

**Testimony of Andrea Johnson
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**In Support of
SB 404-Labor and Employment—Equal Pay—Job Announcement and Salary History
Information Disclosures
Before the Maryland Senate Finance Committee**

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Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights, and to help women and families achieve economic security. More than 63 percent of women over the age of 16 in Maryland are in the labor force.¹ Equal pay is a vital concern for Maryland's working families, who increasingly depend on women's wages to achieve economic security. Yet, pay discrimination remains a persistent barrier to women's economic success in Maryland, particularly for women of color, who face some of the largest wage gaps in the country.

Maryland has a proud history of taking steps to make the promise of equal pay for equal work a reality for Maryland's workforce. From enactment of the Equal Pay for Equal Work law in 1991,² to the law establishing an Equal Pay Commission in Maryland in 2005, to the Lilly Ledbetter Fair Pay Act in 2009,³ Maryland has recognized the importance of strong legal protections from pay discrimination and has emerged as a leader in closing the wage gap.

Strengthening Maryland's equal pay laws was one of the key recommendations contained in the Maryland Equal Pay Commission's report issued in 2006.⁴ Maryland made important strides in strengthening its equal pay law last session,⁵ but there are a number of employer practices that aren't clearly prohibited by law that cause gender and racial pay disparities to be perpetuated. SB 404 gets at the heart of those practices by prohibiting employers from demanding job applicants' salary history and by requiring employers to include the minimum rate of pay for a position in a job announcement. This bill will bring Maryland an important step closer to closing the wage gap for women and people of color.

I. Women in Maryland Face a Substantial Wage Gap

When comparing women of all races to men of all races, women in Maryland typically make

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84 cents for every dollar made by men.⁶ Black women in Maryland make only 69 cents for every dollar made by white, non-Hispanic men.⁷ And the gap is even larger for Maryland's Latinas, who make only 47 cents for every dollar made by white, non-Hispanic men—placing Maryland sixth in the country for the worst wage gap for Latinas.⁸

The 16 cent wage gap that women overall face in Maryland significantly diminishes their earning power. In 2015, women's median earnings in Maryland were only \$50,635, in comparison to median earnings for men of \$60,591.⁹ That is a difference of a whopping \$9,956 annually.¹⁰ Put another way, that is equal to about eight months of rent and utilities or about 19 months of health care contributions.¹¹ For black women in Maryland, the race and gender wage gap compared to white, non-Hispanic men translates to an annual loss of \$21,599, and for Latinas, \$36,843 per year.¹²

The wage gap affects women as soon as they enter the labor force, expands over time, and leaves older women with a gap in retirement income. Over the course of a 40-year career, a woman who works full time, year round in Maryland, typically loses \$398,240 to the wage gap.¹³ A woman would have to work nearly 48 years to her male counterpart's 40 years to make up this gap.¹⁴ When we look specifically at black women and Latinas in Maryland, losses to the wage gap amount to \$863,960 and \$1,473,720 million, respectively, over a 40-year career.¹⁵

Closing the wage gap would help lift women and children in Maryland out of poverty. Over 10 percent of women in Maryland live in poverty, with higher rates for some women of color, including a 13.9 percent rate for African American women and a 16 percent rate for Latinas.¹⁶ Moreover, 14.3 percent of working mothers of very young children in Maryland work in low-wage occupations.¹⁷ Closing the wage gap in Maryland is thus not only fair, it is urgently needed.

II. Women Face Significant Barriers to Achieving Equal Pay

Skeptics of the wage gap contend that the wage gap exists because of differences in women's education or the occupational "choices" that women make. But a study conducted by the American Association of University Women found that just one year after college graduation, women were paid 82 percent of what their similarly educated and experienced male peers were paid.¹⁸ And a study conducted by labor economists Francine Blau and Lawrence Kahn found that 38 percent of the wage gap remains unexplained even when accounting for factors like race, region, unionization status, education, occupation, industry, and work experience.¹⁹

The wage gap persists and, for the last decade, has remained stagnant²⁰ for a variety of reasons:

A. Employers Still Discriminate Against Women in Setting Their Pay

The Equal Pay Act was passed by Congress more than 50 years ago and Maryland's Equal Pay Act²¹ has banned discrimination in compensation for over 20 years. These laws were intended to eradicate the practice of paying women less for the same jobs as men. But although pay

discrimination is less overt today than it was when those laws were passed, it continues to flourish as recent court opinions from Maryland and across the country demonstrate.²² 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. A recent experiment revealed that when presented with identical resumes, one with the name John and one with the name Jenifer, science professors offered the male applicant for a lab manager position a salary of nearly \$4,000 more, additional career mentoring, and judged him to be significantly more hireable.²³

Likewise, 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.²⁴ 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.²⁵ The reality is that women's income is critical to families' economic security, but unequal pay means that women are taking home less than their fair share.

Women with caregiving responsibilities—and mothers in particular—also face persistent discrimination in the workplace, which leads to lower wages. Working mothers still face discrimination based on gender stereotypes about mothers' competence and commitment at work. A 2007 study found that when comparing equally qualified women candidates, women who were mothers were recommended for significantly lower starting salaries, perceived as less competent, and less likely to be recommended for hire than non-mothers.²⁶ The effects for fathers in the study were just the opposite—fathers were recommended for significantly higher pay and were perceived as more committed to their jobs than non-fathers.²⁷ It is thus not surprising that, in 2015, mothers who worked full time, year round in Maryland typically made only 72 cents for every dollar paid to fathers.²⁸ Such caregiver discrimination disproportionately affects women, and in particular women of color, who are more likely to be employed while raising young children or caring for other individuals, and more likely to be the sole source of income for their families.²⁹

B. Women Still Face Barriers to Entering Higher-Paying, Nontraditional Jobs and Are Concentrated in Lower-Wage 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 annual earnings for full-time workers, only five are majority female.³⁰ In contrast, three of the highest-wage occupations are over 90 percent male.³¹ Isolation, active discouragement, harassment, outright exclusion, and lack of information about alternative job options are all significant barriers to women's entry into these higher-wage jobs.

Not only do women face significant barriers to entering higher-wage, nontraditional jobs, they continue to be overrepresented in low-paying jobs. Four out of ten women work in female-dominated occupations,³² such as child care workers, family caregivers, or servers³³ – which pay low wages *simply because* women are the majority of workers in the occupation.³⁴ One study that used the share of women in an occupation to predict wages in that job a decade later found that “women’s occupations” – those that were two-thirds or more female – had wages that were 6 percent to 10 percent lower a decade later than “mixed occupations.”³⁵

And nearly two-thirds of workers earning the lowest wages—\$10.50 or less—are women; nearly half of these workers are women of color.³⁶ 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.³⁷ In Maryland, women make up more than 62 percent of the low-wage workforce.³⁸ And more than six in ten of the lowest-paid workers in Maryland—those earning the minimum wage—are women.³⁹ Most women paid the minimum wage are not being supported by a spouse’s income.⁴⁰

III. Asking for a Job Applicant's Salary History Perpetuates Gender and Racial Wage Gaps

When employers rely on job applicants’ prior salary in hiring or in setting pay, pay inequalities from past employment are perpetuated throughout applicants’ careers and qualified applicants are blocked from much-needed employment opportunities. This common practice can hurt all job applicants, but is especially detrimental to women and people of color who face conscious and unconscious bias in the job application and negotiation process and are more likely to be working in lower-paying jobs.

For example, if a job applicant’s prior employer discriminated against her in setting her pay below her male counterparts’, or the applicant previously worked in a female-dominated profession where pay is lower precisely because women do the jobs and “women’s work” is undervalued, and the new employer sets her pay based on that prior job’s salary, the pay discrimination that applicant faced in her previous job will follow her, depressing her new wages. Many employers claim they need to rely on an applicant’s prior salary to know the market value of the applicant or the position. But as a California district court explained in rejecting an employer’s argument that its reliance on prior salary in setting pay was a facially-neutral “factor other than sex”: “say[ing] an otherwise unjustified pay differential between women and men performing equal work is based on a factor other than sex because it reflects historical market forces which value the equal work of one sex over the other perpetuates the market’s sex-based subjective assumptions and stereotyped misconceptions Congress passed the Equal Pay Act to eradicate.”⁴¹ Moving to a new job can be the best opportunity women have to increase their pay, but relying on salary history to set pay can condemn women to perpetually depressed salaries.

Job applicants who reduced their hours or left their prior job for several years to care for children or other family members are also penalized when employers set compensation based on

their prior salaries which are not reflective of existing labor market conditions or the applicants' current qualifications. This penalty contributes to the gender wage gap because it falls especially heavily on women, and particularly women of color, who continue to shoulder the majority of caregiving responsibilities while at the same time serving as primary breadwinners in 41 percent of families with children, and co-breadwinners in another 22 percent of these families.⁴²

Asking for salary history in the hiring process only compounds the negotiation disadvantages and past biases that women and people of color experience. For example, research has documented that women who negotiate their salaries are already at a disadvantage because they are perceived as greedy, demanding, not nice, and less desirable candidates, leading to lower starting pay.⁴³ When a new employer requests a candidate's prior salary information, they are likely to anchor salary negotiations around the prior salary, with only small room for adjustment,⁴⁴ thereby further entrenching, even if unwittingly, gender and racial disparities in the candidate's new salary.

Importantly, this reliance on salary history not only disadvantages women and people of color in negotiation and setting pay, it also negatively impacts subsequent raises, bonuses, and promotions that are tied to the employee's initial salary. Over time, those lower salaries add up to huge losses that affect an employee's and her family's financial well-being and ultimately her retirement. The class action law suit *Beck v. Boeing*,⁴⁵ settled in 2004 for \$72.5 million, is a poignant example of this destructive dynamic. Boeing set the salaries of newly hired employees as their immediate past pay plus a hiring bonus which was set as a percent of their past salary. Raises were also set as a percentage of an employee's salary. Boeing claimed it set pay based on a neutral policy, but since women had lower average prior salaries than men, these pay practices led to significant gender disparities in earnings that compounded over time and could not be justified by performance differences or other objective criteria.

Given the role that relying on salary history plays in perpetuating and institutionalizing gender and racial disparities, it is not surprising that the Equal Employment Opportunity Commission (EEOC) Compliance Manual on compensation discrimination has instructed since 2000 that reliance on prior salary cannot justify a compensation disparity.⁴⁶ The EEOC explains that "permitting prior salary alone as a justification for a compensation disparity 'would swallow up the rule and inequality in compensation among genders would be perpetuated.'"⁴⁷ Nevertheless, many employers continue to rely on salary history in setting pay.

Employers also use salary history information to screen out job applicants which has a discriminatory impact on the composition of the workforce. Some employers automatically disqualify or compare applicants based on the assumption that an applicant with a lower salary is of lower quality than an applicant with a higher salary.⁴⁸ But when women and people of color experience, on average, lower wages compared to white, non-Hispanic men, relying on salary history in this way serves to perpetuate the underrepresentation of women and people of color in many workplaces and positions.

Even when pay has not been affected by discrimination, employers who use salary history to screen applicants unfairly block many qualified applicants from much-needed employment opportunities. For example, an older individual who is laid off late in his or her career, or leaves the workforce temporarily to care for him or herself or a loved one, might need to accept a lower-paying job to make ends meet. But employers who screen out job applicants whose salary exceeds a certain amount on the assumption that those applicants would not actually accept the job if offered, unfairly block applicants' efforts to achieve economic security. Likewise, employers who screen out job applicants with salaries below a certain threshold unfairly penalize individuals who take a lower paying job due to a tight market, the bankruptcy of a prior employer, or to work in the public sector.⁴⁹

IV. Not Providing Minimum Pay Information in Job Announcements Perpetuates Gender and Racial Wage Gaps

When an employer asks a job applicant what his or her salary expectations are without providing the applicant any information about the rate of pay for the position, women and people of color lose out. Studies show that women often ask for less when they negotiate than men.⁵⁰ This is true even when the women applicants are otherwise equally qualified and applying for similar jobs as their male counterparts.⁵¹ Moreover, it is a common practice for job applicants to ask for an amount that is a 10 to 20 percent increase over their prior salary.⁵² Given that women and people of color are, on average, paid less than white, non-Hispanic men, they would have to request a particularly large percentage increase over their current pay for their request to be on par with their white, non-Hispanic male counterparts, which they are unlikely to do given the anchoring effect of their own pay.

Fortunately, studies also show that when job applicants are clearly informed about the context for negotiations, including the types of compensation, benefits, or conditions that are negotiable, or the typical pay for the position, women are more willing to negotiate and more successful in negotiating.⁵³ Since employers tend to anchor salary negotiations, consciously or subconsciously, on the job applicant's first request, providing applicants with the minimum pay that the employer is willing to pay helps level the negotiating playing field and reduce gender and racial wage gaps.

Likewise, transparency around pay ranges for positions helps employees root out unlawful pay disparities. Pay transparency and requirements that employers not pay less than the minimum rate of pay for a position also help employers avoid unjustified disparities and incentivizes employers to review and address unjustified disparities between employees. The implications of such protections are real: in 2012, the Seventh Circuit Court of Appeals remanded a pay discrimination case for trial where an Illinois business paid all but one of the women business managers less than the low end of the pay scale and all of the men business managers at the high end of the pay scale or above.⁵⁴

The much narrower wage gap in the public sector – where agencies typically have transparent and public pay structures – is evidence that greater pay transparency helps reduce wage disparities. Nationally, the gender-based wage gap for all full-time workers, based on median earnings, is 20 percent, but in the federal government, where pay rates are publicly available,⁵⁵ the gender-based wage gap in 2012 was 13 percent.⁵⁶

Unfortunately, many employers, especially in the private sector, are not transparent about pay ranges for positions even though, according to a study by *payscale.com*, 85 percent of employers use pay ranges to structure compensation programs.⁵⁷ Even if they don't have established pay ranges, all employers must budget an amount for the position for which they are hiring. But when employers hold all of the salary information, they are at a significant advantage in negotiating the lowest possible salary and women and people of color lose out.

V. SB 404 Would Play an Important Role in Closing Persistent Gender and Racial Wage Gaps

As the wage gap has barely budged in a decade, we must consider all of the tools at our disposal, including changing seemingly neutral practices that condemn women and people of color to depressed wages. SB 404 would play an important role in breaking the cycle of wage discrimination and closing the wage gap in Maryland.

A. Ending the detrimental reliance on salary history

Under the bill, an employer is prohibited from screening out job applicants whose prior salaries do not meet minimum or maximum criteria. An employer also cannot ask for a job applicant's prior salary as a condition of that applicant being interviewed or as a condition of that candidate being considered for an offer of employment or offer of compensation. These provisions will help ensure that job applicants are evaluated and compensated based on their skills for the jobs to which they have applied, not their gender or race or their apparent value to a previous employer. In other words, the bill ensures that employers pay employees for their new job, not their old one.

Importantly, the Act would also bar an employer from providing the salary history of a current or former employee to a prospective employer, to discourage employers from going around a job applicant to get his or her prior salary history. However, the Act does explicitly permit an employer to seek such information if the employer has already made an offer of employment to the job applicant with a corresponding offer of compensation; the job applicant has provided written authorization for the employer to seek such information; and the employer is only seeking the information for the sole purpose of *confirming* the prior salary information already volunteered by the job applicant.

While under the Act, a job applicant would still be allowed to voluntarily disclose her prior salary to the prospective employer, the bill will ensure that she will not be screened out of a job

opportunity or condemned to depressed wages due to gender and racial inequalities or factors unrelated to an applicant's fit for the job.

B. Requiring posting of the minimum rate of pay for a position

SB 404 would also require employers to include in job announcements the minimum pay for the job and would prohibit the employer from paying the candidate who is hired for the position less than the wages indicated in the job announcement. Employers know the range they are willing to pay for a position based on their budget. This bill simply requires employers to be transparent about the floor—the minimum rate of pay for a particular position.

SB 404 helps create a more level playing field for negotiating pay to ensure that women and people of color are paid a fair salary based on what the job is worth. This provision builds on Maryland's commitment to pay transparency and is a crucial addition to the pay transparency protections Maryland enacted last year to ensure employees can discuss their pay with each other free from fear of retaliation.

VI. Requesting Salary History Information and Not Providing Applicants with Pay Information Are Not Necessary or Good Business Practices.

SB 404 would not only benefit working people in Maryland, it would put an end to business practices that, while common, are neither necessary nor good for employers' bottom line. Companies like Google have foregone the practice of relying on salary history, opting instead to "figure out what the job is worth, not the person."⁵⁸ Although employers may like to obtain as much information as possible in the hiring process, a job applicant's prior salary does not determine a job's market value. Many companies keep detailed information about pay ranges for a large variety of jobs in a variety of geographic regions.⁵⁹ And most large corporations already have set ranges for a job's pay.⁶⁰

Nor does past salary demonstrate a job applicant's worth. As discussed above, it can often be misleading. Employers are better served by evaluating job applicants' experience, skills, accomplishments, track record, and the responsibilities they will be assuming to determine their value.⁶¹ Moreover, when employees are paid fairly, research shows that their morale and retention improves and they tend to be more focused, dedicated, and productive, helping the employer's bottom line.⁶²

In addition, the discriminatory impact of screening out job applicants based on their prior salary reduces the pool of diverse talent available to an employer directly undermining employer efforts to diversify their workforce. But a diverse workforce and equitable employment practices can confer a wide array of benefits on a company, including decreased risk of liability, access to the best talent, increased employee satisfaction and productivity, increased innovation, an expanded consumer base, and stronger financial performance.⁶³

Likewise, transparency around the minimum rate of pay for a position benefits employers' bottom line because it increases the likelihood that employees will believe they are paid fairly, which in turn promotes employee engagement and productivity.⁶⁴ In addition, this practice can make the hiring process more efficient. Employers often contend that they need to ask job applicants for their prior salary or desired pay so as to not "waste time" interviewing someone who would not accept the position because the salary is too low. By including the minimum rate of pay in the job announcement, these candidates will likely opt-out entirely and not apply. As a result, applicants will be better matched to job opportunities without the risk of introducing information into the hiring process that perpetuates gender and racial wage gaps.

VII. By passing SB 404, Maryland Would Join a Growing Chorus of States Seeking to Ban the Salary History Question

In 2015, the federal Office of Personnel Management issued a new policy discouraging government agencies from considering candidates' prior salary in setting their pay. The policy memo explained that "[r]eliance on existing salary to set pay could potentially adversely affect a candidate who is returning to the workplace after having taken extended time off from his or her career or for whom an existing rate of pay is not reflective of the candidate's current qualifications or existing labor market conditions."⁶⁵

In August of 2016, the Massachusetts legislature unanimously passed, and Governor Charlie Baker signed into law, an equal pay bill that, among other provisions, bans employers from seeking a job applicant's prior salary history before extending a job offer.⁶⁶ The Massachusetts bill was enacted not only with strong bipartisan support, but with the support of many in the Massachusetts business community, including the Greater Boston Chamber of Commerce, and the Marlborough and Metrowest Chambers of Commerce.⁶⁷

Since the passage of Massachusetts' law, there has been a groundswell of support for bringing an end to employer reliance on prior salary information. In September 2016, California amended its equal pay act to state that "prior salary cannot, by itself, justify any disparity in compensation."⁶⁸ And more recently, the mayors of New York City and New Orleans and the Governor of New York state signed Executive Orders blocking public agencies from asking about an applicant's previous compensation before extending a job offer.⁶⁹ In January 2017, Philadelphia became the first city to ban public *and* private employers from relying on salary history in setting pay.⁷⁰

A growing number of state legislatures are considering legislation prohibiting employers from seeking salary history, including Colorado, Connecticut, Illinois, Montana, New Jersey, Pennsylvania, and Texas. And California and Massachusetts have considered legislation requiring employers to provide job applicants or employees with the minimum rate of pay for a position or the pay scale.⁷¹ Finally, at the federal level, District of Columbia Delegate, Eleanor Holmes Norton,

introduced legislation in September 2016 that would prohibit employers from screening job applicants based on their prior salary or requesting job applicants' prior salary information.⁷²

VIII. Minor Modifications to SB 404 Would Further Strengthen Its Protections

SB 404 could be strengthened by making a few minor modifications. Although a job applicant may suffer real harm by being screened out of a job opportunity or paid depressed wages due to an employer's reliance on her prior salary, the bill does not provide a mechanism for a victim to file a complaint or be compensated for her damages. Amending the bill to allow a job applicant to file a complaint with the Commissioner of Labor and Industry and file an action in court and to provide for damages if a violation is established will ensure that victims are made whole and employers are adequately deterred from violating the law.

VIV. Conclusion

Stopping employers from asking about salary history and requiring them to provide minimum rate of pay information are important steps to close the wage gap. And since the wage gap has barely budged in more than a decade, we need to take action now. We urge the members of this Committee to once again stand up for working people in Maryland by supporting SB 404.

¹U.S. Census Bureau, American Community Survey 2015, *available at* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_DP03&prodType=table.

² Md. Code Ann., Lab. & Empl. § 3-304 (West).

³ Md. Code Ann., State Gov't § 20-607 (West).

⁴ MD DEPT. OF LABOR, LICENSING, AND REG., REPORT OF THE EQUAL PAY COMMISSION (Sept. 30, 2006), *available at* <http://msa.maryland.gov/msa/mdmanual/26excom/defunct/html/13equal.html>.

⁵ H.B. 1003, 2016 Gen. Assemb. (Md. 2016) (amending Md. Lab. & Emp. Code §§ 3-301, 3-304, 3-306, 3-307 (2015)).

⁶ NAT'L WOMEN'S LAW CTR (NWLC). THE WAGE GAP, STATE BY STATE, <http://nwlc.org/resources/wage-gap-state-state/>.

⁷ *Id.*

⁸ *Id.*

⁹ NWLC calculations based on U.S. Census Bureau, American Community Survey 2015, Tables B20017, B20017B, B20017H and B20017I *available at* <http://www.census.gov/acs/www/>.

¹⁰ *Id.*

¹¹ Median gross rent for Maryland is \$1,278 per month and comes from U. S. Census Bureau, American Community Survey (ACS) 1-Year Estimates. Gross rent is the contract rent plus the estimated average monthly cost of utilities (electricity, gas, and water and sewer) and fuels (oil, coal, kerosene, wood, etc.) if these are paid by the renter (or paid for the renter by someone else). Average monthly employee contribution for employer-based family coverage in Maryland is \$530. Data come from U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey: 2015, Table II.D.2, 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, 2015.

¹² NWLC 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/>.

¹³ NWLC calculations based on U.S. Census Bureau, 2015 American Community Survey, *available at* <http://www.census.gov/acs/www/>.

¹⁴ *Id.*

¹⁵ NWLC calculations based on U.S. Census Bureau, 2010-2014 American Community Survey Five-Year Averages, *available at* <http://www.census.gov/acs/www/>.

¹⁶ NAT'L WOMEN'S LAW CTR., WOMEN AND POVERTY, STATE BY STATE (Sept. 2016), <http://www.nwlc.org/resource/women-and-poverty-state-state>.

¹⁷ NWLC calculations of U.S. Census Bureau 2015 American Community Survey 1-year estimates using IPUMS.

¹⁸ AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW), GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE 9 (2012), *available at* www.aauw.org/research/graduating-to-a-pay-gap/.

¹⁹ Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends and Explanations*, NATIONAL BUREAU OF ECONOMIC RESEARCH (Jan. 2016), *available at* <http://www.nber.org/papers/w21913.pdf>.

²⁰ NAT'L WOMEN'S LAW CTR., THE WAGE GAP IS STAGNANT FOR NEARLY A DECADE 1 (2015), *available at* <http://nwlc.org/resources/wage-gap-stagnant-nearly-decade/>.

²¹ H.B. 1003, 2016 Gen. Assemb. (Md. 2016) (amending Md. Lab. & Emp. Code §§ 3-301, 3-304, 3-306, 3-307 (2015)).

²² For just a few recent examples of pay discrimination, see *King v. Acosta Sales and Marketing, Inc.*, 678 F.3d 470 (7th Cir. 2012) (all of the male business managers were paid more than twice plaintiff's salary even though she was also a business manager doing the same work under the same conditions. Plaintiff was one of the most successful sales associate, but one of the male sales associates with whom her sales were on par was paid three times more than her); *Morse v. Pratt & Whitney*, 2013 WL 255788 (D.Conn. 2013) (plaintiff and another woman in her same pay grade, title, and working group were paid \$10,000 less than the other employee—a man—in their same pay grade, title, and working group. Plaintiff's supervisors told her that “ ‘girls’ who had husbands with jobs did not need to make as much money as men since men were the primary earners in the family”); *Riser v. QEP Energy*, 776 F.3d 1191 (10th Cir. 2015) (plaintiff's duties were bifurcated and assigned to two new positions that were filled by two male employees who were compensated 31% and 39% more than plaintiff even though they had no, or no significant, additional duties); *Reardon v. Herring*, 191 F.Supp.3d 529 (E.D. Va. 2016) (Assistant Attorney General III in the Office of the Attorney General of Virginia in Richmond, VA, alleged that she was paid substantially less than five male comparators, all of whom were AAG IIIs within her section, had similar duties and performed similar work, and at least two of whom were also based in Richmond); *Woodard v. Medseek, Inc.*, 178 F.Supp.3d 1188 (N.D. Al. 2016) (plaintiff, a vice president, was paid less than other vice presidents, all of whom were male and even less than some managers and directors who ranked lower in the hierarchy than vice president). For examples from Maryland, see OFCCP JOHNS HOPKINS UNIVERSITY'S APPLIED PHYSICS LABORATORY SETTLES RACE AND SEX DISCRIMINATION CASE WITH US LABOR DEPARTMENT, USDL 14-2299, 2015 WL 270272 (describing a \$359,253 settlement to a lawsuit in which multiple Maryland women were paid less than male coworkers); WORCESTER COUNTY WILL PAY \$60,000 TO RESOLVE EEOC PAY DISCRIMINATION LAWSUIT, 2013 WL 4714245 (describing a settlement with Worcester County, Maryland, after the EEOC filed a lawsuit against the county for paying its county-run liquor retail clerks less than male clerks); *Cohens v. Maryland Dep't of Human Res.*, 933 F. Supp. 2d 735, 740 (D. Md. 2013) (in which an African American Maryland woman alleged that over the course of four years she was denied pay increases, and discovered that she was being paid between \$25,000 and \$30,000 less per year than her white, male coworkers); EEOC SETTLES SUIT AGAINST PUBLIC ACCESS TV CORP. FOR PAY DISCRIMINATION AND RETALIATION, 2000 WL 33729122 (describing a consent decree between the EEOC and Baltimore Cable Access Corporation after its executive director complained that she was being paid unfairly and was subsequently fired).

²³ Corrine A. Moss-Racusin et al., *Science Faculty's Subtle Gender Biases Favor Male Students*, Proceedings of the National Academy of Science of the United States of America (Aug. 2012), *available at* <http://www.pnas.org/content/109/41/16474.abstract#aff-1>.

²⁴ NAT'L WOMEN'S LAW CTR., 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.

²⁵ 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); see also *Morse*, 2013 WL

255788 (plaintiff's supervisor told her that "girls" who had husbands with jobs did not need to make as much money as men since men were the primary earners in the family").

²⁶ SHELLEY J. CORRELL, STEPHAN BENARD, and IN PAIK, GETTING A JOB: IS THERE A MOTHERHOOD PENALTY, AMERICAN JOURNAL OF SOCIOLOGY, Vol. 11 No. 5 (Mar. 2007), pp. 1297- 1339, *available at* http://gender.stanford.edu/sites/default/files/motherhoodpenalty_0.pdf.

²⁷ *Id.*

²⁸ NAT'L WOMEN'S LAW CTR, THE WAGE GAP FOR MOTHERS, STATE BY STATE (Nov. 2016), <https://nwlc.org/resources/the-wage-gap-for-mothers-state-by-state-2016/>.

²⁹ NAT'L WOMEN'S LAW CTR, MOVING WOMEN AND FAMILIES FORWARD: A STATE ROADMAP TO ECONOMIC JUSTICE 37 (MAR. 2016), <https://nwlc.org/resources/moving-women-families-forward-state-roadmap-economic-justice/>.

³⁰ NWLC 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.

³¹ *Id.*

³² ARIANE HEGEWISCH & MAXWELL MATITE, INST. FOR WOMEN'S POLICY RESEARCH, THE GENDER WAGE GAP BY OCCUPATION (Apr. 2015), *available at* <http://iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2014-and-by-race-and-ethnicity>. Female-dominated occupations are those that are at least 75 percent female.

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³⁵ Asaf Levanon, Paula England, & Paul Allison, OCCUPATIONAL FEMINIZATION AND PAY: ASSESSING CAUSAL DYNAMICS USING 1950-2000 U.S. CENSUS DATA, SOCIAL FORCES (Dec. 2009): 865-892, *available at* <http://www.statisticalhorizons.com/wp-content/uploads/2012/01/88.2.levanon.pdf>.

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³⁷ WIDER OPPORTUNITIES FOR WOMEN, GENDER EQUITY, <http://www.wowonline.org/gender-equity> (last visited June 4, 2013).

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⁴⁰ See FAIR PAY FOR WOMEN, *supra* note 36.

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⁴³ See HANNAH RILEY BOWLES, LINDA BABCOCK & LEI LAI, SOCIAL INCENTIVES FOR GENDER DIFFERENCES IN THE PROPENSITY TO INITIATE NEGOTIATIONS: SOMETIMES IT DOES HURT TO ASK, 103 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 84 (2007).

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⁴⁵ *Beck v. Boeing* (W.D. Wash. 2000)

⁴⁶ EQUAL EMPLOYMENT OPPORTUNITY COMM'N, COMPLIANCE MANUAL, No. 915.003 § 10-IV.F.2.g (Dec. 2000), *available at* <https://www.eeoc.gov/policy/docs/compensation.html>.

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⁴⁸ June Bell, *He Earned, She Earned: California Bill Would Limit Use of Salary Information*, SHRM.ORG. August 29, 2016, <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/california-salary-history.aspx> (“salary history ‘is one component businesses look at to see if candidates are equally qualified.’”); Jena McGregor, *The Worst Question You Could Ask Women in a Job Interview*, WASHINGTON POST (April 14, 2015), <https://www.washingtonpost.com/news/on-leadership/wp/2015/04/14/the-worst-question-you-could-ask-women-in-a-job-interview/> (“Higher salaries also have what’s known as a “branding” impact. Just as consumers think pricier products are better quality, recruiters and managers can have the same reaction when a job candidate has a higher past salary, Anderson explained. ‘It may trigger a conviction that one hire is lower quality than another, even if that isn’t the reality.’”).

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⁶⁸ A.B. 1676, 2016 Reg. Sess. (Ca. 2016) (amending (amending CAL. LAB. CODE § 1197.5)

⁶⁹ NY City Exec. Order No. 21 (Nov. 4, 2016), http://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2016/eo_21.pdf; New Orleans Exec. Order No. MJL 17-01 (Jan. 25, 2017), *available at* <http://www.nola.gov/mayor/press-releases/2017/20170125-pr-mayor-issues-executive-order-to-address/>; NY Exec. Order No. 161 (Jan. 9, 2017), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_161.pdf.

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