

COMBAT PAY DISCRIMINATION: STRENGTHEN EQUAL PAY LAWS

THE PROBLEM

More than 55 years after the passage of the Equal Pay Act, women are still paid less than men in **all 50 states** and in **nearly every occupation**. **Nationally, in 2020**, a woman working full time, year-round was typically paid just 83 cents for every dollar paid to a man working full time, year-round. The wage gaps experienced by many women of color were even larger than the overall gender wage gap—nationally Black women, Indigenous* women, and Latinas working full time, year-round were typically paid just 64 cents, 57 cents**, and 57 cents, respectively, for every dollar paid to their non-Hispanic, white male counterparts. Asian American, Native Hawaiian, and Pacific Islander women working full time, year-round were typically paid 95 cents for every dollar paid to non-Hispanic, white men, but the wage gap was substantially larger for some subgroups of Asian American women.

These numbers don't account for the widespread job loss experienced during the pandemic, particularly among low-paid workers, or the many women who were forced into part-time work or out of the labor force altogether. When comparing all women who worked in 2020 with all men who worked, regardless of how many hours or weeks they worked, women were typically paid just 73 cents for every dollar paid to men, and the numbers were even wider for many women of color when compared to white, non-Hispanic men. For example, when comparing all men and all women who worked, Latinas were typically paid only 50 cents for every dollar paid to their white non-Hispanic male counterparts.

Racist and sexist wage gaps have always existed—but the pandemic drove new, harmful economic fissures along racial and gender lines. And now, with inflation rising at a faster rate than wages, the wage gap is hitting women, especially those working in low-paid jobs, hard. Pay discrimination persists in part because of outdated stereotypes that continue to infect workplace decision making, such as the idea that families do not rely on women's income and that women do not need higher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 stark contrast to the economic reality for women and their families. Stereotypes about appropriate behavior for women also negatively impact earnings for women who do not conform to those stereotypes, including lesbian women and transgender women. And many common employer pay setting practices, like relying on an applicant's salary history to set pay or refusing to provide salary ranges to applicants or employees, perpetuate the wage gap. 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 61% of private sector employees report that discussing their wages is either prohibited or discouraged by employers. 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.

BASIC ELEMENTS OF THE SOLUTION

- Prohibit employers from requiring job applicants to provide their salary history in the hiring process and from relying on applicants' salary history to set pay.
- 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.
- Prohibit employers from retaliating against employees who share pay information with co-workers or applicants.
- Extend equal pay protections to other protected 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.
- 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 (or employees in other protected classes) doing the same work. Require that employers that pay different salaries for the same job prove a business justification for the difference.
- 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 the state to collect data from employers about what their employees are paid by job category. 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.

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.
- The COVID-19 crisis highlighted the consistent undervaluing of women's work and threatens to further widen gender and racial

wage gaps if equal pay measures aren't prioritized. Gender and racial wage gaps have left women with less savings to weather a crisis and forced too many to break into retirement funds, forcing women to accept lower pay offers as they seek to re-enter the workforce and leading to long-term impacts on future economic security.

- Equal pay measures are crucial to help more people get back into the workforce and help employers rebuild their businesses from the COVID-19 crisis. Equal pay measures, including salary range transparency, give job seekers tools to secure pay that accurately values their worth and gives employers the tools to efficiently, effectively, and fairly rebuild their workforce.
- Families suffer when women are paid less. Ending pay discrimination will not just help close the wage gap, but will also strengthen families and households. Bringing women's earnings in line with men's would typically bring in an **additional \$10,435 a year** to support a family and pay for two months' supply of groceries, three months' child care payments, three months' rent, three months' health insurance premiums, three months' student loan payments, and six tanks of gas.
- Closing the wage gap is particularly important for **Black, Latina, and Native American women** who tend to be paid less than white, non-Hispanic women, and are more likely to be in poverty. Bringing Black women's earnings in line with white, non-Hispanic men's would typically bring in an additional \$24,420. For Latinas, it would bring in an additional \$28,911 and for Native American women an additional \$27,000.
- 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.
- A national movement to strengthen equal pay laws has been sweeping through the states. In the last five years, **16 states** from Alabama to Illinois to Virginia have taken steps to close loopholes in their equal pay laws or otherwise strengthen enforcement of those laws. And at least 20 states and the District of Columbia ban retaliation against workers who talk about their wages.
- As of **February 2022, the overwhelming majority of people (72%)**—across races, genders, regions, income levels, and political affiliations—support protecting employees' right to discuss salaries. And 63% support requiring employers to report pay data by gender, race, and ethnicity to a government enforcement agency.

* The data uses the term "Native American" but this policy brief uses the term "Indigenous."

** Due to COVID-19, data collection for the 2020 American Community Survey experienced significant interruptions and high non-response rates.