

**Testimony of Fatima Goss Graves  
Vice President for Education & Employment  
National Women's Law Center**

**U.S. Senate Committee on Health, Education, Labor & Pensions  
Economic Security for Working Women: A Roundtable Discussion**

**May 20, 2014**

Thank you for the opportunity to speak today on behalf of the National Women's Law Center on the critical issue of economic security for working women. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights. We advance the issues that cut to the core of women's lives in education, employment, family and economic security, and health and reproductive rights—with special attention given to the needs of low-income women and their families. We believe that ending all forms of workplace discrimination is crucial to removing barriers to women's economic opportunity.

Employment discrimination takes place across the income spectrum, but workers in low-wage jobs are hit shockingly hard. For example, about 50 percent of pregnancy discrimination charges filed with the Equal Employment Opportunity Commission (EEOC) between 1996 and 2005 involved the service or retail industries.<sup>1</sup> Between January and November 2011 alone, 37 percent of sexual harassment charges filed with the EEOC came from women in the restaurant industry.<sup>2</sup> These are jobs that tend to be low-wage.

Women working in low-wage jobs, who are juggling multiple personal, caregiving, and financial responsibilities, can least afford to have their livelihoods threatened by discrimination. But they also unfortunately confront systemic discrimination that shapes their basic employment opportunities. Women are subject to sexual harassment, experience discrimination when pregnant or caregiving, and are paid less in nearly every occupation, even those that pay the very lowest wages. These and other basic violations of the employment discrimination laws continue 50 years after Congress outlawed workplace discrimination in Title VII of the Civil Rights Act, and undermine the advancement of women in jobs in nearly every sector.

**I. Sexual harassment remains pervasive in low-wage workplaces.**

Sexual harassment remains a persistent problem in workplaces overall and in low-wage workplaces in particular. In Fiscal Year 2013, the combined total number of harassment charges filed with the Equal Employment Opportunity Commission (EEOC) and state and local Fair Employment Practices Agencies was over 30,000.<sup>3</sup> More than 10,000 of these charges involved sexual harassment, and 82 percent were brought by women.<sup>4</sup> But these numbers probably do not even come close to reflecting the extent of sexual harassment. In a recent survey, 60 percent of workers who experienced harassment said they never reported it.<sup>5</sup> The pervasiveness of sexual harassment has also been well-documented among low-wage workers.<sup>6</sup> In a study of more than 1,200 predominantly low-income union workers in the Boston area, 26 percent of women and 22

percent of men reported experiencing sexual harassment.<sup>7</sup> African-American women were more likely to report having experienced sexual harassment (28 percent) than white women (21 percent) and Latinas (17 percent).<sup>8</sup>

Sexual harassment is pervasive in many low-wage sectors. For example, a survey conducted by Restaurant Opportunities Centers (ROC) United found that more than one in ten workers in the restaurant industry reported that they or a coworker had experienced sexual harassment, and this is likely an undercount.<sup>9</sup> As noted above, a 2011 review by MSNBC of EEOC charge data found that nearly 37 percent of EEOC sexual harassment charges from January to November 2011 came from women in the restaurant industry.<sup>10</sup> Workers have described harassment in restaurants as simply “an accepted part of the culture.”<sup>11</sup> Women working in agriculture, who are often migrant workers, are also especially vulnerable to sexual harassment. Sexual harassment and assault is so common that farms in California have been referred to by farmworkers as the “field of panties” and farms in Florida as the “Green Motel.”<sup>12</sup>

More than fifteen years ago, the Supreme Court put in place strong protections against workplace harassment. Recognizing the potential for supervisors to abuse their power over their subordinates, in *Burlington Industries, Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, the Supreme Court held that employers have a heightened legal responsibility to protect workers from supervisor harassment.<sup>13</sup> *Faragher* and *Ellerth* established an important principle: because a supervisor’s ability to harass is a direct result of the authority given to the supervisor by the employer, the employer should be liable for the supervisor’s actions *unless* the employer can show that it took steps to prevent harassment and to address harassment when it occurred, and that the plaintiff failed unreasonably to take advantage of the opportunities provided by the employer to report and address the harassment.<sup>14</sup> This rule encourages employers to put policies in place to prevent harassment and to respond promptly and effectively when harassment occurs.

However, the Supreme Court recently undermined this longstanding principle in the narrow 5-4 decision in *Vance v. Ball State University*.<sup>15</sup> Maetta Vance, an African-American employee who worked in the catering department at Ball State, filed a lawsuit against her employer for racial harassment alleging that Saundra Davis, whom Vance argued was her supervisor, subjected Vance to racial slurs, threats, and intimidation.<sup>16</sup> Because Davis did not have the power to take tangible employment actions against Vance, the Court held that Davis did not qualify as Vance’s supervisor, and that Ball State could not be held vicariously liable for Davis’s actions.<sup>17</sup> The decision held that heightened protections from harassment no longer apply to harassment by those higher-ups who direct daily work activities but do not have the power to hire and fire.<sup>18</sup> Now, workers who are harassed by their boss must proceed under the more difficult negligence standard that applies in coworker harassment cases, unless that boss has the power to hire and fire.<sup>19</sup> And their cases may be thrown out as a result.

Unfortunately this decision has the potential to have negative consequences for millions of workers, and especially for low-wage workers. Based on a review of the academic literature and an informal survey of sector-based organizations advocating for workers, we believe that millions of lower-level supervisors have significant power over low-wage workers.<sup>20</sup> First, our analysis shows that there are more than six-million lower-level supervisors in our nation’s workplaces, and that more than half of these oversee low-wage workers.<sup>21</sup> Second, our analysis suggests that these lower-level supervisors have significant responsibility for directing entry-

level workers' day-to-day activities.<sup>22</sup> And finally, our analysis suggests that most of these lower-level supervisors have no formal authority to hire or fire workers, which often lies with managers.<sup>23</sup> All of that tells us that most employees with the day-to-day management authority are not the ones with the formal power to hire or fire employees, and are therefore not supervisors in the eyes of the law when it comes to holding their employers liable for harassment that they might perpetrate.

Because they often have little bargaining power, workers in low-wage jobs can be severely affected by harassment that involves manipulation of their daily work activities.<sup>24</sup> And this is exactly the type of harassment that lower-level supervisors are well positioned to perpetrate. The person who tells you to clean toilets instead of working the register, to stay late, to work on weekends, or to work the night shift, is enough of a boss to make your life miserable.

Take fifteen-year-old Megan McCafferty, for example. Jacob Wayne Peterson was McCafferty's 21-year-old shift supervisor at McDonald's, and was often the most senior person on duty when McCafferty worked. Peterson participated in McDonald's manager-in-training program, assigned job duties, scheduled break time, and had authority to authorize overtime and to send employees home when work was slow or when an employee had engaged in misconduct. One day McCafferty agreed to cover a shift for a coworker, and Peterson promised to pick her up from school to give her a ride to work. But when Peterson picked up McCafferty he told her that she did not have to report to work that day; instead he drove her to his friend's home and then his own house, where she alleged that he plied her with drugs and alcohol and repeatedly sexually assaulted her. McCafferty brought a sexual harassment lawsuit, but the trial court dismissed her case on the grounds that her employer could not be held liable for Peterson's actions, since he was not a supervisor as defined in the *Vance* decision because he did not have the power to hire, fire, or promote employees. The appellate court then affirmed the lower court's dismissal on these grounds.<sup>25</sup>

In March Senator Baldwin, Chairman Harkin, Representative Miller, and Representative DeLauro introduced the Fair Employment Protection Act, which addresses this loophole in the law.<sup>26</sup> The bill would amend Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Genetic Information Nondiscrimination Act and other federal nondiscrimination laws to restore strong protections from harassment by making clear that employers can be vicariously liable for harassment by individuals with the authority to undertake or recommend tangible employment actions or with the authority to direct an employee's daily work activities. In other words, workers who report to higher-ups without the authority to hire and fire—and many of the employees making these reports will be low-wage workers—would once again have an effective remedy if these higher-ups abuse their power through harassment. Such robust protection against sexual harassment is critical if women are to have a fair shot to succeed in the workplace.

## **II. Women are penalized for pregnancy and for caregiving, leaving them with lower wages and sometimes forcing them out of a job altogether.**

Despite women making up nearly half the labor force today, women also still continue to shoulder a far larger share of caregiving responsibilities than men, on average.<sup>27</sup> And women continue to experience sex discrimination at work because of employers' gender stereotypes

about the competence and commitment of women with caregiving responsibilities. A recent study about the penalty that women who are mothers face in the workplace illustrates this point. In that study, employers recommended mothers for hire less often, recommended lower starting salaries for them, and rated them as less competent than non-mothers with nearly identical resumes.<sup>28</sup> (In contrast, fathers were recommended for hire more often, regarded as more competent, and recommended for higher salaries than non-fathers.)<sup>29</sup> Indeed, motherhood accounts for a large proportion of the wage gap between women and men. Women who work full time, year round are typically paid only 77 cents for every dollar paid to their male counterparts.<sup>30</sup> However, there is an even larger gap between parents: among full time, year round workers, mothers earn only 69 percent what fathers earn.<sup>31</sup> Sociologists have documented a wage penalty of approximately four to fifteen percent per child, with low-wage workers suffering the largest penalties.<sup>32</sup> Discrimination against caregivers based on gender stereotypes constitutes sex discrimination,<sup>33</sup> and enforcement of protections against this form of discrimination is especially important for women in low-wage jobs.

-----

Pregnant workers face particular burdens. Prior to the Pregnancy Discrimination Act of 1978 (PDA), it was not uncommon for employers to categorically exclude pregnant workers from particular jobs, particular industries, or the workforce entirely. The PDA changed this forever by providing that the right to be free of discrimination on the basis of sex includes: (1) the right not to be treated adversely because of pregnancy, childbirth, or related medical conditions; and (2) the right for workers affected by pregnancy, childbirth, or related medical conditions to be treated as well as other employees not so affected who are “similar in their ability or inability to work.”<sup>34</sup>

While these protections have been critical to women’s advances in the workforce, the latest data show that women continue to face pregnancy discrimination on the job. In fact, between 1997 and 2011 the number of pregnancy discrimination charges received by the EEOC and state and local counterparts increased by nearly 50 percent.<sup>35</sup> Today, women are still being forced off the job because of pregnancy.

In particular, pregnant workers sometimes have a medical need for temporary adjustments of job duties or work rules so that they can continue to work safely and provide the income on which their families depend. While many women will work through their pregnancies without any need for accommodations, these adjustments are necessary for others, especially in jobs that require running, lifting, long periods of standing, or repetitive motions—physical activities that may pose challenges to some women at some stages of pregnancy. However, too often when pregnant workers ask even for modest accommodations recommended by their medical provider, like the opportunity to sit on a stool or drink water during a long shift, they are instead forced onto unpaid leave, or even fired.<sup>36</sup> Indeed, 35 years after the passage of the PDA, employers continue to believe that they have no obligation to provide reasonable accommodations to workers with limitations arising out of pregnancy, even when they provide these accommodations to workers with similar limitations arising out of disabilities or injuries unrelated to pregnancy.<sup>37</sup> One recent survey estimated that more than a quarter of a million pregnant workers are denied their requests for reasonable accommodations nationally every year.<sup>38</sup>

Amy Crosby’s case illustrates this problem. She worked as a cleaner in a hospital in Florida, cleaning 20 to 30 hospital rooms per shift and lifting up to 50 pounds of trash and linens each day. After she became pregnant, she started experiencing intense shooting pains in her back and arms due to carpal tunnel syndrome exacerbated by her pregnancy, and her OB-GYN advised that she not lift more than 20 pounds. But the hospital refused to accommodate her, because it said it would only accommodate workers injured on the job or people with disabilities and that she did not qualify under either of those categories, since she was pregnant. Crosby knew of other cleaners in her department who were accommodated when they had medical needs unrelated to pregnancy, by being allowed to perform other tasks or getting help with heavy lifting. But the hospital placed Crosby on 12 weeks of FMLA leave, which was due to run out more than a month before her due date—and threatened to fire her if she did not return to work without restrictions once this leave was up, even though she would be in the middle of her last trimester.<sup>39</sup>

As this story shows, women working in low-wage jobs often work in jobs that are physically demanding—for example, jobs in the retail sector, in food service, in nursing assistance, or in housekeeping—and are particularly likely to have a medical need for workplace accommodations during pregnancy as a result. Yet these same sectors often are marked by inflexible workplace cultures, which lead to employers refusing to make accommodations as simple as providing a stool to sit on or the right to drink water during a long shift.

Women of color and immigrant women make up a disproportionate share of the workers in low-paying jobs that are also physically demanding. For example, immigrant women make up just 7 percent of employed workers but 45 percent of workers employed as maids or housekeepers.<sup>40</sup> Workers in these jobs are typically paid less than \$10 an hour.<sup>41</sup> Latinas make up only 7 percent of employed workers, but make up 26 percent of workers employed as hand packers and packagers<sup>42</sup>—jobs that also pay only \$10 per hour.<sup>43</sup> These are jobs where workers can spend the bulk of their days standing, walking, or moving and lifting heavy objects<sup>44</sup>—which can be a challenge or pose a health risk for some pregnant workers.

To address this problem, the Equal Employment Opportunity Commission must follow through on its identification of pregnancy accommodations as a strategic enforcement priority, and strengthen enforcement of the PDA and the Americans with Disabilities Act, to ensure pregnant workers receive the accommodations to which they are entitled under current law. In addition, the Pregnant Workers Fairness Act, introduced by Senator Casey, Senator Shaheen and Representative Nadler, would provide a lifeline to pregnant workers.<sup>45</sup> This bill would make it unmistakably clear that workers who need changes in job rules or duties because of physical limitations arising from pregnancy, childbirth, or a related medical condition can get such reasonable accommodations. In other words, the bill treats medical needs for accommodation arising out of pregnancy or childbirth in the same way that the Americans with Disabilities Act treats medical needs for accommodation arising out of disability, requiring that employers provide these accommodations if they can do so without undue hardship.<sup>46</sup>

-----

Low-wage jobs that are primarily held by women are also marked by work scheduling policies and practices that pose particular challenges for workers with significant responsibilities outside of their job, including caregiving, pursuing education and workforce training, or holding down a second job.<sup>47</sup> The work schedules in these jobs are often unpredictable, unstable and inflexible. For example, in some low-wage sectors “just-in-time” scheduling practices, which base workers’ schedules on perceived consumer demand, often result in workers being given very little advance notice of their work schedules<sup>48</sup> – a practice that can make it nearly impossible to arrange child care, take a second job, or enroll in post-secondary courses. Indeed, in the retail sector workers report that they are routinely required to work call-in shifts, which means they must call their employer to find out whether they will be scheduled to work that day—and if they are told to report to work, they often must do so within two hours.<sup>49</sup> Many workers in low-wage jobs experience unstable schedules with hours that vary from week to week or month to month, or periodic reductions in work hours when work is slow, leading to major fluctuations in income that put workers and their families in financial jeopardy. And many of these jobs require working nights, weekends or even overnight, or offer only part-time work, despite many workers’ need for full-time hours.

These challenging work schedules have a cascade of negative consequences for both workers in low-wage jobs and their children. In contrast, fairer work schedules benefit employees and employers alike. Workers in low-wage jobs report that more job autonomy and involvement in management decision-making led to less negative spillover from work to their non-work life.<sup>50</sup> Employees with flexible workplaces are less stressed and have better physical and mental well-being.<sup>51</sup> Less negative spillover from work also leads to greater productivity and job retention: lower-wage workers with flexibility are almost half as likely as other workers to intend to leave their positions within two years.<sup>52</sup> State and local governments have taken the lead in exploring innovative solutions to some of the problems posed by abusive scheduling practices, including requiring some minimum hours of pay for workers who are called into a shift or premium pay for workers required to work particularly challenging schedules. Some have also protected workers’ rights to request changes in their schedules at work, without fear of retaliation—as would be protected through the Flexibility for Working Families Act introduced by Senator Casey and Representative Maloney.<sup>53</sup> These state and local innovations suggest ways in which federal law could promote fairer work schedules, which is particularly important for workers with caregiving responsibilities.

### **III. Women experience pay discrimination, even in the lowest paid jobs.**

The wage gap between women and men persists in nearly every occupation, and affects women across the income spectrum.<sup>54</sup> There are a range of unfair factors that contribute to the wage gap including: job segregation, and the fact that women-dominated jobs pay less than male-dominated jobs; the lower pay that women who are mothers face, as discussed above; and the fact that even when women are working in the same jobs as men, they are often still paid less.<sup>55</sup> The wage gap exists even in the lowest-paid fields. In the ten largest low-wage occupations, women working full time were typically paid only 90.4 percent of what their male counterparts were paid each week—an average wage gap of 9.6 cents for every dollar earned by men.<sup>56</sup>

Latoya Weaver is one woman who experienced pay discrimination first hand. She worked full time as a Guest Services Representative at a hotel in Maryland, ultimately making \$8.88 an hour.

In 2012 she was offered another job that would pay more, but she wanted to stay at the hotel so she asked for a raise to \$9.50. Her manager turned her down because she said that the hotel was undergoing construction, so Weaver ended up taking the other job. During her time at the hotel, employees were told that they were not supposed to discuss their pay with each other. However, just before Weaver left the hotel for her new job she saw some papers that her manager left sitting out that showed that two men recently hired as Guest Services Representatives were each making \$10.00 an hour. As a single mother of three children, being paid fairly would have made a huge difference to Weaver, who struggled to pay \$100 out of pocket each week for child care. In order to finally get a job that would pay her more, she had to travel 45 minutes from her home.

The Equal Pay Act (EPA), along with Title VII of the Civil Rights Act, has helped to reduce pay discrimination, but the protection offered by the EPA is weakened by court decisions that have opened loopholes in the Act—including by allowing employers to escape accountability for pay disparities even when they are not related to business needs—and by the incomplete remedies the Act provides.<sup>57</sup> In addition, too often wage disparities go undetected and thus unremedied because employers maintain policies that punish employees who voluntarily share salary information with their coworkers.<sup>58</sup>

The Paycheck Fairness Act, introduced by Senator Mikulski and Representative DeLauro, is a commonsense piece of legislation that would strengthen the EPA in a number of important ways by making it easier to identify and remedy discriminatory pay decisions, closing loopholes in the law, and providing incentives for employers to voluntarily comply with the law.<sup>59</sup> For example, the bill would prohibit retaliation against employees for discussing their pay; bring the remedies for equal pay violations in line with those available for other pay discrimination based on race or ethnicity by allowing plaintiffs who win their equal pay cases to recover compensatory and punitive damages; and tighten the defenses available to employers by requiring employers to provide a business justification for paying unequal wages.<sup>60</sup>

The Fair Pay Act, introduced by Chairman Harkin and Representative Holmes Norton, would address the devaluation of women's work simply because it is done by women.<sup>61</sup> The bill would ensure that female-dominated jobs receive the same pay as male-dominated jobs that require equivalent skill level, effort, responsibility and working conditions.

\* \* \*

Title VII of the Civil Rights Act of 1964 outlined a fundamental promise—a promise that a woman's sex or race or ethnicity would no longer prevent her from having access to any opportunity in the workplace. Yet, the sort of biases that underlie all of these discriminatory practices that I've described today, and more, are really rooted in outmoded stereotypes about women. For example, the stereotype that women are not breadwinners and that families do not rely on women's income and women therefore do not need higher pay often underlies employer decisions to pay men more than women and to offer career-track, family-supporting jobs to men only. Women are also regularly confronted by the idea that women working particular jobs should just put up with harassment as a part of the job, and the idea that women cannot be productive workers and take care of their families at the same time. It is clear that a serious

effort is still required to fulfill that promise and address the many remaining barriers to women's economic equality, especially for those in the lowest paid jobs.

---

<sup>1</sup> See NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, THE PREGNANCY DISCRIMINATION ACT: WHERE WE STAND 30 YEARS LATER Chart A (Oct. 2008), available at [http://go.nationalpartnership.org/site/DocServer/Pregnancy\\_Discrimination\\_Act\\_-\\_Where\\_We\\_Stand\\_30\\_Years\\_L.pdf?docID=4281](http://go.nationalpartnership.org/site/DocServer/Pregnancy_Discrimination_Act_-_Where_We_Stand_30_Years_L.pdf?docID=4281).

<sup>2</sup> RESTAURANT OPPORTUNITIES CENTERS UNITED ET AL., TIPPED OVER THE EDGE: GENDER INEQUITY IN THE RESTAURANT INDUSTRY 23 (Feb. 2012), available at <http://rocunited.org/tipped-over-the-edge-gender-inequity-in-the-restaurant-industry/>.

<sup>3</sup> E-mail from Indu Kundra, Senior Program Analyst, Program Planning and Analysis Division, Office of Research, Information and Planning, U.S. Equal Employment Opportunity Commission, to Lauren Khouri, Fellow, National Women's Law Center (Feb. 27, 2014) (on file with the National Women's Law Center).

<sup>4</sup> *Id.*; E-mail from Indu Kundra, Senior Program Analyst, Program Planning and Analysis Division, Office of Research, Information and Planning, U.S. Equal Employment Opportunity Commission, to Lauren Khouri, Fellow, National Women's Law Center (March 3, 2014) (on file with the National Women's Law Center).

<sup>5</sup> ABC News & Washington Post, One in Four U.S. Women Reports Workplace Harassment (Nov. 16, 2011), available at <http://www.langerresearch.com/uploads/1130a2WorkplaceHarassment.pdf>.

<sup>6</sup> Not only does sexual harassment make working conditions for women in low-wage jobs extremely difficult, it also operates to keep women from moving into higher-paying traditionally male fields. Sexual harassment plays a major contributing role in the persistence of occupational segregation between men and women. See, e.g., *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 58 (2006). This occupational segregation in turn plays a significant role in women's predominance in low-wage jobs, discussed further below.

<sup>7</sup> Nancy Krieger et al., *Social Hazards on the Job: Workplace Abuse, Sexual Harassment, and Racial Discrimination*, 36 INT'L J. HEALTH SERVICES 51, 67 (2006).

<sup>8</sup> *Id.*

<sup>9</sup> Restaurant Opportunities Centers United, *supra* note 2, at 23.

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

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

<sup>12</sup> Rebecca Clarren, *The Green Motel*, MS. MAGAZINE, Summer 2005, available at <http://www.ms magazine.com/summer2005/greenmotel.asp>.

<sup>13</sup> *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 763-65 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775, 802-807 (1998). See also *Ellerth*, 524 U.S. at 754-55 (applying the principles of agency law to Title VII employer liability).

<sup>14</sup> *Ellerth*, 524 U.S. at 763-65; *Faragher*, 524 U.S. at 801-807. See also U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, NOTICE NO. 915.002, ENFORCEMENT GUIDANCE ON VICARIOUS EMPLOYER LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS (1999), available at <http://www.eeoc.gov/policy/docs/harassment.html>.

<sup>15</sup> 133 S. Ct. 2434 (2013).

<sup>16</sup> Brief for the Petitioner at 6-10, *Vance v. Ball State Univ.*, 133 S.Ct. 2434 (2013) (No. 11-556).

<sup>17</sup> 133 S. Ct. at 2454.

<sup>18</sup> *Id.* at 2443, 2448.

<sup>19</sup> *Id.* at 2448.

<sup>20</sup> See NATIONAL WOMEN'S LAW CENTER, REALITY CHECK: SEVENTEEN MILLION REASONS LOW-WAGE WORKERS NEED STRONG PROTECTIONS FROM HARASSMENT (2014), available at [http://www.nwlc.org/sites/default/files/pdfs/final\\_nwlc\\_vancereport2014.pdf](http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_vancereport2014.pdf).

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at 5-6.

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

<sup>24</sup> Stephanie Bornstein, *Work, Family, and Discrimination at the Bottom of the Ladder*, 19 GEO. J. ON POVERTY L. & POL'Y 1, 8-11 (2012).

<sup>25</sup> *McCafferty v. Preiss Enterprises, Inc.*, 534 F. App'x 726 (10th Cir. 2013).

<sup>26</sup> Fair Employment Protection Act, S. 2133, H.R. 4227, 113th Cong. (2014).

<sup>27</sup> NATIONAL WOMEN'S LAW CENTER, 50 YEARS & COUNTING: THE UNFINISHED BUSINESS OF ACHIEVING FAIR PAY 4, 9 (2013), available at [http://www.nwlc.org/sites/default/files/pdfs/final\\_nwlc\\_equal\\_pay\\_report.pdf](http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_equal_pay_report.pdf).



- 
- <sup>28</sup> Shelley J. Correll, Stephan Benard, & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC 1297, 1315-17 (2007), available at [http://gender.stanford.edu/sites/default/files/motherhoodpenalty\\_0.pdf](http://gender.stanford.edu/sites/default/files/motherhoodpenalty_0.pdf).
- <sup>29</sup> *Id.*
- <sup>30</sup> NATIONAL WOMEN'S LAW CENTER, THE WAGE GAP OVER TIME (Oct. 2013), available at [http://www.nwlc.org/sites/default/files/pdfs/wage\\_gap\\_over\\_time\\_overall.pdf](http://www.nwlc.org/sites/default/files/pdfs/wage_gap_over_time_overall.pdf).
- <sup>31</sup> HALF IN TEN AND NATIONAL WOMEN'S LAW CENTER, HALF IN TEN REPORT 2014 – POVERTY AND OPPORTUNITY PROFILE: MOTHERS (2014), available at <http://www.nwlc.org/sites/default/files/pdfs/mothers-poverty-opportunity-profile.pdf>.
- <sup>32</sup> Michelle Budig, Parenthood exacerbates the gender pay gap, THE HILL CONGRESS BLOG, Sept. 30, 2010, <http://thehill.com/blogs/congress-blog/economy-a-budget/121869-parenthood-exacerbates-the-gender-pay-gap>.
- <sup>33</sup> See U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES (2007), available at <http://www.eeoc.gov/policy/docs/caregiving.html>.
- <sup>34</sup> See 42 U.S.C. § 2000e(k).
- <sup>35</sup> U.S. Equal Employment Opportunity Commission, *Pregnancy Discrimination Charges EEOC & FEPAs Combined: FY 1997 – FY 2011*, <http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm>.
- <sup>36</sup> For stories of women pushed out of work because they were denied the temporary accommodations that they sought during pregnancy, see generally NATIONAL WOMEN'S LAW CENTER AND A BETTER BALANCE, IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS (2013), available at [http://www.nwlc.org/sites/default/files/pdfs/pregnant\\_workers.pdf](http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf).
- <sup>37</sup> *Id.*
- <sup>38</sup> NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, LISTENING TO MOTHERS: THE EXPERIENCE OF EXPECTING AND NEW MOTHERS IN THE WORKPLACE 3 (Jan. 2014), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>.
- <sup>39</sup> See *It Shouldn't Be a Heavy lift*, *supra* note 36, at 8.
- <sup>40</sup> National Women's Law Center calculations based on Integrated Public Use Microdata – American Community Survey (IPUMS-USA), 2010-2012 multi-year ACS (three-year estimates), Minnesota Population Center, University of Minnesota, <https://usa.ipums.org/usa/index.shtml> (last visited Mar. 24, 2014).
- <sup>41</sup> BUREAU OF LABOR STATISTICS, OCCUPATIONAL EMPLOYMENT STATISTICS, MAY 2013 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES UNITED STATES (2014), available at [http://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](http://www.bls.gov/oes/current/oes_nat.htm#00-0000). Maids and housekeeping cleaners had a median hourly wage of \$9.51 in 2013.
- <sup>42</sup> National Women's Law Center calculations based on Integrated Public Use Microdata – American Community Survey (IPUMS-USA), 2010-2012 multi-year ACS (three-year estimates), Minnesota Population Center, University of Minnesota, <https://usa.ipums.org/usa/index.shtml> (last visited Mar. 24, 2014).
- <sup>43</sup> Bureau of Labor Statistics, *supra* note 41. Hand packers and packagers had a median hourly wage of \$9.60 in 2013.
- <sup>44</sup> See, e.g., O\*NET OnLine, *Details Report for: 37-2012.00 – Maids and Housekeeping Cleaners*, <http://www.onetonline.org/link/details/37-2012.00> (last visited May 16, 2014); O\*NET OnLine, *Details Report for: 53-7064.00 – Packers and Packagers, Hand*, <http://www.onetonline.org/link/details/53-7064.00> (last visited May 16, 2014).
- <sup>45</sup> Pregnant Workers Fairness Act, S. 942, H.R. 1975, 113th Cong. (2013).
- <sup>46</sup> See NATIONAL WOMEN'S LAW CENTER, THE PREGNANT WORKERS FAIRNESS ACT: MAKING ROOM FOR PREGNANCY ON THE JOB (May 2012), available at <http://www.nwlc.org/resource/pregnant-workers-fairness-act-making-room-pregnancy-job>.
- <sup>47</sup> See, e.g., RESTAURANT OPPORTUNITIES CENTERS UNITED, THE THIRD SHIFT: CHILD CARE NEEDS AND ACCESS FOR LOW-WAGE WORKING MOTHERS IN RESTAURANTS 1-2 (July 2013), available at <http://www.scribd.com/doc/161943672/The-Third-Shift-Child-Care-Needs-and-Access-for-Working-Mothers-in-Restaurants>.
- <sup>48</sup> See generally NANCY C. CAUTHEN, DEMOS, SCHEDULING HOURLY WORKS: HOW LAST MINUTE, JUST-IN-TIME SCHEDULING PRACTICES ARE BAD FOR WORKERS, FAMILIES AND BUSINESS (2011), available at [http://www.demos.org/sites/default/files/publications/Scheduling\\_Hourly\\_Workers\\_Demos.pdf](http://www.demos.org/sites/default/files/publications/Scheduling_Hourly_Workers_Demos.pdf).

---

<sup>49</sup> STEPHANIE LUCE & NAOKI FUJITA, RETAIL ACTION PROJECT, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 13 (2012), available at [http://retailactionproject.org/wp-content/uploads/2012/03/7-75\\_RAP+cover\\_lowres.pdf](http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf).

<sup>50</sup> James T. Bond & Ellen Galinsky, *How Can Employers Increase the Productivity and Retention of Entry-Level, Hourly Employees?*, Families and Work Institute 12 (Nov. 2006), available at <http://familiesandwork.org/site/research/reports/brief2.pdf>; see also Ellen Galinsky, James T. Bond & Eve Tahmincioglu, *What if Employers Put Women at the Center of Their Workplace Policies? When Businesses Design Workplaces that Support their Employees, Both the Businesses and the Employees Benefit*, in THE SHRIVER REPORT: A WOMAN'S NATION PUSHES BACK FROM THE BRINK (Olivia Morgan & Karen Shelton eds., 2014) (“Overall, 55 percent of low-income mothers surveyed said it would be “extremely important” to “have the flexibility I need to manage my work and personal or family life.... No one surveyed said it was ‘not important.’”).

<sup>51</sup> Sloan Center on Aging & Work at Boston College, *Why Employees Need Workplace Flexibility*, [http://workplaceflexibility.bc.edu/need/need\\_employees](http://workplaceflexibility.bc.edu/need/need_employees) (citing sources).

<sup>52</sup> WFD CONSULTING, CORPORATE VOICES FOR WORKING FAMILIES, INNOVATIVE WORKPLACE FLEXIBILITY OPTIONS FOR HOURLY WORKERS 94-95 (Oct. 2006), available at [http://www.wfd.com/PDFS/Innovative\\_Workplace\\_Flexibility\\_Options\\_for\\_Hourly\\_Workers.pdf](http://www.wfd.com/PDFS/Innovative_Workplace_Flexibility_Options_for_Hourly_Workers.pdf).

<sup>53</sup> Flexibility for Working Families Act, S. 1248, H.R. 2559, 113th Cong. (2013).

<sup>54</sup> See 50 Years & Counting, *supra* note 27, at 1.

<sup>55</sup> *Id.* at 4-9.

<sup>56</sup> JOAN ENTMACHER, KATHERINE GALLAGHER ROBBINS, & LAUREN FROLICH, NATIONAL WOMEN'S LAW CENTER, WOMEN ARE 76 PERCENT OF WORKERS IN THE 10 LARGEST LOW-WAGE JOBS AND SUFFER A 10 PERCENT WAGE GAP (Mar. 2014), available at [http://www.nwlc.org/sites/default/files/pdfs/women\\_are\\_76\\_percent\\_of\\_workers\\_in\\_the\\_10\\_largest\\_low-wage\\_jobs\\_and\\_suffer\\_a\\_10\\_percent\\_wage\\_gap.pdf](http://www.nwlc.org/sites/default/files/pdfs/women_are_76_percent_of_workers_in_the_10_largest_low-wage_jobs_and_suffer_a_10_percent_wage_gap.pdf).

<sup>57</sup> See NATIONAL WOMEN'S LAW CENTER, PAYCHECK FAIRNESS: CLOSING THE “FACTOR OTHER THAN SEX” GAP IN THE EQUAL PAY ACT (May 2012), available at [http://www.nwlc.org/sites/default/files/pdfs/factorotherthan\\_sexfactsheet\\_5.29.12\\_final.pdf](http://www.nwlc.org/sites/default/files/pdfs/factorotherthan_sexfactsheet_5.29.12_final.pdf).

<sup>58</sup> See NATIONAL WOMEN'S LAW CENTER, COMBATING PUNITIVE PAY SECRECY POLICIES (Apr. 2012), available at <http://www.nwlc.org/sites/default/files/pdfs/paysecrecyfactsheet.pdf>.

<sup>59</sup> Paycheck Fairness Act, S. 84, H.R. 377, 113th Cong. (2013).

<sup>60</sup> NATIONAL WOMEN'S LAW CENTER, HOW THE PAYCHECK FAIRNESS ACT WILL STRENGTHEN THE EQUAL PAY ACT (2012), available at <http://www.nwlc.org/resource/how-paycheck-fairness-act-will-strengthen-equal-pay-act>.

<sup>61</sup> Fair Pay Act, S. 168, H.R. 438, 113th Cong (2013).