NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

EMPLOYMENT

FACT SHEET

What the Paycheck Fairness Act Would Really Do

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For nearly 50 years, the Equal Pay Act has made it illegal for employers to pay unequal wages to men and women who perform substantially equal work. Although enforcement of the Equal Pay Act as well as other civil rights laws has helped to narrow the wage gap, significant disparities remain and need to be addressed. Women today still make only 77 cents for every dollar paid to their male counterparts.[1] And for women of color, the gap is even larger.[2]

The Paycheck Fairness Act would strengthen current laws against wage discrimination by protecting employees who voluntarily share pay information with colleagues from retaliation, fully compensating victims of sex-based pay discrimination, empowering women and girls by strengthening their negotiation skills, and holding employers more accountable under the Equal Pay Act. Opponents of the Paycheck Fairness Act have put forth rhetoric about the bill that is misleading – this document contrasts the various myths about the bill and explains what the Paycheck Fairness Act would accomplish in reality.

Myth: The bill would require employers to cut the salaries of their male employees.[3]

Fact: The Equal Pay Act prohibits employers from lowering the wages of men to make up for discrimination against women. In fact, the first paragraph of the Act states: An "employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee."[4] The bill does nothing to disturb this longstanding rule.

Myth: The bill is unnecessary because there is no wage gap.[5]

Fact: American women who work full time, year round are paid only 77 cents for every dollar paid to their male counterparts.[6] This gap in earnings translates into $10,784 less per year in median earnings, leaving women and their families shortchanged.[7] The wage gap is even more substantial when race and gender are considered together, with African-American women making only 62 cents, and Hispanic women only 54 cents, for every dollar paid to white, non-Hispanic men.[8]

The wage gap is not merely a matter of choice in occupation – women typically are paid less than men in the same occupation.[9] This is the case whether that occupation pays high or low wages, whether they work in traditionally male occupations, traditionally female occupations, or occupations with an even mix of men and women.

Numerous studies show that even when all relevant career and family attributes are taken into account, there is still a significant, unexplained gap in men's and women's earnings.[10] Thus, even when women make the same career choices as men

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and work the same hours, they earn less. For example, a study of college graduates one year after graduation determined that women earned only 95 percent of what men earned, even after accounting for variables such as "job and workplace, employment experience and continuity, education and training, and demographic and personal characteristics."[11]

Myth: The bill would subject employers to criminal penalties for refusing to disclose wage information.

Fact: No part of the bill provides for criminal penalties for employers for any conduct. But pay disparities often go unnoticed because employers forbid employees from sharing wage information with each other.[12] The bill enhances employees' ability to learn about wage discrimination by merely banning retaliation against workers who inquire about their employers' wage practices or disclose their own wages. It does not ban pay secrecy policies altogether – in fact, employers with access to colleagues' wage information in the course of their work, such as human resources employees, may still be prohibited from sharing that information.

Myth: The bill requires the government to set salaries for federal employers.[13]

Fact: Nothing in the Paycheck Fairness Act allows the federal government to set salaries for any private employer. But the tools for detecting and addressing pay disparities under the Equal Pay Act have been limited by courts over time. For example, courts have opened loopholes in the defenses that employers are permitted to raise when seeking to justify a decision to not pay workers equal wages for doing substantially equal work.[14] Some courts have said that an employer may justify paying unequal wages even if there is no business reason for paying men and women unequal salaries.[15] The bill also would require the Department of Labor to reinstate a survey instrument that will help the Department detect and remedy wage discrimination by federal contractors and would serve as a critical tool in the federal government's effort to enforce civil rights laws.

Myth: There is no need for the bill after the Lilly Ledbetter Fair Pay Act.

Fact: The Lilly Ledbetter Fair Pay Act restored the protection against pay discrimination stripped away by the Supreme Court's decision in *Ledbetter v. Goodyear*. But, even after the Act, our existing equal pay laws remain weakened by a series of other court decisions and insufficient federal tools to detect and combat wage discrimination. The Act made clear that each discriminatory paycheck, not just an employer's original decision to engage in pay discrimination, resets the period of time during which a worker may file a pay discrimination claim.[16] The steps taken in the Ledbetter Act are essential, as they enable workers to bring wage discrimination cases again. But the Ledbetter Act simply returned the law to what it was prior to the Court's decision. And wage disparities go undetected because employers maintain policies that punish employees who voluntarily share salary information with their coworkers.[17] The Paycheck Fairness Act would update the Equal Pay Act by closing loopholes in the law and ensuring that workers will no longer be punished simply for talking about their own wages.

1 NWLC calculations from U.S. Census Bureau, Current Population Survey, 2011 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2010 – People 15 Years Old and Over by Total Money Earnings in 2010, Age, Race, Hispanic Origin, and Sex, available at http://www.census.gov/hhes/www/cpstables/032011/perinc/toc.htm (last visited Sept. 13, 2011).

2 Ibid.

3 *See* Carrie Lukas, '*Paycheck Fairness' Will Mean a Pay Cut for Men*, The Wall Street Journal (May 6, 2012), *available at* http://online.wsj.com/article/SB10001424052702304746604577383922267272922.html.

4 Equal Pay Act, 29 U.S.C. 206(d) (2012).

5 Carrie Lukas, *There Is No Male-Female Wage Gap*, The Wall Street Journal (Apr. 12, 2011), *available at* http://online.wsj.com/article/SB10001424052748704415104576250672504707048.html; Diana Furchtgott-Roth, Hudson Institute, *The Employment Effects of the Paycheck Fairness Act* (Nov. 2010), available at http://www.hudson.org/files/publications/DFR%20Paycheck%20Fairness.pdf.

6 NWLC calculations from U.S. Census Bureau, Current Population Survey, 2011 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2010 – People 15 Years Old and Over by Total Money Earnings in 2010, Age, Race, Hispanic Origin, and Sex, available at http://www.census.gov/hhes/www/cpstables/032011/perinc/toc.htm (last visited Sept. 13, 2011).

7 Nat'l Women's Law Ctr., Fact Sheet: *Women Can't Afford Unfair Pay Today* (Apr. 2012), *available at* http://www.nwlc.org/sites/default/files/pdfs/womenunfairpay-factsheet.pdf.
8 NWLC calculations from U.S. Census Bureau, Current Population Survey, 2011 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2010 – People 15 Years Old and Over by Total Money Earnings in 2010, Age, Race, Hispanic Origin, and Sex, available at http://www.census.gov/hhes/www/cpstables/032011/perinc/toc.htm (last visited Sept. 13, 2011).
9 U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey, Table 39. Median weekly earnings of full-time wage and salary workers by detailed occupation and sex, *available at* http://www.bls.gov/cps/cpsaat39.pdf. Data are 2011 annual averages.
10 *See, e.g.*, Cheryl Travis, et al., *Tracking the Gender Pay Gap: A Case Study*, 33 PSYCHOL. WOMEN Q. 410, 410-11 (2009) (citing studies).
11 *See* American Association of University Women. *Behind the Pay Gap* 17, 18 (2007), *available at* http:// www.aauw.org/learn/research/behindPayGap.cfm.
12 Nat'l Women's Law Ctr., Fact Sheet: *Combating Punitive Pay Secrecy Policies* (Apr. 2012), *available at* http://www.nwlc.org/sites/default/files/pdfs/paysecrecyfactsheet.pdf.
13 Diana Furchtgott-Roth, Hudson Institute, *The Employment Effects of the Paycheck Fairness Act* 11 (Nov. 2010), *available at* http://www.hudson.org/files/publications/DFR%20Paycheck%20Fairness.pdf ("The Paycheck Fairness Act would have the government play a substantial role in determining how much workers earn.").
14 Nat'l Women's Law Ctr., Fact Sheet: *The Paycheck Fairness Act Resolves the Debate Among Courts over the Meaning of the "Factor Other Than Sex" Defense* (Apr. 12, 2011), *available at* http://www.nwlc.org/sites/default/files/pdfs/pfa_resolves_debate_over_factor_other_than_sex.pdf.
15 Ibid.
16 Nat'l Women's Law Ctr., *Fair Pay: Frequently Asked Questions*, *available at* http://www.nwlc.org/resource/fair-pay-frequently-asked-questions (last visited May 16, 2012).
17 Nat'l Women's Law Ctr., Fact Sheet: *Combating Punitive Pay Secrecy Policies* (Apr. 2012), *available at* http://www.nwlc.org/sites/default/files/pdfs/paysecrecyfactsheet.pdf.