

WORKPLACE JUSTICE

## LONG OVERDUE: EQUAL PAY FOR MARYLAND'S WOMEN AND FAMILIES

Pay discrimination remains a persistent problem in the workforce. In Maryland, on average, women working full-time, year-round typically earn 85.4 cents for every dollar earned by men.<sup>1</sup> Asian American women in Maryland earn only 82.2 cents for every dollar earned by white, non-Hispanic men and the situation is even worse for African American women (69.0 cents) and Latinas (47.1 cents).<sup>2</sup> Nearly 64 percent of Maryland women over the age of 16 are in the labor force.<sup>3</sup> Equal pay is a vital concern for Maryland's working families, who increasingly depend on women's wages to achieve economic security. **SB 481** and **HB 1003**—the **Equal Pay for Equal Work Act**—would strengthen Maryland's equal pay law and provide workers with the tools they need to combat pay discrimination and close the wage gap.

### The Wage Gap Continues to Plague Working Families in Maryland and Across the Country

Although Congress passed the Equal Pay Act more than 50 years ago and Maryland passed its Equal Pay Act 25 years ago, women workers continue to face significant pay disparities.<sup>4</sup>

- The 14.6 cent wage gap that Maryland women face significantly diminishes their earning power. Maryland women's median earnings are only \$50,481, in comparison to median earnings for men of \$59,085.<sup>5</sup> That is a difference of a whopping \$8,604. Put another way, that is equal to about ten months of rent and utilities or about two years of health care contributions.<sup>6</sup> For African American women in Maryland, the wage gap translates to an annual loss of \$21,599, and \$36,843 per year for Latinas.<sup>7</sup>
- Over the course of a 40-year career, a woman who works full time, year round in Maryland, typically loses \$344,160 to the wage gap.<sup>8</sup> A woman would have to work nearly seven years longer to make up this gap.<sup>9</sup>
- Ten percent of women in Maryland live in poverty, with higher rates for women of color, including a 14 percent rate for African American women and a 16 percent rate for Latinas.<sup>10</sup>

In virtually every county across the state of Maryland, women are facing a wage gap—from a 11.9 cent gap in Baltimore City to a 33.0 cent wage gap in St. Mary's County. With Prince George's County as the lone exception, the wage gap continues to hold Maryland's women and families back.

County	Women's Median Earnings	Men's Median Earnings	What Women Typically Make for Every Dollar Men Make	Wage Gap
Allegany County	\$32,854	\$43,994	74.7¢	25.3¢
Anne Arundel County	\$53,807	\$65,329	82.4¢	17.6¢
Baltimore County	\$47,876	\$56,203	85.2¢	14.8¢
Calvert County	\$53,489	\$71,026	75.3¢	24.7¢
Caroline County	\$33,512	\$48,635	68.9¢	31.1¢
Carroll County	\$49,156	\$65,809	74.7¢	25.3¢
Cecil County	\$42,239	\$56,830	74.3¢	25.7¢



County	Women's Median Earnings	Men's Median Earnings	What Women Typically Make for Every Dollar Men Make	Wage Gap
Charles County	\$57,684	\$65,972	87.4¢	12.6¢
Dorchester County	\$36,427	\$44,088	82.6¢	17.4¢
Frederick County	\$51,726	\$67,100	77.1¢	22.9¢
Garrett County	\$31,605	\$40,941	77.2¢	22.8¢
Harford County	\$50,702	\$65,555	77.3¢	22.7¢
Howard County	\$65,586	\$87,274	75.1¢	24.9¢
Kent County	\$37,737	\$50,161	75.2¢	24.8¢
Montgomery County	\$61,706	\$75,329	81.9¢	18.1¢
Prince George's County	\$52,145	\$50,769	102.7¢	-2.7¢
Queen Anne's County	\$49,510	\$62,402	79.3¢	20.7¢
St. Mary's County	\$47,134	\$70,321	67.0¢	33.0¢
Somerset County	\$32,201	\$37,210	86.5¢	13.5¢
Talbot County	\$41,961	\$50,676	82.8¢	17.2¢
Washington County	\$37,820	\$49,420	76.5¢	23.5¢
Wicomico County	\$37,877	\$45,643	83.0¢	17.0¢
Worcester County	\$41,870	\$50,870	82.3¢	17.7¢
Baltimore City	\$40,966	\$46,501	88.1¢	11.9¢

"What a woman makes for every dollar a man makes" is the ratio of female and male median earnings for full-time, year-round workers. Earnings are in 2014 dollars. The "wage gap" is the additional money a woman would have to make for every dollar made by a man in order to have equal annual earnings. County wage gaps calculated by National Women's Law Center (NWLC) are based on 2010-2014 American Community Survey Five-Year Estimates (<http://www.census.gov/acs/www/>).

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### Women Continue to Face Barriers to Entering Higher-Paying, Nontraditional Jobs

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.<sup>11</sup>

- Of the 25 detailed occupations with the highest median weekly earnings for full-time workers, only five are majority female.<sup>13</sup>
- In contrast, three of the highest-wage occupations are over 90 percent male.<sup>14</sup> These occupations all have median annual earnings for full-time workers above \$83,400 for someone who works year-round.<sup>15</sup>
- In Maryland, women make up nearly 70 percent of the low-wage workforce, as compared to nearly 50 percent of the workforce overall.<sup>16</sup> And more than six in ten of the lowest paid workers—those earning the minimum wage or less—are women.<sup>17</sup>

#### Maryland Employer Settled Hiring and Pay Discrimination Case in Nontraditional Employment

In a recent case in Maryland, ACM Services paid \$415,000 to settle a lawsuit brought by the EEOC for refusing to hire women applicants and black applicants as field laborers. Two women who, despite ACM's allegedly discriminatory hiring practices, managed to get jobs with the company were allegedly subjected to harassment on the job and terminated when they complained about the harassment.<sup>12</sup>



## Pay Discrimination Claims Are All Too Common in Maryland

- In January of 2015, the Applied Physics Laboratory at Johns Hopkins University settled a complaint brought by two women workers which included allegations of pay discrimination based on sex. Investigators from the Office of Federal Contract Compliance Programs, which handled the case, concluded that both women workers were paid less than their male counterparts. The two employees will receive \$359,253 in back pay and damages.<sup>18</sup>
- In September of 2013, Worcester County, Maryland resolved a lawsuit with the Equal Employment Opportunity Commission for multiple counts of pay discrimination against female retail clerks in county-run liquor stores. The EEOC found that the County was paying the women less wages than the male clerks, even though they were doing substantially equal work under similar conditions. Pursuant to the settlement, the County paid \$60,000 to three women and entered into a three-year consent decree.<sup>19</sup>
- In 2000, Baltimore Cable Access Corporation paid \$45,000 to settle a lawsuit with the Equal Employment Opportunity Commission for pay discrimination. The EEOC found that the company fired its first executive director after she complained that she was receiving far less pay than her male counterparts, and subsequently compensated her male successor at a far higher salary for performing the same job.<sup>20</sup>

## Workers Face Significant Pay Discrimination Based on their “Gender Identity”

- Transgender Americans are four times more likely to have a household income under \$10,000 per year than the population as a whole (15 percent vs. 4 percent). This is true despite the finding that 87 percent of transgender people have completed at least some college and 47 percent have obtained a college or graduate degree—rates that are much higher than those for the general population.<sup>21</sup>
- One study shows the earnings of transgender women workers fall by nearly a third following transition.<sup>22</sup>
- Nearly half of all transgender workers say they have been fired, denied a promotion, or not given a job because of their gender identity.<sup>23</sup>

## The Maryland Equal Pay for Equal Work Act Would Strengthen Maryland’s Current Equal Pay Law and Give Women the Tools to Hold Employers Accountable for Discrimination

- SB 481 and HB 1003 Provide Crucial Protections for Women to Discuss their Wages Without Fear of Retaliation*

One of the reasons that pay discrimination is so difficult to root out is that the majority of employers have policies and practices that prohibit or discourage workers from discussing or inquiring about pay. According to the Institute for Women’s Policy Research, about half of all workers, including about 61 percent of private-sector employees, report that discussing or inquiring about their wages is either directly prohibited or discouraged by their employer.<sup>24</sup> In contrast, when workers are able to discover pay disparities, they can take steps to address them, and employers are more likely to proactively identify and remedy discrimination, reducing the need for costly litigation.

SB 481 and HB 1003 provide important protections for workers to inquire about, discuss, and disclose their wages—including asking the employer to provide a reason for the employee’s wages—without fear of retaliation. By enacting this protection, Maryland would join both the federal government<sup>25</sup> and the growing ranks of states that have enacted protections to ensure that workers can discuss their wages without fear of retaliation.

- SB 481 and HB 1003 Remove Barriers for Women to Enter into Higher Paying Jobs*

Addressing occupational segregation is crucial to closing the wage gap. Importantly, because SB 481 and HB 1003 prohibit employers from discriminating between employees in any occupation by providing less favorable employment opportunities based on sex or gender identity, the act ensures that all workers will have equal access to opportunities that advance their career and their paychecks, and will help bring an end to occupational segregation.

- SB 481 and HB 1003 Include an Important Update to Maryland’s Equal Pay Law by Including “Gender Identity” as a Protected Category*

Like discrimination on the basis of sex, discrimination on the basis of gender identity often rests on gender stereotypes about supposedly “normal” or appropriate behavior for women and men. Maryland codified



protections for employees against discrimination based on gender identity when it passed the Fairness for All Marylanders Act in 2014.<sup>26</sup> SB 481 and HB 1003 align with this law by amending Maryland’s pay discrimination law to include important protections for workers who are discriminated against in pay based on gender identity.

*iv. SB 481 and HB 1003 Close Important Loopholes in Maryland’s Equal Pay Law*

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—including the Maryland Equal Pay Act—so broadly that they have allowed employers to flout these laws and continue paying women less.<sup>27</sup>

**How One Maryland Court Widened the Judicially Created Loophole in the BFOQ Defense**

In *Glunt v. GES Exposition Services, Inc.*, a Maryland woman sued her former employer for pay discrimination in violation of the Maryland Equal Pay Act, the federal Equal Pay Act, and Title VII.<sup>28</sup> Glunt alleged that she was paid less than three of her male coworkers for substantially equal work and sued the company. The district court held that it was likely that Glunt was indeed being paid less for substantially equal work.<sup>29</sup> But the court ruled against her, accepting the employer’s “factor other than sex” defense which relied in part on evidence that the company offered one of her male coworkers a higher starting salary “in order to induce” him “to accept the employer’s offer over competing offers.”

SB 481 and HB 1003 amend Maryland law to close that “factor other than sex” loophole by spelling out that the factor cannot be based on or derived from a gender-based differential in compensation, and that the factor must be job-related with respect to the position and consistent with a business necessity. By closing this judicially created loophole in our equal pay laws, SB 481 and HB 1003 ensure that employers can no longer rely on compensation differentials that are merely a pretext for discrimination.

SB 481 and HB 1003 also clarify that, to establish that pay discrimination has occurred, an employee can compare her wages to employees working for the same employer at workplaces located in the same county of the state. Currently, Maryland law only considers pay disparities between employees in the “same establishment,” which some courts have interpreted narrowly to mean that employees cannot compare their wages to wages paid in different offices or facilities, even if they are located in the same town. This clarification closes a loophole in the current law that allows employers to avoid complying with the equal pay law by limiting the number of potential comparators.

**Conclusion**

From enactment of the Equal Pay for Equal Work law in 1991, to the law establishing a commission on equal pay in Maryland in 2005, to the Lilly Ledbetter Fair Pay Act in 2009,<sup>30</sup> Maryland has recognized the importance of strong legal protections from pay discrimination. SB 481 and HB 1003, the Equal Pay for Equal Work Act, is the next important step to strengthen Maryland’s Equal Pay Act and give women the tools they need to fight back against pay discrimination.

1 NAT’L WOMEN’S LAW CTR., THE WAGE GAP, STATE BY STATE (Dec. 2015), available at <http://nwlc.org/resources/wage-gap-state-state/>.  
2 *Id.*  
3 U.S. Census Bureau, American Community Survey 2014, available at [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_14\\_YR\\_DP03&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_YR_DP03&prodType=table).  
4 29 U.S.C. § 206(d)(1); MD. CODE ANN., LAB. & EMPL. § 3-304 (WEST).  
5 National Women’s Law Center calculations based on U.S. Census Bureau, American Community Survey 2014, Tables B20017, B20017B, B20017H and B20017I available at <http://www.census.gov/acs/www/>.  
6 The median housing costs for renters were \$863.79 per month in 2014. See Rent and Utilities - U.S. Census Bureau, American Housing Survey: 2013, Table C-10-AO, Housing Costs—All Occupied Units, available at <http://www.census.gov/programs-surveys/ahs/> (listing rental costs for 2013 as \$850, which, when adjusted for inflation using the BLS Inflation Calculator, equal \$863.79). The average employee contribution for employer-based family coverage is \$4,518 annually or \$377 per month. See Health Insurance Premiums - U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey: 2014, Table II.D.2 (2014) Average total employee contribution (in dollars) per enrolled employee for family coverage at private-sector establishments that offer health insurance by firm size and State: United States, 2014, available at [http://meps.ahrq.gov/mepsweb/data\\_stats/summ\\_tables/insr/state/series\\_2/2014/tiid2.htm](http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/state/series_2/2014/tiid2.htm).  
7 *Id.*  
8 National Women’s Law Center calculations are based on the latest (2014) data on the difference between women’s and men’s median annual earnings for full-time, year-round workers, multiplied by 40 years. Figures are not adjusted for inflation. Figures are based on five-year annual average American Community Survey data (2010-2014), available at <http://www.census.gov/acs/www/>.  
9 *Id.*  
10 NAT’L WOMEN’S LAW CTR., WOMEN AND POVERTY, STATE BY STATE (Sept. 2014), available at <http://www.nwlc.org/resource/women-and-poverty-state-state>.  
11 See ADVISORY COMM. ON OCCUPATIONAL SAFETY & HEALTH, U.S. DEP’T OF LABOR, WOMEN IN THE CONSTRUCTION WORKPLACE: PROVIDING EQUITABLE SAFETY AND HEALTH PROTECTION (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”).
- 12 Maryland Firm to Pay \$415K to Settle EEOC Discrimination Suit, Insurance Journal (Nov. 18, 2014), available at <http://www.insurancejournal.com/news/east/2014/11/18/347364.htm>.
- 13 National Women’s Law Center calculations based on U.S. Census Bureau, Table Packages, Full-Time, Year-Round Workers and Median Earnings in the Past 12 Months by Sex and Detailed Occupation: 2014, available at [http://www.census.gov/people/io/publications/table\\_packages.html?eml=gd&utm\\_medium=email&utm\\_source=govdelivery](http://www.census.gov/people/io/publications/table_packages.html?eml=gd&utm_medium=email&utm_source=govdelivery).
- 14 *Id.*
- 15 *Id.*
- 16 NAT’L WOMEN’S LAW CTR., WOMEN IN THE LAW-WAGE WORKFORCE BY STATE (Jul. 2014), available at [http://www.nwlc.org/sites/default/files/pdfs/pv\\_fs\\_low\\_wage\\_state\\_tables.pdf](http://www.nwlc.org/sites/default/files/pdfs/pv_fs_low_wage_state_tables.pdf).
- 17 NAT’L WOMEN’S LAW CTR., WOMEN AND THE MINIMUM WAGE, STATE BY STATE (Jan. 2015), available at <http://www.nwlc.org/resource/women-and-minimum-wage-state-state>.
- 18 OFCCP JOHNS HOPKINS UNIVERSITY’S APPLIED PHYSICS LABORATORY SETTLES RACE AND SEX DISCRIMINATION CASE WITH US LABOR DEPARTMENT, USDL 14-2299, 2015 WL 270272.
- 19 WORCESTER COUNTY WILL PAY \$60,000 TO RESOLVE EEOC PAY DISCRIMINATION LAWSUIT, 2013 WL 4714245.
- 20 EEOC SETTLES SUIT AGAINST PUBLIC ACCESS TV CORP. FOR PAY DISCRIMINATION AND RETALIATION, 2000 WL 33729122.
- 21 CTR. FOR AM. PROGRESS & MOVEMENT ADVANCEMENT PROJECT, PAYING AN UNFAIR PRICE: THE FINANCIAL PENALTY OF BEING LGBT IN AMERICA 4 (2014), available at <http://www.lgbtmap.org/file/paying-an-unfair-price-full-report.pdf>.
- 22 Kristen Schilt & Matthew Wiswall, *Before and After: Gender Transitions, Human Capital, and Workplace Experiences*, 8 B.E. J. OF ECON. ANALYSIS & POLICY 1 (Sept. 2008).
- 23 CROSBY BURNS & JEFF KREHELY, CTR. FOR AM. PROGRESS, GAY AND TRANSGENDER PEOPLE FACE HIGH RATES OF WORKPLACE DISCRIMINATION AND HARASSMENT 2 (2011), available at [https://cdn.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/workplace\\_discrimination.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/workplace_discrimination.pdf).
- 24 INST. FOR WOMEN’S POLICY RESEARCH, PAY SECRECY AND WAGE DISCRIMINATION 1 (2014), available at [http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at\\_download/file](http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at_download/file) (revealing that overall, 51 percent of female employees and 47 percent of male employees report that their employers either prohibit or discourage the discussion of wages, and that in the private sector those numbers increase to 60 percent of male employees and 62 percent of female employees).
- 25 On September 11, 2015, the Office of Federal Contract Compliance Programs in the Department of Labor issued a final rule implementing President Obama’s Executive Order to eliminate pay secrecy policies in federal contracts. The final rule affects about 28 million employees of federal contractors. See 41 C.F.R. pt. 60-1.
- 26 MD. CODE ANN., STATE GOV’T § 20-606 (West).
- 27 See NAT’L WOMEN’S LAW CTR., PAYCHECK FAIRNESS: CLOSING THE “FACTOR OTHER THAN SEX” GAP IN THE EQUAL PAY ACT (May 2012), available at [http://www.nwlc.org/sites/default/files/pdfs/factorotherthan\\_sexfactsheet\\_5.29.12\\_final.pdf](http://www.nwlc.org/sites/default/files/pdfs/factorotherthan_sexfactsheet_5.29.12_final.pdf).
- 28 *Glunt v. GES Exposition Servs., Inc.*, 123 F. Supp. 2d 847 (D. Md. 2000).
- 29 *Id.* at 858-59.
- 30 MD. CODE ANN., STATE GOV’T § 20-607 (West).

