


 STATE
PLAY
BOOK

FOR GENDER EQUITY

COMBAT PAY DISCRIMINATION: STRENGTHEN EQUAL PAY LAWS

The Problem

Over Fifty-five years after the passage of the Equal Pay Act, women are still paid less than men. In 2017, a woman working full time, year round was typically paid just 80 cents for every dollar paid to a man working full time, year round. The wage gaps experienced by women of color were even larger than the overall gender wage gap—nationally Black women, Native women, and Latinas working full time, year round were typically paid just 61 cents, 58 cents, and 53 cents, respectively, for every dollar paid to their non-Hispanic, white male counterparts. While Asian women working full time, year round were typically paid only 85 cents, the wage gap is substantially larger for some subgroups of Asian women.¹ The wage gap persists in all 50 states and in nearly every occupation. Pay discrimination persists in part because of outdated stereotypes that continue to infect workplace decision making, such as the idea that families do not rely on women's income and that women do not need higher pay, which stand in contrast to the economic reality for women and their families.² Stereotypes about appropriate behavior for women also negatively impact earnings for lesbian women and transgender women.³ Employees, however, lack the tools they need to effectively fight against pay discrimination and employers lack the incentives to proactively reduce pay disparities. Pay discrimination is difficult to detect, in part because 66 percent of private sector employees report that discussing their wages is either prohibited or discouraged by employers.⁴ And even when working people discover unfair pay, loopholes in the law make it difficult to hold employers responsible for pay discrimination.

The Solution

State laws should improve upon existing protections against pay discrimination by protecting employees who share pay information from retaliation, closing longstanding loopholes in pay discrimination laws that make it harder for employees to prevail in equal pay claims, fully compensating victims of pay discrimination, and ensuring that employers who discriminate in pay are held accountable. State laws should also include proactive measures that help stop pay discrimination before it starts by increasing pay transparency and prohibiting employers from relying on job applicants' salary history in setting pay.

For help
crafting
legislation,
talking points,
fact sheets, and for
state-specific policy
research and data,
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Basic Elements of the Solution

- Provide explicit nondiscrimination protections for employees who share pay information and prohibit employers from retaliating against an employee who does share such information with co-workers.
- Prohibit employers from requiring job applicants to provide their salary history and from relying on past salary to set pay, to ensure that lower pay in one job does not depress pay in future employment.
- Require equal pay for “substantially similar” or “comparable” work to ensure that jobs that are not identical but are similar in terms of skills, responsibility, and working conditions are compensated equally.
- Limit the reasons employers may offer to justify paying different wages to men and women in the same position. Require that employers that pay men and women different salaries for the same job provide a business justification.
- Specify that the time period to pursue an equal pay claim starts over each time an employee receives a paycheck that is lower because of discrimination.
- Allow employees with successful pay discrimination claims to recover compensatory and punitive damages to fully compensate for all their losses.
- Require employers to provide job applicants and employees the salary range for their position to help level the negotiating playing field and incentivize employers to proactively review and evaluate their compensation practices and address any unjustified disparities between employees.
- Require the state to collect data from private-sector employers about what their employees are paid. Ensure this data is broken down by gender and other protected categories, such as race and ethnicity.
- Require all companies that bid for and/or receive government contracts to analyze their pay practices for wage gaps, report race and gender wage gaps, and certify ongoing compliance with pay equity laws and principles.
- Extend equal pay protections to characteristics such as race, ethnicity, or disability, in addition to sex, so employees have the tools to address the full array of pay discrimination, including intersectional discrimination that they may experience based, for example, on their race and gender, or their disability and gender combined.

- Ensure that all employers, including small employers, are covered by equal pay laws and other nondiscrimination requirements.

Talking Points on the Solution

- Having an economy that works for everyone starts by ensuring that women are paid the same as men when they work in similar jobs.
- Paying men and women the same wage for the same work is about basic fairness. But, 55 years after passage of the Equal Pay Act, the typical woman is still being paid only 80 cents for every dollar paid to the typical man.
- Families suffer when women are paid less. Ending gender discrimination in pay will not just help close the wage gap, but will strengthen families and households. Bringing women’s earnings in line with men’s would typically bring in an additional \$10,169 a year to support a family.
- Equal pay for women would also help ensure that state programs designed to help low-income families serve as a safety net for those who have fallen on hard times—not as a taxpayer subsidy to employers that fail to pay their workers fairly.
- Eliminating the wage gap helps state budgets and reduces public costs. If women receive equal pay, this will move many families out of poverty and reduce the need for public spending on programs that provide support to families for basic needs.
- Equal pay and pay transparency helps employers’ bottom line by increasing employee loyalty, productivity, and performance.⁵ Equal pay also helps boost the national economy.⁶
- A national movement to strengthen equal pay laws has been sweeping through the states. In the last three years, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, New Jersey, Nevada, Oregon, Vermont, and Washington have taken steps to close loopholes in their equal pay laws or otherwise strengthen enforcement of those laws.⁷ And 19 states and the District of Columbia ban retaliation against workers who talk about their wages.
- A recent poll found that 79 percent of women and 70 percent of men felt equal pay should be a top priority.⁸

1 Nat'l Women's Law Ctr. (NWLC), Equal Pay for Asian American and Pacific Islander Women (Mar. 2019), available at <https://nwlc.org/resources/equal-pay-for-asian-pacific-islander-women/>.

2 NWLC, Sex Stereotypes: How They Hurt Women in the Workplace - and in the Wallet (2013), available at https://nwlc.org/wp-content/uploads/2015/08/suits_fact_sheet_-_sex_stereotypes_01.30.2013.pdf.

3 NWLC, The Wage Gap: The Who, How, Why, and What To Do (Sept. 2017), available at <https://nwlc-ci49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/09/The-Wage-Gap-The-Who-How-Why-and-What-to-Do-2017-2.pdf>.

4 Inst. for Women's Policy Research, Private Sector Workers Lack Pay Transparency: Pay Secrecy May Reduce Women's Bargaining Power and Contribute to Gender Wage Gap (Dec. 2017), available at <https://iwpr.org/publications/private-sector-pay-secrecy/>.

5 See Andrew Chamberlain, Is Salary Transparency More Than a Trend?, Glassdoor (Apr. 27, 2015), <https://www.glassdoor.com/research/studies/is-salary-transparency-more-than-a-trend/>; Deborah Thompson Eisenberg, Money, Sex and Sunshine: A Market-Based Approach to PayDiscrimination, 43 Ariz. State L.J. 951, 1001-15 (2011).

6 Inst. for Women's Pol'y Research, The Economic Impact of Equal Pay by State (May 2017), available at <https://iwpr.org/publications/economic-impact-equal-pay-state/>.

7 The Washington Post/Kaiser Family Foundation, Feminism Survey (Jan. 2016), available at <http://files.kff.org/attachment/topline-methodology-washington-post-kaiser-family-foundation-feminism-survey>.