs than non-fathers.<sup>46</sup> It is thus not surprising that, in 2016, mothers who worked full time, year-round typically made only 71 cents for every dollar paid to fathers. The wage gap between mothers and fathers exists across education level, age, location, race, and occupation.<sup>47</sup>

The wage gap also persists because women face significant barriers—like harassment and discrimination—to entering higher-wage, nontraditional jobs and thus continue to be overrepresented in low-paying jobs. Women are nearly two-thirds of the workforce in low-wage jobs that typically pay less than \$11.50 per hour.<sup>48</sup> And all too often, wages in occupations that are made up predominantly of women – “pink collar” occupations such as child care workers, family caregivers, or servers – pay low wages,<sup>49</sup> in significant part because women are the majority of workers in the occupation and “women’s work” is undervalued.<sup>50</sup> A study of more than 50 years of data revealed that when women moved into a field in large numbers, wages declined, even when controlling for experience, skills, education, race and region.<sup>51</sup>

Nor is the answer to the gender wage gap for women to negotiate their way out of it. Women are less likely to negotiate their salaries than men, but in many instances, that is for good reason. Studies show employers react more favorably to men who negotiate salaries, while women who negotiate may be perceived negatively and penalized for violating gender stereotypes.<sup>52</sup> In addition, when women do negotiate, they are less likely to receive the raises they seek.<sup>53</sup> Not surprisingly given the cultural hostility to women's negotiation, women who do negotiate often ask for less when they negotiate than men.<sup>54</sup>

### **C. A Focus on Pay Equity Is Good for Business**

When employers do proactively implement practices to help prevent pay disparities in the first instance and to develop a diverse workforce, they reap rewards. A diverse workforce and equitable employment practices can confer a wide array of benefits on a company, including decreased risk of liability, access to the best talent, increased employee satisfaction and productivity,<sup>55</sup> increased innovation, an expanded consumer base, and stronger financial performance.<sup>56</sup> Competitive — and thus equal — pay is critical for recruiting and retaining a diverse workforce and high performers, particularly for younger women workers.<sup>57</sup> And when workers are confident they are being paid fairly, they are more likely to be engaged and productive.<sup>58</sup>

Significantly, shareholders and potential investors are recognizing these benefits and are increasingly interested in companies' commitment to diversity and equal employment opportunity. They see compliance with antidiscrimination laws — particularly with regard to equal pay — as an important factor impacting risk and profitability, and therefore relevant to investment decisions.<sup>59</sup>

### **D. Equal Pay Would Provide an Enormous Economic Boost**

Addressing discrimination and closing the gender wage gap would have a significant positive impact on the economy. A recent study found that if women received the same compensation as their comparable male co-workers, the poverty rate for all working women would be reduced by half, from 8.1 percent to 3.9 percent.<sup>60</sup> Moreover, nearly 60 percent of women would earn more if working women were paid the same as men of the same age with similar education and hours of work.<sup>61</sup> Increased wages would augment these workers' consumer spending power and benefit businesses and the economy.<sup>62</sup> Another recent study by McKinsey estimates that by closing the wage gap entirely, women's labor force participation would increase and \$4.3 trillion in additional gross domestic product could be added in 2025, about 19 percent more than would otherwise be generated in 2025.<sup>63</sup>

### III. CURRENT LAW FALLS SHORT

Pay discrimination remains difficult to detect in the first instance. Because pay often is cloaked in secrecy, when a discriminatory salary decision is made, it is seldom as obvious to an affected employee as a demotion, a termination, or a denial of a promotion.<sup>64</sup> Moreover, according to the most recent data available, about 60 percent of workers in the private sector nationally are either forbidden or strongly discouraged from discussing their pay with their colleagues.<sup>65</sup> As a result, employees face significant obstacles in gathering the information that would suggest that they have experienced pay discrimination, which undermines their ability to challenge such discrimination. Punitive pay secrecy policies and practices allow this form of discrimination not only to persist, but to become institutionalized.

Lilly Ledbetter's story demonstrates how the culture of secrecy around pay allows pay discrimination to persist for years, unchecked, and the difficulties workers face in successfully challenging and being made whole for pay discrimination under our current laws. Lilly worked at Goodyear for 19 years before discovering that she was being paid less than her male counterparts, thanks to an anonymous note. When she brought a Title VII pay discrimination suit against her employer, the jury awarded her over \$3 million in damages, which were promptly reduced to \$300,000 due to statutory damages caps. And when her suit came before the Supreme Court, the Court ruled against her, holding that employers could not be sued for pay discrimination under Title VII if the employer's original discriminatory pay decision occurred more than 180 days before the employee initiated her claim.<sup>66</sup> Congress acted quickly in response, and the Lilly Ledbetter Fair Pay Act of 2009 restored the protection against pay discrimination stripped away by the Court, making clear that each discriminatory paycheck, not just an employer's original decision to engage in pay discrimination, resets the 180-day time period.

The Ledbetter Act has resulted in real, concrete gains for victims of pay discrimination, ensuring that the doors of the courthouse remain open. Because of the Ledbetter Act, workers who learn that they have been paid unfairly — like Lilly Ledbetter — have been able to challenge and remedy pay discrimination that otherwise would have gone unchecked.<sup>67</sup>

But while the Ledbetter Act was a necessary and important victory, it simply restored the law to the status quo that existed before the Supreme Court's *Ledbetter* decision. It did not address the significant deficiencies in our equal pay laws, which are limited in the tools they provide to detect and combat wage discrimination, and have been further weakened by a series of judicial interpretations. For instance, the problems created by pay secrecy are compounded by inadequate remedies under the law that fail to incentivize employers to consistently take proactive steps to address and correct pay discrimination in the first instance. Courts' narrow

interpretations of the required elements of an Equal Pay Act claim have made it exceedingly difficult for workers to prevail. At the same time, and as set out in greater detail below, courts have also opened loopholes in the Equal Pay Act, interpreting it in ways that undermine its basic goal, allowing employers to justify sex-based pay disparities based on practices and factors that have nothing to do with the experience, education, or skills required for the job, such as relying on an applicant’s prior salary, negotiation skills, or family economic situation. The remedial purposes of the Equal Pay Act have been gravely undermined over the years, creating an urgent need for the critical reforms in the Paycheck Fairness Act outlined below.

#### **IV. THE PAYCHECK FAIRNESS ACT WOULD PROVIDE CRITICALLY IMPORTANT PROTECTIONS**

The Paycheck Fairness Act would update and strengthen the Equal Pay Act in several critical ways to ensure that it provides robust protection against sex-based pay discrimination. The Paycheck Fairness Act promotes pay transparency by barring retaliation against workers who voluntarily discuss or disclose their wages, and by requiring employers to report pay data to the EEOC. It prohibits employers from relying on salary history to set pay when hiring new employees, so that pay discrimination does not follow women and people of color from job to job. It closes loopholes that have allowed employers to pay women less than men for the same work without a legitimate business justification related to the job. It strengthens workers’ ability to demonstrate pay discrimination by modifying the “same establishment” requirement, and removing barriers allowing workers to come together as a class to challenge pay discrimination. And finally, the Paycheck Fairness Act ensures women can receive the same robust remedies for sex-based pay discrimination that are currently available to those subjected to discrimination based on race or ethnicity.

##### **A. Pay Transparency Helps Root Out Discrimination and Allows Employers to Take Proactive Preventive Measures**

###### **1. Protecting Employees from Retaliation for Discussing Pay**

You can’t remedy pay discrimination if you have no idea that you are making less than the man across the hall. When workers fear retaliation for talking about their pay, any wage gap they face is likely to continue to grow, undiscovered, in the shadows. By restricting employees’ ability to talk about their pay, employers seek to rob employees of the power that pay transparency can unlock.

The Paycheck Fairness Act stops employers from prohibiting or punishing employees for asking about, discussing, or disclosing information about pay and makes clear that employees cannot

contract away or waive their rights to discuss and disclose pay. This reform is necessary because protection for talking about pay shouldn't depend on where you live or whether you work in a particular kind of job. Eighteen states—including Massachusetts, Connecticut, New Hampshire, New York, New Jersey, and Vermont—and the District of Columbia have enacted such protections in recent years.<sup>68</sup> And under federal law, employees have a patchwork of insufficient protections. Pursuant to Executive Order 13665 of 2014, federal contractors are prohibited from discriminating against employees and job applicants who inquire about, discuss, or disclose either their own or others' compensation – but that rule does not reach all private employers.<sup>69</sup> The National Labor Relations Act (NLRA) has been interpreted to protect workers' conversations about wages because they are necessary for collective bargaining or other mutual aid or protection; courts and the National Labor Relations Board have also found that pay secrecy rules can be unfair labor practices under the NLRA because they can inhibit protected labor practices.<sup>70</sup> But NLRA protections do not extend to supervisors, public sector employees, domestic and agricultural workers, and various employees of railways and airlines, and remedies for violations of employee rights under the NLRA are often not robust enough to act as a significant deterrent to employers.<sup>71</sup> As a result, too many employers maintain punitive pay secrecy policies. The Paycheck Fairness Act would ensure that *all* workers enjoy robust protections for talking about their pay.

The significantly narrower gender wage gap for employees working in the public sector – where pay secrecy rules are uncommon and pay is often publicly disclosed – suggests the difference that transparency makes. According to the most recent data available, approximately 60 percent of employees in the private sector report that discussing their wages is either prohibited or discouraged, compared to 11-18 percent of public sector employees.<sup>72</sup> In contrast to the overall gender wage gap of 20 percent, in the federal government, where pay rates and scales are more transparent and publicly available, the gender wage gap is 13 percent.<sup>73</sup>

## **2. Collecting Pay Data to Help Identify and Address Pay Discrimination**

Because pay is often cloaked in secrecy, women and people of color can be paid less for doing the same job for many years without knowing it. Receiving equal pay shouldn't have to depend on an anonymous note writer letting you know you are being underpaid. That is why we need strong federal enforcement of pay discrimination laws and why we need employers to look at their own pay practices and close any pay gaps that aren't justified by legitimate factors like differences in qualifications. The Paycheck Fairness Act would forward both goals by requiring employers to report pay data by race, ethnicity, and gender to the EEOC.

Reporting pay data to the EEOC by sex, race, and ethnicity helps ensure employer self-evaluation and correction. It ensures that employers are reviewing wage data by sex, race, and

ethnicity. The reporting requirement provides an opportunity and strong incentive for employers to proactively self-evaluate their pay practices and not only correct unjustified pay disparities, but prevent them from occurring in the first place. Reporting this data also will allow the EEOC to see which employers have racial or gender pay gaps that differ significantly from the pay patterns from other employers in their industry and region. By comparing wage data for firms employing workers in the same job categories, in the same industry, in the same location, in the same year, the EEOC will be able to tell which employers' pay practices may present problems and investigate pay discrimination more efficiently.

The Paycheck Fairness Act's requirement of pay data collection is especially critical because the Trump Administration has blocked the EEOC's efforts to collect this type of pay data on its own initiative. In 2016, the EEOC and OMB approved a requirement that companies with 100 or more employees confidentially report employee pay by job category, sex, race, and ethnicity as part of their annual Employer Information Report (EEO-1) to the EEOC.<sup>74</sup> The EEOC determined that collecting this pay data was necessary to enforce equal pay law, creating a crucial window into pay practices often shrouded in secrecy. The pay data collection was finalized after a multi-year process involving detailed analysis and revision and multiple opportunities for public notice and comment from stakeholders. But in August 2017, OMB issued a terse one and half page memo indefinitely staying the pay data collection, claiming that it "lacked practical utility" and was "unnecessarily burdensome" to businesses.<sup>75</sup> The Administration eliminated this essential data tool with virtually no explanation of its rationale. And unlike the EEOC, OMB's decision making transpired in secret, with no opportunity for public comment; rather, several corporate groups, including the U.S. Chamber of Commerce, repeatedly requested review and rescission of the pay data collection, while requests for meetings by equal pay advocates were ignored. The National Women's Law Center, in partnership with Democracy Forward and the Labor Council for Latin American Advancement, had challenged the legality of the stay,<sup>76</sup> but in the interim the Administration has made it easier to sweep pay discrimination under the rug.

### **B. Limiting Employers' Reliance on Salary History in the Hiring Process**

Relying on a job applicant's salary history in the hiring and pay setting process is an irrational and unfair practice that hurts all working people, but has a disproportionately negative impact on women and people of color, who are typically paid lower wages than white, non-Hispanic men. It also penalizes individuals—predominately women—who reduced their hours in their prior job to care for children or family members, or who are returning to work after a spell out of the workforce for caregiving, or who moving from the nonprofit to the for-profit sector, and whose prior salary, consequently, may not reflect the market value of their qualifications. Setting pay for a new employee by reference to their salary history allows pay discrimination

and wage gaps to follow women, people of color, and others from job to job, hurting working people, their families, and the economy.

The Paycheck Fairness Act prohibits an employer from screening applicants based on their wage history: an employer would no longer be permitted to conclude that certain applicants made too little in their previous job to be considered as candidates for a position. An employer would not be permitted to rely on wage history to determine compensation for a new employee unless the candidate voluntarily offers his or her wage history after an offer of employment and an offer of compensation has been made. In other words, an employee would still be allowed to negotiate a higher offer by reference to salary history, but an employer could not require such information be provided. In addition, the prospective employer would be permitted to verify wage history with a current or former employer only if the prospective employee had volunteered that wage history in order to negotiate for a higher wage.

Ending reliance on salary history—a practice that unjustifiably perpetuates gender and racial wage gaps within a workplace—will help employers decrease their exposure to costly pay discrimination litigation.<sup>77</sup> It will also help businesses attract and retain diverse and qualified talent who are unjustifiably screened out because their prior salary is too high or too low or they are driven away by this intrusive and unfair practice.<sup>78</sup> As a human resources professional recently stated, the practice of seeking salary history from job applicants is “intrusive and heavy-handed . . . It’s a Worst Practice . . . It hurts an employer’s brand and drives the best candidates away.”<sup>79</sup> A recent study demonstrated that employers are limiting their talent pools when they rely on salary history. When salary history information was taken out of the equation, the employers studied ended up widening the pool of workers under consideration and interviewing and ultimately hiring individuals who had made less money in the past.<sup>80</sup>

Some businesses have announced they will abandon this practice. Small and large businesses throughout the country, including Amazon, American Express, Bank of America, Cisco Systems, Facebook, Google, GoDaddy, Progressive, Starbucks, and Wells Fargo, have announced that they are no longer asking applicants to provide their salary history, acknowledging that this practice perpetuates wage gaps, and that employees should be paid based on their experience, skills, track record, and the responsibilities they will be assuming, not on what they happened to be paid in their past job.<sup>81</sup>

California, Connecticut, Delaware, Hawaii, Massachusetts, Oregon, Puerto Rico, and Vermont, as well as cities such as New York City and San Francisco have all enacted prohibitions on reliance on salary history in pay setting—in many instances with bipartisan and business support.<sup>82</sup> The District of Columbia, New York, New Jersey, and the cities of Chicago, New Orleans, Pittsburgh, and Salt Lake City have prohibited the use of salary history by state or city

agencies.<sup>83</sup> Similarly, in 2015, the federal Office of Personnel Management (OPM) discouraged federal agencies from considering candidates' prior salary in setting their pay, explaining that "[r]eliance on existing salary to set pay could potentially adversely affect a candidate who is returning to the workplace after having taken extended time off from his or her career or for whom an existing rate of pay is not reflective of the candidate's current qualifications or existing labor market conditions."<sup>84</sup> Like these initiatives, the Paycheck Fairness Act would end the inequities perpetuated by pay setting based on salary history.

### **C. Eliminating a Loophole In the "Factor Other Than Sex" Affirmative Defense That Perpetuates Pay Disparities**

In cases brought under the Equal Pay Act, a plaintiff has the substantial initial burden of establishing that she is being paid less than a male employee for performing substantially equal work, requiring equal skill, effort and responsibility under similar working conditions. If she makes this showing, an employer still may avoid liability for pay discrimination by proving that a wage disparity is justified by one of four affirmative defenses, including that the employer set wages based on a "factor other than sex."

Some courts have adopted interpretations of this affirmative defense that create a large loophole in the guarantee of equal pay for women. For instance, some courts have interpreted this affirmative defense so broadly that factors such as a male worker's stronger salary negotiation skills or higher previous salary qualify, even if these factors themselves may be "based on sex."<sup>85</sup> In addition, some courts have accepted the argument that employers can rely on vague, ill-defined "market forces" excuses to justify pay discrimination between men and women doing equal work.<sup>86</sup> Relying on "market forces" or market value alone as a justification for offering a male employee a higher salary than a similarly situated female employee to prevent him from leaving, or to recruit him from another employer, is the type of compensation practice that invites stereotyping and faulty assumptions about women's competence and value. In contrast, other courts have scrutinized employers' proffered justifications for sex-based wage disparities, and have recognized that the Equal Pay Act requires that any "factor other than sex" that justifies paying a woman less than a man for the same work must be closely tied to an employer's business needs.<sup>87</sup>

The Paycheck Fairness Act would resolve the uncertainty in the law and ensure that employers would no longer be able to justify paying women less for the same work as men based on faulty and invalid justifications that are not related to the job or any business necessity. The Paycheck Fairness Act closes the "factor other than sex" loophole by adding a requirement that the factor proffered by the employer be "bona fide," ensuring that the

factor actually is neutral and unrelated to sex. It makes clear that the “factor other than sex” affirmative defense only excuses a pay differential when that factor is related to the position in question, forwards a business necessity, and accounts for the entire pay differential. In addition, the Paycheck Fairness Act would ensure that if an employee demonstrates that there is an alternative practice that would serve the employer’s same business purpose without producing the pay disparity, which the employer has refused to adopt, the employee can succeed in her Equal Pay Act claim. A growing chorus of states have taken similar steps to close the legal loopholes courts have created in this defense, including Maryland, New Jersey, New York, Washington, and California.<sup>88</sup>

Through these robust protections, the Paycheck Fairness Act would help ensure that the Equal Pay Act’s promise of equal pay for equal work is not swallowed by a loophole that allows the wage gap to persist.

#### **D. Modifying the “Establishment” Requirement to Strengthen Employees’ Ability to Prove Pay Discrimination**

The Paycheck Fairness Act prevents an employer from paying a male employee more than a female employee who is doing the same job for the employer on the other side of town—because a few miles’ distance is no justification for pay discrimination. Currently, in order to succeed in an Equal Pay Act claim, not only must the employee show that the employer paid her less for performing substantially the same work as a male employee working in the “same establishment.”<sup>89</sup> The term “same establishment” is not defined, but courts have interpreted it to mean “a distinct physical place of business.”<sup>90</sup> This can be an obstacle for an employee who seeks to compare her job to a male employee who does the same work in a different physical location for the same employer in the same town. The Paycheck Fairness Act clarifies that comparisons may be made between employees in workplaces in the same county or similar political subdivision as well as between broader groups of workplaces in some commonsense circumstances.

#### **E. Facilitating Class Action Equal Pay Act Claims**

Class actions are important for ending workplace discrimination because they reduce the barriers to seeking justice and decrease the likelihood of disparate results. When workers can come together to challenge systemic discrimination, they are less likely to face retaliation, are better able to find legal representation and share information and resources, gain strength from each other’s experiences, and can obtain a uniform resolution that will benefit many workers.

But procedures for enforcing the Equal Pay Act make it difficult for plaintiffs to come together as a class to prove systemic wage discrimination. The Equal Pay Act, which was enacted prior to adoption of the current Federal Rule of Civil Procedure governing class actions, requires that all plaintiffs *opt in* to a suit.<sup>91</sup> Unlike in other civil rights claims, in which class members are automatically considered part of the class until they choose to *opt out*, Equal Pay Act plaintiffs are subjected to a substantial burden that can dramatically reduce participation in wage discrimination cases. Some women may decline to opt into Equal Pay Act cases due to fear that the notice they must provide to their employer of an interest in participating in the case will subject them to retaliation. The Paycheck Fairness Act ensures that workers can come together to challenge an employer's company-wide pay discrimination in court in conformity with other civil rights laws. Under the Paycheck Fairness Act, class members are automatically considered part of the class until they choose to opt out, consistent with the Federal Rules of Civil Procedure.

#### **F. Providing Strengthened Penalties That Deter Discrimination and Make Workers Whole**

When a woman is paid less than a man for doing the same work, she is getting a second-class salary. We shouldn't add insult to injury by giving her a second-class remedy for discrimination, as the law does today. She deserves to be made whole.

Robust remedies for violating equal pay laws are also essential to incentivizing employers to lead the way in tackling the wage gap and to fully compensating victims of pay discrimination. Weak remedies for pay discrimination mean that employers that discriminate in pay can come out ahead by gambling that they won't get caught. And when paired with pay secrecy they likely will not get caught. Unlike those who challenge wage disparities based on race or ethnicity, who are entitled to receive full compensatory and punitive damages pursuant to Section 1981, successful plaintiffs who challenge sex-based wage discrimination under the Equal Pay Act may receive only back pay and, in limited cases, an equal amount as liquidated damages.<sup>92</sup> Even where liquidated damages are available, moreover – in cases in which the employer acted intentionally and not in good faith – the amounts available to compensate plaintiffs tend to be insubstantial. Furthermore, because plaintiffs with Equal Pay Act claims are not entitled to compensatory or punitive damages, they will not be made whole for out-of-pocket expenses caused by the discrimination — like a new job search or medical expenses — and for any emotional harm and pain and suffering caused by the discrimination, such as humiliation, anxiety, or depression.

Workers also may challenge sex-based pay discrimination under Title VII, which does provide for the recovery of compensatory and punitive damages. However, an individual's recovery of compensatory and punitive damages is capped under federal law depending on the size of the

employer. These caps were set in 1991 and have not been adjusted for inflation or any other reason in the last 25 years. For a plaintiff succeeding in a pay discrimination case against an employer with 15-100 employees, for example, damages are capped at \$50,000, regardless of the magnitude of harm experienced or the culpability of the employer. Even for employers with more than 500 employees, damages are capped at \$300,000.<sup>93</sup> This means that in the most egregious cases of sex-based pay discrimination, if a jury awarded a plaintiff millions of dollars in compensatory and punitive damages, the most she could recover from a large employer is \$300,000, which could be insufficient to compensate her for the injuries she suffered. It's what happened to Lilly Ledbetter – a jury found in her favor and awarded her back pay and approximately \$3.3 million in compensatory and punitive damages. However, due to the damages caps, her award was reduced to \$300,000. She subsequently lost that award when the Supreme Court adopted a restrictive interpretation of the statute of limitations that prevented recovery.

These limitations on remedies not only deprive women subjected to wage discrimination of full relief – they also substantially limit the deterrent effect of the Equal Pay Act. Limited remedies and damages caps mean that employers can refrain from addressing, or even examining, pay disparities in their workforces without fear of substantial penalties for this failure.<sup>94</sup> Arbitrary limits on damages also encourage employers to frame the discrimination faced by women of color as only sex-based, and therefore subject to limitations – ignoring the complex nature of the discrimination employees have suffered. These are all reasons why an increasing number of states have recognized the need for robust remedies and penalties for pay discrimination, including Utah, Illinois, and Oregon,<sup>95</sup> which have all taken steps to increase damages and penalties for equal pay violations in the last few years.

The Paycheck Fairness Act would ensure that victims of pay discrimination could be made whole and would make it less likely that employers would conclude that pay discrimination was worth the risk. It would make compensatory and punitive damages available under the Equal Pay Act, ensuring that those experiencing sex-based pay discrimination have access to the same remedies as those experiencing race-based pay discrimination.

#### **V. THE PAYCHECK FAIRNESS ACT IS AN ESSENTIAL PART OF A BROADER POLICY AGENDA PROMOTING ECONOMIC SECURITY FOR WOMEN AND FAMILIES**

The Paycheck Fairness Act is an essential tool to prevent, identify, and fight against pay discrimination. But it is only one piece of a broader policy agenda we need to help close the gender wage gap and advance equity, dignity, and safety for women and families.

Gendered and racist stereotypes and outdated workplace structures and policies, including low wages, lack of accommodations for pregnant workers, paid leave and predictable work schedules, access to affordable child care, and union support make it hard for women to get and keep good jobs, and advance and become leaders at work. This leaves women with less power in the workplace, increasing their vulnerability to discrimination and exploitation, including sexual harassment.

Sexual harassment widens the wage gap by negatively impacting women's wages and lifetime earnings. Sexual harassment can hurt employee health, productivity, and morale, and push women out of their jobs or lead them to leave an industry or profession altogether. Reporting harassment can lead to retaliation, such as demotion, denial of career advancement opportunities, and being labelled as a troublemaker or "difficult," all of which damage career prospects and advancement. And for male-dominated jobs, like those in construction or STEM fields, the pervasiveness of sexual harassment and sex discrimination keeps women from entering and staying in these jobs and earning the higher wages they offer, pushing them instead into lower-paying female-dominated jobs. All of this decreases women's earnings relative to those of men. The pervasive and insidious nature of workplace harassment highlighted by the MeToo movement demands comprehensive reform to strengthen and expand protections against workplace harassment,<sup>96</sup> including the EMPOWER Act<sup>97</sup> and more. Only then will we begin to redress the power imbalance that has allowed harassment to flourish.

Raising the minimum wage and eliminating the unjust two-tiered minimum wage system for tipped workers also will help boost pay for women, especially women of color. One factor driving the gender wage gap is women's overrepresentation in low-wage jobs: women are close to two-thirds of the workforce in jobs that pay the federal minimum wage or just a few dollars above it,<sup>98</sup> and make up more than two-thirds of workers in tipped jobs for whom the federal minimum cash wage is just \$2.13 per hour.<sup>99</sup> Women of color are particularly overrepresented in these jobs—and they would particularly benefit from the wage increase proposed by the Raise the Wage Act. Nearly 40 percent of Black and Latina working women across the country would get a raise under the bill, and in 30 states, more than half of Black and Latina working women would benefit.<sup>100</sup> With a \$15 minimum wage and one fair wage for tipped workers, millions more women would have paychecks they can count on, and tipped workers would be less vulnerable to sexual harassment from customers because they would not have to rely on tips for nearly all of their income.<sup>101</sup>

The fact that women still shoulder the majority of caregiving responsibilities also impacts the gender wage gap. Outdated workplace structures and a lack of critical workplace supports for workers means that many women are losing wages because they are forced to cut back on their hours, take leave without pay, or leave their jobs altogether in order to maintain a healthy pregnancy or meet caregiving responsibilities.

Requiring that pregnant workers with a medical need have reasonable accommodations so they can keep working will help close the gender wage gap by making it less likely that pregnancy will mean a loss of income and a long spell of unemployment. Pregnant workers are still too often forced to choose between a paycheck and the health of their pregnancies, as employers continue to force pregnant workers off the job rather than providing modest accommodations.<sup>102</sup> The Pregnant Workers Fairness Act would ensure pregnant workers have access to accommodations at work when they need them, such as the opportunity to sit on a stool during a long shift or avoid heavy lifting for a few months.

Adopting nationwide paid family and medical leave and paid sick days will further help close the gender wage gap. Because there is no comprehensive nationwide paid family and medical leave program or guaranteed ability to earn paid sick days, women with caregiving responsibilities often lose wages because they are forced to cut their hours, take leave without pay, or leave their jobs altogether in order to care for themselves and their families.<sup>103</sup> New parents need paid family leave to care for their newborns or to recuperate themselves, and parents with young children need paid time off from work to take their children to doctor's appointments and to account for unanticipated illnesses in their families.<sup>104</sup> Caregivers need paid time off to take care of ill or injured family members, and everyone should have time to care for themselves when they face a serious illness.<sup>105</sup> Low-wage workers are not only least likely to have access to paid family or medical leave, but they are also least likely to be able to afford to take unpaid time off from work.<sup>106</sup> Adopting comprehensive nationwide paid family and medical leave proposed by the FAMILY Act and paid sick days proposed by the Healthy Families Act would make it easier for individuals to meet caregiving responsibilities without facing a pay penalty.

Providing workers with more predictability, stability, and voice in their work schedules could also help close the gender wage gap. Parents in the low-wage workforce, most of whom are women, often have unpredictable and unstable work schedules over which they have little control, which can wreak havoc on transportation and child care arrangements. Insufficient work hours, together with low wages, can also deprive parents of the income they

need to provide for their children. Legislation such as the Schedules That Work Act would help workers meet their obligations on and off the job by granting a right to request work schedules that work for their lives and discouraging the last-minute schedule changes that are rampant in industries like retail and food service, in which women represent the majority of the workforce.<sup>107</sup>

Providing access to affordable, high quality child care will help close the gender wage gap. Because women shoulder the majority of caregiving responsibilities, women are often pushed out of work or into lower-paying jobs to take care of their children, since they struggle to find high-quality, affordable child care that matches their work schedules or to even afford the cost of average-priced care, much less higher-quality—and typically higher-cost—care.<sup>108</sup> At the same time, our child care workforce, which is disproportionately women of color, typically earns just \$11.42 an hour,<sup>109</sup> often leaving them in poverty and unable to afford high-quality child care themselves. Legislation, such as the Child Care for Working Families Act, would help families with the cost of high-quality child care, and enable child care workers to earn a wage that would allow them to support themselves and their families.

Strengthening workplace protections for LGBTQ individuals would also affect the gender wage gap. According to the most recent analysis available, women in same-sex couples have a median personal income of \$38,000, compared to \$47,000 for men in same-sex couples and \$48,000 for men in different-sex couples.<sup>110</sup> One study found that the average earnings of transgender women workers fall by nearly one-third after transition.<sup>111</sup> The Equality Act would strengthen critical federal civil rights laws to make clear that in prohibiting sex discrimination they protect individuals from discrimination based on sexual orientation and gender identity, while adding new protections against sex discrimination.<sup>112</sup>

Finally, union membership is critical for closing the gender wage gap. Less than 11 percent of the workforce belongs to a union, but those women who are members of unions experience greater wage equality. Female union members make 88 cents for every dollar paid to male union members, compared to female non-union members who make only 82 cents for every dollar paid to their male counterparts.<sup>113</sup> Legislation to restore and strengthen workers' rights to come together to organize and collectively bargain – including workers who traditionally have been excluded from the protection of workplace laws, such as domestic workers, who are predominantly women of color -- is critical for achieving equal pay for women.

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Women in the U.S. are loudly demanding a change in the systems that have shortchanged us for far too long. The Paycheck Fairness Act is part of the response to our urgent call for a shift in the ways of doing business that have persistently devalued women's work. By updating our equal pay laws to reflect our world today, the Equal Pay Act will advance equity and dignity at work for all women.

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<sup>1</sup> See YWCA USA, *What Women Want 2018* (Sept. 2018) (91 percent of women surveyed, of varying political affiliation, agreed that Congress should strengthen equal pay laws for women), [https://www.ywca.org/wp-content/uploads/WhatWomenWant2018\\_final.pdf](https://www.ywca.org/wp-content/uploads/WhatWomenWant2018_final.pdf); Rasmussen Reports, *National Survey of 1,000 American Adults* (Apr. 2018) (67 percent of survey respondents favor "a law which mandates equal pay for men and women if they do 'substantially similar work' for a company even if they have different job titles or work at different locations"), [http://www.rasmussenreports.com/public\\_content/business/jobs\\_employment/april\\_2018/most\\_americans\\_support\\_equal\\_pay\\_for\\_men\\_and\\_women](http://www.rasmussenreports.com/public_content/business/jobs_employment/april_2018/most_americans_support_equal_pay_for_men_and_women); *Gallup Poll* (Sept. 2014) (survey respondents said equal pay was the most important issue facing working women), <https://news.gallup.com/poll/178373/americans-say-equal-pay-top-issue-working-women.aspx>.

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<sup>5</sup> NWLC, PROGRESS IN THE STATES FOR EQUAL PAY (Jun. 2018), <https://nwlc.org/resources/progress-in-the-states-for-equal-pay/>.

<sup>6</sup> *Id.*

<sup>7</sup> N.M. Exec. Order No. 2009-049 (Dec. 18, 2009), <https://www.generalservices.state.nm.us/uploads/FileLinks/864df4748b2440569b3af8a95ce155d8/eo2009-049.pdf>; N.Y. Exec. Order No. 162 (Jan. 9, 2017), <https://www.governor.ny.gov/news/no-162-ensuring-pay-equity-state-contractors>; S.B. 104, 218th Leg., Reg. Sess. (N.J. 2018) (amending N.J. Pub. L. 1945, c.169 (2018)), [https://www.njleg.state.nj.us/2018/Bills/A0500/1\\_11.HTM](https://www.njleg.state.nj.us/2018/Bills/A0500/1_11.HTM); Albuquerque, N.M., Ordinance 15-47 (May 21, 2015), <https://cabq.legistar.com/LegislationDetail.aspx?ID=2242779&GUID=5F9F9F24-2151-4912-85D3-5B8ADB27F29A&FullText=1>.

<sup>8</sup> NWLC, REQUIRING TRANSPARENCY AROUND SALARY RANGES REDUCES THE GENDER WAGE GAP (Jun. 2018), <https://nwlc.org/resources/requiring-transparency-around-salary-ranges-reduces-the-gender-wage-gap/>.

<sup>9</sup> See U.S. DEP'T OF LABOR, WOMEN'S BUREAU, EQUAL PAY AND PAY TRANSPARENCY PROTECTIONS, [https://www.dol.gov/wb/EqualPay/equalpay\\_txt.htm](https://www.dol.gov/wb/EqualPay/equalpay_txt.htm) (last visited Feb. 7, 2018).

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<sup>16</sup> Sarah Butler, *The UK companies reporting the biggest gender pay gaps*, THE GUARDIAN (Apr. 5, 2018), <https://www.theguardian.com/society/2018/apr/05/the-uk-companies-reporting-the-biggest-gender-pay-gaps>.

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<sup>19</sup> *Id.*

<sup>20</sup> Sabine Smith-Vidal & Letitia de Pelet, *New French Rules on Gender Pay Equality Enacted*, MORGAN LEWIS (Sept. 20, 2018), <https://www.morganlewis.com/pubs/new-french-rules-on-gender-pay-equality-enacted>.

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- <sup>46</sup> *Id.*
- <sup>47</sup> NWLC, *Mothers lose \$16,000 Annually to the Wage Gap, NWLC Analysis Shows* (May 23, 2018), <https://nwlc.org/press-releases/mothers-lose-16000-annually-to-the-wage-gap-nwlc-analysis-shows/>.
- <sup>48</sup> NWLC, WOMEN IN LOW-WAGE JOBS MAY NOT BE WHO YOU EXPECT (Aug. 2017), <https://nwlc.org/resources/women-in-low-wage-jobs-may-not-be-who-you-expect/>.
- <sup>49</sup> NWLC, LOW WAGE JOBS ARE WOMEN'S JOBS: THE OVERREPRESENTATION OF WOMEN IN LOW WAGE WORK (Aug. 2017), <https://nwlc.org/resources/low-wage-jobs-are-womens-jobs-the-overrepresentation-of-women-in-low-wage-work/>.
- <sup>50</sup> Philip N. Cohen, *Devaluing and Revaluing Women's Work*, HUFFINGTON POST (Apr. 3, 2010), [https://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w\\_b\\_444215.html](https://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w_b_444215.html).
- <sup>51</sup> Asaf Levanon, Paula England & Paul Allison, *Occupational Feminization and Pay: Assessing Causal Dynamic Using 1950-2000 U.S. Census Data*, SOCIAL FORCES (Dec. 2009), <http://sf.oxfordjournals.org/content/88/2/865.short>.
- <sup>52</sup> See Linda Babcock & Sara Laschever, *Women Don't Ask: The High Cost of Avoiding Negotiation—And Positive Strategies For Change* (2007); Hannah Riley Bowles, Linda Babcock & Lei Lai, *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask*, ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES (2007).
- <sup>53</sup> Benjamin Artz, Amanda Goodall & Andrew J. Oswald, *Research: Women Ask for Raises as Often as Men, but Are Less Likely to Get Them*, HARV. BUS. REV. (Jun. 25, 2018), <https://hbr.org/2018/06/research-women-ask-for-raises-as-often-as-men-but-are-less-likely-to-get-them>. Racial biases affect salary negotiations as well. See Morela

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Hernandez, Derek R. Avery, Sabrina D. Volpone, & Cheryl R. Kaiser, *Bargaining While Black: The Role of Race in Salary Negotiations*, J. APPLIED PSYCHOLOGY (Oct. 18, 2018), <https://www.apa.org/pubs/journals/releases/apl0000363.pdf>.

<sup>54</sup> See Linda Babcock & Sara Laschever, *Women Don't Ask: Negotiation and the Gender Divide* (2003) (finding that women ask for less when they do negotiate and that women business school graduates who negotiate fare 30 percent worse than their peers who are men); Jenny Save-Soderbergh, *Are Women Asking for Low Wages? Gender Differences in Wage Bargaining Strategies and Ensuing Bargaining Success*, SWEDISH INST. SOC., Res. Working Paper Series 7/2007 10 (2007) [https://ideas.repec.org/p/hhs/sofiwp/2007\\_007.html](https://ideas.repec.org/p/hhs/sofiwp/2007_007.html).

<sup>55</sup> Research indicates that workers are more productive when salary is transparent. See Emiliano Huet-Vaughn, *Striving for Status: A Field Experiment on Relative Earnings and Labor Supply*, UC BERKELEY (Nov. 2013), [http://econgrads.berkeley.edu/emilianohuet-vaughn/files/2012/11/JMP\\_e.pdf](http://econgrads.berkeley.edu/emilianohuet-vaughn/files/2012/11/JMP_e.pdf).

<sup>56</sup> Vivian Hunt, Dennis Layton & Sara Prince, *Why Diversity Matters*, MCKINSEY & Co. (Feb. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters> (finding diverse workforces correlate with better financial performance, because diversity helps to recruit the best talent, enhance the company's image, increase employee satisfaction, and improve decision making, including fostering innovation); Sylvia Ann Hewlett, Melinda Mashall & Laura Sherbin, *How Diversity Can Drive Innovation*, HARV. BUS. REV. (Dec. 2013), <https://hbr.org/2013/12/how-diversity-can-drive-innovation>. Conversely, companies that fail to address gender wage disparities and discriminatory employment practices could damage their reputation and brand among consumers, leading to a loss of profits and shareholder value. See Natasha Lamb & Will Klein, *A Proactive Approach to Wage Equality is Good for Business*, EMPLOYMENT RELATIONS TODAY (Jul. 16, 2015), available at <http://arjuna-capital.com/news/a-proactive-approach-to-wage-equality-is-good-for-business/>.

<sup>57</sup> See DELOITTE 2018 MILLENNIAL SURVEY, DELOITTE (2018), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-2018-millennial-survey-report.pdf> (pay was the top factor influencing the decision to work for an employer); Lauren Noel & Christie Hunter Arscott, WHAT YOU SHOULD KNOW ABOUT THE YOUNG, FEMALE TALENT AT YOUR ORGANIZATION, ICEDR (2015), [https://www.icedr.org/research/documents/14\\_millennial\\_snapshot.pdf](https://www.icedr.org/research/documents/14_millennial_snapshot.pdf) (Millennial women leave jobs primarily for more compensation).

<sup>58</sup> Courtney Seiter, *The Counterintuitive Science of Why Transparent Pay Works*, FASTCOMPANY.COM (Feb. 26, 2016), <http://www.fastcompany.com/3056975/the-future-of-work/the-transparent-pay-revolution-inside-the-science-and-psychology-of-open->

<sup>59</sup> See *A Proactive Approach*, supra note 56; Natasha Lamb, *Closing the pay gap: Silicon Valley's gender problem*, ETHICAL BOARDROOM (Jun. 7, 2016), <https://ethicalboardroom.com/closing-the-pay-gap-silicon-valleys-gender-problem/>; Trillium Asset Mgm't, Letter to Citigroup Shareholders (Apr. 16, 2016), <https://www.sec.gov/Archives/edgar/data/831001/000121465916010905/j415160px14a6g.htm>.

<sup>60</sup> Heidi Hartmann, Jeff Hayes & Jennifer Clark, *How Equal Pay for Working Women Would Reduce Poverty and Grow the American Economy*, IWPR (Jan. 13, 2014), <http://www.iwpr.org/publications/pubs/how-equal-pay-for-working-women-would-reduce-poverty-and-grow-the-american-economy/>.

<sup>61</sup> *Id.*

<sup>62</sup> See *id.* (finding that the U.S. economy would have produced additional income of more than \$447 billion in 2012 if women received pay equal to their male counterparts).

<sup>63</sup> Kweilin Ellingrud et al., *The power of parity: Advancing women's equality in the United States*, MCKINSEY GLOBAL INST. (Apr. 2016), <http://www.mckinsey.com/global-themes/employment-and-growth/the-power-of-parity-advancing-womens-equality-in-the-united-states>. The same study estimates that even if the wage gap was only partially closed, \$2.1 trillion in additional GDP could be added in 2025.

<sup>64</sup> As Justice Ginsburg has noted:

Pay disparities often occur, as they did in Ledbetter's case, in small increments; cause to suspect that discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee's view. Employers may keep under wraps the pay differentials maintained among supervisors, no less the reasons for those differentials. Small initial discrepancies may not be seen

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as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves. Pay disparities are thus significantly different from adverse actions “such as termination, failure to promote, ...or refusal to hire,” all involving fully communicated discrete acts, “easy to identify” as discriminatory.

*Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 645 (2007) (Ginsburg, J. dissenting).

<sup>65</sup> IWPR, PAY SECRECY AND WAGE DISCRIMINATION (Jan. 29, 2014), <https://iwpr.org/publications/pay-secrecy-and-wage-discrimination>.

<sup>66</sup> *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

<sup>67</sup> See NWLC, THE LILLY LEDBETTER FAIR PAY ACT OF 2009: EMERGING ISSUES (Apr. 2011), [https://www.nwlc.org/wp-content/uploads/2015/08/4.11.11\\_ledbetter\\_act\\_current\\_status\\_and\\_emerging\\_issues\\_1.pdf](https://www.nwlc.org/wp-content/uploads/2015/08/4.11.11_ledbetter_act_current_status_and_emerging_issues_1.pdf) (collecting cases recognizing or restoring workers’ pay discrimination claims in instances in which the claims had not yet been filed, were pending, or were on appeal at the time of the Ledbetter Act). See e.g., *Mikula v Allegheny Cty.*, 583 F.3d 181, 186 (3d Cir. 2009) (reversing grant of summary judgment to employer on plaintiff’s Title VII sex discrimination claim for failure to respond to request for pay increase, because post-Ledbetter Act each discriminatory paycheck renewed the time for filing a pay discrimination claim); *Gentry v. Jackson State Univ.*, 610 F. Supp. 2d 564 (S.D. Miss. 2009) (denying employer’s motion for summary judgment on professor’s Title VII claim alleging sex discrimination, brought two years after denial of tenure and corresponding pay increase, because denial of tenure constituted discriminatory “other practice” within meaning of the Ledbetter Act).

<sup>68</sup> PROGRESS IN THE STATES, *supra* note 5. Research indicates that some workers fared better in states that passed such laws. See Marlene Kim, *Pay Secrecy and the Gender Wage Gap in the United States*, INDUSTRIAL RELATIONS (Oct. 2015) (finding that “women with higher education levels who live in states that have outlawed pay secrecy have higher earnings, and that the wage gap is consequently reduced”), [https://www.researchgate.net/publication/281769563\\_Pay\\_Secrecy\\_and\\_the\\_Gender\\_Wage\\_Gap\\_in\\_the\\_United\\_States](https://www.researchgate.net/publication/281769563_Pay_Secrecy_and_the_Gender_Wage_Gap_in_the_United_States).

<sup>69</sup> DEP’T OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, *Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions*, 80 Fed. Reg. 54934 (Sept. 11, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-09-11/pdf/2015-22547.pdf>.

<sup>70</sup> NWLC, COMBATING PUNITIVE PAY SECRECY POLICIES (Apr. 2011), [https://www.nwlc.org/sites/default/files/pdfs/4.11.11\\_pay\\_secrecy\\_fact\\_sheet.pdf](https://www.nwlc.org/sites/default/files/pdfs/4.11.11_pay_secrecy_fact_sheet.pdf).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* Sixty-two percent of women and 60 percent of men working for private employers report that wage and salary information is secret, while 11 percent of men in the public sector and 18 percent of women in the public sector report that wage discussion is discouraged or prohibited.

<sup>73</sup> U.S. OFFICE OF PERSONNEL MGMT, GOVERNMENTWIDE STRATEGY ON ADVANCING PAY EQUALITY IN THE FEDERAL GOVERNMENT (Apr. 2014), <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/governmentwide-strategy-on-advancing-pay-equality-in-the-federal-government.pdf> (gender wage gap was 13 percent for all “white collar” workers (all pay plans) and 11 percent for workers on the GS scale only).

<sup>74</sup> U.S. OFFICE OF MGMT AND BUDGET, NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION (Sept. 29, 2016), <https://www.reginfo.gov/public/do/DownloadNOA?requestID=275763>.

<sup>75</sup> U.S. OFFICE OF MGMT AND BUDGET, EEO-1 FORM, REVIEW AND STAY MEMORANDUM (Aug. 29, 2017), [https://www.reginfo.gov/public/jsp/Utilities/Review\\_and\\_Stay\\_Memo\\_for\\_EEOC.pdf](https://www.reginfo.gov/public/jsp/Utilities/Review_and_Stay_Memo_for_EEOC.pdf).

<sup>76</sup> See *NWLC et al., v. Office of Mgm’t and Budget, et al.*, No. 1:17-cv-02458-TSC (D.D.C), *complaint available at* <https://nwlc.org/resources/nwlc-sues-to-stop-illegal-trump-administration-rollback-of-equal-pay-rule/>.

<sup>77</sup> See, e.g. *Beck v. Boeing*, 203 F.R.D 459 (W.D. Wash. 2000) (\$72.5 million dollar settlement in class action suit alleging pay discrimination based on Boeing setting salaries of new hires based on past salary plus hiring bonus leading to significant gender pay disparities).

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<sup>78</sup> Liz Ryan, *When Someone Demands Your Salary History, Give Your Salary Requirements Instead*, FORBES (Jan. 16, 2017), <https://www.forbes.com/sites/lizryan/2017/01/16/when-they-demand-your-salary-history-give-your-salary-requirement-instead/#afb43625a8bb>.

<sup>79</sup> *Id.*

<sup>80</sup> Moshe A. Barach & John J. Horton, *How do Employers Use Compensation History: Evidence From a Field Experiment*, CESIFO, Working Paper No. 6559 (2017), <http://moshebarach.com/wp-content/uploads/2017/06/WageHistory.pdf>.

<sup>81</sup> Madison Alder, *Amazon, BofA Join Employers That Won't Ask for Pay History*, BLOOMBERG BNA (Jan. 30, 2018), <https://www.bna.com/amazon-bofa-join-n73014474798/>; Kate Tornone, *After helping overhaul GoDaddy's culture, its VP of inclusion sets out on her own*, HRDIVE (Nov. 16, 2017), <https://www.hrdiver.com/news/after-helping-overhaul-godaddys-culture-its-vp-of-inclusion-sets-out-on-h/510923/>; Courtney Connley, *Starbucks has closed its pay gap in the US—here are 4 other companies that have done the same*, CNBC (Mar. 23, 2018), <https://www.cnbc.com/2018/03/23/5-companies-that-have-reached-100-percent-pay-equity-in-the-u-s.html>.

<sup>82</sup> See ASKING FOR SALARY HISTORY, *supra* note 4.

<sup>83</sup> NJ Exec. Order No. 1 (Jan. 16, 2018), <https://nj.gov/infobank/eo/056murphy/pdf/EO-1.pdf>; NY Exec. Order No. 161 (Jan. 9, 2017), [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_161.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_161.pdf); New Orleans Exec. Order No. MJL 17-01 (Jan. 25, 2017), <https://www.nola.gov/mayor/news/archive/2017/20170125-pr-mayor-issues-executive-order-to-address/>; Pittsburgh Ordinance No. 2017-1121 (Jan. 30, 2017), <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=2931161&GUID=E45D1721-68E5-4BEC-9989-59C275B74AA7&FullText=1>; Salt Lake City Dep't of Human Resources Pol'y 3.01.10 (Mar. 1, 2018), <https://static1.squarespace.com/static/5682fba7bfe8733044495b6f/t/5a985d8908522926f70e05aa/1519934858864/3.01.09+Gender+Pay+Equity+%28Final%29.pdf>; DC Dep't of Human Resources, District Personnel Instruction No. 11-92 (Nov. 17, 2017), [https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/edpm\\_11B\\_92\\_salary\\_history\\_instruction.pdf](https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/edpm_11B_92_salary_history_instruction.pdf); Chicago Exec. Order No. 2018-1 (Apr. 10, 2018), <http://www.chicityclerk.com/legislation-records/journals-and-reports/executive-orders>.

<sup>84</sup> Jul. 30, 2015 Letter from Beth F. Cobert, Acting Director, U.S. Office of Personnel Mgm't, CHCO Council (Jul. 30, 2015), <https://www.chcoc.gov/content/additional-guidance-advancing-pay-equality-federal-government>.

<sup>85</sup> See *Lauderdale v. Ill. Dep't of Human Servs.*, 876 F.3d 904 (7th Cir. 2017) (holding that pay disparity between male and female employees based on their prior salary was justified by a “factor other than sex,” and following Seventh Circuit precedent “that a difference in pay based on the difference in what employees were previously paid is a legitimate ‘factor other than sex’”); *Muriel v. SCI Ariz. Funeral Servs., Inc.*, No. CV-14-0816, 2015 WL 6591778 (D. Ariz. Oct. 30, 2015) (holding that pay disparity between male and female employee was justified by “a factor other than sex” because male employee had a prior higher salary and negotiated his higher salary).

<sup>86</sup> See *Drury v. Waterfront Media, Inc.*, No. 05 Civ. 10646, 2007 WL 737486, at \*4 (S.D.N.Y. Mar. 8, 2007) (accepting the employer’s argument that higher pay for the male comparator was necessary to “lure him away from his prior employer”).

<sup>87</sup> See *Thibodeaux-Woody v. Houston Cmty. Coll.*, 593 F. App'x 280, 283 (5<sup>th</sup> Cir. 2014) (holding salary negotiation could not be a bona fide “factor other than sex” where female job applicant was not allowed to negotiate for higher salary and male applicant for same position was allowed to negotiate); *Dreves v. Hudson Group (HG) Retail, LLC*, No. 2:11-cv-4, 2013 WL 2634429 (D. Vt. Jun. 12, 2013) (rejecting employer’s proffered justification for sex-based pay disparity and finding employer’s argument that it had to pay male successor more to induce him to take the job and to relocate his family to a new city, and to satisfy his demands when he negotiated for more money than initially offered, was not related to the job itself or the general business of the company); *Sauceda v. Univ. of Texas at Brownsville*, 958 F.Supp.2d 761 (S.D. Tex. Jul. 26, 2013) (finding evidence regarding faculty salary levels -- such as the school’s practice of paying less to non-tenure track professors -- could be inconsistent with the school’s assertion that it paid more purely to attract professors with the necessary qualifications for accreditation, and that the University failed to show that the market for new faculty was not shaped by sex discrimination and stereotyping).

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<sup>88</sup> H.B. 1003, 2016 Gen. Assemb. (Md. 2016) (amending Md. Lab. & Emp. Code §§ 3-301, 3-304, 3-306, 3-307 (2015)); S. 1, 2015 Gen. Assemb. (N.Y. 2015) (amending N.Y. Lab. Law §§ 194, 198 (Consol. 2015)); H.B. 1506, 65th Leg., Reg. Sess. (Wash. 2017) (amending Wash. Rev. Code § 49.12.175; adding a new chapter to Wash. Rev. Code, Tit. 49); S.B. 358, 2015 Reg. Sess. (Cal. 2015) (amending CAL. LAB. CODE § 1197.5 (West 2015)); S. 104, 218th Leg., Reg. Sess. (N.J. 2018) (amending N.J. Rev. Stat. § 34:11-56.1 et seq.).

<sup>89</sup> 29 U.S.C. § 206(d)(1).

<sup>90</sup> *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 496 (1945); 29 C.F.R. § 1620.9(a).

<sup>91</sup> 29 U.S.C. § 216(b).

<sup>92</sup> 29 U.S.C. § 216(b); 29 C.F.R. § 1620.33.

<sup>93</sup> 42 U.S.C. § 1981a(b)(3).

<sup>94</sup> See, e.g., Equal Employment Opportunity Commission, Press Release, *Royal Tire Will Pay \$182,500 for Wage Discrimination Against Female Executive* (Aug. 4, 2014), <https://www.eeoc.gov/eeoc/newsroom/release/8-4-14.cfm>. In that case, the EEOC alleged the employer violated Title VII and the Equal Pay Act when it paid its female human resources director \$35,000 a year less than a male employee in the same position, and \$19,000 less than the minimum salary for the position under the employer's own compensation system. The employer failed to address the pay disparity even after the female employee complained and asked to be compensated fairly. The consent decree resolving the case required the employer to evaluate its pay structure to ensure compliance with the Equal Pay Act and Title VII, and correct any pay disparities by raising wages for the employees negatively affected.

<sup>95</sup> S.B. 185, 2016 Gen. Sess. (Utah 2016) (amending Utah Lab. Code Ch. 5 §§ 104, 107); H.B. 3619, 99th Gen. Assem. (Ill. 2015) (amending 820 ILL. COMP. STAT. ANN. 112 § (West 2015)); H.B. 2005, 2017 Reg. Sess. (Or. 2017) (amending Or. Rev. Stat. §§ 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875, 659A.885).

<sup>96</sup> See *A Call For Legislative Action To Eliminate Workplace Harassment* (Dec. 2018), <https://nwlc.org/resources/a-call-for-legislative-action-to-eliminate-workplace-harassment/>.

<sup>97</sup> Ending the Monopoly of Power Over Workplace Harassment through Education and Reporting Act (EMPOWER Act), H.R. 3728, S. 2994 and 2988, 115th Congress (2018).

<sup>98</sup> Women are 62.8 percent of workers paid the federal minimum wage or less. NWLC calculations based on BUREAU OF LAB. STAT. (BLS), CHARACTERISTICS OF MINIMUM WAGE WORKERS, (Table 1) (2017), <https://www.bls.gov/opub/reports/minimum-wage/2017/home.htm>. Women are 65.9 percent of the workforce in jobs with median wages of \$11.50 or less per hour. NWLC, WOMEN IN THE LOW-WAGE WORKFORCE BY STATE (Jul. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/06/women-in-low-wage-workforce-by-state-2018-2.pdf>.

<sup>99</sup> NWLC calculations based on U.S. Census Bureau, American Community Survey 2017 one-year estimates (ACS 2017) using IPUMS USA. Women make up 69.1 percent of tipped workers. Figures include employed workers only and use the same definition as the Economic Policy Institute (EPI) in its analysis of the beneficiaries of the Raise the Wage Act. See EPI, MINIMUM WAGE SIMULATION TECHNICAL METHODOLOGY (forthcoming Feb. 2019).

<sup>100</sup> See ECONOMIC POLICY INSTITUTE AND OXFAM AMERICA, TEN YEARS WITHOUT A RAISE: A SIMPLE INCREASE IN THE FEDERAL MINIMUM WAGE WOULD BENEFIT MILLIONS OF AMERICAN WORKERS (Feb. 2019), [https://www.oxfamamerica.org/static/media/files/Raise the Wage- How women of color would benefit.pdf](https://www.oxfamamerica.org/static/media/files/Raise%20the%20Wage-How%20women%20of%20color%20would%20benefit.pdf).

<sup>101</sup> See, e.g., Catrin Einhorn & Rachel Abrams, *The Tipping Equation*, N.Y. TIMES (Mar. 12, 2018), <https://www.nytimes.com/interactive/2018/03/11/business/tipping-sexual-harassment.html>; NWLC, OUT OF THE SHADOWS: AN ANALYSIS OF SEXUAL HARASSMENT CHARGES FILED BY WORKING WOMEN (Aug. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/08/SexualHarassmentReport.pdf>; RESTAURANT OPPORTUNITIES CTR. UNITED (ROC UNITED) & FORWARD TOGETHER, ET AL., THE GLASS FLOOR: SEXUAL HARASSMENT IN THE RESTAURANT INDUSTRY (Oct. 2014), [http://rocunited.org/wp-content/uploads/2014/10/REPORT\\_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf](http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf).

<sup>102</sup> NWLC, PREGNANT WORKERS FAIRNESS ACT: MAKING ROOM FOR PREGNANCY ON THE JOB (Oct. 2018), <https://nwlc.org/resources/pregnant-workers-fairness-act-making-room-pregnancy-job/>.

<sup>103</sup> See NWLC, THERE'S NOTHING EQUAL ABOUT #MOMSEQUALPAYDAY (May 23, 2017), <https://nwlc.org/blog/theres-nothing-equal-about-momsequalpay-day/>.

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<sup>104</sup> See NWLC, STEPPING UP: NEW POLICIES AND STRATEGIES SUPPORTING PARENTS IN LOW-WAGE JOBS AND THEIR CHILDREN (Aug. 2018), <https://nwlc.org/resources/stepping-up-new-policies-and-strategies-supporting-parents-in-low-wage-jobs-and-their-children/>.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> NWLC, FAIR WORK SCHEDULES ARE CRITICAL FOR WORKING PARENTS AND THEIR CHILDREN'S WELL-BEING (Sept. 2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/New-Set-Up-For-Success-Why-Fair-Schedules-Are-Critical-for-Working-Parents-and-Their-Childrens-Well-Being-Sept..pdf>.

<sup>108</sup> See STEPPING UP: NEW POLICIES, *supra* note 104.

<sup>109</sup> U.S DEP'T OF LABOR, BUREAU OF LAB. STAT., OCCUPATIONAL EMPLOYMENT STATISTICS, OCCUPATIONAL EMPLOYMENT AND WAGES, MAY 2017, 39-9011 CHILDCARE WORKERS (Mar. 2018), <https://www.bls.gov/oes/2017/may/oes399011.htm>.

<sup>110</sup> GARY J. GATES, THE WILLIAMS INSTITUTE, SAME-SEX AND DIFFERENT-SEX COUPLES IN THE AMERICAN COMMUNITY SURVEY 2005-2011 (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf>. Figures only include people in labor force. Due to data limitations, they do not include lesbian or gay individuals who are not part of a couple. These figures are median annual personal income for all workers in the labor force – these figures differ from the median annual earnings for full-time, year round workers reported for the wage gap and are not directly comparable.

<sup>111</sup> Kristen Schilt & Matthew Wiswall, *Before and After: Gender Transitions, Human Capital, and Workplace Experiences*, THE B.E. J. OF ECONOMIC ANALYSIS & POLICY 1 (Sept. 2008), <http://www.degruyter.com/view/j/bejeap.2008.8.1/bejeap.2008.8.1.1862/bejeap.2008.8.1.1862.xml>.

<sup>112</sup> H.R. 2282, S. 1006, 115<sup>th</sup> Congress (2017); NWLC, THE EQUALITY ACT OF 2017: GROUNDBREAKING PROTECTIONS AGAINST SEX DISCRIMINATION (May 2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/05/Equality-Act.pdf>.

<sup>113</sup> See THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO, *supra* note 23.

16-15372

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

AILEEN RIZO, *Plaintiff-Appellee*,

v.

JIM YOVINO, Fresno County Superintendent of Schools, *Defendant-Appellant*.

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On Appeal from the United States District Court for the Eastern District of California, Michael J. Seng, Magistrate Judge, Presiding, No. 1:14-cv-00423-MJS

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**MOTION OF *AMICI CURIAE* EQUAL RIGHTS ADVOCATES; 9TO5, NATIONAL ASSOCIATION OF WORKING WOMEN; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN – CALIFORNIA CHAPTER; ACLU OF NORTHERN CALIFORNIA AND ACLU WOMEN’S RIGHTS PROJECT, ATLANTA WOMEN FOR EQUALITY; CALIFORNIA WOMEN’S LAW CENTER; FEMINIST MAJORITY FOUNDATION; LEGAL AID AT WORK; LEGAL VOICE; NATIONAL ORGANIZATION FOR WOMEN (NOW) FOUNDATION; NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES; NATIONAL WOMEN’S LAW CENTER; SOUTHWEST WOMEN’S LAW CENTER; WOMEN EMPLOYED; & WOMEN’S LAW PROJECT TO FILE AN *AMICUS CURIAE* BREF IN SUPPORT OF PLAINTIFF-APPELLEE’S PETITION FOR REHEARING AND REHEARING EN BANC**

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, Equal Rights Advocates; 9to5, National Association Of Working Women; American Association Of University Women; American Association Of University Women – California Chapter; ACLU Of Northern California And ACLU Women’s Rights Project, Atlanta Women For Equality; California Women’s Law Center; Feminist Majority Foundation; Legal Aid At Work; Legal Voice; National Organization For Women (Now) Foundation; National Partnership For Women And Families; National Women’s Law Center; Southwest Women’s Law Center; Women Employed; & Women’s Law Project (collectively, “*Amici*”) submit this motion for leave to file the *amicus curiae* brief attached hereto as Exhibit A in support of the Petition For Rehearing And Rehearing En Banc of the Court's ruling in *Rizo v. Yovino*, No. 16-15372, slip op. at 9 (9th Cir. Apr. 27, 2017) filed on May 10, 2017 by Plaintiff-Appellee Aileen Rizo. Plaintiff-Appellee has provided consent to this filing. Defendant-Appellant has not provided consent.

This Court may grant leave to proposed *amici* to file an *amicus curiae* brief pursuant to Rule 29 of the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 29(b). Under Rule 29, proposed *amici* are directed to state: (1) their “interest;” and (2) “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” *Id.* at 29(a)(3)(B). This case is

appropriate for rehearing or en banc review because the question of law presented is complex and a matter of first impression in this circuit. The petition therefore involves “novel or particularly complex issues.” 9th Cir. R. 29-2 advisory comm. nn. In support of this motion, counsel for Amici state as follows:

**INTEREST OF PROPOSED AMICI**

As set forth in their Statements of Interest, *amici* are organizations from across the United States which have special expertise regarding the application and enforcement of the Equal Pay Act, 29 U.S.C. § 206 (“Equal Pay Act”), the history and nature of gender-based pay discrimination in the United States, and the relationship between the practice of setting pay based on prior salary and the persistent gender wage gap. *Amici* therefore are well-positioned to assist the Court in the question of law at issue regarding proper interpretation of the “factor other than sex” affirmative defense under the Equal Pay Act. *Amici* have an interest in ensuring that this Court interprets the Equal Pay Act in a manner consistent with its prior decisions and so as to effectuate the underlying purpose of the Act, which aims to abolish wage disparity based on sex and codify the right to equal pay for equal work.

**DESIRABILITY AND RELEVANCE OF AMICUS BRIEF**

*Amici*’s proposed brief provides the Court with additional information and a supplementary analysis on the question of law presented: whether, under the Equal

Pay Act, an employer can defeat a prima facie case and satisfy its burden of proof on the “factor other than sex” affirmative defense by relying on prior salary alone to justify a gender wage differential.

As set forth in the proposed brief, the panel decision erroneously vacated the order of the U.S. District Court for the Eastern District of California denying Defendant-Appellant’s motion for summary judgment and remanded the case for further proceedings with instructions that the district court evaluate the four “business reasons” offered by the defendant (for using employees’ prior salaries to set starting pay) to determine “whether [the defendant] used prior salary reasonably.” *Rizo v. Yovino*, No. 16-15372, slip op. at 11 (9th Cir. Apr. 27, 2017). In reaching this conclusion, the panel misconstrued this Court’s prior decision in *Kouba v. Allstate Insurance Co.*, 691 F.2d 873 (9th. Cir. 1982), which did *not* hold that a difference in employees’ prior salaries, by itself, could serve as the sole justification for paying an employee of one sex less than another when there is no dispute that they perform equal work.

In misapplying this Court’s precedent, the panel sanctioned an interpretation of the Equal Pay Act “factor other than sex” defense which contravenes the underlying purpose of the Act and conflicts with the interpretation of this defense by other Courts of Appeals (in decisions following *Kouba*) and the Equal Employment Opportunities Commission (EEOC). The proposed brief will aid the

Court by analyzing this Court's precedent and relevant case law in relation to the question of whether prior salary alone may justify a wage differential under the Equal Pay Act.

The proposed brief of *amici* will further aid the Court by providing additional context about the nature and scope of the gender wage gap and pay discrimination which the parties have not addressed.

### **CONCLUSION**

For the foregoing reasons, amici respectfully request that the Court grant the Motion of Amicus Curiae Equal Rights Advocates et al. for Leave to File Amicus Curiae Brief In Support Of the Petition For Panel Rehearing And Rehearing En Banc and deem the accompanying amicus brief, attached as Exhibit A, filed.

Dated: May 22, 2017

Respectfully submitted,

/s/ Jessica Stender

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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(c), the undersigned counsel certifies that this motion:

(i) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2010 and is set in Times New Roman font in a size equivalent to 14 points or larger, and

(ii) complies with the length requirement of Rule 27(d)(2) because it is 826 words.

Dated: May 22, 2017

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**CERTIFICATE OF SERVICE**

I certify that on May 22, 2017, the foregoing motion was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

Dated: May 22, 2017

/s/ Jessica Stender

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# **EXHIBIT A**

16-15372

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

AILEEN RIZO, *Plaintiff-Appellee*,

v.

JIM YOVINO, Fresno County Superintendent of Schools, *Defendant-Appellant*.

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On Appeal from the United States District Court for the Eastern District of California, Michael J. Seng, Magistrate Judge, Presiding, No. 1:14-cv-00423-MJS

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**BRIEF OF *AMICI CURIAE* EQUAL RIGHTS ADVOCATES; 9TO5, NATIONAL ASSOCIATION OF WORKING WOMEN; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN – CALIFORNIA CHAPTER; ACLU OF NORTHERN CALIFORNIA AND ACLU WOMEN’S RIGHTS PROJECT, ATLANTA WOMEN FOR EQUALITY; CALIFORNIA WOMEN’S LAW CENTER; FEMINIST MAJORITY FOUNDATION; LEGAL AID AT WORK; LEGAL VOICE; NATIONAL ORGANIZATION FOR WOMEN (NOW) FOUNDATION; NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES; NATIONAL WOMEN’S LAW CENTER; SOUTHWEST WOMEN’S LAW CENTER; WOMEN EMPLOYED; & WOMEN’S LAW PROJECT IN SUPPORT OF PLAINTIFF-APPELLEE’S PETITION FOR REHEARING AND REHEARING EN BANC**

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 29, the undersigned counsel of record certifies that none of the *amici curiae* is a nongovernmental entity with a parent corporation or a publicly held corporation that owns 10% or more of its stock.

Dated: May 22, 2017

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## **INTERESTS OF AMICI CURIAE<sup>1</sup>**

*Amici* are a coalition of civil rights groups and public interest organizations committed to preventing, combating, and redressing sex discrimination and protecting the equal rights of women in the United States. Detailed statements of interest are included in Appendix A.

## **SUMMARY OF ARGUMENT**

*Amici* submit this brief in support of Plaintiff-Appellee’s petition for panel rehearing and rehearing *en banc* of the Court’s ruling in *Rizo v. Yovino*, No. 16-15372 (9th Cir. Apr. 27, 2017). In this case, it is undisputed that Defendant-Appellant paid Plaintiff-Appellee Aileen Rizo less than her male counterparts for the same job, although they had no additional duties or responsibilities, nor any additional relevant experience prior to the job. In fact, Ms. Rizo had *more* experience. The only justification set forth by Defendant-Appellant for this pay differential is that Ms. Rizo made less than her male counterparts in her previous job.

Accordingly, the question in this case is whether, under the Equal Pay Act, an employer can defend paying a woman less than a man for equal work, pursuant to the “factor other than sex” affirmative defense, based solely on the fact that her

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<sup>1</sup> *Amici Curiae* certify that no party or party’s counsel authored this brief in whole or in part, and that no party, party’s counsel, or other person made a monetary contribution to the preparation or submission of this brief.

prior salary was lower than his. The district court correctly held that, consistent with this Court’s precedent, prior salary alone cannot be used to justify a gender wage differential pursuant to that affirmative defense. In vacating the district court’s decision, the panel misinterpreted and improperly expanded this Court’s prior holding in *Kouba v. Allstate Insurance Co.*, 691 F.2d 873 (9th. Cir. 1982).

*En banc* review is appropriate if “(1) necessary to secure or maintain uniformity of the court’s decisions” or “(2) the proceeding involves a question of exceptional importance.” Fed. R. App. P. 35. Both prongs are satisfied. First, the panel misinterpreted and improperly expanded the court’s prior holding in *Kouba*. Second, there is a circuit split on the question of law at issue. In misapplying precedent, the panel sanctioned an interpretation of the Equal Pay Act “factor other than sex defense” which contravenes the very purpose of the Act, and if left to stand, would effectively swallow up the rule – a result that Congress clearly did not intend. For these reasons, *amici* respectfully request that the Court reconsider its ruling through panel rehearing or en banc review.

## **ARGUMENT**

### **I. En Banc Review Should be Granted Because The Panel Misinterpreted The Holding in *Kouba v. Allstate Insurance Co.***

#### **A. *Kouba Did Not Hold That Prior Salary Alone Can Constitute A “Factor Other Than Sex” Under The Equal Pay Act.***

On appeal, the panel focused its analysis almost entirely on the proper interpretation of its prior decision in *Kouba*. The panel did not agree with the district court that *Kouba* left open the question of whether a salary differential based *solely* on prior earnings violates the EPA, stating that this “was exactly the question presented and answered in *Kouba*.” *Rizo v. Yovino*, No. 16-15372, slip op. at 9 (9th Cir. Apr. 27, 2017). *Amici* urge the Court to reconsider this conclusion. The *Kouba* court held only that “the EPA does not impose a strict prohibition against the use of prior salary.” *Kouba*, 691 F.2d at 878. The court did not analyze, and did not even consider, whether prior salary can be the *only* factor justifying a gender wage differential.

In *Kouba*, the employer, Allstate, relied on multiple factors in computing the minimum salary guaranteed to new sales agents, making this determination “on the basis of ability, education, experience, and prior salary.” *Id.* at 874. While the plaintiff contended that prior salary caused the wage differential, in fact the defense questioned whether prior salary caused the difference and the court left that issue for the district court to determine on remand. *Id.* at 877 n. 5. Therefore, the court in *Kouba* was aware that there may have been other factors that Allstate relied on that caused or contributed to the wage differential. Indeed, the court took note of the fact that Allstate argued that prior salary “corresponds roughly to an employee's ability” and claimed that it “use[d] prior salary to predict a new

employee's performance as a sales agent.” *Id.* at 878. Therefore, the *Kouba* court’s analysis involved combining prior salary with another “factor other than sex” – in that case, the employee’s ability. This is precisely why *Kouba* cannot stand for the much broader holding on which the panel based its decision in the present case. While the *Kouba* court held that an employer is not *per se* prohibited from asserting prior salary as another factor other than sex, it acknowledged the possible use of other factors to help support or explain the difference in prior salaries between the male and female employees.

Moreover, the *Kouba* court directed the district court on remand to consider, “in evaluating the reasonableness of this practice . . . (1) whether the employer also uses other available predictors of the new employee’s performance, (2) whether the employer attributes less significance to prior salary once the employee has proven himself or herself on the job, and (3) whether the employer relies more heavily on salary when the prior job resembles the job of sales agent.” *Id.* In other words, the court in *Kouba* directed the district court to consider, *inter alia*, the degree to which prior salary may have been used in combination with and/or as a gauge of other factors such as ability.

Therefore, because the court in *Kouba* remanded the determination of reasonableness of using prior salary, it could not have answered the question of

whether a salary differential based *solely* on prior earnings violates the EPA.<sup>2</sup> As further explained below, had the panel conducted this analysis, we believe it would have concluded, like other Courts of Appeals, that reliance on prior salary alone is simply another form of the “market forces theory,”<sup>3</sup> which has consistently been rejected by the Supreme Court. *See Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974).

***B. The Panel Decision Fails to Distinguish Between Considering Prior Salary in Setting Pay and Relying On Prior Salary Alone To Justify a Wage Differential Under the Equal Pay Act.***

The question of law at issue is whether prior salary alone can justify a gender wage differential. In the example provided by the panel (a male and a female employee have the same education and experience, but the male employee had a higher prior salary), the conclusion was that “prior salary alone is responsible for the disparity [and] requiring an employer to consider factors in addition to prior

---

<sup>2</sup> As the Eleventh Circuit has recognized “*Kouba* does not stand for the proposition that prior salary alone can justify pay disparity. In *Kouba*, the Ninth Circuit held that “the Equal Pay Act does not impose a strict prohibition against the use of prior salary.” *Glenn v. General Motors Corp.*, 841 F.2d 1567, 1571 n. 9 (11th Cir. 1988) (quoting *Kouba*, 691 F.2d at 878).

<sup>3</sup> *See e.g., Glenn*, 841 F.2d at 1571 (“The flaws of the *Covington* decision are that the Seventh Circuit implicitly used the market force theory to justify the pay disparity and that the Seventh Circuit ignored congressional intent as to what is a ‘factor other than sex.’ Consequently, we reject *Covington* because it ignores that prior salary alone cannot justify a pay disparity.”).

salary cannot resolve the problem that the EEOC and the plaintiff have identified.” *Rizo*, slip op. at 10. This example demonstrates how the question at issue was misconstrued by the panel.

The question was not whether prior salary can be the only factor *considered* by an employer in setting pay, but rather, if it can be the only factor that *caused* the gender wage differential, even if other factors were considered at the front end.<sup>4</sup> This distinction is paramount because as the panel pointed out, when the question is framed in the way that it was, employers could simply consider other factors (as most employers do) in order to “cure” the problem. *Rizo*, slip op. at 10, n. 3. Of course, that would lead to a result that contravenes the underlying purpose of the EPA. Therefore, this Court should reconsider the proper question at issue: whether prior salary alone can be the only factor that *caused* the gender wage differential.

Given the existence of a gender wage gap in virtually every occupation and industry, as set forth *infra* Section IV, prior salary should only be accepted as a “factor other than sex” if the wage difference can be explained or supported by some other factor. If the employer can show no other factor that correlated to the

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<sup>4</sup> The framing of the question of law in the interlocutory appeal certification may have led to confusion. The question was presented as “whether, as a matter of law under the EPA, 29 U.S.C. § 206(d), an employer subject to the EPA may rely on prior salary alone when setting an employee’s starting salary.” 2015 U.S. Dist. LEXIS 163849, at \*34. However, the relevant question is whether, the employer can overcome the burden of proof on the affirmative defense of relying on “any other factor other than sex” by resting on prior pay alone.

lower prior salary, then there is a strong likelihood, “indeed . . . the virtual certainty,” *Rizo v. Yovino*, 2015 U.S. Dist. LEXIS 163849, at \*26 (E.D. Cal. Dec. 4, 2015), that the pay differential is a result of past pay discrimination, making it a sex-based factor – precisely what is prohibited by the EPA.

This interpretation is consistent with the position of the EEOC that “prior salary cannot, by itself, justify a compensation disparity.”<sup>5</sup> In its Compliance Manual, the EEOC explains that an “employer could, for example, show that it: (1) determined that the prior salary accurately reflected the employee's ability based on his or her job-related qualifications; and (2) considered the prior salary, but did not rely solely on it in setting the employee's current salary.”<sup>6</sup> Other circuits have also properly adopted this reasoning. *See e.g., Balmer v. HCA, Inc.*, 423 F.3d 606, 612 (6th Cir. 2005) (“Consideration of a new employee's prior salary is allowed as long as the employer does not rely solely on prior salary to justify a pay disparity.”); *Angove v. Williams-Sonoma, Inc.*, 70 Fed. Appx. 500 (10th Cir. 2003) (“The EPA only precludes an employer from relying solely upon a prior salary to justify pay disparity.”); *Irby v. Bittick*, 44 F.3d 949, 954 (11th Cir. 1995) (“[A]n employer may not overcome the burden of proof on the affirmative defense of relying on ‘any other factor other than sex’ by resting on prior pay alone.”).

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<sup>5</sup> U.S. Equal Employment Opportunity Comm’n, Compliance Manual, No. 915.003 § 10-IV.F.2.g (Dec. 2000), <https://www.eeoc.gov/policy/docs/compensation.html>.

<sup>6</sup> *Id.*

As set forth above, the court in *Kouba* did not analyze or make a holding on the specific question of law at issue and for that reason, the district court certified its decision for interlocutory appeal, noting that “[t]he question is one of first impression in the Ninth Circuit.” 2015 U.S. Dist. LEXIS 163849, at \*33-34 (citing 28 U.S.C. § 1292(b)). Because the panel decision conflicts with *Kouba*, rehearing or *en banc* review is appropriate in order to maintain uniformity of this Court’s decisions. *See Makaeff v. Trump Univ., LLC*, 736 F.3d 1180, 1187 (9th Cir. 2013) (en banc rehearing appropriate to “secure or maintain uniformity of our decisions or because a question of exceptional importance is involved”).

**II. The Issue Of Whether Prior Salary Alone Can Justify A Wage Differential Under The Equal Pay Act Is Of Exceptional Importance And Should be Reconsidered.**

The U.S. Supreme Court has declared that “Congress’ purpose in enacting the [EPA] was to remedy what was perceived to be a serious and endemic problem of employment discrimination in private industry - the fact that the wage structure of ‘many segments of American industry has been based on an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same.’” *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974) (citing S. Rep. No. 176, 88th Cong., 1st Sess. 1 (1963)). As explained in *Corning Glass*, “[t]he Equal Pay Act is broadly remedial,

and it should be construed and applied so as to fulfill the underlying purposes which Congress sought to achieve.” *Id.* at 208.

Given the existence of a gender wage gap, prior salary alone cannot constitute a “factor other than sex” to justify a wage differential, because without some correlation to another factor or attribute to explain it, the lower prior salary is likely a result of past discrimination, despite appearing gender neutral on its face. Indeed, if a woman’s prior salary was on its own sufficient justification for an employer to pay her less than a man for the same work, it is hard to imagine what factor would not be acceptable. While Congress intended the “factor other than sex” exception to be sufficiently broad to accommodate legitimate business practices, it is nonsensical to conclude that Congress intended to allow a factor that allows employers to benefit from a “bargain” caused by historical wage inequities. Indeed, “[t]he argument that supply and demand dictates that women *qua* women may be paid less is exactly the kind of evil that the [Equal Pay] Act was designed to eliminate, and has been rejected.” *Glenn v. General Motors Corp.*, 841 F.2d 1567, 1570 (11th Cir. 1988) (citing *Brock v. Georgia Southwestern College*, 765 F.2d 1026, 1037 (11th Cir. 1985)).

A helpful analogy is the treatment of job titles in evaluating “equal work” under the EPA. Courts have recognized that job titles may be helpful in determining whether jobs generally require similar skill, effort, and responsibility,

but they are not controlling and therefore cannot be relied upon on their own. *See e.g., EEOC v. Universal Underwriters Ins. Co.*, 653 F.2d 1243, 1245 (8th Cir. 1981); *Gunther v. Cty. of Wash.*, 623 F.2d 1303, 1309 (9th Cir. 1979). Just as an employer must be able to point to some difference in job-related duties that supports or explains different job titles, an employer should similarly be required to point to some factor that supports the difference in prior salary.

### **III. The Gender Wage Gap Is A Persistent Problem That Costs Women and Families Billions of Dollars A Year.**

In enacting the Equal Pay Act, Congress recognized that unjustified wage differentials between men and women “depress[] wages and living standards for employees necessary for their health and efficiency.” Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (1963) (“EPA”). More than 50 years later, women continue to earn less than their male counterparts in virtually every industry and occupation. This gender wage gap exacts a heavy toll not only on women, but on families, communities, and the economy as a whole. As set forth herein, the Equal Pay Act will be undermined unless this Court prescribes the proper use and consideration of prior salary and definitively rejects the use of prior salary to justify paying a woman less than a male counterpart when no other job-related qualification or factor can support or explain it.

The pay gap is a persistent feature of the labor market in the United States that has not changed in a statistically significant way since 2007.<sup>7</sup> In 2015, the disparity between the median earnings of women and men stood at 20 percent, meaning that women working full-time year round typically earned 80 cents for every dollar earned by men.<sup>8</sup> For women of color, the gaps are much larger.<sup>9</sup> Collectively, the gender wage gap costs women in the U.S. over \$840 billion a year.<sup>10</sup>

Persistent inequality in earnings of working women translates into lower lifetime pay for women, less income for families, and higher rates of poverty. By the time a college-educated woman turns 59, she will have lost almost \$800,000 throughout her life due to the gender wage gap.<sup>11</sup> The pay gap increasingly affects men and children as more families rely on women's wages. Today, more than 42 percent of mothers with children under the age of 18 are their families' primary or

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<sup>7</sup> Bernadette D. Proctor, Jessica L. Semega, and Melissa A. Kollar, *Income and Poverty in the United States: 2015 Current Population Reports* P60-256 at 10, U.S. Census Bureau (2016), <https://goo.gl/pfzijQ>. At the current rate of change, it will not close until the year 2059. See INSTITUTE FOR WOMEN'S POLICY RESEARCH (IWPR), PROJECTED YEAR THE WAGE GAP WILL CLOSE BY STATE 1 (2017), <https://goo.gl/612AW7>.

<sup>8</sup> Proctor, *supra* note 7, at Table A-4.

<sup>9</sup> See IWPR, THE GENDER WAGE GAP: 2016 EARNINGS DIFFERENCES BY RACE AND ETHNICITY (2017), <https://goo.gl/VKXE9l>.

<sup>10</sup> See NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, AMERICA'S WOMEN AND THE WAGE GAP 1 (2017), <https://goo.gl/SLEcd8>.

<sup>11</sup> STATUS OF WOMEN, EMPLOYMENT & EARNINGS, <https://goo.gl/PXkOJP> (last visited May 19, 2017).

sole breadwinners.<sup>12</sup> Eliminating the gender wage gap would reduce the poverty rates of working women and their families by more than half.<sup>13</sup>

#### **IV. Women Earn Less Than Men In Nearly Every Occupation, Industry, and Education Level.**

The disparity between women's and men's earnings persists across industries,<sup>14</sup> occupations,<sup>15</sup> and education levels.<sup>16</sup> Women's median earnings are lower than men's in almost all occupations, whether they are predominantly performed by women, by men, or have an even mix of men and women.<sup>17</sup>

Although women are now more likely than men to attain a college education<sup>18</sup> and have earned the majority of doctoral degrees for seven straight years,<sup>19</sup> women earn less than men starting just one year out of college, even when

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<sup>12</sup> CENTER FOR AMERICAN PROGRESS, BREADWINNING MOTHERS ARE INCREASINGLY THE U.S. NORM (DEC. 2016), <https://goo.gl/B7iKd6>.

<sup>13</sup> IWPR, THE ECONOMIC IMPACT OF EQUAL PAY BY STATE 1 (2017), <https://goo.gl/u3wQcN>.

<sup>14</sup> AMERICA'S WOMEN AND THE WAGE GAP, *supra* note 10, at 2 (citing U.S. Census Bureau Survey).

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

<sup>16</sup> *Id.*; Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends, and Explanations*, NBER Working Paper No. 2193, National Bureau for Economic Research (2016), <http://www.nber.org/papers/w21913> (last visited May 16, 2017).

<sup>17</sup> IWPR, THE GENDER WAGE GAP BY OCCUPATION 2016 AND BY RACE AND ETHNICITY 1 (2017), <https://iwpr.org/wp-content/uploads/2017/04/C456.pdf>.

<sup>18</sup> Kurt Bauman, *Shift Toward Greater Educational Attainment for Women Began 20 Years Ago*, U.S. Census Bureau (March 29, 2016), <https://goo.gl/RCqxdY>.

<sup>19</sup> COUNCIL OF GRADUATE SCHOOLS, GRADUATE ENROLLMENT AND DEGREES: 2005 TO 2015 9-13 (2016), <https://goo.gl/LGzBpt>.

controlling for factors like major, occupation, and hours worked.<sup>20</sup> The same holds true for female graduates of business school, who start at lower salaries than men with MBAs despite having “similar career paths, performance and education.”<sup>21</sup>

V. **Use of Prior Salary in Setting Pay Perpetuates the Gender Wage Gap.**

Because women frequently begin their careers earning lower salaries than men, they remain at a stark disadvantage throughout their working lives. Women who start with lower salaries will continue to earn less than their male counterparts if employers set pay based only on prior salaries.<sup>22</sup> The U.S. Equal Employment Opportunities Commission (EEOC) therefore advises employers to avoid basing

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<sup>20</sup> CHRISTIANNE CORBETT & CATHERINE HILL, GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE GRADUATION 2 (2012), <https://goo.gl/tijC4x>.

<sup>21</sup> See Taylor H. Cox & Celia V. Harquail, *Career Paths and Career Success in the Early Career Stages of Male and Female MBAs*, 39 J. VOCATIONAL BEHAV. 54, 71 (1991).

<sup>22</sup> Researchers have also found that, when requested in salary negotiations, the prior salary of a prospective employee often acts as an “anchor” on which new salary offers are based, thereby perpetuating, and exacerbating, the gender wage gap. See e.g., Todd J. Thorsteinson, *Initiating Salary Discussions With an Extreme Request: Anchoring Effects on Initial Salary Offers*, 41 J. APPLIED SOC. PSYCHOL. 1774, 1779-81 (2011); Hannah Riley Bowles, et al., *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes it Does Hurt to Ask*, 103 ORG. BEHAV. & HUM. DECISION PROCESSES 84, 85 (2006).

salary decisions on prior salary<sup>23</sup> and recognizes that such a practice would perpetuate “inequality in compensation among genders.”<sup>24</sup>

In recognition of the ways that questions about prior salary perpetuate past pay discrimination, some legislatures are going a step further to prevent employers from asking about prior salary at all. At the federal level, the Paycheck Fairness Act and the Pay Equity for All Act, now pending, would prohibit employers from seeking or relying on salary history.<sup>25</sup> Laws or executive orders limiting or banning inquiry into and/or reliance on prior salary have been enacted in three states,<sup>26</sup> four cities,<sup>27</sup> and Puerto Rico.<sup>28</sup> In this year alone, legislation has been introduced in twenty-one states and localities that would ban and/or limit employer inquiry into prior salary.<sup>29</sup> Finally, some employers are taking steps to address the persistent gender wage gap by pledging to eliminate questions on prior salary from

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<sup>23</sup> U.S. Equal Employment Opportunity Comm’n (EEOC), *Tips for Small Businesses*, <https://goo.gl/D1cgzO> (last visited May 18, 2017).

<sup>24</sup> EEOC, Compliance Manual, *supra* note 5.

<sup>25</sup> H.R. 1869, S.819, 115th Cong. (2017); H.R. 2418, 115th Cong. (2017).

<sup>26</sup> Mass. Gen. Laws ch. 149, § 105A (2016) (effective July 1, 2018); N.Y. Exec. Order No. 161 (2017); Cal. Labor Code § 1197.5 (2016).

<sup>27</sup> N.Y.C. Admin. Code § 8-107 (2017); Phila. Admin. Code § 9-1131 (2017); Pittsburgh, Pa., Code Ordinances tit. 1, art. XI, § 181.13 (2017); N.Y. Exec. Order No. 161 (2017); New Orleans Exec. Order MJL17-01 (2017).

<sup>28</sup> H.B. 9, Act 16-217, 2017-18 Sess. (P.R. 2017).

<sup>29</sup> See Exhibit 1 for a list of legislation introduced as of May 19, 2017.

their hiring processes<sup>30</sup> and moving away from basing wage determinations on prior salary.<sup>31</sup>

### **CONCLUSION**

As set forth herein, the specific question of whether prior salary, by itself, can justify a gender wage differential under the EPA was not addressed in *Kouba* and is therefore an issue of first impression in this Circuit. We therefore urge the Court to revisit this question and consider the positions of other courts of appeals, the EEOC, and national, state and local legislative bodies that have recognized that to allow reliance on prior salary alone to justify a gender wage differential would render the Act meaningless.

For the foregoing reasons, *amici* respectfully request that this Court grant panel rehearing or rehearing en banc in this matter.

Dated: May 22, 2017

Respectfully submitted,

/s/ Jessica Stender

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<sup>30</sup> Emma Hinchliffe, *Kickstarter joins NYC effort to close wage gap by not asking about employee salary history*, MASHABLE (Jan. 16, 2017), <https://goo.gl/nVF3Ne>.

<sup>31</sup> See e.g., Laszlo Bock, *How the “What’s your current salary?” question hurts the gender pay gap*, WASH. POST (Apr. 29, 2016), <https://goo.gl/RwXfHG>.

# APPENDIX A

## **STATEMENTS OF INTEREST OF AMICI**

### **Equal Rights Advocates**

Equal Rights Advocates (ERA) is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in 1974, ERA has litigated numerous class actions and other high-impact cases on issues of gender discrimination and civil rights. ERA cosponsored the California Fair Pay Act (Cal. Labor Code § 1197.5), which amended the state's Equal Pay Act, and which prohibits the use of prior salary as the sole justification for a gender pay differential. ERA has appeared as *amicus curiae* in numerous Supreme Court cases involving the interpretation of anti-discrimination laws, including *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993); *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998); and *Burlington Northern and Santa Fe Ry. Co. v. White*, 126 S.Ct. 2405 (2006). ERA has an interest in ensuring that federal courts interpret the federal Equal Pay Act so as to effectuate its intent to ensure equal pay for equal work irrespective of gender.

### **9to5, National Association of Working Women**

9to5, National Association of Working Women is a 44 year-old national membership organization of women in low-wage jobs dedicated to achieving economic justice and ending all forms of discrimination. Pay inequities and

discrimination are a major problem for our members and constituents. 9to5 has a long history of supporting corporate, local, state and national measures to combat discrimination and close the pay gap experienced by women and people of color. We have initiated and supported measures to prohibit the use of prior salary history to set wages. The outcome of this case will directly affect our members' and constituents' rights and economic well-being, and that of their families.

### **American Association of University Women**

In 1881, the American Association of University Women (“AAUW”) was founded by like-minded women who had defied society’s conventions by earning 27 college degrees. Since then it has worked to increase women’s access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW’s priority issues, and chief among them is increased access to higher education. In adherence with our member-adopted Public Policy Program, AAUW is a staunch advocate for pay equity and seeks to uphold the protections of the Equal Pay Act. Using prior salary alone to calculate current wages perpetuates existing pay disparities and undermines the legislative intent of the Equal Pay Act.

## **American Association of University Women – California Chapter**

AAUW is a nonpartisan, nonprofit organization, founded in 1881 and is the nation's leading organization advocating equity for women and girls, with more than 13,000 members in California and 80,000 members nationwide. Among our interests, and one of our top priorities, is addressing and closing the gender pay gap through legislative advocacy, legal advocacy, community involvement and projects such as our Start Smart salary negotiation workshops. For more than thirty years our Legal Advocacy Fund provides financial and organizational backing for plaintiffs who are challenging gender discrimination in education and the workplace. The LAF contributed funds to assist with Ms. Rizo's legal costs.

## **American Civil Liberties Union of Northern California & ACLU Women's Rights Project**

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 1,000,000 members dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU of Northern California is the ACLU's regional affiliate for Northern California, including Fresno, and it has approximately 158,000 members. The ACLU, through its Women's Rights Project, has long been a leader in legal advocacy aimed at ensuring women's full equality and ending

discrimination against women in the workplace, including pay discrimination. The ACLU has appeared before the Supreme Court in numerous cases involving women's equality, both as direct counsel and as *amicus curiae*.

### **Atlanta Women for Equality**

Atlanta Women for Equality is nonprofit organization dedicated to providing free legal advocacy for women and girls facing sex discrimination in the workplace or at school, protecting and expanding economic and educational opportunities for women and girls, and helping our community shape our workplaces and schools according to true standards of equal treatment. Ensuring pay equity is crucial to our mission.

### **California Women's Law Center**

The California Women's Law Center ("CWLC") is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination against women, with a focus on advocating for the rights of low-income women. CWLC is dedicated to the fight to end practices contributing to the gender wage gap and women in poverty. Committed to ensuring women are paid equally so they can be afforded the most opportunities possible,

CWLC as a part of Equal Pay Today worked to get California's 2015 Fair Pay Act passed, one of the toughest equal pay laws in the country.

### **Feminist Majority Foundation**

Founded in 1987, the Feminist Majority Foundation (FMF) is a cutting-edge organization devoted to women's equality, reproductive health, and non-violence. FMF uses research and action to empower women economically, socially, and politically through public policy development, public education programs, grassroots organizing, and leadership development. Through all of its programs, FMF works to end sex discrimination in all sectors of society and to achieve civil rights for all people, including people of color and LGBTQ individuals.

### **Legal Aid at Work**

Legal Aid at Work (formerly Legal Aid Society – Employment Law Center) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women and girls, recent immigrants, individuals with disabilities, the LGBT community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education Amendments of 1972 as well as Title VII of the Civil Rights Act of 1964. LAAW has appeared in

discrimination cases on numerous occasions both as counsel for plaintiffs, *see, e.g., National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an amicus curiae capacity. *See, e.g., U.S. v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Systems*, 510 U.S. 17 (1993); *International Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

## **Legal Voice**

Legal Voice is a nonprofit public interest organization in the Pacific Northwest that works to advance the legal rights of women and girls through litigation, legislation, and public education on legal rights. Since its founding in 1978, Legal Voice has been at the forefront of efforts to combat sex discrimination in the workplace, in schools, and in public accommodations. We have served as counsel and as amicus curiae in numerous cases involving workplace gender discrimination throughout the Northwest and the country. Legal Voice also serves as a regional expert advocating for legislation and for robust interpretation and

enforcement of antidiscrimination laws, and has a strong interest in the proper interpretation of the Equal Pay Act in this case.

### **National Organization for Women (NOW) Foundation**

The National Organization for Women (NOW) Foundation is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal opportunity, among other objectives, and works to assure that women receive equal treatment in the workplace. As an education and litigation organization dedicated to eradicating sex-based discrimination, we believe that the salary history of job applicants often leads to hiring decisions that include discriminatory actions that perpetuate the gender wage gap. Further, we believe that prior salary alone cannot be used to justify a wage differential under the Equal Pay Act.

### **National Partnership for Women and Families**

The National Partnership for Women & Families (formerly the Women's Legal Defense Fund) is a national advocacy organization that develops and promotes policies to help achieve fairness in the workplace, reproductive health and rights, quality health care for all, and policies that help women and men meet the dual demands of work and family. Since its founding in 1971, the National

Partnership has worked to advance women's equal employment opportunities and health through several means, including by challenging discriminatory employment practices in the courts. The National Partnership has fought for decades for equal pay and to combat sex discrimination.

### **National Women's Law Center**

The National Women's Law Center is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women and women of color, and has participated as counsel or amicus curiae in a range of cases before the Supreme Court and the federal Courts of Appeals to secure the equal treatment of women under the law, including addressing sex discrimination in the workplace. The Center has long sought to ensure that workplace rights and opportunities are not restricted on the basis of sex, and that all individuals enjoy the protection against discrimination promised by federal law.

## **Southwest Women's Law Center**

The Southwest Women's Law Center is a non-profit policy and advocacy law center formed in 2005. The Law Center focuses on advancing positive outcomes for girls and women in the State of New Mexico by ensuring that women and girls are paid equally and fairly. The Southwest Women's Law Center is dedicated to advancing women's economic security by ensuring that all women receive equal pay aligned with their talent, skills and abilities. Accordingly, the Law Center is uniquely qualified to comment on, and inform, the Court about the impact of the decision in *Rizo v. Yovino*, No. 16-15372 (9th Cir. April 27, 2017), and the need for a rehearing en banc.

## **Women Employed**

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed believes that basing pay differentials between men and women on previous salaries should not be allowed as a "factor other than sex" as this is not gender neutral.

## **Women's Law Project**

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of women throughout their lives. To meet these goals, the WLP engages in high impact litigation, policy advocacy, public education, and individual counseling. Founded in 1974, the WLP has a long and effective track record on a wide range of legal issues related to women's health, legal, and economic status. Economic justice and equality for women is a high priority for WLP. To that end, WLP has advocated for equal pay for women, a goal that is far from achieved despite the adopted of federal and state equal pay laws more than fifty years ago. We have supported reform to strengthen federal and state equal pay laws and to enact local laws banning reliance on prior pay to set wages in Philadelphia and Pittsburgh. Such laws are necessary to end the insidious perpetuation of pay discrimination by employers who seek to justify pay discrimination solely on the basis of prior pay.

# **EXHIBIT 1**

### States That Have Introduced Bills Banning the Use of Prior Salary

State	Bill Information	Summary of Bill
<b>Arkansas</b>	H.B. 1021, 91st Gen. Assemb. (Ark. 2017)	Prohibits employers from asserting an affirmative defense to an equal pay claim based on an employee's prior salary alone. (introduced: 11/22/2016)
<b>California</b>	Assemb. B. 168, 2017-2018 Reg. Sess. (Cal. 2017)	Prohibits an employer, including state and local government employers, from seeking salary history information about an applicant for employment. Requires an employer to provide the pay scale for a position to an applicant for employment. (introduced: 1/17/2017)
<b>Connecticut</b>	H.B. 5210, 2017 Reg. Sess. (Conn. 2017)	Prohibits employers from seeking a prospective employee's wage and salary history before an employment offer with compensation has been negotiated. Prohibits employers from using an employee's previous wage or salary history as a defense in an equal pay lawsuit. (introduced: 1/05/2017)
<b>District of Columbia</b>	B. 22-0016, 22nd Council Period (D.C. 2017)	Amends the Wage Transparency Act of 2014 to prohibit an employer from screening prospective employees based on their wage history or seeking the wage history of a prospective employee. (introduced: 1/09/2017)
<b>Delaware</b>	H.B. 1, 149th Gen. Assemb. (Del. 2017)	Prohibits employers from seeking the salary history of a prospective employee and from screening prospective employees based on their compensation histories. (introduced: 4/4/2017)
<b>Georgia</b>	H.B. 345, 2017-2018 Reg. Sess. (Ga. 2017)	Prohibits employers from seeking the wage or salary history of a prospective employee and from requiring that a prospective employee's prior wage or salary history meet certain criteria. Prohibits employers from using an employee's previous wage or salary history as an affirmative defense to an equal pay claim. (introduced: 2/10/2017)
<b>Idaho</b>	H.B. 71, 64th Leg. (Idaho 2017)	Prohibits employers from seeking applicants' salary history (introduced: 1/30/2017)
<b>Illinois</b>	H.B. 2462, 100th Reg. Sess. (Ill. 2017)	Prohibits employers from screening applicants based on their salary history and from seeking salary history of applicants. (introduced: 2/07/2017)

<b>Iowa</b>	H. File 129, 87th Gen. Assemb. (Iowa 2017) S. File 340, 87th Gen. Assemb. (Iowa 2017)	Prohibits prospective employers from seeking applicants' salary history. Prohibits current employers from releasing salary history to prospective employers. (introduced: 2/23/2017) (introduced: 1/26/2017)
<b>Maine</b>	S.P. 422, 128th Leg. (Me. 2017)	Amends the Maine Human Rights Act to provide that evidence of discrimination with respect to compensation includes an employer seeking information about a prospective employee's prior wage history before an offer of employment, including all compensation, to the prospective employee has been made. (introduced: 4/19/2017)
	H.P. 672, 128th Leg. (Me. 2017)	Prohibits employers from inquiring about a prospective employee's prior compensation history until after an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee. (introduced: 3/09/2017)
<b>Maryland</b>	H.B. 398, 2017 Reg. Sess. (Md. 2017) S.B. 404, 2017 Reg. Sess. (Md. 2017)	Prohibits employers that employ 15 or more employees from screening an applicant for employment based on salary history and from seeking salary history of prospective or current employees. (introduced: 1/26/2017) (introduced: 1/27/2017)
<b>Mississippi</b>	H.B. 1080, 2017 Reg. Sess. (Miss. 2017) S.B. 2894, 2017 Reg. Sess. (Miss. 2017)	Prohibits employers from seeking the wage or salary history of a prospective employee and from requiring that a prospective employee's prior wage or salary history meet certain criteria. Prohibits employers from using an employee's previous wage or salary history as an affirmative defense to an equal pay claim. (introduced: 1/16/2017)
<b>Montana</b>	S.B. 148, 65th Leg. (Mo. 2017)	Prohibits employers from screening applicants based on their salary history and from seeking salary history of applicants. Prohibits employers from using an employee's previous wage or salary history as a defense in an equal pay lawsuit. (introduced: 1/24/2017)
<b>New Jersey</b>	Assemb. B. 3480, 217th Leg. (N.J. 2016)	Prohibits employers from seeking salary history of certain employees and from releasing the salary history of any current or former employee, without written authorization from the employee. Prohibits employer inquiries about wage and salary history as a condition of being interviewed for employment; prohibits retaliatory action against an employee or prospective employee for opposing such unlawful actions. (introduced: 9/15/2016)

	S. B. 2536, 217th Leg. (N.J. 2016)	Prohibits employers from screening job applicants based on wage or salary history and from using an applicant's wage or salary history in determining the salary amount for the applicant at any stage in the hiring process. Prohibits employers from seeking the wage or salary history of a job applicant without having received voluntary written authorization from the applicant to do so. (introduced: 9/15/2016)
	Assemb. B. 4515, 217th Leg. (N.J. 2017) S.B. 3014, 217th Leg. (N.J. 2017)	Prohibits employers from using prior salary, by itself, to justify any disparity in compensation or employment opportunity. Requires employers to demonstrate that any pay or employment opportunity differential was pursuant to a seniority or merit system or legitimate bona fide factor other than sex. Employer must also demonstrate that the factors do not perpetuate a sex-based differential and are job-related and based upon legitimate business necessities. (introduced: 1/19/2017) (introduced: 2/13/2017)
<b>New York</b>	Assemb. B. 2040, 2017-2018 Reg. Sess. (N.Y. 2017) S.B. 5532, 2017-2018 Reg. Sess. (N.Y. 2017)	Prohibits employers from seeking salary history from prospective employees; establishes a public awareness campaign. (introduced: 1/17/2017) (introduced: 4/6/2017)
	Assemb. B. 3020, 2017-2018 Reg. Sess. (N.Y. 2017)	Prohibits employers from seeking salary history from a prospective employee as a condition for interview or employment. Prohibits employers from seeking a prospective employee's wage and salary history before an employment offer with compensation has been made to the applicant. (introduced: 1/24/2017)
	Assemb. B. 4240, 2017-2018 Reg. Sess. (N.Y. 2017)	Establishes a state policy of a fair, non-biased compensation structure. Prohibits employers from seeking salary history from prospective employees. Prohibits employers from using an employee's previous wage or salary history as a defense to an equal pay action. (introduced: 2/1/2017)
	Assemb. B. 5669, 2017-2018 Reg. Sess. (N.Y. 2017)	Prohibits employers from screening applicants based on their salary history. Prohibits employers from seeking a prospective employee's wage and salary history before an employment offer with compensation has been made to the applicant. (introduced: 2/14/2017)

	S.B. 5233, 2017-2018 Reg. Sess. (N.Y. 2017) Assemb. B. 6707, 2017-2018 Reg. Sess. (NY 2017)	Prohibits employers from seeking salary history from prospective employees. (introduced: 3/16/2017)
<b>North Carolina</b>	S.B. 537, 2017 Gen. Assemb. (N.C. 2017)	Prohibits employers from screening applicants based on their salary history. Prohibits employers from seeking a prospective employee's wage and salary history before an employment offer with compensation has been made to the applicant. Prohibits employers from using an employee's previous wage or salary history as a defense to an equal pay action. (introduced: 4/3/2017)
<b>Oregon</b>	H.B. 2005, 79th Leg. Assemb. (Or. 2017) S.B. 752, 79th Leg. Assemb. (Or. 2017)	Prohibits employers from screening job applicants based on salary history and from basing salary decision on salary history, other than for internal hires. Prohibits employers from seeking salary history from applicant until after making offer of employment to employee that includes amount of compensation; requires employer to demonstrate business necessity for pay differentials not based on merit, seniority, piece-rate or production-based work. (introduced: 2/6/2017) (introduced: 2/22/2017)
<b>Pennsylvania</b>	H.B. 931, 2017-2018 Reg. Sess. (Pa. 2017)	Prohibits employers from screening applicants based on their salary history. Prohibits employers from seeking a prospective employee's wage and salary history before an employment offer with compensation has been made to the applicant. (introduced: 3/23/2017)
<b>Rhode Island</b>	S.B. 583, 2017 Gen. Assemb. (R.I. 2017)	Prohibits employers from screening job applicants based on wage or salary history and from using an applicant's wage or salary history in determining the salary for the applicant. Prohibits employers from seeking the wage or salary history of a job applicant until after the employer makes an offer of employment including compensation to the applicant. An individual's wage history cannot, by itself, justify an unlawful wage differential. (introduced: 3/22/2017)
<b>Texas</b>	H.B. 209, 85th Leg. (Tex. 2016) S.B. 1160, 85th Leg. (Tex. 2017)	Prohibits employers from screening applicants based on wage or salary history. Prohibits employers from inquiring or seeking the wage or salary history of a prospective employee before an employment offer with compensation has been made to the applicant. (introduced: 11/14/2016)

		(introduced: 2/28/2017)
<b>Vermont</b>	H.B. 294, 2017-2018 Gen. Assemb. (Vt. 2017)	Prohibits employers from screening applicants based on wage or salary history or requiring wage or salary history as a condition for interview or employment. Prohibits employers from seeking a prospective employee's wage and salary history before an employment offer with compensation has been made to the applicant. (introduced: 2/16/2017)
<b>Virginia</b>	H.B. 2190, 2017 Reg. Sess. (Va. 2017)	Prohibits a prospective employer from requiring as a condition of employment that a prospective employee provide or disclose the prospective employee's wage or salary history or seeking the wage or salary history of a prospective employee from the prospective employee's current or former employers. (introduced: 1/11/2017)
<b>Washington</b>	H.B. 1533, 65th Leg. (Wash. 2017) S.B. 5555, 65th Leg. (Wash. 2017)	Prohibits employers from seeking the wage or salary history of a prospective employee and from requiring that a prospective employee's prior wage or salary history meet certain criteria. Prohibits employers from seeking the wage or salary history of a prospective employee until after an offer of employment with compensation has been negotiated and made to the prospective employee. (introduced: 1/23/2017) (introduced: 1/27/2017)
<b>Wisconsin</b>	S.B. 142, 2017-2018 Reg. Sess. (Wis. 2017)	Prohibits an employer from relying on or inquiring about a prospective employee's current or prior compensation and from restricting an employee's right to disclose compensation information and providing a penalty. (introduced: 3/29/2017)

**SUPPLEMENTAL  
MATERIALS  
ORS 652.220**



**ANNE M. MILLIGAN**

**LAURA SALERNO OWENS**

**2019 OREGON WOMEN LAWYERS FALL CLE**

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# Take Home Action Plan

# *Pay Equity 202*

## *Take Home Action Plan*

Oregon Women Lawyers – 2019 Fall CLE

### 1. **Determine the scope of your audit.**

- All employees, one group of (high risk or high quantity) job titles, just non-represented employees?
- You're already late for the 1/1/2019 deadline; you may need to triage.
- Any red flags in your existing policies or procedures?
- Employees in different unions performing comparable work with different benefits or pay?
- What about differences in pay due to the market at time of hire, or pay freezes?

### 2. **Gather existing workforce data (bona fide factors).**

- Quality (completeness) and Cleanliness (accuracy) of the data is key to a correct, legally defensible, and efficient audit.
- Name, Position, Division, Grade, Structure, Salary/Pay, Applicable Salary Range, Years Education, Years' Experience.
- Issue mandatory employee survey for additional information?
- How do you deal with noncompliance or delayed compliance?
- BEST PRACTICE: Run a blind pay analysis without regard to protected class.

### 3. **Determine which groups of employees are performing “work of comparable character.”**

- Job titles are dead.
- Run compare across a set of job classifications? Grades?
- Without a systematic, preexisting marker, you will need to likely go through thousands of data points to determine “comparable character.”

### 4. **Select method to evaluate workforce data**

- Must be “reasonable in detail and scope in light of the size of the employer.” Multiple regression analysis is the gold standard.
  - Regression – statistical technique of measuring the difference between variables; Multiple – more than one factor.

# *Pay Equity 202*

## *Take Home Action Plan*

5. **Correct wage differentials for employees with statistically significant anomalies that can't be explained by bona fide factors**
  - Consider making the pay retroactive through the statute of limitation (1 year) or effective date of the 2017 legislation (1/1/2019) as applicable.
6. **Define the scope of work moving forward to ensure that pay equity is considered in every transfer, promotion, and hire.**
  - Authentic, comprehensive pay equity between all protected classes should be maintained, not corrected every 3 years
  - But still perform an analysis every 3 years to maintain safe harbor
  - BEST PRACTICE: retain a statistical vendor to create a Salary Predictive Formula (SPF) to auto-generate “justifiable” salary bands in line with pay equity, so pay equity is maintained rather than “fixed” every three years; also ensures hiring managers can make correct and defensible decisions without having to be experts in pay equity.
  - Through SPFs, some employers have built a formula model for compensatory factors to determine salary—e.g., a 4-year degree is always worth 4 points, a master’s degree is worth 6 points, etc.
    - EQUITY POINTER – Systemic inequities are maintained in part by resource disparities, including access to higher education. Consider having a policy or practice that all relevant college degrees will be weighed the same in your SPF. For example, a J.D. from Harvard Law is awarded the same number of points as one from U. of Oregon.
  - SMALL FIRMS: determine the closest comparators at time of hire and bring in the candidate or transfer in line with those figures.

BOLI Equal Pay Poster  
(Eng. + Span.)



# OREGON EQUAL PAY LAW

<b>PAY HISTORY</b>	<b>Effective October 6, 2017</b> , employers are prohibited from seeking the pay history of employment applicants and employees before the employer makes an offer of employment to the prospective employee that includes an amount of compensation.
<b>UNLAWFUL PRACTICES</b>	<b>Effective January 1, 2019</b> , it is an unlawful employment practice under ORS chapter 659A (Unlawful Discrimination laws) for an employer to: <ul style="list-style-type: none"><li>• Discriminate in any manner between employees on the basis of an employee’s status as a member of a protected class in the payment of wages or other compensation for work of comparable character;</li><li>• Pay wages or other compensation to any employee at a rate greater than that at which the employer pays wages or other compensation to employees of a protected class for work of a comparable character;</li><li>• Screen job applicants based on current or past compensation;</li><li>• Determine compensation for a position based on current or past compensation of a prospective employee (not including a current employee of the employer during a transfer, move or hire of the employee to a new position with the same employer);</li><li>• Seek the pay history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee before the employer makes an offer of employment to the prospective employee that includes an amount of compensation.</li></ul>
<b>ADDITIONAL PROVISIONS</b>	<b>Also effective January 1, 2019:</b> <ul style="list-style-type: none"><li>• Employers may not reduce the compensation of any employee in order to comply with the law;</li><li>• Amounts owed to an employee because of a failure of an employer to comply with the requirements of the Equal Pay Law are considered “unpaid wages” under the law;</li><li>• Employees who assert violations of the Equal Pay Law may file complaints with the Civil Rights Division of BOLI or a civil action within one year after the occurrence of the unlawful practice;</li><li>• An unlawful compensation practice is deemed to have occurred each time compensation is paid pursuant to a discriminatory compensation decision or other practice;</li><li>• Notice of claim against public bodies (tort claim notices) must be given within 300 days of discovery of the alleged loss or injury.</li></ul>
<b>OTHER PROVISIONS</b>	See BOLI website for additional information regarding: <ul style="list-style-type: none"><li>• Permitted circumstances for paying employees performing work of a comparable character at different compensation levels;</li><li>• Legal remedies under the law; and</li><li>• Provisions for employer equal pay analyses as a defense in the award of compensatory and punitive damages.</li></ul>

For additional information, contact the Bureau of Labor and Industries:

[www.oregon.gov/boli](http://www.oregon.gov/boli)

Portland: 971-673-0761      Eugene: 541-686-7623  
Salem: 503-378-3292      TTY: 711  
Technical Assistance for Employers Program: 971-673-0824

This is a summary of the provisions of the Oregon Equal Pay Law. It is not a complete text of the law.

THIS INFORMATION MUST BE POSTED IN A CONSPICUOUS LOCATION  
Supplemental Materials ORS 652.220



# LEY DE IGUALDAD EN LAS REMUNERACIONES DE OREGON

<b>ANTECEDENTES DE REMUNERACIONES</b>	Con vigencia desde el 6 de octubre de 2017, se prohíbe a los empleadores intentar averiguar los antecedentes de remuneraciones de aspirantes a un empleo y de empleados antes de que el empleador haga una oferta de empleo al aspirante a empleado, que incluya el monto de compensación.
<b>PRÁCTICAS ILEGALES</b>	Con vigencia a partir del 1.º de enero de 2019, lo siguiente se considerará una práctica de empleo ilegal para un empleador, conforme al capítulo 659A (leyes de Discriminación ilegal) de los Estatutos Revisados de Oregon (Oregon Revised Statutes, ORS): <ul style="list-style-type: none"><li>• Discriminar de cualquier manera entre empleados en función de la condición de un empleado como miembro de una clase protegida en el pago de salarios u otro tipo de compensación por trabajo de carácter comparable.</li><li>• Remunerar salarios u otro tipo de compensación a cualquier empleado a una tasa mayor que la que paga el empleador para remunerar salarios u otro tipo de compensación a empleados de una clase protegida por trabajo de carácter comparable.</li><li>• Seleccionar a aspirantes a un empleo en función de compensaciones actuales o anteriores.</li><li>• Determinar la compensación para un puesto en función de la compensación actual o anterior de un aspirante a empleado (sin incluir a un empleado actual del empleador durante una transferencia, mudanza o contratación del empleado a un nuevo puesto con el mismo empleador).</li><li>• Intentar averiguar los antecedentes de remuneraciones de un aspirante al empleo o empleado a través del aspirante a empleo o empleado de un empleador actual o anterior antes de que el empleador haga una oferta de empleo al aspirante a empleado, que incluya el monto de compensación.</li></ul>
<b>DISPOSICIONES ADICIONALES</b>	<b>También vigente a partir del 1.º de enero de 2019:</b> <ul style="list-style-type: none"><li>• Los empleadores no podrán reducir la compensación de ningún empleado para estar en cumplimiento con la ley.</li><li>• Los montos que un empleador le deba a un empleado debido al incumplimiento con los requisitos de la Ley de Igualdad en las Remuneraciones (Equal Pay Law) se considerarán "salarios no remunerados" según esta ley.</li><li>• Los empleados que alegan infracciones a la Ley de Igualdad en las Remuneraciones podrán presentar sus quejas ante la División de Derechos Civiles del Departamento de Trabajo e Industrias de Oregon (Bureau of Labor and Industries, BOLI) o interponer un juicio civil dentro del plazo de un año después del incidente de la práctica ilegal.</li><li>• Se considera que una práctica de compensación ilegal ha ocurrido cada vez que se paga la compensación, de acuerdo con una decisión de compensación discriminatoria u otro tipo de práctica.</li><li>• El aviso de demanda contra los organismos públicos (avisos de demanda no contractual) se debe entregar dentro del plazo de 300 días de haber descubierto la pérdida o el agravio que se alega.</li></ul>
<b>OTRAS DISPOSICIONES</b>	Consulte el sitio web del BOLI para obtener más información sobre lo siguiente: <ul style="list-style-type: none"><li>• Circunstancias en que se permiten remunerar a los empleados que realizan un trabajo de carácter comparable en diferentes niveles de compensación.</li><li>• Recursos de ayuda legales, según lo establecido por ley.</li><li>• Disposiciones para análisis de igualdad en las remuneraciones del empleador como defensa en la concesión de indemnización por daños y perjuicios y compensación punitiva.</li></ul>

Para obtener más información, comuníquese con el Departamento de Trabajo e Industrias:

[www.oregon.gov/boli](http://www.oregon.gov/boli)

Portland: 971-673-0761

Eugene: 541-686-7623

Salem: 503-378-3292

TTY: 711

Programa de Asistencia Técnica para Empleadores: 971-673-0824

Este es un resumen de las disposiciones de la Ley de Igualdad en las Remuneraciones de Oregon.

No es el texto completo de la ley.

ESTA INFORMACIÓN SE DEBE PUBLICAR EN UN LUGAR VISIBLE.

Supplemental Materials ORS 652.220

# BOLI Pay Equity Charges (2018-2019)

All pay equity cases processed 2018 - present									
Case Number	File Date	Complainant First Name	Complainant Last Name	Respondent	dba Name	Current Status	Status Date	Filing Basis	
DEMPD180103-10029	3-Jan-18	HIGHTOWER	ANGELA	SETERUS, INC.		Closed - No Substantial Evidence	30-Aug-18	EP-EM-Sex	
EEEMX180119-10110	19-Jan-18	TURNER	KELSEY	WILLAMETTE DENTAL GROUP, P.C.		Closed - No Substantial Evidence	10-Apr-18	EP-EM-Sex	
EEEMX180125-60168	25-Jan-18	REED	SHELLEY	BIOMED DIAGNOSTICS, INC.		Closed - Withdrawal to State or Federal Court	30-Mar-18	EP-EM-Sex	
EEEMX180511-91175	11-May-18	GREGOIRE	MARY JO	NIKE, INC.		Closed - Administrative Closure of Case being in	10-May-19	EP-EM-Sex	
EEEMX180511-10717	11-May-18	RAMIREZ	MAYRA	CHA CHA CHA TAQUERIA, INC		Closed - Withdrawal to State or Federal Court	16-Jul-18	EP-EM-Sex	
EEEMX180613-50867	13-Jun-18	COLEMAN	AMBER	LANE FOREST PRODUCTS, INC.		Closed - Withdrawal to State or Federal Court	13-Jun-19	EP-EM-Sex	
EEEMX180628-91171	28-Jun-18	TRAPP	VICTORIA	NIKE, INC.		Closed - Administrative Closure of Case being in	28-Jun-19	EP-EM-Sex	
EEEMX180711-11081	11-Jul-18	WINBORNE	CHARLOA	BALLAS AND PARTNERS MANAGEMENT, INC	BPM HOA MANAGEMENT	Closed - No Substantial Evidence	20-Sep-18	EP-EM-Sex	
EEEMX180816-11254	16-Aug-18	ESQUEDA	ELIZABETH	MONTINORE VINEYARDS LIMITED	MONTINORE ESTATE	Closed - Withdrawal with private settlement	24-Dec-18	EP-EM-Sex	
EEEMX180928-11449	28-Sep-18	FOUNTAIN	BRITTANY	ADVANTAGE MEDIA PARTNERS LLC		Closed - Withdrawal to State or Federal Court	15-Jan-19	EP-EM-Sex	
EEEMX181010-91827	10-Oct-18	TVEDT	JENNIFER	NIKE, INC.		EEOC Suspended	7-Dec-18	EP-EM-Sex	
EEEMX181015-11543	15-Oct-18	MITCHELL	ERICA	OREGON HEALTH & SCIENCE UNIVERSITY		Closed - Administrative Closure	19-Nov-18	EP-EM-Sex	
EEEMX181023-11598	23-Oct-18	STRUCHEN	KAREN	CROWDSTREET, INC.		Closed - Withdrawal without Settlement	27-Dec-18	EP-EM-Sex	
EEEMX181023-41599	23-Oct-18	ROGERS	HALEY	WILLAMETTE VALLEY MEDICAL CENTER, LLC		Closed - No Substantial Evidence	29-Jan-19	EP-EM-Sex	
DEMPD181206-11878	6-Dec-18	SEUBERT	BONITA	LEGACY HEALTH SYSTEM	LEGACY HEALTH	Closed - No Substantial Evidence	4-Apr-19	EP-EM-Sex	
EEEMX181217-11934	17-Dec-18	KAMNA	SHARI	STATE OF OREGON, HUMAN SERVICES		Investigation	24-Dec-18	EP-EM-Sex	
EEEMX190129-10146	29-Jan-19	SCHLINGMAN	DYRK	NVA CPC NE 82ND AVE	NVA NE PORTLAND VETERINARY MANAGEMENT, LLC	Closed - No Substantial Evidence	23-Apr-19	EP-EM-Sex	
EEEMX190314-40358	14-Mar-19	MICKENHAM	JEANNETTE	GOOD SAMARITAN HOSPITAL CORVALLIS	GOOD SAMARITAN REGIONAL MEDICAL CENTER	Closed - No Substantial Evidence	8-Jul-19	EP-EM-Sex	
EEEMX190319-90345	19-Mar-19	QUEST	ARISSA	S.B., INC.	SHERMAN BROS. TRUCKING	EEOC Suspended	22-Mar-19	EP-EM-Sex	
EEEMX190327-90412	27-Mar-19	TAYLOR	BRENDALYN	NORTHWEST PERMANENTE, P.C.		EEOC Suspended	10-Apr-19	EP-EM-Sex	
EEEMX190408-60529	8-Apr-19	KREIFELS	SABRINA	MASTER CLEANING SERVICE, INC.	SERVICEMASTER OF MEDFORD	Closed - No Substantial Evidence	26-Jun-19	EP-EM-Sex	
EEEMX190408-60529	8-Apr-19	KREIFELS	SABRINA	MASTER CLEANING SERVICE, INC.	SERVICEMASTER OF MEDFORD	Closed - No Substantial Evidence	26-Jun-19	ST-EM-Pay Equity - Sex	
EPEMS190411-10475	11-Apr-19	THREADGILL	DONA	QWEST CORPORATION		Investigation	19-Apr-19	EP-EM-Sex	
EPEMS190411-10475	11-Apr-19	THREADGILL	DONA	QWEST CORPORATION		Investigation	19-Apr-19	ST-EM-Pay Equity - Sex	
EEEMX190503-40674	3-May-19	FLETCHELL	MARALEE	DALE'S REMODELING, INC.		Investigation	21-May-19	EP-EM-Sex	
EEEMX190506-10668	6-May-19	CABRERA	AMANDA	PEOPLEREADY, INC.		Closed - Withdrawal with private settlement	25-Sep-19	EP-EM-Sex	
EEEMX190506-10669	6-May-19	CABRERA	AMANDA	PEOPLEREADY, INC.		Closed - Withdrawal with private settlement	25-Sep-19	ST-EM-Pay Equity - Sex	
EEEMX190506-10669	6-May-19	LITTTRELL	JESSICA	PEOPLEREADY, INC.		Closed - Withdrawal with private settlement	25-Sep-19	EP-EM-Sex	
EEEMX190506-10669	6-May-19	LITTTRELL	JESSICA	PEOPLEREADY, INC.		Closed - Withdrawal with private settlement	25-Sep-19	ST-EM-Pay Equity - Sex	
EPEMS190506-50671	6-May-19	AZAR	STEPHANIE	QWEST CORPORATION	CENTURYLINK	Investigation	19-Jun-19	EP-EM-Sex	
EPEMS190516-40713	6-May-19	AZAR	STEPHANIE	QWEST CORPORATION	CENTURYLINK	Investigation	19-Jun-19	ST-EM-Pay Equity - Sex	
EPEMS190516-40713	16-May-19	RUCKER	JENIFER	STATE OF OREGON, DEPARTMENT HUMAN SERVICES		Closed - No Substantial Evidence	29-Jul-19	EP-EM-Sex	
EPEMS190528-70789	16-May-19	RUCKER	JENIFER	STATE OF OREGON, DEPARTMENT HUMAN SERVICES		Closed - No Substantial Evidence	29-Jul-19	ST-EM-Pay Equity - Sex	
EPEMS190528-70789	28-May-19	ZERTUCHE	JILL	PACIFICSOURCE HEALTH PLANS		Investigation	12-Jun-19	EP-EM-Sex	
EPEMS190528-70789	28-May-19	ZERTUCHE	JILL	PACIFICSOURCE HEALTH PLANS		Investigation	12-Jun-19	ST-EM-Pay Equity - Sex	
EPEMS190606-10844	6-Jun-19	DELPLANCHE	NEIL	WILSONVILLE T, LLC		Closed - No Substantial Evidence	5-Sep-19	EP-EM-Sex	
EPEMS190627-50925	27-Jun-19	AZAR	STEPHANIE	QWEST CORPORATION	CENTURYLINK	Investigation	10-Jul-19	EP-EM-Sex	
EPEMS190627-50925	27-Jun-19	AZAR	STEPHANIE	QWEST CORPORATION	CENTURYLINK	Investigation	10-Jul-19	ST-EM-Pay Equity - Sex	
EPEMS190703-70975	3-Jul-19	SHIRLEY	JOHN	MINI PET MART, INC.		Investigation	22-Jul-19	EP-EM-Sex	
EPEMS190703-70975	3-Jul-19	SHIRLEY	JOHN	MINI PET MART, INC.		Investigation	22-Jul-19	ST-EM-Pay Equity - Sex	
STEMRC190715-11025	15-Jul-19	ROBINSON	CANDAS	ALWAYS QUALITY CLEANINGS LLC	AQC COMMERCIAL CLEANING	Investigation	31-Jul-19	ST-EM-Pay Equity - Race	
AGEMAG190806-11145	6-Aug-19	WEGNER	RHONDA	STATE OF OREGON, DEPARTMENT OF ADMINISTRATIVE SERVICES		Investigation	13-Aug-19	ST-EM-Pay Equity - Age	
DEMPD190814-11172	14-Aug-19	DUPUIS	TRAVIS	XPO LOGISTICS WORLDWIDE, INC.		Investigation	21-Aug-19	ST-EM-Pay Equity - Disability	
DEMPD190815-51208	15-Aug-19	DAVIS	ANN MARIE	PACIFIC AIR COMFORT, INC.		Investigation	3-Sep-19	EP-EM-Sex	
AGEMAG190826-11274	26-Aug-19	NUNN	TRACEE	VIBRA SPECIALTY HOSPITAL OF PORTLAND		Investigation	18-Sep-19	ST-EM-Pay Equity - Age	
EEEMX190826-41282	26-Aug-19	WOLFE	WILLIAM	STATE OF OREGON DEPARTMENT OF CORRECTIONS		Investigation	18-Sep-19	EP-EM-Sex	
EEEMX190826-41282	26-Aug-19	WOLFE	WILLIAM	STATE OF OREGON DEPARTMENT OF CORRECTIONS		Investigation	18-Sep-19	ST-EM-Pay Equity - Sex	
EEEMX190903-41316	3-Sep-19	ALLEN	JENNIFER	SINTRA CORPORATION	CAFE SINTRA	Investigation	27-Sep-19	ST-EM-Pay Equity - Sex	
Count: 38									

# BOLI Administrative Rules on Pay Equity



## PERMANENT ADMINISTRATIVE ORDER

**BLI 22-2018**

CHAPTER 839

BUREAU OF LABOR AND INDUSTRIES

**FILED**

11/19/2018 1:16 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: New rules implement Equal Pay law, including definitions, work of comparable character, exceptions, posting notice.

EFFECTIVE DATE: 01/01/2019

AGENCY APPROVED DATE: 11/19/2018

CONTACT: Christine Lewis

971-673-0795

christine.e.lewis@state.or.us

c/o Bureau of Labor and Industries

800 NE Oregon St. #1045

Portland, OR 97232

Filed By:

Marcia Ohlemiller

Rules Coordinator

### RULES:

839-008-0000, 839-008-0005, 839-008-0010, 839-008-0015, 839-008-0020, 839-008-0025, 839-008-0030, 839-008-0035

ADOPT: 839-008-0000

RULE TITLE: Definitions

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes definitions as used in Pay Equity laws enacted by OL Ch. 197 (2017).

### RULE TEXT:

As used in ORS 652.210 to 652.235 and these rules:

(1) "Benefits" means:

(a) The rate of contribution, beyond what is required by federal, state or local law, that an employer makes irrevocably to a trustee or to a third person under a plan, fund or program including, but not limited to, those described under subsection (b) of this section; or

(b) The rate of costs to the employer in providing benefits to an employee, beyond what is required by federal, state or local law, pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed to the employee affected, including, but not limited to, the following:

(A) Medical or hospital care;

(B) Pensions on retirement or death;

(C) Compensation for injuries or illness resulting from occupational activity;

(D) Insurance to provide any of the benefits provided in paragraphs (A) through (C) of this subsection;

(E) Unemployment benefits;

(F) Life insurance;

(G) Disability insurance;

(H) Sick leave pay;

(I) Accident insurance;

(J) Vacation or holiday pay; or

- (K) Defraying costs of other bona fide fringe benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses.
- (2) "Bonus" means an amount that is paid or something of monetary or quantifiable value that is given to an employee by an employer in addition to the employee's regular rate of pay, typically as a means of encouragement or in recognition of superior performance. Bonuses include, but are not limited to, the following:
- (a) Signing or job acceptance bonuses;
  - (b) Attendance bonuses;
  - (c) Retention or longevity bonuses;
  - (d) Performance bonuses; and
  - (e) Productivity bonuses.
- (3)(a) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.
- (b) Compensation does not include tips or reimbursement for any actual costs incurred including, but not limited to, relocation reimbursements, mileage, and out-of-pocket expenses.
- (4) "Employee" means any individual who, otherwise than as a copartner of the employer, as an independent contractor or as a participant in a work training program administered under the state or federal assistance laws, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only partly in this state, an individual is not an employee unless the contract of employment of the employee has been entered into, or payments thereunder are ordinarily made or to be made, within this state.
- (5)(a) "Employer" means any person employing one or more employees, including the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.
- (b) "Employer" does not include the federal government.
- (6) "Equal-pay analysis" means an evaluation process to assess and correct wage disparities among employees who perform work of comparable character.
- (7)(a) "Equity-based compensation" means non-cash payments that represent ownership, membership interests or opportunity for investment in the employer's business and may include, but is not limited to, restricted stock awards, stock options, employee stock purchase plans, stock appreciation rights and other similar compensation schemes.
- (b) "Equity-based compensation" does not include a one-time buyout.
- (8) "Fringe benefits" means benefits as described in section (1) of this rule.
- (9) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.
- (10) "Rate" with reference to wages means:
- (a) The basis of compensation for services by an employee for an employer; and
  - (b) Compensation based on the time spent in the performance of the services, on the number of operations accomplished or on the quantity produced or handled.
- (11) "Salary" has the meaning provided in OAR 839-020-0004(29) and means a predetermined amount constituting all or part of the employee's compensation paid for each pay period of one week or longer (but not to exceed one month). The predetermined amount may not be any amount less than the equivalent of a monthly salary calculated by multiplying the wage set pursuant to ORS 653.025 by 2,080 hours per year, then dividing by 12 months.
- (12) "Sexual orientation" has the meaning given that term in ORS 174.100 and means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.
- (13) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required under ORS 652.220 to be paid to the employee.
- (14) "Veteran status" means an individual is a veteran as defined in ORS 408.225.
- (15) "Wages" means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person or paid in cash or any medium other than cash.

(16) "Working conditions" includes work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee, as those terms are defined in OAR 839-008-0010.

(17) "Work of comparable character" means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title, as defined in OAR 839-008-0010.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.210-652.235

ADOPT: 839-008-0005

RULE TITLE: Seeking and Screening Job Applicants Based on Compensation

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes rule to implement salary history unlawful employment practice provisions of OC Ch. 197 (2017).

RULE TEXT:

(1) Pursuant to ORS 659A.357, it is an unlawful practice under ORS chapter 659A for an employer or prospective employer to seek the salary history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee.

(2) Pursuant to ORS 652.220(1)(c), it is an unlawful employment practice under ORS chapter 659A for an employer to screen job applicants based on current or past compensation. As used in ORS 652.220(1)(c) and these rules, "to screen job applicants based on current or past compensation" includes using information, however obtained, about a job applicant's current or past compensation to determine a job applicant's suitability or eligibility for employment.

(3) The unsolicited disclosure of a job applicant's current or past compensation by a job applicant, employee or a current or former employer of the applicant or employee that is not considered by an employer does not constitute a violation of ORS 659A.357 or ORS 652.220(1)(c).

(4) Pursuant to ORS 652.220(1)(d), it is an unlawful employment practice under ORS chapter 659A for an employer to determine compensation for a position based on the current or past compensation of a prospective employee.

(5) Sections (1) and (2) of this rule are not intended to prevent an employer from requesting from a prospective employee written authorization to confirm prior compensation after the employer makes an offer of employment to the prospective employee that includes an amount of compensation.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.220, ORS 659A.357

ADOPT: 839-008-0010

RULE TITLE: Work of Comparable Character

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes criteria used for evaluation of factors for work of comparable character as established in OL Ch. 197 (2017).

RULE TEXT:

(1) As used in ORS 652.210 to ORS 652.235 and these rules, "work of comparable character" includes substantially similar knowledge, skill, effort, responsibility and working conditions as defined or described as follows, with no single factor being determinative:

(a) Knowledge considerations may include, but are not limited to, the following:

(A) Certifications, licenses and certificates;

(B) Education;

(C) Experience; or

(D) Training.

(b) Skill considerations may include, but are not limited to, the following:

(A) Ability;

(B) Agility;

(C) Coordination;

(D) Creativity;

(E) Efficiency;

(F) Experience; or

(G) Precision.

(c) Effort considerations may include, but are not limited to, the following:

(A) Amount of physical or mental exertion needed;

(B) Amount of sustained activity; or

(C) Complexity of job tasks performed.

(d) Responsibility considerations may include, but are not limited to, the following:

(A) Accountability, decision-making discretion or impact of an employee's exercise of their job functions on the employer's business;

(B) Amount, level or degree of significance of job tasks;

(C) Autonomy or extent to which the employee works without supervision;

(D) Extent to which the employee exercises supervisory functions; or

(E) Extent to which an employee's work or actions expose an employer to risk or liability.

(e) Working condition considerations include the following:

(A) Work environment;

(B) Hours, which may include, but are not limited to, the following considerations:

(i) Alternative scheduling such as split shifts;

(ii) Level of busyness during hours of work;

(iii) Limited duration assignments;

(iv) Number of hours;

(v) Overtime hours; or

(vi) Part-time or full-time work.

(C) Time of day, which may include, but is not limited to, the consideration of shift differentials related to the day of the week or time of day work shifts are scheduled;

(D) Physical surroundings, which may include, but are not limited to, the following considerations:

(i) Air quality;

- (ii) Distractions;
- (iii) Dust;
- (iv) Exposure to weather;
- (v) Isolation;
- (vi) Lighting;
- (vii) Noise;
- (viii) Physical design or layout of workspace;
- (ix) Temperature;
- (x) Ventilation; or
- (xi) Wetness.

(E) Potential hazards, which may include, but are not limited to, the following considerations:

- (i) Degree or severity of potential injury;
- (ii) Frequency of exposure;
- (iii) Intensity;
- (iv) Physical hazards;
- (v) Risk of injury; or
- (vi) Toxicity.

(2) Evaluations of work of comparable character need only consider comparisons of Oregon employees as defined in OAR 839-008-0000.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.210-.235

ADOPT: 839-008-0015

RULE TITLE: Bona Fide Factors that May Be Considered in Paying Employees Performing Work of Comparable Character at Different Compensation Levels

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes criteria used for evaluation of factors that may contribute to a compensation differential under Pay Equity laws, OC Ch. 197 (2017).

RULE TEXT:

(1) Pursuant to ORS 652.220(2), employees may receive different levels of compensation for work of comparable character if the entire compensation differential is based on one or more bona fide factors related to the position in question. The bona fide factors that may be considered in determining the compensation differential between individuals are as follows:

- (a) A seniority system that recognizes and compensates employees based on length of service with the employer. A seniority system utilized by an employer may be considered as a bona fide factor by the employer's successor in interest, as defined by OAR 839-005-0014;
  - (b) A merit system that provides for variations in pay based upon employee performance as measured through job-related criteria, for example, a written performance evaluation plan or policy that measures employee performance using a set numerical or other established rating scale, such as from "unsatisfactory" to "exceeds expectations," and takes employees' ratings into account in determining employee pay rates;
  - (c) A system that measures earnings by quantity or quality of production, including piece rate work;
  - (d) Notwithstanding any other applicable federal, state or local laws, workplace location considerations may include, but are not limited to, the following:
    - (A) Cost of living;
    - (B) Desirability of worksite location;
    - (C) Access to worksite location;
    - (D) Minimum wage zones; or
    - (E) Wage and hour zones.
  - (e) Necessary and regular travel;
  - (f) Education considerations may include, but are not limited to, substantive knowledge acquired through relevant coursework, as well as any completed certificate or degree program;
  - (g) Training considerations may include, but are not limited to, on-the-job training acquired in current or past positions as well as training acquired through a formal training program;
  - (h) Experience considerations include, but are not limited to, any relevant experience that may be applied to the particular job; or
  - (i) Any combination of the factors described in subsections (a)–(h) of this section, if the combination of those factors accounts for the entire compensation differential.
- (2) As used in subsections (1)(a)-(c) of this rule, "system" means a devised coherent, consistent, verifiable and reasonable method that was in use at the time of the alleged violation to identify, measure and apply appropriate variables in an orderly, logical and effective manner.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.220

ADOPT: 839-008-0020

RULE TITLE: Determining Benefits as Part of Compensation

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes rule to clarify benefits as a component of compensation under Pay Equity laws, OL Ch. 197(2017).

RULE TEXT:

For purposes of ORS 652.210 to 652.235 and these rules, an employer may provide different benefits as part of compensation to employees performing work of comparable character if:

- (1) The same benefit options are offered to all employees performing work of comparable character. For example, an employer may provide and pay for a more expensive health care policy that covers an employee and the employee's spouse and dependent children, as compared to another employee performing work of comparable character that does not have a spouse or dependent children, so long as both employees are provided the same health care options. For another example, an employer may offer an array of benefit options to employees performing work of comparable character to select from, with or without cost caps, so long as each employee performing work of comparable character is offered the same options.
- (2) The cost of a bona fide benefit offered by an employer, but declined by an employee, may be considered as part of the total amount of compensation paid to the employee. For example, if an employee chooses not to take advantage of a health insurance policy offered by an employer because the employee is covered under their spouse's plan, the cost of providing the benefit that would have been incurred by the employer to provide the employee with the benefit offered may be included as part of the employee's total compensation rate for purposes of calculating the employee's total compensation under this law.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.210-.235

ADOPT: 839-008-0025

RULE TITLE: Reductions in Employee Compensation

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes rule to clarify provision that an employer may not reduce an employee's compensation in order to comply with Pay Equity laws, OL Ch. 197(2017).

RULE TEXT:

(1) Pursuant to ORS 652.220(4), an employer may not reduce the compensation level of an employee to comply with the provisions of ORS 652.210 to 652.235 and these rules.

(2) Red circling, freezing or otherwise holding an employee's compensation constant as other employees come into alignment are not considered reductions in the compensation level for the employee whose compensation is being held constant.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.210-.235

ADOPT: 839-008-0030

RULE TITLE: Required Posting and Notice Requirements

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes provisions for posting notice of Pay Equity laws, OL Ch. 197 (2017).

RULE TEXT:

(1) The Bureau of Labor and Industries shall make available to employers a template that meets the required notice provisions of ORS 652.220(7).

(2) Employers shall display the poster in every establishment where employees work. If displaying the poster is not feasible, an employer may comply with the requirement to provide written notice as required in ORS 652.220 by any of the following:

(a) Distributing the written notice to each employee personally by regular mail or email, or by including it with a paycheck;

(b) Incorporating the written notice into a handbook or manual made available to employees, whether in a print or electronic format; or

(c) Posting the written notice in a conspicuous and accessible location in each workplace of the employer or via electronic format that is reasonably conspicuous and accessible.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.220

ADOPT: 839-008-0035

RULE TITLE: Individual Acts of Remuneration as Distinct Violations

NOTICE FILED DATE: 08/28/2018

RULE SUMMARY: Establishes rule to clarify unlawful practice occurrences under Pay Equity laws, OL Ch. 197 (2017).

RULE TEXT:

An employer commits an unlawful compensation practice each time an employee is remunerated in violation of ORS 652.220.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 652.220, ORS 659A.875

1955 Tracing + Minutes for  
ORS 652.220, et seq.

Listing of Legislative records in  
Oregon State Archives pertaining to:

SENATE BILL 2, 1955  
re: the abolishment of  
discriminatory wage rates based  
on sex.....

SENATE LABOR AND INDUSTRIES COMMITTEE MINUTES (ON MICROFILM ONLY):

Jan. 18: p. 1  
Feb. 2: p. 1, 2, 3, 4, 5 & 6  
Feb. 15: p. 1, 2 & 3  
Feb. 16: p. 1  
Feb. 22: p. 1

No tape recordings, no exhibit file.

HOUSE LABOR AND INDUSTRIES COMMITTEE MINUTES:(ON MICROFILM ONLY):

Mar. 8: p. 1  
Mar. 15: p. 1, 2 & 3  
Mar. 22: p. 2

No tape recordings, no exhibit file.

Compiled by: M. Keillor, Reference Archivist  
1/19/81

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MINUTES OF THE MEETING  
OF THE  
LABOR AND INDUSTRIES COMMITTEE

January 18, 1955

The first regular meeting of the Senate Labor and Industries Committee was called to order by the Chairman, Senator Ulett, at 10:30 A.M. All members were present. Also present were Mr. George Brown, Secretary of the CIO and Mr. James Marr of the State Federation of Labor.

Discussion was held regarding schedule and procedure and it was decided that some hearings would be held at times appointed by the Chairman.

Senator Allen was asked to discuss his Bills. He stated that he would like to see some of the things that are standing alone gotten rid of without waiting until the end of the Session, such as Bill No. 2, regarding discrimination based on sex.

BILL NO. 2

Thirteen States and Alaska now have laws that, in some degree, are moving in this direction. This Bill is based on a model Bill prepared by the Women's Division of the United States Department of Labor. It simply prevents discrimination based on sex and does not apply just to women.

The Secretary of Labor has issued a report and will indicate the rates for men and women for the same kind of work.

It was presented in the discussion that it is not believed that there are a great number of instances where this would apply in this State, except in some cases where retail clerks are paid on a separate scale. Senator Brady added that in the Laundry, Dry Cleaning and Pressing businesses, women and girls are expected to produce the same quality of work for less. In some cases if they do not, they are sent on their way. He also saw violations in the retail sales trade.

Mr. Marr said that during the depression there were many instances of men going out and taking lesser pay than women in order to get work.

Senator Allen moved that a hearing be called on Bill No. 2 at the Chairman's discretion. Senator Boiven seconded the motion which carried unanimously.

MINUTES OF THE MEETING  
OF THE  
LABOR AND INDUSTRIES COMMITTEE  
(INCLUDING HEARING ON SB #2)  
FEB. 2, 1955

The meeting was called to order by the Chairman, Senator Ulett at 2:15 P.M. All members were present.

Senator Allen first explained Bill #2 briefly, stating that the meat of the Bill was contained on Page 2, Line 16, which he read. He stated that Labor is in favor of this Bill because it is interested in fair treatment of employees and if workers can be hired cheaper to do work, they will be hired, so if women will do the work cheaper it will put a man out of work. He presented quotations from others who had worked on this type of legislation in other states. He also has a summary of management reactions to such legislation.

Two of the most important things about the Bill are that 1.) It applies to a job rate based on job content and 2.) It prevents discrimination, so prevents undercutting family wages.

Senator Ulett asked regarding the scope of the people covered and Senator Allen stated that it covers every single person who works in the state.

The Bill is the same as the FEPC Law preventing discrimination because of race, creed and color. It is merely bringing things down to a more modern outlook.

The meeting was then turned over to those who wanted to speak in regard to the Bill. They were as follows:

FOR: Mrs. Jean Young, State Wage & Hour Commission  
George Brown, Secretary, CIO  
Mrs. George Bawder, Business & Professional Women's Group  
Mr. Gordon Swope, Secy-Treas., Oregon State Council of Retail Clerks  
Mrs. Chambers, Oregon City Retail Group of Cutlery Workers

AGAINST: Mr. Martin Rostevold, Butte Falls Insurance Co., Woodburn

Mrs. Calvin Cramacher also appeared to give information on a similar Bill which was passed in Montana some years ago.

MRS. YOUNG: Stated that she had not known of the hearing in time to bring along material in regard to this Bill, but would supply it at a later time. The State Wage and Hour Commission is very much interested in this particular legislation and feels it is desirable for the State of Oregon. They have studied and done research on

this type of Bill and from reports they have had from states that have had similar Bills, some of them have proven to be unsuccessful. She has checked with Mrs. Leopold as far as the Commission is interested. In some states similar legislation has proven very effective and in others not so much so. It is their belief that where it is not so successful it is lack of enforcement. She stated that 13 States and Alaska now have similar laws. Senator Wilhelm inquired if the successful legislation was due to the way it was set up and Mrs. Young said that the best has been that where the bills were set up after their proposed bill. The Wage and Hour Group is made up of one employer one employee and one impartial party. The Bill they favor covers everything except household help.

**GEO BROWN:** Stated that his organization supports Senator Allen's Bill, even though among the people he represents he did not know of any instances of discrimination between sexes. At one time there was a difference between pay for men and women in the Lumber Industry but that has been corrected and he knows of no instances of it now. There is one group where it does exist to some extent, this group being the Cannery Business. He will have a person from this business prepare a statement.

None of the Unions have discriminations as far as Mr. Brown knows.

Senator Ulett asked if Mr. Brown's Union represented any hospitals or groups like that where there are nurses, etc.

Mr. Brown answered to the negative, stating that they represented steel workers, lumber workers, clothing workers, etc.

**BANDER:** This Bill embodies a great deal that has been part of the Business and professional Program for a great number of years. There are 2,250 members in this organization, including teachers, nurses, factory workers, self-employed people, people in offices. Only a very few are housewives. She advised that this organization will stand behind any legislation of this kind.

Senator Brown asked if she knew of any specific cases to mention where teachers were discriminated against. Mrs. Bawder did not know for sure and stated that she had not had time to get alot of material together for this hearing.

Senator Brown stated that his reason for asking about this is that there is already a law protecting teachers and he would appreciate hearing about any cases in existence. He said that alot of times people speak for new legislation not knowing that the particular point they are interested in is already covered by a law.

Senator Allen stated that this law regarding teachers had been in existence for 20 years.

Senator Ulett asked her to send in examples where discrimination occurred.

Senator Wilhelm asked regarding who were members of Business and Professional group, asking if they weren't primarily office workers. Mrs. Bauder answered to the negative and gave a cross section of the membership.

GORDON SWOPE: Stated that it was very hard to speak without being repetitious since the views of his organization were somewhat the same as the others in favor and he is in full agreement with Senator Allen. He stated that 1/3 of the labor forces in Oregon are women. These women work to make a living and are undercutting mens wages. This jeopardizes an adequate standard of living. He gave as an instance of discrimination, the situation with Bank Tellers in Portland, men got \$25 to \$40 more than women. The same is true in many clerical jobs and in the case of retail clerks, textile stores, retail stores, etc. the same situation exists. Portland and Oregon City have a Contractual arrangement.

Senator Wilhelm asked if girls and men in Portland have the same pay for the same job. Mr. Swope said yes they did in Portland, but in most of the state they did not.

Senator Wilhelm asked when Mr. Swope said comparable work, could it be said that because a woman does not lift more than 25 lbs, she isn't doing the same work? Mr. Swope replied that women are not hired to do that kind of work.

Senator Wilhelm then asked regarding men leaving the job because of a low rate of pay. At an equal amount of pay, would the employers let the men go rather than bring women up to men's pay. Mr. Swope said that it does not work that way. He said there are many jobs where women fit in better than men.

Senator Ulett said in a Bank, where women get less, than it would be logical to bring in more women than to keep the men and pay the women more. Mr. Swope did not know about this.

Mr. Swope stated that the different rate of payment seemed to be established during the war and women have been paid less ever since.

Senator Brown asked if there was any such discrimination in practice at Grants Pass, which is his home and he would like to

know about it. Mr. Swope replied that he was not familiar with that particular situation as that was under the Teamsters Union, however, he could find out. He stated that Salem, Oregon was 25%. He will get information on all towns possible and will also send in contracts.

MRS. CHAMBERS: The retail clerks contract in Oregon City is the same in Department Stores and Mercantile, \$1.00 difference based on sex. In some instances where women are working as bartenders, the wage for man is \$1.87½ and the women cannot get more than \$1.25 to \$1.50. She stated that they did not like to have the women behind the bar, but there were some circumstances where it was necessary and while a woman cannot make as much as a man bartender, she can still make more than she can working as a waitress. She stated that where pay is covered on the contract, there is still infringement on it. Mr. Moore in Lebanon signed contract with a spread of 35 or 40¢ between the women and men. Employers will admit that women make better checkers in grocery stores, etc., than men. It was only with the threat of an industry-wide strike that the agreement was brought about in Oregon City.

Senator Brown asked if Mrs. Chambers understood that this does not raise the pay, only makes pay equal for men and women for the same job.

She understood that was true.

MR. ROSTEVOLD: Stated that he employs some girls in his office group and they have to be trained for several weeks to do the work required of them, so that both time and money are invested in them before they are satisfactory employees. After his original investment, girls have a knack of getting married and leaving their job, creating a loss to the firm. Because of that fact, Mr. Rostevold stated he did not feel that he would like to pay women more.

Senator Allen explained that the Bill does not mean that the same rate of pay is going to have to be paid by all companies. This Bill will change no rate, it will merely make the same job pay an equal amount to either sex who does the work. It has no effect on merit or seniority, etc. It does not mean that a grocery store on one side of the State has to pay the same as one on the other.

Senator Brown stated that there could also be a diversification of pay in time of experience.

Senator Allen then read from the Bill regarding merit pay.

MR. SWOPE: Stated that he did not think that this Bill applied to all employers by any manner of means, but it will be good to make the ones who are not following this line, do it right.

Senator Wilhelm asked about the success of the legislation in California and Washington. Mr. Swope said that it has accomplished its purpose. In some other states it has not been enforced too well.

Senator Wilhelm then asked if there had been any difficulties in enforcement, management and labor have gotten along all right? To which Mr. Swope replied that they had gotten along very well, better than anticipated.

Senator Allen stated that there is a wide variety of legislation, some has been good others have been inadequate. He quoted from early state administrators equal pay law. This Bill attempts to bring the levels up without alot of fuss. There will be no serious administrative problems.

Senator Brady asked if Mr. Swope had seen that there were inequities in Klamath Falls.

Mr. Swope said that he did not have the records.

MR. MARR: Mr. George Brown stated that Mr. Marr of the AFL had wanted to appear to state the support of his organization for the Bill, but the room was so crowded and he had another appointment, so he did not stay.

All were then dismissed except the members of the committee, who stayed on for a brief discussion. Mrs Calvin Cramer volunteered to give some information on how the legislation in Montana had been handled, so she was asked to give her views. Mrs. Cramer's husband was in the Montana Legislature in 1919, at the time that the Montana Bill passed. She remembered different women who were lobbying for equal pay. When the Law was passed, it was not specified who was to enforce the Law, so the buck was passed from one to the other. All possible employees were included in this Bill. It wasn't until 1946 that they finally said the Attorney General was the one who had to enforce the law. These are probably the reasons why the law did not prove too successful in Montana over that period of years.

Senator Ulett said that at the next meeting he would like to have Senator Sweetland in and discuss Senate Bill #135.

There was then some discussion regarding Bill #2. Senator Wilhelm brought up the question of its requiring another department in the department of Labor. Senator Allen stated that the worse that could happen would be that an additional deputy might be needed.

Senator Brown stated that he did not like section #6. He suggested that each member read this section over and observe the power it gives the Labor Commissioner. Senator Allen said that this was probably taken from the same powers he now has in some other legislation.

Senator Brady said that Mr. Swopes places have violent violations. He knows that girls are working 12 hours without even lunch hours.

Senator Brown discussed the fact that people come in to speak at these hearings without knowing the existing laws.

Senator Brady said he is going to check on Mr. Swopes statements regarding Klamath Falls.

Senator Ulett explained that the Legislative Counsel is going to work on the Bills from the Advisory Committee's Report.

Senator Brown said that he did not approve of Committee Bills.

Senator Allen asked how soon action could be taken on Bill #2. Senator Ulett suggested that the Committee wait until they can see what comes in from the people heard today. Senator Allen said he would like to get this Bill out before Committee is loaded down with work on other Bills.

Senator Brown said that he would not vote for this Bill with Section #6 included.

Senator Wilhelm stated that the information from these people will be here in a week and maybe some of the wording can be changed, etc., at that time.

Senator Allen asked if a time could be set on the Bill after the Committee has had a week to get this information. Senator Wilhelm suggested that this be taken up next Wednesday afternoon.

Senator Allen then asked regarding the "One or More" Bill. Senator Ulett said he wants to have the Legislative Counsel write it up.

Senator Brown said that there will be a load of Bills at the Legislative Counsel and he is doubtful as to how soon these can be drawn. Senator Hardie said that others were working on Bills without using that service.

MINUTES OF THE MEETING  
OF THE  
LABOR AND INDUSTRIES COMMITTEE  
(Including Hearing on S.B. #2)

February 15, 1955

The regular meeting was called to order by the Chairman, Senator Ulett at 11:45 A.M. All members were present.

Although no hearing had been scheduled, a number of people appeared who wished to be heard on Senate Bill #2, so the Committee allowed them to speak. Those attending were:

FOR: Chas. R. Smith, AFL  
J. D. McDonald  
James Marr, AFL  
George Brown, CIO

AGAINST: Mr. Clifford Zollinger, Oregon Bankers Association  
Mr. R. W. Franz, Oregon Bankers Association  
Mr. Scott A. MacEachron, Oregon Bankers Association  
Mr. J. B. Rinker, Retail Trade Bureau  
Mr. William Lubersky, Retail Trade Bureau  
Mr. D. J. Davis, Retail Trade Bureau  
George Halling, Retail Trade Bureau  
Mrs. Marion Cameron, Retail Trade Bureau  
William Woods, Retail Trade Bureau

Those speaking were Mr. Zollinger, Mr. Rinker and Mr. Lubersky.

Mr. Zollinger stated that the Bill has laudable objectives, but will create mischief. He was talking on behalf of all banks and did not know if this Bill would have too great an affect on his own bank, First National, since they have a rather elaborate job classification similar to the Barrington Study for State Employees.

He stated that one place where the Bank could run into possible difficulties was in the hiring of young men as Tellers with an eye to their future possibilities. When banks are competing for the service of college graduates, there is hot competition and they may have to pay the man \$300 as a starting wage. On the other hand, another man employed who was not in the top 10 of his class may be started on the same job for \$250. They are willing to pay a premium to get employees who can go further in the business and be of more value at a future date. The same applies in the hiring of women. They are not likely to pay a woman the same as a man to start.

If this Bill is passed, the Banks are concerned about the effect on employee morale and personnel relations. When a woman reaches the conclusion that she is being discriminated against, she will get other women to go along with her in trying to get equal pay with these

men who will be more valuable to the Bank in the future. If the women are satisfied now, this law is very likely to start them thinking "Have I been discriminated against?" and thus it is poor for employee morale.

Mr. Zollinger then answered questions regarding the operation of the bank. He stated that they now have about 60% women tellers, however, they are trying to bring in a larger number of men employees because they feel they do not have enough men to fill the places when advancement is forthcoming. He does feel that by and large women are as good as men as tellers. He stated that this law is much more drastic than the Fair Employment Practices Law and that his remarks would not apply equally to both. Fair Employment does have sharp teeth but does have much more intelligent provision than appears to be contemplated in this law. He stated that he thinks he favors the Fair Employment Practices but not this Bill, although he could not state what the basic difference was that caused him to feel this way about it. Senator Allen asked if the bill were changed to eliminate these men who are merely training while being tellers would it remove some of Mr. Zollinger's objections. Mr. Zollinger replied that he still thought the Bill would create charges of discrimination and create unhappy personnel.

Senator Wilhelm said he would like to have copies of similar laws such as California and Washington. Mr. Zollinger said he would be happy to initiate such an inquiry if the Committee would let him know what it wants. Senator Ulett said they needed the records of how the law has worked in California and Washington. Senator Allen said that the copies can be obtained in a few minutes, but the language would take longer to figure out.

Mr. J. B. Rinker, President of the Retail Trade Bureau then appeared. The Bureau consists of 400 merchants in the Portland area. He read from a prepared statement, a copy of which was left with the Committee. Senator Brady and Mr. Rinker discussed some of the different selling positions and which ones would be classed as equal work with others.

Mr. William Lubersky, Legal counsel of the Retail Trade Bureau then appeared and gave examples of the law in other States. He stated that one large objection to this Bill was that it places in the hands of the Labor Commissioner complete administrative power. It would require the building up of a large staff of trained personnel to determine where discrimination has occurred. It was his belief that it is impossible to accomplish the type of results desired by this type of legislation, as there are too many factors to

consider. The law also starts out by putting the employer behind the 8 ball. Mr. Lubersky quoted from the Labor Law Journal of October, 1954, a copy of which he left for our files.

It was necessary to adjourn the meeting before Me. Lubersky had completed his talk.

The meeting was adjourned by the Chairman at 12:25 Noon.

Respectfully submitted,

Phyllis Kopald, Committee Clerk

MINUTES OF THE MEETING  
OF THE  
LABOR AND INDUSTRIES COMMITTEE

February 16, 1955

The regular meeting was called to order by the Chairman, Senator Ulett at 2:25 P.M. All members were present except Senator Brady and Senator Hardie.

There was a discussion of Senate Bill #2 and it was finally agreed that if Senator Allen would make changes in the Bill proposed by the members of the Committee, the Committee would try to pass it out at the next meeting. Senator Allen agreed to do so and try to have the amended Bill ready by that time.

There was some discussion of Senate Bill #215 and it was decided to wait until the bills based on the Governors Advisory Committee were considered before doing anything about this Bill.

Senate Bill #3 was also discussed and Senator Wilhelm stated that if the Supreme Court declares the present law unconstitutional he is in favor of passing this Bill right out. However, other members of the Committee stated that if only one section of the existing law is declared unconstitutional, they would prefer not to pass out Bill #3. Otherwise, as soon as word is received on the action of the Supreme Court, action should be taken on this Bill.

Senate Bill #4 was discussed and it was suggested that on Page 2, Section 2, Subsection 2 be eliminated. It was decided to vote on this Bill next time. Senator Wilhelm stated that he was afraid that if this Bill were tied in with the Unemployment Compensation package, Senator Brown might not vote for it. Senator Brown stated that he might go for the Bill if they got off the high experience rating.

Senator Allen said he would have a new amended Bill #2 printed and try to do this by the next meeting.

The meeting was adjourned by the Chairman at 3:45 P.M.

Respectfully submitted,

Phyllis Kopald, Committee Clerk

MINUTES OF THE MEETING  
OF THE  
LABOR AND INDUSTRIES COMMITTEE

February 22, 1955

The regular meeting was called to order by the Chairman, Senator Ulett, at 11:25 A.M.

SENATE BILL #2: There was a brief discussion of Senate Bill #2, which has been amended and engrossed according to proposed changes at the February 16 meeting.

Senator Allen moved that SB#2 be reported out do pass as amended and engrossed. The motion was seconded by Senator Brady and carried unanimously.

It was decided to have copies printed of this engrossed Bill eliminating all the bracketing material as soon as possible, so that clearer copies might be on the desks before this Bill is voted on. Senator Ulett stated that he would try to have this printing done immediately.

SENATE BILL #135: Senator Hardie moved that this Bill be tabled, the motion was seconded by Senator Boiven.

Discussion: Senator Brady stated that this Bill just allows members of the House or Senate to request the Union Label. It does not make the Union Label mandatory, nor involve the State printers office in collective bargaining, etc. It is his opinion that by tabling this bill the State of Oregon and those in the printing plant are being denied the chance to show the world that there are not bad working conditions existing there.

The roll call on this motion was as follows: Aye: Senators Ulett, Boiven, Wilhelm, Hardie, and Brown. No: Senators Brady and Allen. The Motion carried to table Senate Bill #135.

SENATE BILL #4: Senator Allen moved that SB #4 be reported out do pass with the following amendment: On page 2, Line 25 of the printed Bill, following the word "instrumentality", reinstate the deleted word "Thereof.", and delete the words "of the state, unless the". On Page 2 of the printed Bill, delete all of lines 26,27,28 and 29 inclusive. On Page 3 of the printed Bill delete all of Line 1.

Senator Wilhelm seconded the motion to so amend the Bill and the motion carried unanimously.

Senator Allen moved that SB #4 be reported out do pass as amended. The motion was seconded by Senator Brady.

Committee on Labor and Industry

Date: March 8, 1955  
Time: 2:00 P.M.  
Room: 329  
Absent: Rep. Klemsen

The Chairman called the meeting to order. He introduced Mr. Gary Lockwood, Willamette University student who is interested in HB 128, to the committee.

The following bills were discussed:

SB 2

The Chairman said he had received correspondence both for and against this bill. Suggested that a hearing be scheduled for Tuesday, March 15, at 2:00 P.M., in Room 6. The committee concurred.

HB 128

Discussed the amendments suggested by Reps. Corbett and Cardwell. Committee agreed that whoever is the head should be a fair and partial person. Rep. Cone suggested that this bill be held up until Thursday's meeting.

HB 265

The committee discussed amending Section 11, line 17 by inserting the words "or arrange". The sentence would read "All school boards shall provide or arrange suitable facilities for". It was moved by Rep. Ben Anderson, seconded by Rep. Littrell, that the amendment be adopted. Motion carried. It was moved by Rep. Ben Anderson, Seconded by Rep. Marivether, that the bill be passed out as amended. Motion carried.

HB 270

The Chairman said he had talked with the Farm representatives and they objected to including vessels used by farmers. Amendments proposed by the Farm group were read. Rep. Cone and the Chairman also read letters received pertaining to this bill. Rep. Cardwell asked the Chairman to get figures from Mr. Nilsen pertaining to the number of vessels inspected last year in comparison to 10 years ago. Rep. Littrell suggested that the Farm Bureau be notified to be present at Thursday's meeting. This would enable them to speak their piece on the bill.

Meeting adjourned at 3:20 P.M.

Respectfully submitted,

Joan Lance, Clerk

COMMITTEE ON LABOR AND INDUSTRY  
PUBLIC HEARING

Date: March 15, 1955  
Room: 6  
Time: 2:00 P.M.  
Absent: Representative Cone  
Consideration: Senate Bill 2

The Chairman called the meeting to order. Explained to the visitors that the reason the committee members were delayed was because there was a very important bill under debate in the House. Called upon Senator Allen, sponsor of Senate Bill 2, to explain the bill before hearing from the visitors wishing to speak.

Senator Allen: Explained the bill before the committee is not the original bill as a result of a good deal of thoughtful discussion by the Senate. This bill passed the Senate unanimously. Personally thinks the bill is a good one and would like to see it kept in present form. There are 13 states and one territory that have similar laws. These 13 states employ 1/2 the women employed in industry. Bill provides that an employer may not discriminate against women and pay a lesser rate of wage.

The Chairman called for those wishing to speak for the bill.

Mr. Gordon Swope, Secretary, Oregon State Council Retail Clerks: Wanted to speak in behalf of the bill and point out why the retail clerks feel this legislation is important. Puts rate of pay on the job rather than the sex. Recently talked to girls working in Portland banks. They are doing identical work to men and they get 20 to 50 dollars less. Also clerical work finds the higher rate of pay to be in the men. Women working in grocery stores (with the exception of Portland metropolitan area) receive 10¢ to 40¢ less than men working in the stores. Would like to see the bill go through the House unanimously. Rep. Littrell asked about women working in Hardware stores where they would run up against the problem of 25lb. weight limitation. Mr. Swope stated that this law has to do with comparable work--puts pay on the job rather than the sex.

Mrs. Richard Gordon: Have 30 members present of the Oregon Business and Professional Women --represent 9 different clubs. Some came as far as Klamath Falls. Very interested in the way this type of legislation is passed. Represent employers as well as employees. Happen to be an employer myself and am very open minded on the subject. Would like to go on record of backing this legislation.

Eleanor Roberts, President Salem Business and Professional Women: Legislation is extremely democratic, provides protection for men. Good common sense to vote for this kind of legislation. Stated example: Wouldn't pay more for goods because its made by a man. Pay good money for good goods regardless who makes it. Thinks since 13 states and Alaska have this type of legislation Oregon should go ahead and carry it out also.

Mrs. W.D. Hagenstein, Portland Branch of the American Association of University Women: Feel this is a valuable type of legislation. Feel Senate Bill 2 is solution to problem of equal pay. Proud of the fact that this bill would not affect the majority of employers in Oregon; also proud that so many employers already recognize that sex is not a valid criteria for the establishment of a wage scale. One of the greatest strengths of our country is our recognition of the worth of the individual. It seems to us that "equal pay for equal work" is simply one more application of this basic principle. The Portland Branch of A.A.U.W. feels that Oregon has a great deal to gain and nothing to lose by the adoption of this legislation and we respectfully urge that this House Committee pass out SB 2 with a "do pass" recommendation.

Mr. John R. Moore, Salem Trades and Labor Council: One point to bring out. If a woman can make as much profit as a man then she is entitled to the same pay. Referred to Mr. Littrell's question. Gave example that women in a store might not be able to lift heavy objects but they can smile all day and draw in the customers. There are machines that can lift heavy weights but they can not smile at the customers.

The Chairman read the names of the people he had heard from in regard to SB 2. Called upon spokesman from Cottage Grove. She said that two previous spokesmen had said all that was necessary. The Chairman then asked to hear from the opposition.

Mr. W.F. Lubursky, Portland Retail and Trade Bureau: Not speaking in opposition to equal pay but wonder if this type of legislation is the answer to the problem. Read article from Labor Law Journal. Feel changes made by the Senate will go long way to eliminate the cost matter that would have been in the original bill. Referred to Mr. Littrell's question, women can not lift more than 25 lbs. nor carry over 45lbs. Factor of sex determine what they can and cannot carry. In Oregon employers have to have places for women to lie down, have limit to number of working hours, absenteeism is twice as great to that of men, continuity of employee is of great importance to employer. All these things have bearing on the value of an employee according to labor bulletin. Language in sub-section 2 of section 2 needs clarification.

Mr. D.J. Davis, Portland Trade Bureau: Have no quarrel with equal pay for men and women providing the law can specifically take care of it. Too difficult to administer the law as it is written (referring to sub-section 2 of section 2). No two people can put out the same amount of work. Men can produce more sales in comparison to a woman. Does not think this law is right or necessary.

Mr. Kenneth Rodgers, Portland Retail Trade Bureau: Particular purpose does not apply to our stores. Chief concern is the interpretation. Nothing in this law that guarantees fair analysis for the retailer. Talked about language on page 3--feels burden is placed on the employer. As applied to the retail industry this present law would add nothing but confusion. Retailers have enough problems now in running a store without saddling them with any more. Mr. Rodgers answered questions asked by the committee.

Mr. Gordon Swope, Sec. Oregon State Council Retail Clerks: Speaking for the bill. Everyone is for equal pay. Women first came into the grocery industry during the war and stayed. All employers agree that women are superior to men. Women are more and more taking on the jobs of men.

Senator Allen: Stated that Mrs. Alice Leibold has good article in Labor Law Journal, Jan 55. Senator Ulett pays same wage rates in his business. Employs some 700 people. Is concerned how far the state should go. Does not discriminate wages on the basis of race nor creed and now they're adding sex. Wish employers could see the good of the bill rather than the bad. Its nothing but one more step in the problem of a growing society.

Hellie Burns, Oregon President Business and Professional Women: Women are here to stay! Not trying to promote superior attitude... trying to educate women to adjust to problems such as this. Do not like discriminatory laws. Do ask for full citizenship and this isn't based on sex.

The Chairman thanked the ladies for coming out to discuss this bill with the committee.

Meeting adjourned 4:00 P.M.

Respectfully submitted,

Joan Lance, Clerk

commission to see if they can more clearly define this term and to find out the exact amount of money that will be available. It was also suggested and approved by the committee that the substitute bill for HB 12 be introduced.

SB 2

Mr. Herb Barker, Rep. Central Labor Council, Salem: On record as favoring this bill. Mr. John Moore, Pres. State Council of Clerks: Very much in favor of the bill. Only questions committee asked these men were in regard to (a) of Section 3 on page 3 of the bill. The Chairman then thanked and excused the visitors. It was moved by Rep. Klensen and seconded that this bill be passed out with a do pass recommendation. Motion carried. The Chairman said that do to the fact that this is a ladies bill he would let Rep. Meriwether present it on the floor.

HB 128

The Chairman feels that the setup under this bill would work out very satisfactorily. Committee feels that this office should be where it would do the most good and where it could be as impartial as possible. Talked about the amendments suggested by Reps. Corbett and Cardwell. Rep. Cardwell read a few more amendments for the bill. Committee decided to consider this bill until Thursday's meeting.

Meeting adjourned at 4:00 P.M.

Respectfully submitted,  
Joan Lence, Clerk