Equal Pay

In America, people's wages should be based on the value of their work. But for many women and people of color, that American promise remains unfulfilled, and families are paying the price.

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Summary

- **Millions of women and people of color continue to suffer wage discrimination.**
- **This inequity particularly affects women of color, with African-American women earning 68¢ and Latinas earning only 56¢ for every dollar paid to white male workers.**
- **The gender wage gap alone results in an average annual loss of more than $4,000 per American family.**
- **Existing laws are hard to enforce and do not address the problem of occupations that are undervalued because they are dominated by women or people of color.**
- **States can enact legislation that strengthens enforcement of existing laws and creates a means to identify and address the causes of unequal pay.**
- **Equal pay will not bust the budgets of businesses or governments.**
- **Equal pay is good business and can boost the economy.**

Millions of women and people of color continue to suffer wage discrimination.

Today, according to the U.S. Census Bureau, women working full-time throughout the year earn 77¢ for every dollar earned by men.[1] African-American women earn 68¢ and Latinas earn 56¢ for every dollar paid to white male workers. Men of color also experience wage discrimination, with African-American men earning 75¢ and Latinos earning only 64¢ for every dollar paid to their white male counterparts.[2]

The gender wage gap alone results in an average annual loss of more than $4,000 per American family.[3]

If married women were paid the same as men doing comparable work, family incomes would rise and family poverty rates would fall. If single working mothers earned as much as men doing comparable work, their family poverty rates would be cut in half.[4] Moreover, lower lifetime earnings translate into less savings and lower pensions during retirement. Reductions in poverty rates would also reduce the need for government expenditures on assistance programs like the Earned Income Tax Credit and food stamps.

The wage gap is the result of both discrimination and the concentration of women and people of color in a narrow range of jobs that are undervalued and underpaid.

Although the wage gap can be partially explained by differences in education, experience and /or time in the workforce, a significant portion cannot be attributed to any of these factors and is the result of discrimination. In recent years, Home Depot and Publix Supermarkets each agreed to pay more than $80 million to settle lawsuits based on sex discrimination. In 2000, Coca-Cola settled a wage discrimination lawsuit brought by African-American workers for more than $190 million. Further, more than half of all women workers hold sales, clerical, service or caregiving jobs (child care, elder care, and nursing). These professions, held mainly by women, pay less than equivalent jobs held by men.

Existing laws are hard to enforce and do not address the problem of occupations that are undervalued because they are dominated by women or people of color.

Federal and state equal pay laws have been in effect for decades, yet wage discrimination continues. Not only are these laws poorly enforced, but they do not apply to the problem of unequal pay for *equivalent* work in *different* jobs.

States can enact legislation that strengthens enforcement of existing laws and creates a means to identify and address the causes of unequal pay.

One option, the Equal Pay Remedies and Enforcement Act, enhances existing laws and establishes a multi-sector Equal Pay Commission to study and make recommendations about the extent, causes and consequences of wage disparities. The Commission provides the research needed to craft state-specific policies.

States can also enact legislation requiring equal pay for equivalent jobs.

Another option, the Fair Pay Act, prohibits pay differentials between women and men and between minority and non-minority workers in jobs that are equal or that, though dissimilar, are nevertheless equivalent in their overall composite of skills, effort, responsibility and working conditions. Exceptions are made for differentials based on bona fide seniority, merit or other non-discriminatory factors.

States have led the way in closing the wage gap for over two decades.

States began taking action on equal pay in 1982, when Minnesota first implemented equal pay for all public sector employees. States continue to be the source of innovative solutions for solving the wage gap. In 2003, Illinois enacted a law that prohibits wage discrimination on the basis of gender; New Mexico and Utah passed bills requiring pay equity studies; and the West Wirginia legislature created an equal pay commission.

It is possible to compare different jobs within an organization to determine equivalent work.

For several decades American employers have used job evaluation studies to set pay and rank for different jobs within a company, often taking into consideration factors such as skill, effort, responsibility and working conditions. In fact, two out of three workers are employed by businesses that use some form of job evaluation. The federal government's job evaluation system, covering nearly 2 million employees, has been in use for over 70 years.

Equal pay will not bust the budgets of businesses or governments.

Pay adjustments tend to be modest and are phased in over a period of years. In Minnesota, where equal pay legislation was implemented for public sector employees over a four-year period, the cost was only 3.7 percent of the state's payroll budget. In the state of Washington, equal pay for state employees was achieved at a cost of 2.6 percent of personnel costs, implemented over an eight-year period.

Equal pay is good business and can boost the economy.

One survey found that businesses cited the elimination of wage discrimination between different jobs as "good business," and that equal pay is consistent with remaining competitive.[5] Furthermore, raising wages for women and people of color increases their purchasing power, which strengthens the economy. As working families continue to face economic hardship resulting from the recession, it is critical that women and people of color receive fair wages.

Endnotes

[1] Using 2002 annual earnings from the U.S. Census Bureau (Current Population Reports).

[2] U.S. Bureau of Labor Statistics (Current Population Survey).

[3] AFL-CIO & Institute for Women's Policy Research, "Equal Pay for Working Families: National and State Data on the Pay Gap and its Costs," 1999.

[4] Ibid.

[5] National Committee on Pay Equity, "Questions and Answers on Pay Equity," 2000.

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For more information...

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www.afscme.org

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Institute for Women's Policy Research
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Women's Institute for Secure Retirement
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Equal Pay Remedies and Enforcement Act

SECTION 1. SHORT TITLE

This Act shall be called the "Equal Pay Remedies and Enforcement Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Despite federal and state laws banning discrimination in employment and pay in both the private and public sectors, wage differentials persist between women and men, and between minorities and non-minorities in the same jobs, and in jobs that are not the same but that require equivalent composites of skill, effort, responsibility and working conditions.

2. Wage discrimination not only harms individual women and people of color, it depresses living standards, contributes to higher poverty rates among female-headed and minority households, prevents the maximum utilization of available labor resources, causes labor disputes that burden commerce, and violates the state's expressed policy against discrimination.

3. Many people work in occupations that are dominated by individuals of their own sex, race and / or national origin, and discrimination in hiring, job assignment, and promotion has played a role in establishing and maintaining segregated workforces.

4. Current remedies imposed on employers who practice discrimination in pay between men and women, and between minorities and non-minorities, have proven to be only partially effective in eliminating such wage disparities.

5. Understanding the full extent and causes of wage disparities between men and women, and between minorities and non-minorities in the private and public sectors, would enable the state to take more effective measures to reduce disparities and to eliminate discrimination in wage-setting.

(B) PURPOSE—This law is enacted to protect the health and welfare of individual residents and improve the overall labor environment by correcting and deterring discriminatory wage practices based on sex, race, and / or national origin; developing reliable data about the extent of such wage discrimination; and providing greater understanding about its causes.

SECTION 3. ENHANCED PENALTIES

After section XXX [citation to remedial section of the state equal pay law], the following new paragraphs shall be inserted:

(A) Any employer who violates section(s) [citation to section(s) prohibiting wage discrimination] shall additionally be liable for such compensatory and punitive damages as may be appropriate.

(B) Any employer found liable by virtue of a final judgment under this Act for any monetary damages provided thereunder shall pay to the state a civil penalty equal to 10 percent of the amount of damages owed. Such civil penalty shall be used by the state solely for the purpose of carrying out its responsibilities

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for the administration and / or enforcement of this section, the Equal Pay Commission, and the enforcement of [insert name(s) of other state employment discrimination laws].

SECTION 4. EQUAL PAY COMMISSION

(A) Within 90 days after the effective date of this Act, the [Secretary of Labor] shall appoint a Commission of nine members, to be known as the "Equal Pay Commission."

(B) Membership of the Commission shall be as follows:

1. Two representatives of businesses in the state, who are appointed from among individuals nominated by state business organizations and business trade associations.

2. Two representatives of labor organizations, who have been nominated by a state labor federation chartered by a federation of national or international unions, that admits local unions as members, and exists primarily to carry on educational, legislative and coordinating activities.

3. Two representatives of organizations whose objectives include the elimination of pay disparities between men and women and / or minorities and non-minorities, and who have undertaken advocacy, educational or legislative initiatives in pursuit of that objective.

4. Three individuals, drawn from higher education or research institutions, who have experience and expertise in the collection and analysis of data concerning such pay disparities and whose research has already been used in efforts to promote the elimination of those disparities.

(C) The Commission shall make a full and complete study of:

1. The extent of wage disparities, in both the public and private sector, between men and women, and between minorities and non-minorities.

2. Those factors which cause, or which tend to cause, such disparities, including segregation of women and men, and of minorities and non-minorities across and within occupations; payment of lower wages for occupations traditionally dominated by women and / or minorities; child-rearing responsibilities; and education and training.

3. The consequences of such disparities on the economy and on affected families.

4. Actions, including proposed legislation, that are likely to lead to the elimination and prevention of such disparities.

(D) The Commission shall, no later than 12 months after its members are appointed, make its report to the [Secretary of Labor], who shall in turn transmit it to the Governor.

(E) The Commission's report shall include the results of its study as well as recommendations, legislative and otherwise, for the elimination and prevention of disparities in wages between men and women, and between minorities and non-minorities.

SECTION 5. EFFECTIVE DATE - This Act shall take effect on July 1, 2004.

Fair Pay Act

SECTION 1. SHORT TITLE

This Act shall be called the "Fair Pay Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS – The legislature finds that:

1. Despite federal and state laws banning discrimination in pay in both the public and private sectors, wage differentials persist between women and men and between minorities and non-minorities in the same jobs, and in jobs that are dissimilar but require equivalent composites of skill, effort, responsibility and working conditions.

2. The existence of such wage differentials depresses wages and living standards; reduces family incomes and contributes to higher poverty rates experienced by female-headed and minority households; prevents the maximum utilization of available labor resources; tends to cause labor disputes, thereby burdening and obstructing commerce; constitutes an unfair method of competition; and [insert a state specific finding, e.g., "constitutes an unfair labor practice under state law or violates the state's public policy against discrimination."]

3. Discrimination in wage-setting practices has played a role in depressing wages of women and minorities.

4. Many individuals work in occupations that are dominated by members of the same sex, race, and / or national origin, and discrimination in hiring, job assignment, and promotion has played a role in establishing and maintaining segregated workforces.

5. Eliminating discrimination in compensation based on sex, race and / or national origin would have many positive effects, including providing a solution to problems in the economy created by discriminatory wage differentials; reducing the number of working women and people of color earning low wages, thereby lowering their incidence of poverty during normal working years and in retirement; and promoting stable families by raising family incomes.

(B) PURPOSE – It is the purpose of this Act to correct, and as rapidly as practicable to eliminate, discriminatory wage practices based on sex, race and / or national origin.

SECTION 3. FAIR PAY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS – In this section:

1. "Employer" means [cite existing definition in state employment law].

2. "Employee" includes any permanent employee, whether working full-time or part-time, and any temporary employee who has worked for a period of at least three months. "Employee" shall not include any individual employed by his / her parents, spouse or child.

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3. "Equivalent jobs" means jobs or occupations that are equal within the meaning of the Equal Pay Act of 1963, 29 U.S.C. 206(d), or jobs or occupations that are dissimilar but whose requirements are equivalent, when viewed as a composite of skill, effort, responsibility and working conditions.

4. "Person" means an individual, partnership, association, corporation or other legal entity, including the state and all of its political agencies and subdivisions.

5. "Labor organization" means any organization that exists for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

6. "Market rates" means the rates that employers within a prescribed geographic area actually pay, or are reported to pay for specific jobs, as determined by formal or informal surveys, wage studies, or other means.

7. "Wages and wage rates" shall include all compensation in any form that an employer provides to employees in payment for work done or services rendered, including, but not limited to, base pay, bonuses, commissions, awards, tips, or various forms of non-monetary compensation if provided in lieu of, or in addition to, monetary compensation, and that have economic value to an employee.

(B) PROHIBITION AGAINST DISCRIMINATION IN WAGES

1. It shall be an unlawful employment practice in violation of this chapter for an employer to discriminate between employees on the basis of sex, race and / or national origin by:

   a. Paying wages to employees at a rate less than the rate paid to employees of the opposite sex or of a different race or national origin for work in equivalent jobs; and / or
   b. Paying wages to employees in a job that is dominated by employees of a particular sex, race or national origin at a rate less than the rate at which such employer pays to employees in another job that is dominated by employees of the opposite sex or of a different race or national origin, for work on equivalent jobs.

2. Notwithstanding paragraph 1 above, it shall not be an unlawful employment practice for an employer to pay different wage rates to employees, where such payments are made pursuant to:

   a. A bona fide seniority or merit system;
   b. A system that measures earnings by quantity or quality of production; or
   c. Any bona fide factor other than sex, race or national origin, provided, however, that wage differentials based on varying market rates for equivalent jobs or the differing economic benefits to the employer of equivalent jobs shall not be considered differentials based on bona fide factors other than sex, race or national origin.

3. An employer who is paying wages in violation of this section shall not, in order to comply with the provisions of this section, reduce the wages of any employee.

4. No labor organization or its agents representing employees of an employer having employees subject to any provision of this chapter shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph 1 of this section.

5. The [State Department of Labor or other appropriate agency] shall promulgate regulations specifying the criteria for determining whether a job is dominated by employees of a particular sex, race, or national origin. Criteria shall include, but not be limited to, factors such as whether the job has ever been formally classified

as or traditionally considered to be a "male" or "female" or "white" or "minority" job; whether there is a history of discrimination against women and / or people of color with regard to wages, assignments or access to jobs, or other terms and conditions of employment; and the demographic composition of the workforce in equivalent jobs (e.g., numbers or percentages of women, men, white persons, and people of color). The regulations shall not include a list of jobs.

(C) OTHER PROHIBITED ACTS

It shall be an unlawful employment practice in violation of this chapter for an employer:

1. To take adverse actions or otherwise discriminate against any individual because such individual has opposed any act or practice made unlawful by this section; has sought to enforce rights protected under this section; or has testified, assisted or participated in any manner in an investigation, hearing or other proceeding to enforce this section; or

2. To discharge, or in any other manner discriminate against, coerce, intimidate, threaten, or interfere with any employee or any other person because an employee inquired about, disclosed, compared, or otherwise discussed an employee's wages, or because an employee exercised, aided or encouraged any other person to exercise any right granted or protected by this section.

(D) WAGE DISCLOSURE, RECORDKEEPING AND REPORTING REQUIREMENTS

1. Upon commencement of an individual's employment and at least annually thereafter, every employer subject to this section shall provide to each employee a written statement sufficient to inform the employee of his or her job title, wage rate, and how the wage is calculated. This notice shall be supplemented whenever an employee is promoted or reassigned to a different position with the employer, provided however, that the employer is not required to issue supplemental notifications for temporary reassignments that are no greater than three months in duration.

2. Every employer subject to this section shall make and preserve records that document the wages paid to employees and that document and support the method, system, calculations and other bases used to establish, adjust and determine the wage rates paid to said employer's employees. Every employer subject to this section shall preserve records and make reports from the records as shall be prescribed by regulation by the [State Department of Labor or other appropriate agency].

3. The regulations promulgated under this section relating to the form of reports required by paragraph 2 shall provide for protection of the confidentiality of employees, and shall expressly require that reports shall not include the names or other identifying information from which readers could discern the identities of employees. The regulations may also identify circumstances that warrant a prohibition on disclosure of reports or information identifying the employer.

4. The [State Department of Labor] may use the information and data it collects pursuant to paragraph 2 for statistical and research purposes, and may compile and publish such studies, analyses, reports and surveys based on the information and data, as it considers appropriate.

(E) ENFORCEMENT

1. This section may be enforced by a private cause of action under [appropriate section of state law].

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2. This section shall be enforced by [appropriate state agency], which shall promulgate such regulations as are necessary to implement and administer compliance. Regulations shall include procedures to receive, investigate and attempt to resolve complaints; and bring actions in any court of competent jurisdiction to recover appropriate relief for aggrieved employees.

3. In any action under this section in which an employee prevails:

a. The employee shall be awarded monetary relief, including back pay in an amount equal to the difference between the employee's actual earnings and what the employee would have earned but for the employer's unlawful practices, and an additional amount in punitive damages, as appropriate.
b. The employer shall be enjoined from continuing to discriminate against employees and the employer may be ordered to take such additional affirmative steps as are necessary, including reinstatement or reclassification of affected workers, to ensure an end to unlawful discrimination.
c. The employer shall pay a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action.

(F) STATUTE OF LIMITATIONS

An action may be brought under this section not later than two years after the date of the last event constituting the alleged violation for which the action is brought.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2004.