

50 years & counting: the unfinished business of achieving fair pay

ABOUT THE CENTER

The National Women's Law Center is a nonprofit organization working to expand opportunities and eliminate barriers for women and their families, with a major emphasis on education and employment opportunities, women's health and reproductive rights, and family economic security.

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Introduction

THE EQUAL PAY ACT OF 1963 is the landmark law that requires employers to pay male and female employees equally for substantially equal work. Until the Act was signed into law it was perfectly legal and common practice to openly pay women lower wages than men for the same job. Women working full time, year round were typically paid only 59 cents for every dollar paid to their male counterparts¹ and job postings routinely listed separate salaries for male and female employees.²

THIS HISTORIC ACT ENCOUNTERED INITIAL RESISTANCE.

Opponents of the Equal Pay Act argued that the legislation was unnecessary, that it would be detrimental to women and to businesses, and that employers would respond to the law by refusing to hire women.³ Some attempted to justify the pay differences between men and women, claiming that women were less skilled, had higher rates of absenteeism, and were “more prone to homemaking and motherhood.”⁴ In contrast, today the tide of public opinion has turned strongly in favor of equal pay. In fact, 84 percent of Americans say they support new laws to give women more tools to obtain fair pay.⁵

Moreover, the last five decades have proven any critics of the Equal Pay Act wrong. This crucial legislation laid the groundwork for two other core nondiscrimination laws that followed – Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Together, these laws vastly expanded opportunities for women and girls at work and in school. Since passage of the Equal Pay Act, women's labor force participation and education levels have increased dramatically. While in 1963 only 38 percent of adult women overall were in the labor force, today that figure is 59 percent.⁶ Likewise, in 1963, less than 7 percent of women 25 years and older were college graduates, but today nearly 31 percent of women have graduated from college.⁷ Women have also entered professions that were previously closed to them, using Title VII to fight back against exclusionary policies and practices.⁸

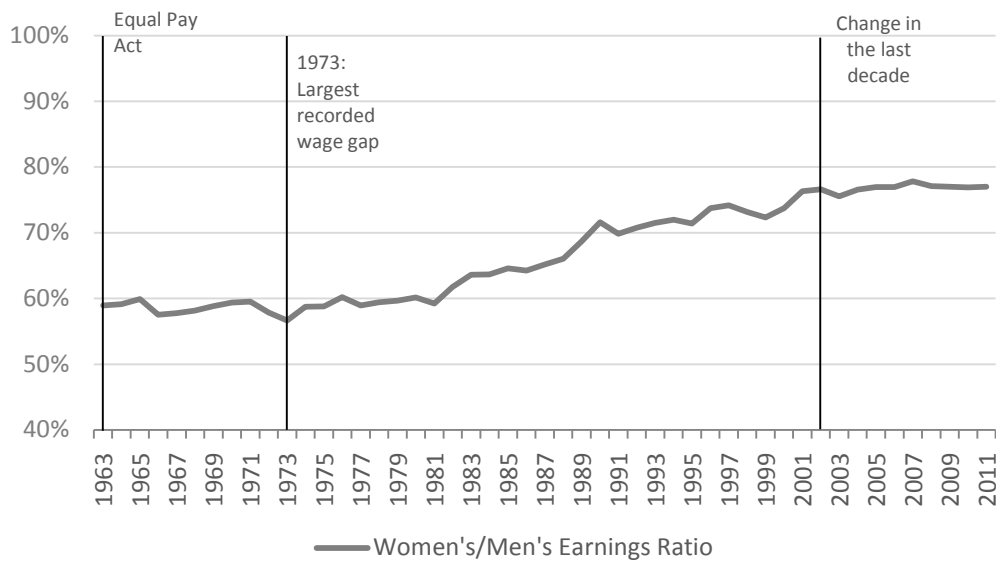
But a substantial wage gap still remains. In 2011, the most recent year for which data are available, women working full time, year round were typically paid just 77 cents for every dollar paid to their male counterparts – a loss of \$11,084 in 2011.⁹ Although women have narrowed the gap by 18 cents over the past five decades, the wage gap today stands at 23 cents.¹⁰ For some women of color the numbers are especially shocking: African-American women working full time, year round are typically paid only 64 cents and Hispanic women are typically paid only 55 cents for each dollar paid to their white, non-Hispanic male counterparts.¹¹ These gaps resulted in a loss of \$18,817 for African-American women and \$23,298 for Hispanic women in 2011 alone.¹²

Fifty years later women are still paid less than men in nearly every occupation. One study examining wage gaps within occupations found that out of 265 major occupations, men's median salaries exceeded women's in all but one.¹³ This is true whether women work in predominately female occupations, predominantly male occupations, or occupations with a more even mix of men and women.¹⁴ It is also true for women in jobs across the income spectrum.¹⁵

And, as the following graph shows, while there has been some slow progress since 1963 toward closing the wage gap, the last decade has resulted in no progress at all.

THE WAGE GAP OVER TIME

RATIO OF MEDIAN EARNINGS OF FULL-TIME, YEAR-ROUND WORKERS



Source: Census Bureau, Current Population Survey

Furthermore, women are still paid less at every level of education.¹⁶

Even women with the lowest levels of education experience a significant wage gap, as compared to their male counterparts. Women without a high school degree earn \$844,520 over a 40-year career working full time, year round, as compared to men without a high school degree who earn \$1,216,920 over a 40-year career, working full time, year round.¹⁷

THE WAGE GAP BY EDUCATION LEVEL

Education Level	Women's Earnings/ Men's Earnings	Wage Gap
Started high school, but did not finish	69%	31%
High school graduate (including GED)	74%	26%
Some college, no degree	73%	27%
Associate degree	77%	23%
Bachelor's degree	74%	26%
Master's degree	73%	27%
Professional degree	68%	32%
Doctorate degree	77%	23%

Source: NWLC calculations based on Current Population Survey, Annual Social and Economic Supplement, 2012. Figures are for full-time, year-round workers.

And the wage gap between men and women starts early, even among those with college degrees. A study by the American Association of University Women found that college graduates experience a wage gap as soon as one year after graduation.¹⁸ One year out, after accounting for variables such as “occupation, economic sector, hours worked per week, multiple jobs, months unemployed since graduation, undergraduate GPA, undergraduate major, undergraduate institution sector, institution selectivity, age, region of residence, and marital status,” women were paid only 93 percent of what men were paid.¹⁹

The fact that women overall working full time, year round are typically paid just 77 cents for every dollar paid to their male counterparts translated to a gap of \$11,084 less per year in median earnings in 2011. This gap adds up over time: a woman who worked full time, year round would typically lose \$443,360 in a 40-year period due to the wage gap, and have to work 12 years longer than her male counterpart to make up this gap.²⁰ The older women are, the larger the wage gap they experience.²¹

THE WAGE GAP BY AGE

Age	Women's Earnings/ Men's Earnings	Wage Gap
16 to 24	92%	8%
25 to 34	88%	12%
35 to 44	80%	20%
45 to 54	73%	27%
55 to 64	73%	27%
65 and older	70%	30%

Source: NWLC calculations based on Current Population Survey, Annual Social and Economic Supplement, 2012. Figures are for full-time, year-round workers.

The wage gap also has profound consequences for families, who rely on women's earnings now more than ever. Today, women are primary breadwinners in more than 41 percent of families with children.²² In another 23 percent of families with children women are co-breadwinners, bringing in between 25-50 percent of family earnings.²³ Additionally, 8.6 million female breadwinner families are headed by single mothers.²⁴ Families that are low income are the most likely to have female primary breadwinners, and these families can least afford the wage gap.²⁵ The wage gap leaves all of these women and their families shortchanged.²⁶

It does not have to be this way. When President Kennedy signed the Equal Pay Act into law, he described it as only a “first step” and emphasized that “much work remains to be done to achieve full equality of economic opportunity.”²⁷ Fifty years later it is past time to finally put in place the set of policies we need to close the wage gap.

This report shines a light on federal and state policies that can help close the wage gap. It identifies the remaining barriers to achieving fair pay for women and concrete steps that can be taken by federal and state policymakers to ensure that women and their families are not struggling indefinitely to make do with less.

Barriers to achieving fair pay

BEFORE THE EQUAL PAY ACT BECAME LAW

employers often advertised for higher-paying jobs in a section of the newspaper labeled “Help Wanted—Male.”²⁸ Lower pay for women was rationalized by the assumption that women’s earnings were not important to the household income and that women would be supported by their fathers and eventually, by their husbands.²⁹ Even after passage of the Equal Pay Act, some employers continued to try to justify paying women less because the market would bear it, under the theory that women should be paid less simply because they would accept lower pay than men.³⁰ But in *Corning Glass Works v. Brennan*, decided in 1974, the Supreme Court held that an employer’s policy of providing higher rates to male inspectors simply because they would not work at the lower rates paid to female inspectors violated the Equal Pay Act.³¹ This case made it unmistakably clear that employers could no longer justify unequal pay simply because the going market rate is lower for women than for men. The vestiges of these policies can be seen today in women’s continued lower pay for the same job; segregation into a set of jobs that are perceived as “women’s work,” several of which are low paying;³² and underrepresentation in high-wage jobs.³³ Similarly, despite women making up nearly half the labor force today, women still fulfill a far greater share of caregiving responsibilities at home than men. And women continue to experience sex discrimination at work because of their actual or perceived caregiving responsibilities. All of these factors depress women’s wages.³⁴

EMPLOYERS CONTINUE TO PAY WOMEN LESS FOR WORK IN THE SAME JOBS AS MEN.

The Equal Pay Act was intended to eradicate the practice of paying women less for the same jobs as men. As Secretary of Labor William Willard Wirtz explained during debate over the bill: “It merely requires an employer to eliminate any differential based on sex”³⁵ Today we no longer have explicitly separate pay scales for men and women. But although pay discrimination is often less overt today than it was in 1963, it continues to flourish. Indeed, women still confront many of the same biases that led critics of the Equal Pay Act to suggest that women should receive lower salaries because they are intrinsically worth less.

The stereotype that families do not rely on women’s income and that women 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.³⁶ The testimony from *Wal-Mart v. Dukes*, in which women sued the retailer for discrimination in pay and promotions, illustrates this point. Women testified that managers in Wal-Mart stores around the country explained pay differences by saying, for example, that men “are working as the heads of their households, while women are just working for the sake of working” and to earn extra money.³⁷

ALTHOUGH WOMEN ARE NOW 41 PERCENT OF BREADWINNERS, SOME EMPLOYERS CONTINUE TO TELL WOMEN THAT THEY DESERVE TO BE PAID LESS BECAUSE ONLY MEN ARE THE BREADWINNERS

The theory that women work just for the sake of working while men work to provide for their families is still all too common. Published decisions illustrate this point:

- In *Kassman v. KPMG*, the plaintiff's supervisor told her that she did not need to work because her husband was the "breadwinner" in the family.³⁸
- In *Stender v. Lucky Stores, Inc.*, a manager repeatedly made comments like, "[w]omen don't have as much drive to get ahead. Women are not the bread winners[.]" and "[w]omen are considered the weak sex. [So] men do the hard, physical work."³⁹
- In *Grove v. Frostburg Nat'l Bank*, female employees challenged the Bank's practice of paying health insurance coverage for men automatically and for women "only when they became the family breadwinners, and then only upon request."⁴⁰

The equal pay laws have been vital tools in challenging pay discrimination that is rooted in these outdated stereotypes. But employer accountability for pay discrimination is the exception to the rule. Too many workers lack the basic information necessary to detect pay disparities. And even when they are able to find out that they are being paid less, existing law is riddled with loopholes that make it difficult to obtain justice.

WOMEN CONTINUE TO FACE BARRIERS TO ENTERING HIGHER-PAYING, NONTRADITIONAL JOBS.

Although the days of separate job ads for male and female workers are gone, women remain sorely underrepresented in many higher-wage fields that are historically nontraditional for their gender. Of the 25 detailed occupations with the highest median weekly earnings for full-time workers, only two are majority female.⁴¹ In contrast, five of the highest-wage occupations are over 90 percent male.⁴² These occupations all have median weekly earnings for full-time workers above \$1,350 – or typical annual salaries over \$70,000 for someone who works year-round.⁴³ In the 25 lowest-wage occupations, the average percentage of women (56 percent) is more than double the average percentage of women in the 25 highest-wage occupations (27 percent).⁴⁴

25 OCCUPATIONS WITH THE HIGHEST MEDIAN WEEKLY EARNINGS

Occupation	Median Weekly Earnings	Percentage of Women in Occupation
Aircraft pilots and flight engineers	\$1,440	4%
Mechanical engineers	\$1,434	5%
Computer network architects	\$1,548	8%
Aerospace engineers	\$1,645	9%
Electrical and electronics engineers	\$1,550	9%
Architectural and engineering managers	\$2,122	11%
Engineers, all other	\$1,439	13%
Information security analysts	\$1,592	15%
Computer hardware engineers	\$1,548	15%
Chemical engineers	\$1,509	18%
Industrial engineers, including health and safety	\$1,393	19%
Software developers, applications and systems software	\$1,591	20%
Computer and information systems managers	\$1,672	27%
Chief executives	\$2,060	27%
Computer systems analysts	\$1,406	31%
Lawyers	\$1,909	31%
Physicians and surgeons	\$1,887	34%
Physical scientists, all other	\$1,456	35%
Database administrators	\$1,376	37%
Financial analysts	\$1,487	37%
Judges, magistrates, and other judicial workers	\$1,637	39%
Management analysts	\$1,452	40%
Marketing and sales managers	\$1,396	45%
Pharmacists	\$1,877	54%
Nurse practitioners	\$1,610	86%
<i>Average share of women among 25 highest-wage occupations</i>		27%

Source: Bureau of Labor Statistics, Current Population Survey, 2012 Annual Averages, Tables 11 and 39. Median weekly earnings figure is for full-time workers, share of women figure is for all workers.

Women's low representation in the science, technology, engineering and math fields has a particular impact on their wages, with women in STEM jobs earning 33 percent more than women in non-STEM careers, all else being equal.⁴⁵ Women earn 35 percent of the degrees in STEM fields,⁴⁶ but make up only 24 percent of college-educated workers in STEM fields.⁴⁷

Women also make up very small percentages of workers in many of the higher-wage traditionally male occupations such as electricians (where women make up 1.8 percent

of workers and the median weekly earnings are \$932); fire-fighters (where women make up 3.4 percent of workers and the median weekly earnings are \$1,068); and police and sheriff's patrol officers (where women make up 12.6 percent of workers and the median weekly earnings are \$979).⁴⁸

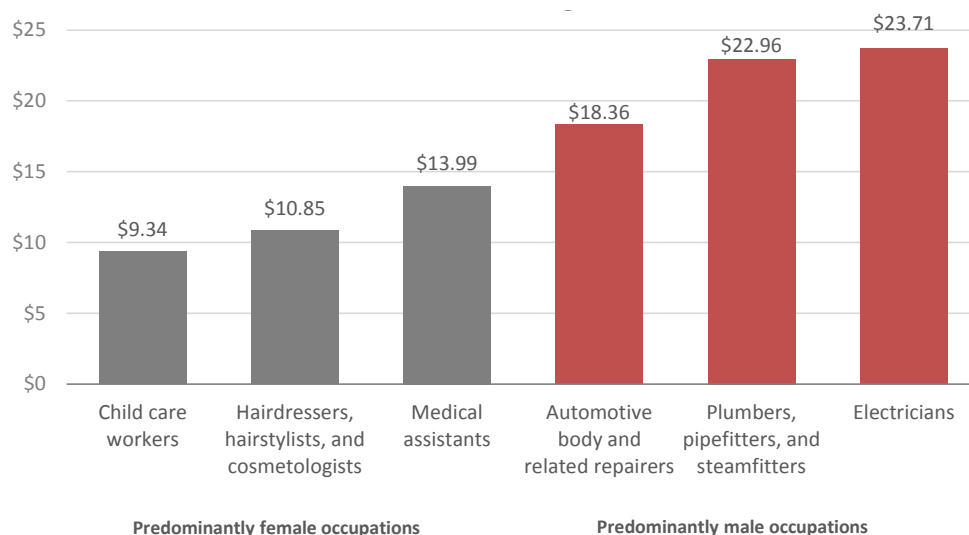
The underrepresentation of women in traditionally male, higher-wage fields cannot be explained away simply by pointing to occupational choice.⁴⁹ Isolation, active discouragement, harassment, outright exclusion, and lack of information about alternative job options are all barriers

to women's entry into higher-wage jobs that are nontraditional for their gender.⁵⁰ For example, in *Wedow v. City of Kansas City*,⁵¹ two female firefighters brought successful claims for sex discrimination against the Kansas City, Missouri Fire Department based on the City's failure to provide them with adequately fitting protective clothing or sanitary facilities, and denial of opportunities to work in successively more career-enhancing positions that were made available to male firefighters of equal or lesser rank. Likewise, in *Burlington Northern & Santa Fe Railway Co. v. White*,⁵² Sheila White, a forklift operator, complained that she was harassed by her supervisor and told that a woman should not be doing her job. After she filed a charge with the Equal Employment Opportunity Commission (EEOC) her employer retaliated by assigning her to perform more arduous tasks and suspending her for 37 days without pay. Likewise, in *Pennsylvania State Police v. Suders*,⁵³ a female police officer filed suit alleging that she was subject to a "continuous barrage of sexual harassment" by her supervisors that included numerous inappropriate comments and threatening behavior. For example, she stated that her supervisor made comments about sexual intercourse every time she entered his office.

And the employment practices related to women in the construction industry in particular have earned it the nickname "the industry that time forgot."⁵⁴ As economist Marc Bendick has explained, these practices include: negative stereotypes about women's ability to perform construction work; sexual tension injected into work contexts; intentions to reserve well-paid employment for men, "who deserve it"; and reluctance by supervisors and other officials to discipline perpetrators of discrimination.⁵⁵

Similar barriers contribute to girls' underrepresentation in education and training programs that are nontraditional for women.⁵⁶ For example, women make up more than 70 percent of secondary level and more than 80 percent of post-secondary level students in "Human Services" career and technical education (CTE) programs, which lead to generally low-paying occupations like child care workers, cosmetologists and nursing home workers.⁵⁷ In contrast, CTE programs that train workers for higher-paying jobs are dominated by men; for example, women make up only 15 percent of secondary level and less than 10 percent of post-secondary level students enrolled in "Architecture and Construction" CTE programs.⁵⁸

WOMEN ARE CONCENTRATED IN CTE PROGRAMS THAT LEAD TO LOWER-WAGE CAREERS



Median Hourly Earnings for Selected Predominantly Female and Male Occupations
Source: Bureau of Labor Statistics, Occupational Employment Statistics, May 2011.

Source: National Coalition of Women and Girls in Education & National Coalition on Women, Jobs and Job Training, Education Data Show Gender Gap in Career Preparation (March 2013).

WOMEN ARE CLUSTERED IN LOW-PAYING JOBS.

While women are underrepresented in higher-paying jobs, they also are heavily concentrated in jobs at the bottom of the labor market.⁵⁹ Four out of ten women work in female-dominated occupations⁶⁰ and about two-thirds of workers earning the lowest wages are women.⁶¹ In 2011, half of working women were clustered in 28 out of 534 possible job categories, and the vast majority of these 28 job categories were low paying.⁶²

Jobs that are predominantly done by women are often devalued precisely because they are “women’s work.”⁶³ For example, although job tasks for janitors and building cleaners are extremely similar to job tasks for maids and housekeeping cleaners,⁶⁴ the overall median weekly wage for a male-dominated janitor and building cleaner job is \$85 dollars, which is 21 percent higher than the median weekly wage for a female-dominated maid and housekeeping cleaner job.⁶⁵ And even still there are wage gaps within these occupations.

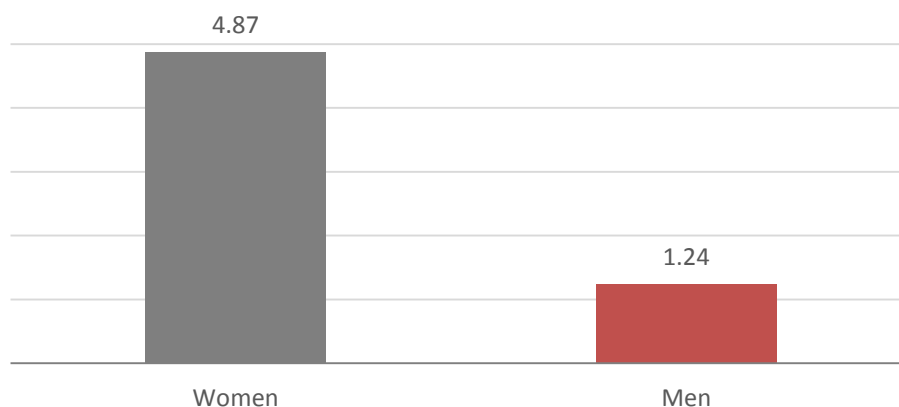
SIMILAR JOBS, DIFFERENT PAY

	Percentage of Women in the Occupation	Men’s Median Weekly Earnings	Women’s Median Earnings
Janitors and Building Cleaners	30%	\$511	\$408
Maids and Housekeeping Cleaners	88%	\$425	\$395

Source: Bureau of Labor Statistics, Current Population Survey, 2012 Annual Averages, Tables 11 and 39.

Four of the most common occupations for women pay less than 100 percent of the federal poverty guidelines for a family of four, and three times as many women as men work in occupations that pay below this poverty guideline for full time work.⁶⁶

MILLIONS OF WORKERS IN OCCUPATIONS WITH MEDIAN EARNINGS FOR FULL-TIME WORK BELOW THE FEDERAL POVERTY THRESHOLD FOR A FAMILY OF FOUR



Source: IWPR, The Gender Wage Gap by Occupation (Apr. 2013).

Indeed, the lowest-paid workers in the labor market, those paid the federal minimum wage or less, are about two-thirds women.⁶⁷ The chances a worker earning the federal tipped minimum wage of \$2.13 an hour is a woman are roughly the same.⁶⁸ Women of color are disproportionately represented among female minimum wage workers: African-American women were just under 13 percent and Hispanic women were just under 14 percent of all employed women in 2012,⁶⁹ but more than 15 percent of women paid the minimum wage were African-American and more than 18 percent were Hispanic.⁷⁰ Most women paid the minimum wage are not relying on a spouse’s income.⁷¹

WOMEN WITH CAREGIVING RESPONSIBILITIES AND PREGNANT WORKERS FACE PARTICULAR WORKPLACE DISCRIMINATION AND ECONOMIC HARDSHIP.

Outmoded assumptions and discrimination against women based on their actual or perceived family responsibilities lower women's wages. Although today women make up nearly half the labor force, they still shoulder the vast majority of caregiving responsibilities.⁷² For example, in dual-income households with children, mothers make a nearly double-time contribution to child care, spending almost twice as much time every week on child care as fathers.⁷³ And single-parent families are much more likely to be headed by women than men.⁷⁴

Women with caregiving responsibilities face stereotypes that these responsibilities render women less committed to their jobs. And, all too often pregnant workers are discriminated against when they need an accommodation to continue safely working during pregnancy, even though these accommodations are provided to other workers. Outdated workplace policies – including lack of paid leave, paid sick days, and flexibility – result in women workers losing pay when they need to take time out from the workplace to care for their families.

Women Face Sex Discrimination Based on Caregiving Responsibilities. Sex discrimination against women with caregiving responsibilities is widespread, and stereotypes about mothers' lesser commitment to their jobs remain particularly strong.⁷⁵ A recent study about the penalty women who are mothers face illustrates this point. In that study, participants recommended mothers with nearly identical resumes to non-mothers for hire less often, recommended lower starting salaries and rated them as less competent than non-mothers.⁷⁶ In contrast, fathers were recommended for hire more often, regarded as more competent, and recommended for higher salaries than non-fathers.⁷⁷ Indeed, motherhood accounts for a large proportion of the wage gap. Women who work full time, year round are typically paid only 77 cents for every dollar paid to their male counterparts.⁷⁸ However, studies show a larger gap between parents: among full-time workers, mothers earn only 60 percent what fathers earn.⁷⁹ Sociologists have documented a wage penalty of approximately four to fifteen percent per child, with low-wage workers suffering the largest penalties.⁸⁰

Pregnant Workers Face Discrimination When Employers Refuse to Provide Accommodations That Are Available to Other Similarly Situated Workers. Although the Pregnancy Discrimination Act (PDA) requires employers to treat pregnant

workers the same as other workers who are similar in their ability or inability to work, too many employers violate the PDA by accommodating workers with disabilities and on-the-job injuries but refusing to accommodate similarly situated pregnant workers.⁸¹ All too often employers deny pregnant workers' requests for accommodations that some of these workers need to continue safely working during pregnancy, such as honoring a lifting restriction, allowing women to stay off high ladders, or even allowing women to drink water, even though they provide these accommodations to other similarly situated workers who are not pregnant.⁸² Instead of accommodating their requests, employers have forced pregnant workers onto unpaid leave or out of their jobs altogether.⁸³

The Lack of 21st Century Workplace Policies Disadvantages Women Workers with Caregiving Responsibilities.

The lack of workplace policies to address the tension between the nearly equal participation of women in the labor force and women's disproportionate caregiving responsibilities is a systemic problem. Only 11 percent of workers in the U.S. have access to paid family leave.⁸⁴ Caregivers who do not have access to any form of paid leave must take unpaid time off to care for their families, and some workers do not even have any unpaid leave. While the Family and Medical Leave Act is designed to ensure job protection and unpaid leave for workers, only 59 percent of workers are eligible for this form of leave.⁸⁵

The numbers are similarly dismal for paid sick days. Over 40 percent of private-sector workers lack paid sick days.⁸⁶ The problem is even worse for low-wage workers – over 80 percent do not have access to paid sick days.⁸⁷ Because so many women do not have paid family leave, paid sick days, or even unpaid job-protected leave, women lose pay when they take time off to care for their families, and sometimes they lose their jobs.

Women who are caregivers take a financial hit in other ways as well. In many low-wage jobs, full-time hours are a reward only for workers who have totally open availability to work any shift at all, even those shifts assigned on a moment's notice.⁸⁸ Workers have reported seeing their coworkers' hours reduced or seeing coworkers fired as a penalty for taking time off to care for family or pick up a sick child.⁸⁹ So workers with caregiving responsibilities may have smaller paychecks in the short term because they are forced to work fewer hours, and smaller paychecks in the long term because they are less likely to be promoted to managerial positions.⁹⁰

Finishing the unfinished business of achieving fair pay

AS WE REFLECT ON THE WAGE GAP OVER THE LAST 50 YEARS and the systemic problems that contribute to unfair pay, it is clear that a serious effort will be required to address the many barriers to women's economic equality. Closing the wage gap will take more than an easy fix. Fortunately, there are commonsense solutions that would improve wages for women and address many of the entrenched barriers that have allowed the wage gap to remain stagnant for the last decade. This section details an approach federal and state policymakers can take to help eliminate the barriers that stand in the way of women being paid fairly by:

- **Strengthening our equal pay laws** to deter employers from paying women less than men for the same job and support women in identifying and remedying pay discrimination;
- **Improving women's access to higher-wage jobs** that are nontraditional for women;
- **Lifting up the wages of workers in the lowest-paid jobs**, who are disproportionately women; and
- **Putting 21st century workplace policies in place** to ensure that workers are not penalized for fulfilling both their work and family obligations.

"EQUAL PAY FOR EQUAL WORK

is a fundamental civil right. Over the past four decades, America has made enormous progress toward ensuring that all its people have an equal chance to enjoy the benefits of this great Nation. Bipartisan civil rights bills have been enacted to expand and strengthen the law to ensure fair pay for all workers. Despite these advances, civil rights is still America's unfinished business."

Source: Statement of the late Senator Edward Kennedy (D-MA) during introduction of the Lilly Ledbetter Fair Pay Act.⁹¹

STRENGTHEN OUR EQUAL PAY LAWS.

There is much more work to be done to make our laws equal to the task of deterring employers from paying women unfairly. It is imperative to address the limitations of our current equal pay laws that make it difficult for women to fight back against pay discrimination. These limitations are described below.

Allowing Employers to Pay Unequal Wages for Equal Work Without a Business Justification Is a Major Loophole in the Equal Pay Laws. Under the equal pay laws, when an employer is found to have paid female employees less than male employees for equal work, the employer may assert an affirmative defense that the pay differential is based on a "factor other than sex." Some

employers have argued for interpretations of this defense that are so broad that they may themselves be sex-based and allow historical wage discrimination to go unchecked.⁹²

The Threat of Retaliation Keeps Workers from Finding Out When They Are Being Paid Less. Workers need explicit protections from retaliation for discussing their pay. Today, over 61 percent of private-sector employees report that discussing their wages is either prohibited or discouraged by employers.⁹³ If employees do not know when they are being paid less than a coworker in the same job, it is nearly impossible to fight back against pay discrimination. Employees should not have to fear that they are putting their jobs at risk by finding out what their coworkers are being paid, in order to determine whether they are victims of pay discrimination.

The Barriers to Coming Together to Fight Back Against Pay Discrimination Make It Difficult for Women to Challenge that Discrimination in the Courts. Under current law, it is extremely difficult for employees to band together to fight back against unfair pay. In 2001, female Wal-Mart workers joined together to challenge company-wide systemic discrimination in pay and promotions.⁹⁴ The women alleged, among other things, that women in the same jobs as men in positions throughout the company were paid less than their male counterparts. In *Wal-Mart Stores, Inc. v. Dukes*, a deeply divided Supreme Court in a narrow 5-4 decision limited workers' ability to come together as a group to challenge discrimination by large employers.⁹⁵ This decision dealt a blow to women's and all workers' ability to enforce their rights under the equal pay and other nondiscrimination laws through class actions. If workers are unable to come together to fight back against pay discrimination, much of this discrimination is likely to go unchecked. This is particularly true for low-wage workers, a group that is disproportionately made up of women.⁹⁶ These workers can least afford to risk retaliation for bringing an individual claim. Further, for these workers the costs and time commitment involved in pursuing individual litigation may often be prohibitive.

Arbitrary Limits on Damages Weaken the Deterrent Effect of the Equal Pay Laws. The promise of the Equal Pay Act will remain unfulfilled without an assurance that employers will be held accountable for breaking the law. Today, the only remedies available under the Equal Pay Act for workers who prove pay discrimination are liquidated damages and back pay awards, which are often small.⁹⁷ In contrast, workers bringing pay discrimination lawsuits on the basis of race or ethnicity may recover both compensatory and punitive damages. Employers must face serious consequences for paying women less and for keeping employees in the dark about their pay. For too many employers today, potential liability for an equal pay violation is an acceptable part of the cost of doing business.

The Failure to Collect Pay Data Inhibits the Enforcement of the Equal Pay Laws. Robust enforcement of the equal pay laws by civil rights agencies is especially important to detect and remedy systemic pay discrimination. But at both the federal and state level, enforcement agencies fail to collect data from private sector employers about what employees are paid. In 2006, the Bush Administration eliminated the tool used by the Department of Labor to detect and remedy wage discrimination by federal contractors.⁹⁸ And the EEOC also does not collect compensation data for private sector employees.⁹⁹ As a result, civil rights enforcement agencies lack sufficient information to adequately enforce the equal pay laws.

FEDERAL STEPS TO STRENGTHEN FEDERAL EQUAL PAY LAWS.

Beyond signing the Lilly Ledbetter Fair Pay Act, the Obama Administration has taken several other steps to date to achieve fair pay. In 2010, the Administration created the National Equal Pay Enforcement Taskforce which has played an active role in recommending and coordinating federal legislative and administrative actions to close the wage gap. The Taskforce's role and impact is described in greater detail on page 16 of this report.¹⁰⁰ In 2013, the Obama Administration took another crucial step forward by rescinding the Bush-era guidelines from 2006 (the "Compensation Standards" and "Voluntary Guidelines") that had previously hampered investigation of pay discrimination claims under Executive Order 11246.¹⁰¹ And a May 2013 presidential memorandum set forth the federal government's plan to identify and implement model pay practices by subjecting its current pay practices to greater scrutiny, including its pay and promotion practices for part-time workers and those who have taken time off to care for families; developing guidance for agencies to promote greater transparency in starting salaries; and analyzing and identifying agency best practices to promote pay equity.¹⁰² But there is much more to be done.

The following legislative and administrative proposals would strengthen the equal pay laws and help close the wage gap.

Federal Legislative Proposals

The Paycheck Fairness Act – A Comprehensive Approach.

The Paycheck Fairness Act is a commonsense piece of legislation that would strengthen the Equal Pay Act 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.¹⁰⁶ The bill would:

- Bring the remedies for equal pay violations in line with those available for other types of pay discrimination by allowing plaintiffs who win their equal pay cases to recover compensatory and punitive damages;
- Prohibit retaliation against employees for discussing their pay;
- Tighten loopholes in the employer defenses to unequal pay by requiring employers to provide a business justification for paying unequal wages; and
- Collect the pay data need by civil rights enforcement agencies.

The Equal Employment Opportunity Restoration Act of 2012 – Removing Barriers to Workers Banding Together to Fight Back Against Pay Discrimination. The Equal Employment Opportunity Restoration Act would remove the obstacles the Supreme Court placed in the way of ordinary Americans seeking their day in court and provide a clear avenue for employees to seek redress as a group.¹⁰⁷

THE LILLY LEDBETTER FAIR PAY ACT

The first substantive piece of legislation that President Obama signed into law was The Lilly Ledbetter Fair Pay Act of 2009. This law kept the courthouse doors open so that women could still pursue their equal pay claims, even if they were prevented from learning about pay discrimination until long after the original discriminatory pay decision was made.¹⁰³ In *Ledbetter v. Goodyear Tire and Rubber Co.*, the Supreme Court held that Lilly Ledbetter could not recover for pay discrimination because she did not bring her claims within 180 days of her employer's original decision to pay her less than her male coworkers – even though she did not learn that she was being paid less until years later.¹⁰⁴ Although that original discriminatory decision was reflected in every subsequent paycheck she received, the Supreme Court, in a 5 to 4 decision, held that Lilly Ledbetter's claims were time-barred.¹⁰⁵ Congress acted swiftly to restore the right to fight back against pay discrimination by passing The Lilly Ledbetter Fair Pay Act to make clear that the 180-day time clock is reset each time a discriminatory paycheck is issued.

A graphic of a spotlight shining down on a dark surface, with the text 'SPOTLIGHT ON THE FAIR PAY ACT OF 2013' centered within the beam of light.

SPOTLIGHT ON THE FAIR PAY ACT OF 2013

Addressing the devaluation of women's work, simply because it is done by women, is critical to closing the wage gap. The Fair Pay Act of 2013 would do just that by ensuring that women receive the same pay as men in jobs requiring equivalent skill level, effort, responsibility and working conditions.¹⁰⁸

Federal Administrative Proposals

In addition to the legislative proposals outlined here, there are concrete steps that the Administration can take to help to close the wage gap.

Combat Punitive Pay Secrecy Policies. The EEOC has clarified that employer prohibitions on employees' ability to file a charge with the EEOC violate the anti-retaliation provisions of Title VII because they "have a chilling effect on the willingness and ability of individuals to come forward."¹⁰⁹ Likewise, employer gag rules that keep employees from finding out when they are being paid less have a similar chilling effect on employees' and the agencies' ability to challenge discrimination.

The Administration can improve the law by making clear that policies that keep workers in the dark about their wages interfere with the enforcement of the equal pay laws and are therefore impermissible under these laws, including the Equal Pay Act, Title VII, and Executive Order 11246 (which bans discrimination by federal contractors). The President could also use his executive authority to explicitly prohibit federal contractors from retaliating against their employees for discussing pay information with others. This can be achieved by issuing a new executive order for federal contractors or through agency regulations or guidance. The Office of Federal Contract Compliance Program's (OFCCP) jurisdiction covers over 20 percent of

the civilian workforce,¹¹⁰ so putting in place a no-retaliation policy for this workforce is especially critical to not only strengthening our pay discrimination laws but ensuring that federal tax dollars are not subsidizing discrimination.

Collect Information About Compensation Data. In 2011, OFCCP began the process of developing a new wage data collection tool for federal contractors by seeking input from stakeholders.¹¹¹ Likewise, the EEOC solicited information about existing data collection in a National Academy of Sciences study.¹¹² It is crucial for these agencies to take the next steps forward by developing and implementing methods for collecting employer pay data that can be used in their enforcement efforts.

STATE STEPS TO STRENGTHEN STATE EQUAL PAY LAWS.

Many states have been leaders in the ongoing fight against pay discrimination and have taken critical steps to strengthen their equal pay laws to provide protections beyond those that are available under the federal Equal Pay Act. Below, we highlight several state efforts that may provide helpful models for other states seeking to strengthen their own equal pay laws.

Prohibit Retaliation. A number of states explicitly prohibit retaliation against employees under their fair pay laws, either for enforcing their rights under the law or for discussing their pay. States that have passed laws prohibiting retaliation against employees for exercising their rights under their states' fair pay laws include California,¹¹³ Colorado,¹¹⁴ Illinois,¹¹⁵ Maine,¹¹⁶ Michigan,¹¹⁷ Vermont,¹¹⁸ and, most recently, New Mexico.¹¹⁹ And more states may be on the way. In New York, Governor Andrew Cuomo recently released the "New York Rising" policy agenda, which includes a Women's Equality Act that, among other things, aims to decrease the wage gap by prohibiting employers from retaliating against workers for discussing their pay.¹²⁰ As Governor Cuomo has stated, "Policies against sharing wage information, essentially deny women workers the ability to discover whether their wages are unequal to their male counterparts," and without the non-retaliation provisions of the act, "wage disparities will persist undetected."¹²¹ Similarly, the Louisiana Senate recently passed, and sent to the Louisiana House of Representatives, a bill that would make it illegal to retaliate or take adverse employment actions against public sector employees who "inquir[e] about, disclos[e], compar[e], or otherwise discuss" their wages or others' wages.¹²²

A graphic of a spotlight shining down on a dark surface, with the text overlaid.

SPOTLIGHT ON NON-RETALIATION IN VERMONT

Vermont passed a law in May 2013 prohibiting employers from requiring employees not to share information about their own pay or ask coworkers what they are paid.¹²³ The new law also prohibits employees from waiving their rights to discuss their wages. Finally, it prohibits retaliation against employees for engaging in these activities. Vermont's longstanding commitment to fair pay is paying off. Vermont is the state with the second-smallest wage gap for women overall, and the smallest wage gaps for African-American women and Hispanic women compared to white, non-Hispanic men.¹²⁴

Improve Pay Data Collection. Collecting information about employee pay is essential to state and local enforcement efforts. Vermont's new equal pay law takes a step in the right direction by requiring state contractors to certify that they are in compliance with that law; and to make their payroll records available on request to the contracting agency or the Attorney General to verify compliance.¹²⁵ New Mexico's executive order has gone a step further.¹²⁶

Tighten Employer Defenses. As has been the case under the federal Equal Pay Act, some courts have interpreted the defenses to equal pay claims brought under state laws so broadly that they have allowed employers to flout these laws and continue paying women less. A handful of states have implemented laws making clear that businesses must provide a valid business reason for paying unequal wages to men and women doing the same work. For example, California's Equal Pay Act requires a "bona fide factor other than sex,"¹²⁷ and Kansas' Act Against Discrimination states that employers may not discriminate "in compensation . . .

without a valid business necessity."¹²⁸ Vermont's new equal pay law also changes its defense to ensure that employers can only pay unequal wages for business reasons. Specifically, that law states, "An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration."¹²⁹

A graphic of a spotlight shining down on a dark surface, with the text overlaid.

SPOTLIGHT ON PAY DATA COLLECTION & REPORTING IN NEW MEXICO SHOWS IT'S POSSIBLE

In 2009, Governor Bill Richardson established the Governor's Task Force on Fair and Equal Pay ("Task Force"). Based on the recommendations of the Task Force, Governor Richardson subsequently issued an executive order that required companies that wanted to contract with the State to provide basic pay equity reports.¹³⁰ The pay reports use the same nine occupational categories used by the federal Equal Employment Opportunity Commission's (EEOC) EEO-1 forms. The reporting requirement applies to all state agencies that let contracts and all categories of purchasing.

About 3,200 firms are covered by the requirements, ranging in size from New Mexico's largest employer, Intel (with more than 3,000 employees) to firms with only 10 employees. This reporting has become a regular part of the contracting process and New Mexico employers have not reported difficulties complying with the law.



SPOTLIGHT ON NEW YORK'S PROPOSED REVISIONS TO THE EMPLOYER DEFENSES TO PAY DISCRIMINATION

New York could close the loophole in employer defenses if it passes the Women's Equality Act. The proposal would require employers to show that the difference in salary is not based on sex, that it is related to job performance, and that it is consistent with business necessity.¹³¹

Keep the Courthouse Doors Open. Enforcement of the pay discrimination laws would be nearly impossible under the rule established in *Ledbetter v. Goodyear Tire Co.*, which held that a woman could not recover for pay discrimination unless she brought her claim within 180 days of when the original discriminatory pay decision was made.¹³² This is because women often do not find out that they are being paid less than their male coworkers until years after their employer makes the original decision to discriminate by setting their wages below their male coworkers'. Congress restored the law in 2009 by passing the Lilly Ledbetter Fair Pay Act, which makes clear that each discriminatory paycheck (rather than simply the original decision to discriminate) resets the 180-day limit to file a claim.¹³³ While many states generally follow Title VII precedent in interpreting their state's nondiscrimination laws, some courts have declined to follow the Ledbetter Act, relying on the Supreme Court's *Ledbetter* decision to dismiss discrimination claims brought under state law as untimely. For example, a district court in New York specifically noted that because "the New York legislature [has not] enacted a statute similar to the

Ledbetter Act," salary discrimination claims under the New York State Human Rights Law (NYSHRL) "are governed by the Supreme Court's analysis in *Ledbetter*."¹³⁴

Some state legislatures have passed their own Ledbetter laws to keep the courthouse doors open for women workers. For example, both houses of the Texas legislature passed a Lilly Ledbetter Fair Pay Act in 2013 in response to a Texas Supreme Court decision making clear that when interpreting Texas' nondiscrimination law Texas courts would not apply the federal law's requirement to reset the clock on the statute of limitations with the payment of each discriminatory paycheck unless explicitly required to do so by the Texas legislature.¹³⁵ The bill is now awaiting the Governor's signature.¹³⁶ Maryland's and Illinois' legislatures acted quickly after the *Ledbetter* decision, both enacting their own state Ledbetter laws.¹³⁷



SPOTLIGHT ON MARYLAND'S LEDBETTER LAW

On April 14, 2009, less than three months after President Obama signed the Lilly Ledbetter Fair Pay Act, Governor Martin O'Malley signed Maryland's Lilly Ledbetter Civil Rights Restoration Act into law, which also expanded the time period for employees who have been subject to unlawful pay discrimination to assert their rights under the state law.¹³⁸ The new law has already been successful in providing Marylanders with relief. For example, in *Rogers v. Conmed, Inc.*, the federal district court in Maryland denied a motion to dismiss state law age and race discrimination claims, holding that they were timely following the passage of the Lilly Ledbetter Civil Rights Restoration Act.¹³⁹

Commissioning Change.

Both at the federal level and in the states, commissions and taskforces have played an important role in focusing policymakers on the need to close the wage gap.

The Obama Administration's National Equal Pay Taskforce, composed of representatives from the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the Office of Personnel Management, is tasked with identifying and addressing challenges to ending pay discrimination. The Taskforce has made recommendations to address persistent barriers to equal pay enforcement and the need for better pay data collection; and has announced plans to make recommendations to close the wage gap in the federal workforce, educate the public about the right to fair pay, and advocate for passage of the Paycheck Fairness Act.¹⁴⁰ The Taskforce has contributed to a heightened focus throughout the federal government on ending pay discrimination. For example, since the establishment of the Taskforce, the number of pay discrimination cases resolved by OFCCP has nearly tripled.¹⁴¹

Similarly, many of the states that have implemented strong equal pay policies have begun the process with the help of a commission tasked with identifying solutions to close the wage gap.

- **New Mexico's Taskforce on Fair and Equal Pay.** In 2009, New Mexico's Governor Bill Richardson created the Fair and Equal Pay for All New Mexicans Initiative, which included the Task Force on Fair and Equal Pay. The Commission's work helped lead to the adoption, in 2013 under Governor Susana Martinez, of the Fair Pay for Women Act, which greatly strengthens fair pay protections for New Mexicans by providing a private right of action with no administrative exhaustion requirement; a strong no-retaliation provision; and damages to help deter violations.¹⁴²
- **Maryland's Equal Pay Commission.** Likewise, in 2004, Maryland's General Assembly established an Equal Pay Commission to study issues relating to equal pay. The Commission worked with the Institute for Women's Policy Research to develop recommendations and best practices.¹⁴³ Maryland's Equal Pay Commission also published a report, providing key recommendations to improve the Commission's ability to analyze the issues and invigorate enforcement of equal pay in Maryland.¹⁴⁴
- **Colorado's Pay Equity Commission.** Similarly, in Colorado, the Executive Director of the Department of Labor and Employment, Don Mares, charged the Pay Equity Commission with "determining the scope of pay inequity based on gender and race in Colorado, identifying policies and practices that help produce it and suggesting areas of reform."¹⁴⁵ In response, Colorado's Pay Equity Commission published a comprehensive report on pay equity, including some major setbacks (in particular, the closing of many Civil Rights Divisions) and a thorough list of recommendations.¹⁴⁶
- **Vermont's Standing Commission on Women.** Vermont, the state with the narrowest wage gap,¹⁴⁷ has had a standing Commission on Women since 1964 whose "[c]ommissioners come from all parts of the state and across the political spectrum."¹⁴⁸ The Commission was heavily involved in the passage of the Vermont Equal Pay Act in 2002¹⁴⁹ and, in 2012, the Commission filed an amicus brief in Federal District Court in Vermont in *Dreves v. Hudson Grp. Retail, LLC*, the first case to interpret Vermont's Equal Pay Act.¹⁵⁰ The commission was also involved in the recent passage of Vermont's new pay equity bill.

A hallmark of many of these Commissions is the inclusion of a wide range of stakeholder groups bringing diverse perspectives to understanding the problem of unequal pay. A commission alone is certainly not enough to bring about wholesale change, but as these examples show, state Commissions have helped raise the profile of the issue and launch improvements in the law.

BUILD LADDERS TO HIGH-WAGE JOBS THAT ARE NONTRADITIONAL FOR WOMEN.

Moving the dial on occupational segregation requires vigorous enforcement of the nondiscrimination laws and making the recruitment and retention of women in nontraditional CTE and STEM courses and nontraditional jobs a priority at both the national and state level.

FEDERAL STEPS TO PROMOTE THE EDUCATION AND EMPLOYMENT OF WOMEN FOR NONTRADITIONAL, HIGHER-WAGE JOBS.

Vigorous enforcement of our nondiscrimination laws is critical to removing barriers for women to accessing higher-wage jobs that are traditionally male. Hiring discrimination remains a significant barrier to women's entry into nontraditional jobs.¹⁵¹ However, this form of discrimination is particularly difficult to challenge since today employer policies that operate to keep women out are often covert, rather than explicit; women often do not know when men are being hired in their place; and women who are victims of systemic hiring discrimination very often do not have the resources to fight back against these company-wide policies or practices.¹⁵² And even when they are hired, discrimination, including unchecked harassment, limits the number of women working in nontraditional fields. For all of these reasons, the federal government's engagement in systemic and high-profile enforcement of the prohibitions on discrimination against women and nontraditional jobs, including employment screens that have a disparate impact on women, is crucial to opening up nontraditional jobs to women.

Our public workforce system must also redouble its efforts to promote nontraditional occupations for women. The Workforce Investment Act is the primary federal job training system, funding educational and career training for underserved workers.¹⁵³ Only roughly 3 percent of those exiting Workforce Investment Act programs go into jobs that are nontraditional for their gender.¹⁵⁴ Workforce Investment Act reauthorization should require states to submit plans to increase the numbers of women entering jobs that are nontraditional for their gender after receiving WIA-funded training.¹⁵⁵ The Women WIN Jobs Act would provide much needed grants to states to increase low-income women's participation in higher-wage, high demand occupations in nontraditional fields.¹⁵⁶ Among the authorized activities,

the grants would help states and their partners improve the recruitment of low-income women in apprenticeship programs, develop effective policies for hiring women, and provide funds for outreach activities and training to overcome gender stereotypes.

SPOTLIGHT ON WOMEN IN CONSTRUCTION

In 1978, the Office for Federal Contract Compliance Programs (OFCCP) established a goal to increase the number of women in construction occupations.¹⁵⁷ The goal was set at a modest 6.9 percent, and has yet to change and the "good faith" efforts required of contractors were not rigorous enough to increase women in the construction profession.¹⁵⁸ Still, by 2010, women made up only 2.6 percent of construction trades and related occupations.¹⁵⁹ The Department of Labor needs to increase the goal for the share of women in construction. It also must update the regulations on apprenticeship programs, the major pathway into construction trades and related occupations, to stress equal employment opportunities.¹⁶⁰ The regulations should be updated to:

- Eliminate criteria and methods that have a disparate impact on women, such as depending heavily on intent to hire letters and irrelevant strength testing.
- Require apprenticeship programs to have evaluation systems that review for non-discrimination, affirmative action, and equal employment opportunities for on-the-job training.
- Require women's committees and mentorship programs, as well as actively seek women in instructional and leadership positions.
- Provide clear consequences for apprenticeship programs that fail to meet these requirements.

Finally, federal policy must hold states accountable for increasing the participation rates of girls in STEM and non-traditional CTE courses. Congress has an opportunity to do just that in the upcoming reauthorization of the Carl D. Perkins Career and Technical Education Act.¹⁶¹ The nontraditional accountability measure in the Perkins Act challenges states to address the barriers that women and girls face in entering nontraditional fields, such as sexual harassment in the classroom; bias in career recruitment, counseling, or mentorship; and a lack of access to appropriate tools or faculty. Congress can also ensure that Office of Vocational and Adult Education (OVAE) plays an important role in improving access to higher-wage CTE fields of study if it has the explicit authority to hold states accountable.

LIFT UP THE WAGES OF WOMEN IN LOW-WAGE JOBS.

The federal minimum wage has been stagnant since 2009, and the tipped minimum wage has not increased since 1991.¹⁶² Raising the minimum wage would help narrow the wage gap for women since most of the workers who will see an increase in pay are women.¹⁶³ Likewise, the many workers being paid slightly above the minimum wage – the majority of whom are women – are likely to get a raise as employers raise the wages of those making just over the minimum wage as well to maintain internal pay scales.¹⁶⁴

FEDERAL STEPS TO RAISE THE WAGES OF WOMEN IN LOW-WAGE JOBS.

The Fair Minimum Wage Act would gradually raise the federal minimum wage from \$7.25 to \$10.10 per hour, increase the tipped minimum cash wage from \$2.13 per hour to 70 percent of the minimum wage, and index these wages to keep pace with inflation.¹⁶⁵ These improvements are important steps toward achieving fair pay for women.

STATE STEPS TO RAISE THE WAGES OF WOMEN IN LOW-WAGE JOBS.

States can help narrow the wage gap by increasing their state's minimum wage.¹⁶⁶ Seven of the ten states with the smaller wage gaps in 2011 had minimum wages above the federal minimum of \$7.25 per hour. Among the ten states with the largest wage gaps, only two had minimum wages above \$7.25 an hour.¹⁶⁷ The average of the wage gaps for states with minimum wages above the federally-mandated minimum is three cents smaller than the average of the wage gaps in those states where the minimum wage is only \$7.25,¹⁶⁸ a substantial difference when you consider that if the national wage gap shrunk by three cents, it would close by more than 13 percent.

STATES WITH HIGHER-THAN-FEDERAL MINIMUM WAGES ALSO HAVE SMALLER WAGE GAPS

States with the 10 Smallest Wage Gaps

State	Women's Earnings/ Men's Earnings	Wage Gap	Minimum Wage
District of Columbia	90.4%	9.6%	\$8.25
Vermont	86.7%	13.3%	\$8.60
Maryland	86.0%	14.0%	\$7.25
Nevada	84.9%	15.1%	\$8.25
California	84.9%	15.1%	\$8.00
Rhode Island	84.8%	15.2%	\$7.75
Arizona	84.7%	15.3%	\$7.80
New York	83.6%	16.4%	\$7.25*
Florida	82.6%	17.4%	\$7.79
Arkansas	82.0%	18.0%	\$7.25

States with the 10 Largest Wage Gaps

State	Women's Earnings/ Men's Earnings	Wage Gap	Minimum Wage
Wyoming	66.6%	33.4%	\$7.25
Louisiana	68.8%	31.2%	\$7.25
Utah	69.0%	31.0%	\$7.25
West Virginia	70.5%	29.5%	\$7.25
North Dakota	72.7%	27.3%	\$7.25
Mississippi	73.5%	26.5%	\$7.25
Michigan	73.8%	26.2%	\$7.40
Alabama	74.2%	25.8%	\$7.25
Montana	74.6%	25.4%	\$7.80
Idaho	75.2%	24.8%	\$7.25

Note: State earnings ratios and wage gaps calculated by the National Women's Law Center (NWLC) are based on the 2011 American Community Survey (<http://www.census.gov/acs/www/>). U.S. Department of Labor, Wage and Hour Division, Minimum Wage Laws in the States – January 1, 2013, available at <http://www.dol.gov/whd/minwage/america.htm>.

*Under recently enacted legislation, New York's minimum wage is set to rise to \$9.00 per hour in three steps between Dec. 31, 2013 and Dec. 31, 2015.

A number of states have taken the lead on raising the minimum wage. Nineteen states and the District of Columbia currently have minimum wages above the federal level,¹⁶⁹ and minimum wage increases advanced in several states during the 2013 legislative session. In New York, the minimum wage will rise from \$7.25 to \$9.00 per hour over two years beginning December 31, 2013.¹⁷⁰ The minimum wage in Connecticut will reach \$9.00 per hour by January 1, 2015 (up from \$8.25 per hour today).¹⁷¹ And in New Jersey, the legislature passed a bill that will put a measure on the ballot in November to raise the minimum wage from \$7.25 to \$8.25 per hour in 2014, followed by annual adjustments for inflation.¹⁷² Additional bills to raise the minimum wage are pending in states such as California, Maine, Massachusetts, and Rhode Island.

ADOPT 21ST CENTURY WORKPLACE POLICIES AND ENFORCE EXISTING PROTECTIONS FOR WOMEN IN THE WORKPLACE AGAINST DISCRIMINATION ON THE BASIS OF PREGNANCY AND CAREGIVING.

To end the wage gap, it is crucial to put in place 21st century workplace policies that would stop women from being penalized for taking time out of the workforce to care for their families. Stronger enforcement of those laws that protect women with caregiving responsibilities from discrimination is also vitally important. Finally, it must be unmistakably clear that women who need to make adjustments to their jobs to continue safely working during pregnancy may not be forced off the job when the employer accommodates other similarly situated workers. Federal and state solutions to achieve these goals are described below.

FEDERAL STEPS TO REMOVE PENALTIES FOR WORKERS WITH CAREGIVING RESPONSIBILITIES AND PREGNANT WORKERS.

Adopt Policies That Would Increase the Availability of Paid Family Leave and Paid Sick Days. Twenty-first century policies that enable all workers to take time out from work to care for their families without losing pay would help close the wage gap. At the federal level, the Healthy Families Act would allow employees to earn up to seven paid sick days per year that can be used for their own illness, for preventive care, to take care of a sick family member or to recover from or seek help relating to sexual assault or

domestic violence.¹⁷³ Likewise, advocates have proposed a federal paid family and medical leave insurance program which would create a national paid leave system allowing employees up to 12 weeks of paid leave for their own serious illness, for the serious illness of certain family members, for the birth or adoption of a child, or for the injury of a family member in the military or for exigencies related to military deployment of a family member.¹⁷⁴

Enforce Sex Discrimination Laws on Behalf of Workers with Caregiving Responsibilities. Sex discrimination against women with actual or perceived caregiving responsibilities operates to reduce women's wages by keeping women from being hired for certain jobs and from being considered for higher pay and promotions. The EEOC and OFCCP should seek opportunities to identify and remedy this form of discrimination.

Clarify Employers' Obligation to Accommodate Pregnant Workers. EEOC guidance should make clear that employers' nondiscrimination obligations under the Pregnancy Discrimination Act require them to accommodate pregnant workers when they accommodate, or would be legally required to accommodate, other similarly situated workers who are not pregnant. Similarly, the Pregnant Workers Fairness Act would ensure that pregnant workers have the same rights to reasonable accommodation that are available to workers with temporary disabilities.¹⁷⁵ Both of these policies would lessen the wage gap by making it possible for pregnant workers in need of workplace accommodations to remain in the workforce earning income for their families rather than being forced off the job.

STATE STEPS TO REMOVE PENALTIES FOR WORKERS WITH CAREGIVING RESPONSIBILITIES AND PREGNANT WORKERS.

States and localities can enforce their sex, pregnancy, and caregiver discrimination protections on behalf of workers with caregiving responsibilities and pregnant workers, as well as adopt paid sick days, paid family leave, and pregnancy accommodations laws.

Adopt State and Local Paid Sick Days and Family Leave Laws. Today, advocates are waging paid sick days campaigns in roughly twenty cities and states.¹⁷⁶ And a number of localities have been successful in recent years

in securing paid sick days for their employees. In Washington, D.C. employees may take up to seven paid sick days, depending on the size of the employer, for their own, or a family member's, illness, injury or medical condition.¹⁷⁷ Under the D.C. paid sick days law, sick days can also be used if an employee or an employee's family member is a victim of stalking, domestic violence, or sexual abuse.¹⁷⁸ In San Francisco, employees can accrue up to 72 hours of paid sick leave that they may use if they are ill or injured or for the purpose of receiving medical care, treatment, or diagnosis, or to aid or care for a family member or designated person when that person is ill, injured, or receiving medical care, treatment, or diagnosis.¹⁷⁹ Sick day laws have also passed in Milwaukee, Seattle, Portland, Oregon and most recently, New York City.¹⁸⁰ In 2011, Connecticut became the first state to enact paid sick days.¹⁸¹ Likewise both New Jersey and California have passed paid family leave laws that provide partial income replacement for workers who take time off to care for a newborn, care for a newly adopted child, or to care for a family member with serious health condition.¹⁸²

Enforce State Nondiscrimination Laws Prohibiting Sex and Caregiver Discrimination. States and localities can enforce sex discrimination laws on behalf of women who are caregivers. In addition, three states – Alaska, the District of Columbia and New Jersey – have explicit protections against caregiver discrimination. Alaska prohibits employment discrimination on the basis of “parenthood,”¹⁸³ the District of Columbia prohibits employment discrimination on the basis of “family responsibilities,”¹⁸⁴ and New Jersey prohibits employment discrimination against public employees on the basis of “familial status.”¹⁸⁵ Sixty-three localities in 22 states also prohibit some form of caregiver discrimination in their employment nondiscrimination statutes.¹⁸⁶ In recent years, similar legislation has been introduced in nearly a dozen states.¹⁸⁷

Adopt Laws to Clarify Employers' Obligations Not to Discriminate on the Basis of Pregnancy by Accommodating Pregnant Workers. At the state level, eight states now have laws requiring employers to provide certain types of accommodations to some or all pregnant employees: Alaska, California, Connecticut, Hawaii, Louisiana, Illinois, Texas, and Maryland.¹⁸⁸ These laws may provide useful models for other states considering similar legislative proposals.

Conclusion

FIFTY YEARS AFTER THE EQUAL PAY ACT WAS SIGNED INTO LAW, women working full time, year round are still typically paid 77 cents for every dollar paid to their male counterparts. The wage gap makes it difficult for women – who are more than 40 percent of primary breadwinners in families with children and nearly 50 percent of the labor force – to provide for themselves and their families. Closing this gap requires a serious and sustained commitment at both the federal and state levels to overcoming all of the barriers standing in the way of women achieving fair pay. It requires strengthening our equal pay laws so that women have the tools they need to challenge pay discrimination; removing the roadblocks to women's access to higher-paying nontraditional jobs and job training, including harassment and discrimination; increasing the pay for women in the lowest-paid jobs, many of which have historically been devalued because they are done by women; and ensuring that women with caregiving responsibilities do not face workplace discrimination and economic hardship simply for fulfilling these responsibilities. It is past time to finish America's unfinished business of achieving fair pay.

endnotes

- 1 Nat'l Women's Law Ctr. (NWLC), *The Wage Gap Over Time* (June 2013), available at http://www.nwlc.org/sites/default/files/pdfs/wage_gap_over_time_overall.pdf.
- 2 Jennifer Perry & David E. Gundersen, *American Women and the Gender Pay Gap: A Changing Demographic or the Same Old Song*, 31 *Advancing Women in Leadership* 153, 154 (2011), available at http://advancingwomen.com/awl/Vol31_2011/gundersonfinal187_31.pdf.
- 3 *Equal Pay Act of 1963: Hearings on S. 882 and S. 910 Before the Subcomm. on Labor of the S. Comm. on Labor & Public Welfare*, 88th Cong. 137, 141-43 (1963) [hereinafter *Equal Pay Act of 1963*] (statement of W. Boyd Owen, Vice President, Personnel Administration, Owens-Illinois Glass Co.).
- 4 H.R. Rep. No. 88-309, at 5 (1963), reprinted in 1963 U.S.C.C.A.N. 687, 692.
- 5 See Paycheck Fairness Act Coalition, *New Polling Data Shows Voters Overwhelmingly Support the Paycheck Fairness Act*, available at http://www.nwlc.org/sites/default/files/pdfs/Poll_Data_One_Pager.pdf. (reporting results of poll conducted by Lake Research Partners from May 21-24, 2010).
- 6 *Labor Force Statistics from the Current Population Survey*, Bureau of Labor Statistics, <http://data.bls.gov/pdq/querytool.jsp?survey=ln> (last visited May 3, 2013). In 1963, 38.3 percent of women age 20 and older were in the labor force. In 2012, 59.3 percent of women age 20 and older were in the labor force. Historically, labor force participation for African-American women has been higher than women's labor force participation overall. In 1972, 51.2 percent of African-American women age 20 and older were in the labor force. In 2012, 62.6 percent of African-American women age 20 and older were in the labor force. The figure overall for women in 1972 was 43.7 percent.
- 7 U.S. Census Bureau, *Current Population Survey: Educational Attainment: CPS Historical Time Series Tables* tbl.A-2: Percent of People 25 Years and Over Who Have Completed High School or College, by Race, Hispanic Origin and Sex: Selected Years 1940 to 2012, <http://www.census.gov/hhes/socdemo/education/data/cps/historical/index.html> (last visited June 3, 2013). The Census Bureau does not have data for educational attainment in 1963. In 1962, just under 7 percent of women age 25 and older had completed four years of college or more, the same as in 1964. NWLC assumes the figure was the same for 1963. In 2012, the most recent year with available data, 31 percent of women age 25 and older had completed four years of college or more. Completing four years of college or more is used as a measure for college graduation.
- 8 See *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 204 (1991) (determining that a company's exclusion of women from certain, high-paying positions based on "fetal-protection policy" was illegal sex discrimination and stating that "women as capable of doing their jobs as their male counterparts may not be forced to choose between having a child and having a job"); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) ("An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not. Title VII lifts women out of this bind."); *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (affirming plaintiff's use of national statistics to make a prima facie case of discriminatory impact under Title VII, which showed that Alabama's statutory height and weight restrictions for prison guards excluded 41.13% of the female population but less than 1% of the male population); *Davis v. City & Cnty. of San Francisco*, 890 F.2d 1438, 1448 (9th Cir. 1989) (affirming a consent decree that settled a Title VII class action alleging racial, gender, and national origin discrimination in the hiring and promotion of firefighters and upholding the affirmative requirements of the decree under Title VII due to the existence of a "manifest imbalance . . . reflecting underrepresentation of women and minorities in traditionally segregated job categories" (citation omitted) (internal quotation marks omitted)).
- 9 NWLC, *The Wage Gap Is Stagnant in Last Decade* (Sept. 2012), available at http://www.nwlc.org/sites/default/files/pdfs/poverty_day_wage_gap_sheet.pdf.
- 10 *The Wage Gap Over Time*, *supra* note 1.
- 11 NWLC, *Closing the Wage Gap Is Crucial for Women of Color and Their Families* (Apr. 2013), available at http://www.nwlc.org/sites/default/files/pdfs/closing_the_wage_gap_is_crucial_for_woc_and_their_families.pdf.
- 12 *Id.*
- 13 Frank Bass, *Shining Shoes Best Way Wall Street Women Outearn Men*, *Bloomberg Businessweek*, Mar. 16, 2012, available at <http://www.businessweek.com/news/2012-03-16/the-gender-pay-disparity>.
- 14 Ariane Hegewisch & Maxwell Matite, Inst. for Women's Policy Research, *The Gender Wage Gap by Occupation* (Apr. 2013), available at <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2>.
- 15 NWLC calculations based on Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey: CPS Tables: 2012 Annual Averages* [hereinafter *CPS Tables: 2012 Annual Averages*] tbl.39: Median Weekly Earnings of Full-Time Wage and Salary Workers by Detailed Occupation and Sex, <http://www.bls.gov/cps/cpsaat39.pdf> (last visited June 4, 2013). Among full-time workers, in only 2 of 114 occupations where wage data were available for both sexes were women's median weekly earnings more than men's median weekly earnings (those occupations were counselors and health practitioner support technologists and technicians). See also Hegewisch & Matite, *supra* note 14.
- 16 NWLC calculations based on U.S. Census Bureau, *Current Population Survey: 2012 Annual Social and Economic Supplement* [hereinafter *CPS ASEC 2012*] tbl.PINC-03: Educational Attainment—People 25 Years Old and Over, by Total Money Earnings in 2011, Work Experience in 2011, Age, Race, Hispanic Origin, and Sex, http://www.census.gov/hhes/www/cpstables/032012/perinc/pinc03_000.htm (last updated Sept. 12, 2012). Figures are for full-time, year-round workers. For an extensive examination of the wage gap among less educated workers, see U.S. Gov't Accountability Office, *GAO-12-10, Gender Pay Differences: Progress Made but Women Remain Overrepresented Among Low-Wage Workers* (Oct. 2011), available at <http://www.gao.gov/assets/590/585721.pdf>. Less educated workers are those with a high school degree or less.
- 17 NWLC calculations based on CPS ASEC 2012, *supra* note 16, tbl.PINC-03: Educational Attainment—People 25 Years Old and Over, by Total Money Earnings in 2011, Work Experience in 2011, Age, Race, Hispanic Origin, and Sex, http://www.census.gov/hhes/www/cpstables/032012/perinc/pinc03_000.htm (last updated Sept. 12, 2012). Figures are for full-time, year-round workers and assume a 40-year career. Figures are not adjusted for inflation.
- 18 Christianne Corbett & Catherine Hill, Am. Ass'n of Univ. Women, *Graduating to a Pay Gap: The Earnings of Women and Men One Year After College Graduation* 1 (Oct. 2012), available at <http://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf>.
- 19 *Id.* at 20 fig.10.
- 20 NWLC, *How the Wage Gap Hurts Women and Families* (Apr. 2013), available at http://www.nwlc.org/sites/default/files/pdfs/how_the_wage_gap_hurts_women.pdf.

- 21 NWLC calculations based on CPS ASEC 2012, *supra* note 16, Table Creator, available at <http://www.census.gov/cps/data/cpstablecreator.html>.
- 22 Sarah Jane Glynn, Ctr. for Am. Progress, *The New Breadwinners: 2010 Update: Rates of Women Supporting Their Families Economically Increased Since 2007*, at 2 (Apr. 2012), available at <http://www.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/breadwinners.pdf>. Primary breadwinners earn as much or more than their partners, or they are their family's sole earner.
- 23 *Id.*
- 24 Wendy Wang, Kim Parker & Paul Taylor, Pew Research Ctr., *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted About the Growing Trend* 1 (May 2013), available at http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.
- 25 In married couples in the bottom income quintile of all families, nearly 70 percent of working wives are primary breadwinners, earning as much or more than their husbands, compared to just over 33 percent of working wives in the top income quintile. Glynn, *supra* note 22, at 3 fig.2.
- 26 *How the Wage Gap Hurts Women and Families*, *supra* note 20.
- 27 John F. Kennedy: Remarks Upon Signing the Equal Pay Act, June 10, 1963, The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=9267> (last visited June 4, 2013).
- 28 Perry & Gundersen, *supra* note 2, at 154.
- 29 *Id.*
- 30 See *id.*
- 31 417 U.S. 188, 205 (1974).
- 32 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbl.39 & tbl.11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity, <http://www.bls.gov/cps/cpsaat11.pdf> (last visited June 5, 2013). Of the 25 detailed occupations with the lowest median weekly earnings for full-time workers, 17 are majority women, 13 of which are about two-thirds or more women. These occupations all have median weekly earnings for full-time workers of \$460 or less. Share of women in each occupation is for all employed workers.
- 33 *Id.* Of the 25 detailed occupations with the highest median weekly earnings for full-time workers, only two are majority women. These occupations all have median weekly earnings for full-time workers above \$1,350.
- 34 NWLC, *Explaining the Wage Gap* (Apr. 2013), available at http://www.nwlc.org/sites/default/files/pdfs/explaining_the_wage_gap.pdf.
- 35 *Equal Pay Act of 1963*, *supra* note 3, at 15 (statement of Hon. W. Willard Wirtz, Secretary of Labor).
- 36 NWLC, *Sex Stereotypes: How They Hurt Women in the Workplace – and in the Wallet* (Jan. 2013), available at http://www.nwlc.org/sites/default/files/pdfs/suits_fact_sheet_-_sex_stereotypes_01.30.2013.pdf.
- 37 Brief Amici Curiae of the American Civil Liberties Union and National Women's Law Center, et al., in Support of Respondents at 18, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) (citation omitted).
- 38 No. 11 Civ. 3743, 2013 WL 452913, at *1 (S.D.N.Y. Feb. 7, 2013).
- 39 803 F. Supp. 259, 293 (N.D. Cal. 1992).
- 40 549 F. Supp. 922, 940 (D. Md. 1982).
- 41 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbls.11, 39. Share of women in each occupation is for all employed workers. NWLC examined all detailed occupations for which median weekly earnings were available for 2012. The "highest-wage occupations" are defined as the 25 occupations that have the highest total median weekly earnings for full-time workers. The "lowest-wage occupations" are the 25 occupations that have the lowest total median weekly earnings for full-time workers.
- 42 *Id.*
- 43 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbl.39. Annual salaries assume 52 weeks of pay.
- 44 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbls.11, 39.
- 45 David Beede et al., U.S. Dep't of Commerce, ESA Issue Brief #04-11, *Women in STEM: A Gender Gap to Innovation* 4 (Aug. 2011), available at <http://www.esa.doc.gov/sites/default/files/reports/documents/womeninstemagaptoinnovation8311.pdf>.
- 46 *Id.* at 11 n.8.
- 47 *Id.* at 2.
- 48 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbls.11, 39. The median weekly earnings of all wage and salary workers are \$768.
- 49 *Explaining the Wage Gap*, *supra* note 34; Am. Ass'n of Univ. Women, *The Simple Truth About the Gender Pay Gap* 8 (2013), available at <http://www.aauw.org/files/2013/02/The-Simple-Truth-2013.pdf>.
- 50 Advisory Comm. on Occupational Safety & Health, U.S. Dep't of Labor, *Women in the Construction Workplace: Providing Equitable Safety and Health Protection* (June 1999), available at <http://www.osha.gov/doc/accsh/haswicformal.html> (explaining that continued isolation, sexual discrimination, and harassment created a hostile environment and affected the safety of construction worksites); see also Phyllis Kernoff Mansfield et al., *The Job Climate for Women in Traditionally Male Blue-collar Occupations*, 25 Sex Roles: J. Res. 63, 76 (1991) (explaining that women in nontraditional occupations face high levels of sexual harassment and sex discrimination, which is particularly problematic because skills in these occupations "usually are acquired during apprenticeships or on the job, and are dependent on help and support from coworkers").
- 51 442 F.3d 661 (8th Cir. 2006).
- 52 548 U.S. 53 (2006).
- 53 542 U.S. 129, 134-35 (2004).
- 54 *Disparate Treatment in 21st Century Hiring Decisions: Meeting of the U.S. Equal Emp't Opportunity Comm'n* (2011) [hereinafter *Disparate Treatment in 21st Century Hiring Decisions*] (written testimony of Marc Bendick, Jr., Ph.D., Economist, Bendick and Egan Economic Consultants, Inc.) (citation omitted), available at <http://www.eeoc.gov/eeoc/meetings/6-22-11/bendick.cfm>.
- 55 *Id.*
- 56 See Advisory Comm. on Occupational Safety & Health, *supra* note 50 (reporting on inadequate training for women in the construction industry); Nat'l Coal. for Women & Girls in Educ. & Nat'l Coal. on Women, Jobs & Job Training, *Education Data Show Gender Gap in Career Preparation* 3 (Mar. 2013), available at http://www.nwlc.org/sites/default/files/pdfs/ncwge_report_on_gender_gap_in_career_preparation.pdf (supporting policy changes that will "challenge[] educational institutions to address the barriers that women and girls face in entering nontraditional fields, such as sexual harassment in the classroom, bias in career recruitment, counseling, or mentorship, and a lack of access to appropriate tools or facilities").
- 57 *Id.* at 2 & fig.2.
- 58 *Id.*
- 59 Philip N. Cohen, *Devaluing and Revaluing Women's Work*, Huffington Post: The Blog (Feb. 1, 2010, 9:38 AM), available at http://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w_b_444215.html.
- 60 Hegewisch & Matite, *supra* note 14. Female-dominated occupations are those that are at least 75 percent female.

- 61 NWLC calculations based on Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey: Characteristics of Minimum Wage Workers: 2012* [hereinafter CPS, Minimum Wage Workers 2012] tbl.1: Employed Wage and Salary Workers Paid Hourly Rates with Earnings at or Below the Prevailing Federal Minimum Wage by Selected Characteristics, 2012 Annual Averages, <http://www.bls.gov/cps/minwage2012tbls.htm> (last updated Feb. 26, 2013). This is true for both women 16 and older (64 percent) and 25 and older (66 percent).
- 62 Wider Opportunities for Women, *Gender Equity*, <http://www.wowonline.org/gender-equity> (last visited June 4, 2013).
- 63 Cohen, *supra* note 59.
- 64 Compare Summary Report for:37-2011.00 - Janitors and Cleaners, Except Maids and Housekeeping Cleaners, O*NET OnLine, <http://www.onetonline.org/link/summary/37-2011.00> (last updated 2010) (describing duties of janitors and cleaners), with Summary Report for: 37-2012.00 - Maids and Housekeeping Cleaners, O*NET OnLine, <http://www.onetonline.org/link/summary/37-2012.00> (last updated 2010) (describing duties of maids and housekeeping cleaners).
- 65 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbls.11, 39. The overall median weekly wage for janitors and building cleaners in 2012 was \$484. For maids and housekeeping cleaners, it was \$399.
- 66 Hegewisch & Matite, *supra* note 14.
- 67 NWLC calculations based on CPS, Minimum Wage Workers 2012, *supra* note 61, tbl.1.
- 68 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbl.11; see NWLC, *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage* (Mar. 2013), available at <http://www.nwlc.org/sites/default/files/pdfs/minimumwagefactsheetmarch.pdf>.
- 69 NWLC calculations based on CPS Tables: 2012 Annual Averages, *supra* note 15, tbl.3: Employment Status of the Civilian Noninstitutional Population by Age, Sex, and Race, <http://www.bls.gov/cps/cpsaat03.pdf> (last visited Mar. 1, 2013) (African-American women); *id.* tbl.4: Employment Status of the Hispanic or Latino Population by Age and Sex, <http://www.bls.gov/cps/cpsaat04.pdf> (last visited Mar. 1, 2013) (Hispanic women).
- 70 NWLC calculations based on CPS, Minimum Wage Workers 2012, *supra* note 61, tbl.1.
- 71 *Id.* tbl.8: Employed Wage and Salary Workers Paid Hourly Rates with Earnings at or Below the Prevailing Federal Minimum Wage by Marital Status, Age, and Sex, 2012 Annual Averages, <http://www.bls.gov/cps/minwage2012tbls.htm> (last visited June 4, 2013). Most women making minimum wage do not have a spouse's income to rely on, including more than three-quarters of women age 16 and older and 59 percent of women over 25 earning the minimum wage. *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage*, *supra* note 68.
- 72 *Explaining the Wage Gap*, *supra* note 34; *Labor Force Statistics from the Current Population Survey*, *supra* note 6. In 2012, women 16 and older were 46.9 percent of the labor force.
- 73 In dual-income households with children where both parents are working, women spend one hour and forty-three minutes on child care for every hour that fathers spend. NWLC calculations based on Kim Parker & Wendy Wang, Pew Research Ctr., *Modern Parenthood: Roles of Moms and Dads Converge as They Balance Work and Family* 4, tbl.: How Dual-Income Couples Divide Their Time (Mar. 2013), available at http://www.pewsocialtrends.org/files/2013/03/FINAL_modern_parenthood_03-2013.pdf.
- 74 NWLC calculations based on U.S. Census Bureau, *America's Families and Living Arrangements: 2012*, at tbl.F2: Family Households, By Type, Age of Own Children, and Educational Attainment of Householder: 2012, <http://www.census.gov/hhes/families/data/cps2012.html> (last updated Nov. 13, 2012). There are over 2.4 million families with children under 18 headed by men and nearly 8.9 million families with children under 18 headed by women.
- 75 U.S. Equal Emp't Opportunity Comm'n, Notice 915.002, *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities* (May 23, 2007), available at <http://www.eeoc.gov/policy/docs/caregiving.html>.
- 76 Shelley J. Correll, Stephen Benard & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 Am. J. Soc. 1297, 1316-23 (Mar. 2007), available at http://gender.stanford.edu/sites/default/files/motherhoodpenalty_0.pdf.
- 77 *Id.* at 1332-33.
- 78 *The Wage Gap Over Time*, *supra* note 1.
- 79 Michelle Budig, *Parenthood Exacerbates the Gender Pay Gap*, The Hill's Congress Blog (Sept. 30, 2010, 12:24 PM), <http://thehill.com/blogs/congress-blog/economy-a-budget/121869-parenthood-exacerbates-the-gender-pay-gap>.
- 80 *Id.*
- 81 42 U.S.C. § 2000e(k) (2006); see also NWLC, *The Pregnant Workers Fairness Act: Making Room for Pregnancy on the Job* (May 2013), available at http://www.nwlc.org/sites/default/files/pdfs/pregnantworkersfairnessfactsheet_w_bill_number.pdf.
- 82 *The Pregnant Workers Fairness Act: Making Room for Pregnancy on the Job*, *supra* note 81.
- 83 NWLC et al., *Why We Need the Pregnant Workers Fairness Act: Stories of Real Women* (Sept. 2012), available at http://www.nwlc.org/sites/default/files/pdfs/why_we_need_the_pregnant_workers_fairness_act_-_stories_of_real_women.pdf.
- 84 Paid Family and Medical Leave, Nat'l Partnership for Women & Families, http://www.nationalpartnership.org/site/PageServer?pagename=issues_work_paidleave (last visited June 4, 2013).
- 85 Abt Assocs., Inc., *Family and Medical Leave in 2012: Technical Report* 19 (Feb. 2013), available at <http://www.dol.gov/asp/evaluation/fmla/FMLATEchnicalReport.pdf>.
- 86 Nat'l Partnership for Women & Families, *Paid Sick Days Protect the Economic Security of Working Families* (June 2011), available at http://paysickdays.nationalpartnership.org/site/DocServer/PSD_Econ_Security_FINAL.pdf?docID=7831.
- 87 See *Paid Sick Days Campaign*, Nat'l Partnership for Women & Families, http://www.nationalpartnership.org/site/PageServer?pagename=issues_campaigns_paysickdays (last visited June 4, 2013).
- 88 See Susan J. Lambert & Julia R. Henly, Univ. of Chi., *Work Scheduling Study: Managers' Strategies for Balancing Business Requirements with Employee Needs: Manager Survey Results*, 25, 28 (May 2010), available at http://ssascholars.uchicago.edu/work-scheduling-study/files/univ_of_chicago_work_scheduling_manager_report_6_25.pdf (reporting that retail hours are typically posted less than a week in advance and that nearly 80 percent of managers agree or strongly agree with the statement, "I give more hours to sales associates with greater availability"); Stephanie Luce & Naoki Fujita, *Discounted Jobs: How Retailers Sell Workers Short* 7-9 (2012), available at http://retailactionproject.org/wp-content/uploads/2012/01/FINAL_RAP.pdf (reporting that most New York retail workers receive their schedules with a week or less of notice, that 40 percent of workers must be available at least sometimes for "call in" shifts, and that "managers sometimes punish workers for requesting shift changes by reducing overall work hours").
- 89 Rest. Opportunities Ctr. of N.Y. & The N.Y.C. Rest. Indus. Coal., *Waiting on Equality: The Role and Impact of Gender in the New York City Restaurant Industry* 15 (July 2010), available at http://rocunited.org/files/2010/07/reports_waiting-on-eq_role-of-gender-in-nyc-rest-industry.pdf ("[W]omen with whom we spoke said that they witnessed coworkers who were fired or whose schedules were reduced for having to leave work to care for a sick child who was sent home from school or daycare.").
- 90 See *id.* ("Some working mothers with whom we spoke said that their employers expressed concern that their child care needs were too 'burdensome' to allow them to perform their work satisfactorily, yet the same concerns were not applied to their male coworkers who also had child care responsibility."); Luce & Fujita, *supra* note 88, at 9, 14 (reporting that managers retaliate against retail workers who request shift changes by reducing their hours

- and that it can be particularly difficult for parents to navigate retail scheduling); Steven Greenhouse, *A Part-time Life, as Hours Shrink and Shift*, N.Y. Times, Oct. 27, 2012, available at <http://www.nytimes.com/2012/10/28/business/a-part-time-life-as-hours-shrink-and-shift-for-american-workers.html> (noting that part-time retail workers can have difficulty securing child care due to their erratic schedules and that “workers risk losing their jobs or being assigned fewer hours in the future if they are unavailable”).
- 91 155 Cong. Rec. 343-44 (2009) (statement of Sen. Edward Kennedy).
- 92 In both Equal Pay Act and Title VII claims, employers can defend against liability by showing that they used a bona fide seniority system, a bona fide merit system, or a system that bases earnings on the quality or quantity of production. 29 U.S.C. § 206(d)(1) (2006); 42 U.S.C. § 2000e-2(h) (2006).
- 93 Ariane Hegewisch, Claudia Williams & Robert Drago, Inst. for Women’s Policy Research, *Pay Secrecy and Wage Discrimination 2* (June 2011), available at <http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination>. This survey, conducted in 2010, found that almost a quarter (23 percent) of private-sector employees work in settings with formal policies against discussing salary information and/or where workers can be punished for discussing their salaries. Even in workplaces without formal pay secrecy policies, an additional 38 percent of workers reported that their managers discouraged employees from discussing salary information.
- 94 *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011).
- 95 *Id.*
- 96 *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage*, *supra* note 68. Women are nearly two-thirds of minimum wage workers.
- 97 NWLC, *How the Paycheck Fairness Act Will Strengthen the Equal Pay Act* (Jan. 2013), available at <http://www.nwlc.org/sites/default/files/pdfs/pfastrengthenepa.pdf>.
- 98 Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Equal Opportunity Survey, 71 Fed. Reg. 53,032 (Sept. 8, 2006) (codified at 41 C.F.R. pt. 60-2).
- 99 *Id.*
- 100 See White House, *National Equal Pay Enforcement Taskforce*, available at http://www.whitehouse.gov/sites/default/files/rss_viewer/equal_pay_task_force.pdf (last visited June 4, 2013).
- 101 Notice of Final Rescission Interpreting Nondiscrimination Requirements of Executive Order 11246, 78 Fed. Reg. 13,508 (Feb. 28, 2013); Press Release, U.S. Dep’t of Labor, US Labor Department Rescinds Restrictions on Investigating Pay Discrimination (Feb. 26, 2013), available at <http://www.dol.gov/opa/media/press/ofccp/OFCCP20130305.htm>.
- 102 See Presidential Memorandum of May 10, 2013, *Advancing Pay Equality in the Federal Government and Learning from Successful Practices*, 78 Fed. Reg. 28,717 (May 15, 2013).
- 103 Lilly Ledbetter Fair Pay Act of 2009, 42 U.S.C. § 2000e-5(e)(3)(A) (Supp. III 2009); see also NWLC, *The Lilly Ledbetter Fair Pay Act of 2009* (Feb. 2009), available at http://www.nwlc.org/sites/default/files/pdfs/lilly_ledbetter_fair_pay_act_of_2009_01.07.2013.pdf.
- 104 550 U.S. 618 (2007).
- 105 *Id.*
- 106 Paycheck Fairness Act, S. 84, 113th Cong. (2013); *How the Paycheck Fairness Act Will Strengthen the Equal Pay Act*, *supra* note 97.
- 107 NWLC, *The Equal Employment Opportunity Restoration Act of 2012: What It Means for Low-Wage Women Workers* (June 2012), available at <http://www.nwlc.org/sites/default/files/pdfs/equalemploymentopportunityactlowwageworkers.pdf>.
- 108 S. 168, 113th Cong. (2013) (introduced by Sen. Tom Harkin (D-IA), Jan. 29, 2013).
- 109 U.S. Equal Emp’t Opportunity Comm’n, Notice 915.002, *Enforcement Guidance on Non-Waivable Employee Rights Under Equal Employment Opportunity Commission (EEOC) Enforced Statutes* (Apr. 10, 1997), available at <http://www.eeoc.gov/policy/docs/waiver.html>.
- 110 Office of Fed. Contract Compliance Programs, *Facts on Executive Order 11246 — Affirmative Action*, U.S. Dep’t of Labor, <http://www.dol.gov/ofccp/regs/compliance/aa.htm> (last updated Jan. 4, 2002).
- 111 See *Non-Discrimination in Compensation*; Compensation Data Collection Tool, 76 Fed. Reg. 49,398 (proposed Aug. 10, 2011) (to be codified at 41 C.F.R. pt. 60-1).
- 112 Comm. on Nat’l Statistics, Nat’l Research Council, *Collecting Compensation Data from Employers: Panel on Measuring and Collecting Pay Information from U.S. Employers by Gender, Race, and National Origin* (2012), available at http://www.nap.edu/openbook.php?record_id=13496.
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- 115 820 Ill. Comp. Stat. 112/10(b) (2013).
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- 118 Vt. Stat. Ann. tit. 21, § 495(a)(8)(B) (2012).
- 119 H.B. 216, 51st Leg. Sess. (N.M. 2013) (enacted), available at <http://www.nmlegis.gov/Sessions/13%20Regular/final/HB0216.pdf>; see Vanessa de la Viña, Gov. Martinez Signs Fair Pay for Women Act, KVIA, <http://www.kvia.com/news/Gov-Martinez-signs-Fair-Pay-for-Women-Act/-/391068/19340964/-/pfbgwez/-/index.html> (last updated Mar. 16, 2013).
- 120 Press Release, Office of Governor Andrew M. Cuomo, Governor Cuomo Introduces Women’s Equality Act Legislation: Groundbreaking Legislation Addresses Gender Equality; Restores New York as Leader of Women’s Rights (June 4, 2013), available at <http://www.governor.ny.gov/press/06042013Womens-Equality-Act-Legislation>.
- 121 Andrew M. Cuomo, *NY Rising: 2013 State of the State Address* 119 (2013), available at <http://www.jwfn.org/cms/wp-content/uploads/2013/01/10-Point-Plan-State-of-the-State-Address-2013.pdf>.
- 122 Louisiana Equal Pay for Women Act, S.B. 153, 2013 Leg., Reg. Sess. (La. 2013), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=834886>.
- 123 An Act Relating to Equal Pay, 2013 Vt. Laws No. 31 (H. 99) (West), available at <http://www.leg.state.vt.us/docs/2014/Acts/ACT031.pdf>.
- 124 NWLC, *The Wage Gap, State by State*, <http://www.nwlc.org/wage-gap-state-state> (last visited June 4, 2013).
- 125 2013 Vt. Laws No. 31 (H. 99).
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