

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1257

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1257
1/21/2015
22276

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Unequal pay for men and women; and to provide a penalty.

Minutes:

Attachments 1-10

Chairman Keiser: Opens the hearing on HB 1257.

Representative Kylie Oversen~District 42 in Grand Forks: (Attachment 1).

7:00

Representative Laning: It seems that this is already law?

Oversen: Yes, but it's cleaning up the language because it hasn't been done in 50 years, but we still have a problem with equal pay. There is a wage gap and I'm hoping to enforce what is already in the books.

Representative Laning: On your wage comparisons, was there an in-depth analysis on the wage comparison where we are talking hours to hours and so on?

Oversen: I can get you more statistics that were pulled out of the data we have. They take into account education, experience, hours, and work requirement. It's intended to show a real reflection of the differential that women versus men earn.

Representative Becker: The stats that you give, what concerns me is these stats aren't overly helpful. You need to show more meaningful statistics.

Oversen: To the best my knowledge, in reading all the data, the researchers who did the wage gap; do follow their best to account for all sectors. I'm happy to email more information to help ease your concerns.

Representative Kasper: I would like to see the detail where you came up with these numbers, who did it and their actual research and data.

Oversen: OK.

Representative M Nelson: That individual, if they feel that they were discriminated against and they can show that there is a pay differential, then the employer does get the opportunity to bring in all of those things. We can talk the big picture, but in the court room, it's down to what the facts are to the individual case.

Oversen: That's correct, that's what the prima facie case establishes.

Representative Ruby: I don't have much problem with the clean ups, I'm wondering if it's basically trying to address the situation, the difference of the sexes. What about the races and age that could also have some disparity?

Oversen: I completely agree with you, but they are protected under the human rights act.

Representative Kasper: Page 3, line 26, have we not switched or changed the normal course of action when the accused is accused? Isn't it current law, the accuser must prove beyond reasonable doubt. Here the employer has to prove they're innocent, isn't that a flip of our current law in the state in North Dakota?

Oversen: That would be the standard under criminal law but under civil law the standards differ. Specifically to this chapter of the code, there isn't a standard in place. It's different under federal law than state law and I thought we would better clarify it at state law what we expect.

Representative Kasper: Is it the state's choice to choose how we handle this situation, could we reverse it or because of federal law, do we have to go with what your language says?

Oversen: It's up to the committee, if they choose to do an amendment to reverse that. My opinion, it makes more sense, as the employee won't have access to the necessary records after they offer that minimum standard of proof. The employer is the one who has to provide all the records of all of their employers to prove that this is what they base their pay off of. That's the investigative process that currently takes place.

Representative Kasper: On the other hand, in a court case that has been filed, would not the employer be required to provide that data anyway?

Oversen: Correct, if I'm hearing what you're saying.

Representative Ruby: If you look on the line above that, that doesn't take in consideration for longevity or experiences. Does this allow that flexibility or are we pretty much stuck to that type of bar?

Oversen: What all of this section is doing is, what evidence the employee does have to produce.

Representative Louser: Do we have a pay gap in state government?

Oversen: There is more transparency in state government jobs.

Chairman Keiser: Page 3, lines 16-18, are you sure we should be doing that? Could there be an administrative action that would be different than a legal action and for the workers should be upheld in both criminal and civil action in the court system? Do you want to eliminate the option for our employees to dismiss any administrative action, once they filed court?

Oversen: It does make sense that if the court is going to the investigative process and hear the entire claim, it wouldn't make sense for the labor department doing the same work. The penalty in the end would be stronger under the district court. I will leave that up to the discretion of the committee to make it permissive.

Representative Frantsvog: Do all claims go to the labor commission?

Oversen: Not necessarily, they don't have to file first with the commissioner of labor.

Renee Stromme~Women's Network: (Attachment 2, 2A, 2B, 3,4).

Representative Becker: I'm not seeing in the study including longevity or taking the longevity variable out of the equation? Is it addressing longevity?

Stromme: There is a section about "life choices", in that section, that addressed a piece of it. They do take into consideration all of the factors, they do the apples and oranges comparison in general that women earn less money that aren't on the hands of the business community to figure out. They also put it on the hands of women, you need to negotiate. Women are less prone to negotiate their pay wages; again, discrimination bills don't address this. What happens is when there is more transparency, women negotiate more. There is a level of discrimination that it does occur and that's a piece of the puzzle too and that's what the law can do when women are not given the raises at the same level. These laws only address a piece of that.

Representative Becker: They address the longevity in the sense of "like choices", but statically is what I'm asking about and they don't show that in there. I would like to see the data. If there is a pay gap based on bias, I would want to be a part in the effort to eliminate that. If there is a perceived pay gap because people aren't looking closely enough and it turned out not to be necessary, I don't want to be a part of that. Education, is that the same?

Stromme: I don't know of hand.

Representative Louser: Looking at page 7, we are showing North Dakota as number 47th in medium income, but we are hearing in reports that we are in the top five for medium income. Why are we 47th in one report and other reports, we are in the top 5?

Stromme: We are 47th in the ranking of the gap and not income.

Chairman Keiser: Are you helping the committee understand the conditions under which the employer legal authority to not discriminate, but to pay differentially? What are the legal mechanisms providing the employer has policies and procedures that can be use legally to pay differently? I'm looking for the list of variables that an employer can use to differentiate pay for the same job, like a teacher ladder pay salary?

Stromme: If you look a HB 1293, then reads it.

Chairman Keiser: That doesn't define it very well. Next is the informal thing, I'm an employer; I have two employees doing the same job. One employee who contributes to the job and the other employee who causes a lot of problems, I cannot discriminate on wages, one is acceptable and other is outstanding, can I use these ladder ratings of job evaluation to give one a 5% raise and the other no raise?

Stromme: I would like to go back and research and give concrete information.

Chairman Keiser: The committee needs to understand that.

Stromme: I agree to that.

Stewart Savakol: On behalf of Nick Archuleta-President of North Dakota United:
(Reads his testimony~attachment 5).

Representative Becker: Gives a hypothetical. Will they be paid the same, one on 11th year the other on 6th year?

Savakol: No, they will not be.

Representative Becker: You do agree we should consider longevity in statistic to determine whether there is a pay gap?

Savakol: I believe someone is better equipped to answer on how that would impact that, for teachers, absolutely.

TJ Jerke~On behalf of the North Dakota Human Rights Coalition: (Attachment 6)

Tom Ricker~ President of the ND AFL-CIO: (Attachment 7).

Representative Ruby: On the second page of your handout, "raising the minimum and tipped minimum wages would help close the wage gap, this leads me to believe that the gap is determined more on the wage it's given for the type of job. A minimum wage job is not necessarily disparity between doing the same job.

Ricker: I don't think that is necessarily true. The reason is at the bottom of the page you will see links to access to see where the research came from.

Josh Askvig~Associate State Director of Advocacy for AARP North Dakota:
(Attachment 8).

Chairman Keiser: Is there anyone else here to testify in support, opposition?

Andy Peterson~President & CEO of the Greater ND Chamber: (Attachment 9).

Representative Hanson: Do you feel the chamber sees a route that this bill could become supported by the chamber.

Peterson: If you could take out that section that I reference to, we would be much more amendable to this bill.

Representative Hanson: Could you gage the status in favor or opposition.

Peterson: We would like to see the language, but most likely support it.

Chairman Keiser: I share your concern about crowding the court system with non-valid complaints, the valid ones we want. In worker's compensation, we do have a system established where they can first file with the labor commissioner. If they weren't satisfied with the labor commissioner, the interim step is an Administrative Law Judge (ALJ) that can adjudicate the case. Then if they are not happy with that, then they can go to the district court. It's been proven successful. Do you see having any practicality to try to reduce the district court level? I have a concern that the district court has to take the case and be overwhelmed.

Peterson: In theory, we like the approach and would support it.

Representative M Nelson: Have you ever filed a complaint with an administrative agency?

Peterson: Short answer, yes.

Representative M Nelson: Have you ever initiated a law suit in district court?

Peterson: No.

Representative M Nelson: You characterized the district court as being easier under this law. What did you base that on?

Peterson: I rely on our attorneys.

Representative M Nelson: It's easier to complain to the labor commissioner, than it would be to hire a lawyer, come to an agreement and so on and go to district court. Is it not easier to go to court?

Peterson: One of the things that employers want is a straight path forward without any deviations. They don't want to get into that situation with them. We don't want that to be a first line of defense.

Chairman Keiser: Anyone else here to testify on HB 1257 in opposition, a neutral position?

52:45

Troy Seibel~Commissioner of Labor: (Attachment 10).

59:09

Representative Louser: You said less than 5 cases per year get referred to the EEOC. The vast majority you investigate, what number is that per year?

Seibel: In fiscal year July 2013-14, all the cases based on sex discrimination that we closed totaled 46. That may or may not be pay issues. We don't break down into subcategories those claims.

Representative Louser: How often do you do fine yourself issuing new regulations to perform here?

Seibel: We have not issued any regulations.

Representative Becker: Of the 5 for the EEOC and 46 in the fiscal year, how many were deemed to have merit to go on to the next phase?

Seibel: I don't know, but I can get that fact figure but I would say it's around the 5% figure.

Representative Laning: Have you ever had a case where a male was being discriminated?

Seibel: Yes, but that's under the human rights.

Representative Boschee: Have there been incidences where a citizen has come to the department with a complaint, you had to turn them away based on your staffing?

Seibel: No, we do not turn anyone away. We have had requests for transfers to EEOC.

Representative Boschee: This makes me happy that you don't turn anyone away.

Representative M Nelson: An equal pay that goes to the EEOC, the next step is federal court?

Seibel: That's correct.

Representative M Nelson: On the human rights, do you issue a ruling or have to go to administrative law judge?

Seibel: Under our human right act, if we a cause finding that the statue was violated, the charging party has the opportunity to make an election between an administrative hearing

or going to district court. It's up to the individual to where they want to go. The department will bring a complaint with the office of administrative hearing and the ALJ will be assigned and the Attorney General's office represents the department in that proceeding.

Chairman Keiser: Anyone else here to testify in neutral? Seeing none, closes the hearing on HB 1257.

Chairman Keiser: Appoints a subcommittee with Vice Chairman Sukut as chairman and Representative Becker & Representative Boschee will serve on the committee. Anyone in the audience who wants to participate, give our committee clerk your information. We will send you notification when they will meet. The committee will address a couple of points: find the problem, if it exists, on the bill addresses the problem if one exists, look at the prima facie problem and decide what changes to make if there is problems. The subcommittee will report to the full committee.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1257
1/22/2015
22424

Subcommittee
 Conference Committee

Ellen Litang

Explanation or reason for introduction of bill/resolution:

Unequal pay for men and women and to provide a penalty.

Minutes:

Meeting location: Peace Garden room.

Members present: Vice Chairman Sukut, Representative Becker, Representative Boschee.

Others Present: Representative Oversen, Troy Seibel~North Dakota Department of Labor, Tom Ricker~President of the AFL-CIO, Renee Stromme~North Dakota Women's Network and Helene Herauf~GNDC.

TOPIC DISCUSSED

Chairman Sukut: Calls the subcommittee hearing on HB1257. Our bill is dealing with equal pay for men and women with comparable working and skills. The bill is attempting to make it better. We will identify the problem and we are going to fix. A couple of problems are prima facie section where it's innocent until proven guilty but the area was guilty until proven innocent. The other area is the labor commissioner, with receiving additional complaints which will create a lot of work.

We will get a hold of Legislative Council, make arrangements with Katherine Hill on speaker phone to address our concerns there and the main thing is to determine, do we have a problem with current laws addressing this issue adequately. We need to set up quickly.

We will find the best option to meet next week but first we have to see when Katherine Hill from DC is available by phone.

No Motion and vote.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1257
1/26/2015
22574

Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Unequal pay for men and women and t provide a penalty.

Minutes:

Attachment 1-3

Meeting Location: Peace Garden room.

Members Present: Chairman Sukut, Representative Becker, Representative Boschee.

Others present: Dr Catherine Hill~the American Association of University Women-By phone, Representative Oversen, Troy Seibel~North Dakota Department of Labor, Renee Strommee.

TOPIC DISCUSSED

Vice Chairman Sukut: Calls the subcommittee hearing on HB 1257. Representative Becker has questions on the studies done by Dr Catherine Hill.

Our plan is to address the issues brought by the three drafts at the next subcommittee.

Troy Seibel~North Dakota Department of Labor: (Attachment 1). He was asked for information to present to the committee from the first hearing.

(Attachment 2)~CT Marhula from Grand Forks. They were unable to attend the hearing and wanted testimony for the record.

(Attachment 3)~Renee Stromme-Additional survey study.

No motion and vote.

refer to recess

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1257
1/26/2015
22574

Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Unequal pay for men and women and ^{to} provide a penalty.

Minutes:

Attachment 1

Meeting Location: Peace Garden room.

Members Present: Chairman Sukut, Representative Becker, Representative Boschee.

Others present: Dr Catherine Hill~the American Association of University Women-By phone, Representative Oversen, Troy Seibel~North Dakota Department of Labor, Renee Stromme & Jennifer Clark~Legal Counsel for North Dakota Legislative Council.

16:00 - Discussion begins TOPIC DISCUSSED

Vice Chairman Sukut: reopen the subcommittee hearing on HB 1257 when Jennifer Clark present. She walks through the mocked up bill providing legal counsel.

No motion and vote.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1257
1/29/2015
22851

- Subcommittee
 Conference Committee

Ellen Litang

Explanation or reason for introduction of bill/resolution:

Unequal pay for men and women and to provide a penalty.

Minutes:

Attachment 1-2

Meeting Location: Peace Garden room.

Members Present: Chairman Sukut, Representative Becker & Representative Boschee.

Other Present: Troy Seibel~North Dakota Department of Labor, Renee Stromme, Representative Oversen and Laney Herauf~North Dakota Chamber.

TOPIC DISCUSSED

Chairman Sukut: Opens the subcommittee on HB 1257. Discussion on amendments (Attachment 1A-.01003), (Attachment 1B-.01002) and (Attachment 2-the mockup version).

We need to present these amendments before the committee to see where they will be at on these. If the committee has problems, we still can amend and change it.

No motion or vote.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1257
2/2/2015
23042

- Subcommittee
 Conference Committee

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Unequal pay for men and women and provide a penalty.

Minutes:

Attachments 1, 1A & 1B

Chairman Keiser: Opens the work session on HB 1257.

Vice Chairman Sukut: Reports on the subcommittee actions. We have 2 amendments which were handed out but we also handed out a marked up addition if the bill. (Attachment 1, 1B). Goes through the marked up attachment.

Representative Boschee: (Attachment 1A). Goes over his amendment 15.0793.01003.

Representative Ruby: It doesn't say it's egregious and that would be the only time that it would be determined. Yes, it may have gone to court but it went to court because they didn't think they violated it, they thought they had a different interpretation. Once they lost, they going to be some punitive damages that will come to them or they are going to change their practice. That's fine if they do, but then why would that information have to be distributed to every agency and they may never bid under any of those other agencies. I think it's an unnecessary notification.

Representative Boschee: If you recall, OMB says they only do a small pie of the contract. They don't do centralized contracting for all agencies, that's the intent. It doesn't say they have to cancel contracts only if they wish.

Representative Ruby: Can't they do their own background checks if they were concerned about that?

Representative Boschee: I think where the concern is if we are under current contract with someone and found a violation. In the last five years, I think there have been two equal pay violations that have been found?

Troy Seibel~Director of the North Dakota Department of Labor: I'm not aware of any cause finding by the EEOC in North Dakota under the equal pay act.

Representative Boschee: I take it back, there were four.

Vice Chairman Sukut: Continues going over attachment 1, the marked up bill.

Chairman Keiser: (Attachment 1B). I asked Jennifer Clark to explain the difference.

Jennifer Clark~Legislative Council: In the version of the prima facie language you have right now, in section 1 of the bill. They are design to be parallel. As this bill was introduced, that prima facie evidence required was slightly less and it made it a little bit easier for the plaintiff to get their foot in the door but they are not the holders of the information. Now as we have amended in Vice Chairman Sukut's version, they are the same. The way you get your foot in the door is to prove that a violation happened. The way an employer returns is, I'm not in violation and they say that the differentials are a result of one of these permissible items. That permissible item cannot be gender related, so their seniority system can't be gender bias. I haven't been in a civil court room in a number of years. I would rely on an expert, a civil practitioner, to confirm that nothing we are doing in that prima facie provides a tool for either party. I don't think it does. You run the risk, if you pass them both, somewhere down the line you amended one body of law and not the other, now they would be different.

Representative Laning: Would you prefer in your opinion, the prima facie left in or taken out?

Clark: With the preface that the only reason, is for future sessions in drafting, my preference for it to be in one place.

Representative Beadle: Under title 7, of the Civil Rights Act of 1964, there is a prima facie requirement under federal law. Our laws make it so they can take discrimination complaint into the state courts as to oppose seeking federal district court remedies. Is their burden on the federal different from our burden on the state, when it comes into conflict, does it matter what jurisdiction they are taking the case to.

Clark: That is always going to be the party needs to take which forms that has better law and history on how they applied it.

Representative Beadle: It just applies to the jurisdiction you are taking?

Clark: Correct.

Representative Ruby: I want your thought on the statute of limitations for court action. In the new language isn't it making it a determination that it's unlawful before the court case determines that it is?

Clark: It is the alleged unlawful action, so that might be the distinction you are looking at. That might be a valuable word to add there but I think it's important to focus on the terminology being used is unlawful employment practice and when it occurs.

Representative Ruby: Before it said, claim of relieve occurs, which is, still what would be happening or the alleged. They are kind of the same thing.

Clark: That language unlawful employment practice. Page 2 on your markup, lines 4-9, pulls together as you are talking about what is that unlawful employment practice.

Chairman Keiser: Commissioner would you walk through, the needs for a prima facia approach is unnecessary. If a complaint is filed by an employee, you have a statutory legal obligation to immediately step in and investigate. Your investigation, you have to make the determinations whether it's frivolous or a legitimate claim. In pursing that answer, you have at your disposal every tool necessary on behalf of that party to obtain information. It's the little people going against the big organization but it's not just the little person. It's the Department of Labor going up against that organization. When everything was requested, we overwhelmed them and something missing, wouldn't you subpoena them?

Seibel: More than likely yes, we would go and get those records. In employment discrimination law, in the early 90's, the Supreme Court issued the McDowell-Douglas decision. What it did essentially is put in place the idea, burden shifting framework when it comes to discrimination statue. An employee needs to come in and make a sufficient allegation that they have met their prima facie burden. If they don't do that, the investigation ends there and the employee loses. If they do that, the burden then shifts to the employer to simply articulate a legitimate non-discriminatory business reason why it took the action they took. Once that reason is given, then the burden shifts to the employee to show that that reason shown, pretext. The ultimate burden of whether or not our discrimination statues are violated always remains with the charging party.

25:00

Chairman Keiser: But you did the investigation and demanded the information. It wasn't up to the employee to provide it. You jumped in first.

Chairman Keiser: We have HB 1257 before us with two amendments options before us, what are your wishes.

Representative Laning: Move to adopt the amendment 15.0793.01004.

Representative Ruby: Second.

Roll call was taken on amendment 15.0793.01004 with 11 yes, 4 no, 0 absent, motion carried.

Chairman Keiser: We have the second amendment regarding the reporting of a violation that is recurring.

Representative Boschee: Moves to further amend, amendment 15.0793.01003.

Representative Hanson: Second.

Vice Chairman Sukut: Why are we including the commissioner to inform the head of each executive branch agency, including the institutions of high learning, under the control of the state board?

Representative Boschee: That because OMB testified, they only do a small pie of the contracting of the state. This is to insure all contracting entities of the state would receive a notification from the labor commissioner and do it as their policies required.

Chairman Keiser: That is correct. OMB only manages the executive branch. The judicial branch does it on their own and Legislature does our own purchasing outside of OMB.

Representative Becker: Amendment .01003, now includes what on the 2nd page, which is the "however"?

Chairman Keiser: That's correct. Further discussion, we will take roll call for amendment on .01003.

Roll call was taken on the adoption of amendment .01003 with 5 yes, 10 no, 0 absent, motion fails.

Chairman Keiser: What are the wishes of the committee?

Representative Ruby: Moves a Do Pass as Amended.

Vice Chairman Sukut: Second.

Roll call for a Do Pass as Amended on HB 1257 with 15 yes, 0 no, 0 absent and Vice Chairman Sukut is the carrier.

JK
2/2/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1257

Page 1, line 1, remove "create and enact a new section to chapter 34-06.1 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to unequal pay for men and women; to"

Page 1, line 14, overstrike "job descriptive"

Page 1, line 14, after the second "systems" insert "that measure earnings by quantity or quality of production"

Page 1, line 14, overstrike "increase"

Page 1, line 15, overstrike "executive training programs" and insert immediately thereafter "a bona fide factor other than gender, such as education, training, or experience"

Page 2, line 17, remove "Any one or more individuals claiming to be aggrieved by a discriminatory practice"

Page 2, remove lines 18 and 19

Page 2, line 20, remove "3."

Page 3, line 1, replace "4." with "3."

Page 3, line 4, replace "5." with "4."

Page 3, line 16, replace "6." with "5."

Page 3, line 17, remove "administrative"

Page 3, remove lines 19 through 26

Page 4, line 2, remove "dismisses the complaint or issues a"

Page 4, line 3, replace "written probable cause determination" with "completes an investigation or otherwise notifies the complainant the commissioner will be taking no further action on the complaint"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1257

Page 1, line 1, after "enact" insert "section 34-05-05 and"

Page 1, line 2, after the first "to" insert "duties of the labor commissioner and"

Page 1, after line 5 insert:

"SECTION 1. Section 34-05-05 of the North Dakota Century Code is created and enacted as follows:

34-05-05. Labor commissioner - Notification of state agencies.

If the commissioner determines or becomes aware a district court has determined an employer committed a discriminatory practice under chapter 14-02.4 or section 34-06.1-03, or the commissioner becomes aware of a determination a North Dakota employer committed a comparable discriminatory practice under federal law, the commissioner shall inform the head of each executive branch agency, including institutions of higher education under the control of the state board of higher education, that the prohibited act occurred."

Renumber accordingly

Date: Feb 2, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1257

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0793.01004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider

Motion Made By Rep Laning Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman		X
Representative Devlin	X		Representative Boschee		X
Representative Frantsvog	X		Representative Hanson		X
Representative Kasper	X		Representative M Nelson		X
Representative Laning	X				

Total (Yes) 11 No 4

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

motion carries

Date: Feb 2, 2015

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1257

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0793 .01003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider further amend

Motion Made By Rep Boschee Seconded By Rep Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Representative Lefor		X
Vice Chairman Sukut		X	Representative Louser		X
Representative Beadle		X	Representative Ruby		X
Representative Becker	X		Representative Amerman	X	
Representative Devlin		X	Representative Boschee	X	
Representative Frantsvog		X	Representative Hanson	X	
Representative Kasper		X	Representative M Nelson	X	
Representative Laning		X			

Total (Yes) 5 No 10

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

further amend fails

Date: Feb 2, 2015

Roll Call Vote: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1257

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	X		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Sukut

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1257: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1257 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new section to chapter 34-06.1 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to unequal pay for men and women; to"

Page 1, line 14, overstrike "job descriptive"

Page 1, line 14, after the second "systems" insert "that measure earnings by quantity or quality of production"

Page 1, line 14, overstrike "increase"

Page 1, line 15, overstrike "executive training programs" and insert immediately thereafter "a bona fide factor other than gender, such as education, training, or experience"

Page 2, line 17, remove "Any one or more individuals claiming to be aggrieved by a discriminatory practice"

Page 2, remove lines 18 and 19

Page 2, line 20, remove "3."

Page 3, line 1, replace "4." with "3."

Page 3, line 4, replace "5." with "4."

Page 3, line 16, replace "6." with "5."

Page 3, line 17, remove "administrative"

Page 3, remove lines 19 through 26

Page 4, line 2, remove "dismisses the complaint or issues a"

Page 4, line 3, replace "written probable cause determination" with "completes an investigation or otherwise notifies the complainant the commissioner will be taking no further action on the complaint"

Re-number accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1257

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1257
3/4/2015
Job Number 24298

- Subcommittee
 Conference Committee

Committee Clerk Signature

Ammonson

Explanation or reason for introduction of bill/resolution:

Relating to unequal pay for men and women.

Minutes:

Attachments 1-4

Chairman Klein opened the hearing on HB 1257.

Representative Kylie Oversen (District 42) See attachment #1 in support of HB 1257.
(Meter 05:22)

Sen. Klein: Does North Dakota not have to follow federal statute today? Why would we need to provide this language in ND law when we have to follow the federal law anyway?

Rep. Oversen: By placing more provisions in state law it allows an employee to bring a claim into state court as opposed to a federal court and they can bring it through our Department of Labor.

Sen. Burckhard: Is the 2 years after the fact the way it is in the federal law as well?

Rep. Oversen: For the statute of limitations I believe it is already 2 years. What we did was clarify that it means 2 years after the unlawful practice had occurred as opposed to maybe 2 years after they were dismissed from the job or 2 years after they started the job. This pertains to any size business.

Renee Stromme (ND Women's Network) See attachment #2 in support of HB 1257 which includes letters from 2 women affected by pay discrimination.

Sen. Klein: The laws are on the books now. This just makes it easier because they can still file currently, right?

Ms. Stromme: Yes, they can. There is a process in place. One of the biggest obstacles in North Dakota is the number of lawyers who are willing to take the cases. There is discrimination happening. There is a lack of civil rights attorneys.

Sen. Klein: So it will more clearly define what the rules are so that when they are filing a suit on behalf of someone the rules aren't ambiguous? That's what this helps do?

Ms. Stromme: Correct.

Tom Ricker (President of ND AFLCIO) testified in support of HB 1257. He pointed out that an employee is an asset to their employer and hopefully creates value to the employer. Whether they are male or female, regardless of their race, if they are creating a value to the employer, the value is the same and the compensation should be the same. The bill does spell out that there are factors where people can be compensated differently like length of service, education, etc. If the sole determination for the pay difference is because of their gender, that is not acceptable and should not be acceptable in North Dakota.

TJ Jerke (ND Human Rights Coalition) See attachment #3 in support of HB 1257.

Stuart Savelkoul (Assistant Executive Director, ND United) This organization represents 11,000 K-12, higher education, and public employees in North Dakota. On behalf of half of those employees he testified in support of HB 1257. Equal pay for equal work has been an immutable principle in education in North Dakota since 1969. As all K-12 teachers perform their duties under a collectively bargained agreement with a school district all teachers are paid based on where they fall on a salary schedule regardless of gender. All ND employees no matter where they are employed should work in accordance with that same principle but they don't.

Josh Askvig (AARP) Presented testimony in support of HB 1257. See attachment #4.

There was no opposing testimony.

Senator Klein closed the hearing on HB 1257. He said he would ask the labor commissioner to stop by the committee to explain his position on this before committee action would be taken.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1257
3/9/2015
Job Number 24511

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emu Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to unequal pay for men and women

Minutes:

No Attachments

Chairman Klein: Said that they heard the bill last week but the commissioner was absent and he just wanted to make sure what they were doing is conforming to what he believe is the State law.

Troy Seibel, Labor Commissioner: The bill before you, we spent a lot of time on over on the House side in a subcommittee. We had several meetings and hammered out what you got before you which is the amended version of the bill. He went over the bill. (:50-5:13)

Senator Sinner: What that means is the statute of limitations expires two years after they leave the job.

Troy Seibel: That's right, essentially now it will start running at the last possible time when we consider they were a victim of a discriminatory practice. He continues going over the bill. (5:32-7:09)

Senator Murphy: Is that because the district ruling would supersede the commission?

Troy Seibel: It is primarily so we are not duplicating are resources. He continues going over the bill. (7:25-11:53)

Chairman Klein: So employers will be required to maintain payroll records for two years, would that be State or Federal law?

Troy Seibel: That would be State law. (12:11-12:46)

Senator Sinner: My question is if you only require the employer to keep those records for two years and the employee files a wage discrimination suit at one year and eleven months by the time you get around to looking at them they are gone.

Troy Seibel: If it got to that point, it is really in the best interest of the employer to keep those payroll records. At that point an employer would have been on notice but if someone came in on the eve of the two year mark this would not prohibit them from getting rid of those records. (13:25-14:23)

Chairman Klein: Do we have a lot of issues right now? Do you want to give us an overview of what is happening?

Troy Seibel: So much depends on how they come in and complain. In the last year we received six. One of them settled, four were not considered and one went to the Feds. (15:05-19:00)

Senator Poolman: This bill isn't about individual sex discrimination case it is about an attorney going and saying there is a systematic problem with this particular employer and the case is much bigger than that.

Troy Seibel: We use the human rights act and title 7 for those individualized cases, you're correct. The statute is not written that narrowly. We are dealing with two statutes that are almost identical. (21:33-22:36)

Senator Burckhard: Someone at the hearing that day said that the real problem is that there is a lack of civil rights attorneys that want to represent the female.

Troy Seibel: It is tough for me to say the lack of the availability but we are told that pretty frequently at the department. We don't see many charging parties that come to us that are represented. The vast majority of lawyers we deal with are representing the employers.

Chairman Klein: Closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1257 Engrossed
3/9/2015
Job Number 24513

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Lebelt

Explanation or reason for introduction of bill/resolution:

Relating to unequal pay for men and women

Minutes:

No Attachments

Chairman Klein: Asked the committee to go to 1257.

Senator Sinner: Moved a do pass.

Senator Burckhard: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Miller will carry the bill.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
HB 1257 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Sinner Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1257, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1257 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1257

1

Testimony - House Bill 1257
House Industry, Business, and Labor Committee
January 21, 2015

Chairman Keiser and members of the House Industry, Business, and Labor committee, my name is Kylie Oversen and I represent District 42 in Grand Forks. I am here to testify in support of HB 1257, which clarifies and expands North Dakota's existing equal pay statute.

For your reference here, I am including the beginning sections of Chapter 34-06.1, outlining the public policy regarding equal pay:

34.06.1-01 - **Declaration of public policy:** The public policy of this state is declared to be that the practice of discriminating on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements unjustly discriminates against the person receiving the lesser rate; leads to low worker morale, high turnover, and frequent labor unrest; discourages workers paid at the lesser wage rates from training for higher level jobs; curtails employment opportunities, decreases workers' mobility, and increases labor costs; impairs purchasing power and threatens the maintenance of an adequate standard of living by such workers and their families; prevents optimum utilization of the state's available labor resources; threatens the well-being of citizens of this state; and adversely affects the general welfare. It is therefore declared to be the policy of this state through exercise of its police power to correct and, as rapidly as possible, to eliminate discriminatory wage practices based on sex.

This first section was enacted in 1965 and has not been amended since then. As you read the reasoning in this section on why unequal pay is harmful, you might think it is outdated or irrelevant. However, much research exists to show that the wage gap across the country is still harmful for many of the same reasons.

Despite the enactment of equal pay laws in the 1960's at the state and federal level, a significant gap remains between what men earn and what women earn, for equal work. These discrepancies cannot be simply explained away by differentials in education, experience, or performance.

The wage gap is calculated by the difference in men's and women's median earnings. The calculations are based on data from the Census Bureau, the Department of Education, and the Bureau of Labor Statistics. The most recent data shows that in North Dakota, women earn only 70% of what men earn. For every dollar that a man brings home, a woman with comparable experience and education, doing comparable work, brings home only 70 cents.¹

In real numbers, the 2013 Census showed that the median earnings of North Dakota men were up to \$49,231, an increase from \$46,225 in 2012. For women, the median earnings increased from \$34,438 to \$35,549.² That amount of take home pay that women lose out on significantly affects their ability to care and provide for their families.

HB 1257 cleans up several sections of the equal pay statute. Throughout the bill, there are many minor changes for grammatical errors. On page 2, subsection 5, the added section defines when an unlawful employment practice occurs, pursuant to this section. This is included to clarify the statute of limitations found later in the chapter.

Also on page 2, section 2: in short, the additional language clarifies the jurisdiction for claims under this section. This allows an individual or individuals to bring a claim for relief either with the commissioner of labor or with a district court. It also explains which district court may have jurisdiction.

On page 3, section 2, subsection 6 allows the commissioner of labor to dismiss an administrative action if an employee elects to bring the same claim before a district court. Also on page 3, section 3 creates a prima facie case. This simply states that if an employee meets the minimum standard of showing that he or she is earning less than a co-worker of a different gender who is doing comparable work with comparable job requirements, the burden then shifts to the employer to show that the difference exists for reasons other than gender.

On pages 3 and 4, section 4 clarifies the statute of limitations. This allows an employee to bring a claim for relief, with a district court, two years after the

¹ The Wage Gap: State Rankings 2013, National Women's Law Center, September 2014. Available at www.nwlc.org; See also ¹ The Gender Pay Gap: North Dakota, AAUW, September 2014. Available at www.aauw.org.

² The Gender Pay Gap, *Supra* note 1.

unlawful practice occurred. Further, the added language states that if an employee decides to first file the complaint with the commissioner of labor, the time limitation is tolled, or put on pause, while the commissioner investigates or dismisses the claim.

Finally, on page 4, section 5 amends the records requirements, stating that an employer must keep employee records for the duration of an employee's career with that employer and for two years beyond that time. This allows an employee to appropriately exercise his or her right to bring a claim within two years, as allowed under the previous section.

Overall, the changes to chapter 34.06-1 are intended to clarify the existing language and to allow for better enforcement of the statute.

Mr. Chairman and members of the committee, I urge to you favorably consider HB 1257 and I would be happy to answer any questions that you have.

House Industry, Business, and Labor Committee
Requested Amendment for HB 1257
Rep. Kylie Oversen
Jan. 21, 2015

On page 2, line 19 -- After sentence ending with commissioner, add a new sentence stating:

"The commissioner may refer the complaint to an appropriate federal agency for investigation."

This clarifies language to follow current practice of the commissioner of labor. Currently, equal pay claims are referred to the Equal Employment Opportunity Center (EEOC). An equal pay claim may require many staff hours of intensive investigation and the EEOC is better equipped, at this time, to handle such complaints. As such, the two agencies have a work agreement so that the EEOC will take any equal pay claims filed with the department of labor. The permissive language allows the commissioner to maintain filing and investigative powers should that work agreement cease to exist.



House Industry, Business and Labor
 House Bills 1257, 1293, and 1294
 January 21, 2015

Good morning Chairman Keiser and members of the House Industry, Business, and Labor committee. I am Renee Stromme representing the North Dakota Women's Network. We are a statewide advocacy organization working to improve the lives of women. We stand in support of House Bills 1257, 1293, and 1294. In the interest of brevity I will testify once for all three bills and ask that my testimony be placed in record for all three.

The time is due for ND to update our laws regarding equal pay for equal work. These have not been updated since they were enacted in 1965. These updates are critical to address several gaps in the current statute. Equal pay laws have become an empty promise for many women who experience pay discrimination. These bills set forth a balanced approach to update the tools we have to work toward equal pay for equal work.

1257 provides a clean up to current laws and clarification on jurisdiction, statute of limitations, retention of records, and standards. These updates are helpful for all parties. I would suggest that the committee consider changing the word "establishment" on line 9 to "business". This will clarify that the law applies to the entire business or "enterprise" with multiple office locations, and not a distinct physical place of business.

1293 provides a requirement that large contracts are only awarded to businesses who are in compliance with equal pay laws. Our state resources should be preserved to ensure that all employment laws are followed, including equal pay laws.

Finally, 1294 recognizes that transparency is an important tool in addressing pay equity. Pay secrecy has allowed unlawful pay disparities to flourish, undetected and undeterred. To address this problem, 1294 prohibits employers from retaliating against employees who ask about or discuss wage information. This reinforces that equal pay for equal work cannot be ignored simply because no one knows about unlawful pay disparities. It will motivate employers to correct unjustified pay disparities before they turn into fodder for litigation.

Wage discrimination does exist and has consequences. Pay disparities cost women and their families thousands of dollars each year while they are working and thousands in retirement income when they leave the workforce. It is long past time for the state to act to ensure that the promise of equal pay becomes a reality. The North Dakota Women's Network supports 1257, 1293 and 1294 and ask the committee give favorable approval to the bills.

HB 1257

Jan 21, 2015

2A

THE SIMPLE TRUTH

about the
Gender Pay Gap

2014 Fall Edition



AAUW
empowering women since 1881

Pg 0

2A

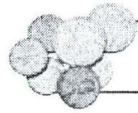
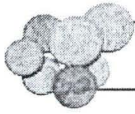


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Foreword

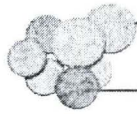
If you take one simple truth from this guide, I hope it's this: The pay gap is real. This guide backs up this assertion with the latest evidence and presents ideas for what we can do about it.

The American Association of University Women (AAUW) has been on the front lines of the fight for pay equity since 1913. AAUW members were in the Oval Office when President John F. Kennedy signed the Equal Pay Act of 1963 into law, and more than 50 years later, we continue to lead the push for policies and legislation to encourage and enforce fair pay in the workplace.

Pay equity is a priority for AAUW, and it will continue to be until women everywhere earn a fair day's pay for a fair day's work. In January 2009, President Barack Obama signed the Lilly Ledbetter Fair Pay Act into law, thanks to the hard work and leadership of AAUW, our members, and our coalition partners. Since then, AAUW has worked for the passage of the Paycheck Fairness Act, which would give women additional and much-needed equal pay protections. The legislation failed in procedural votes in the House and Senate in the 113th Congress. But the Senate did vote to fully debate the bill for the first time ever in September 2014. We haven't gotten our up-or-down vote yet, but we are moving ever closer.

This guide is designed to empower our members and other advocates with the facts and resources they need to tell the simple truth about the pay gap. It's real, it's persistent, and it's undermining the economic security of American women and their families. We hope you will join us in the fight.

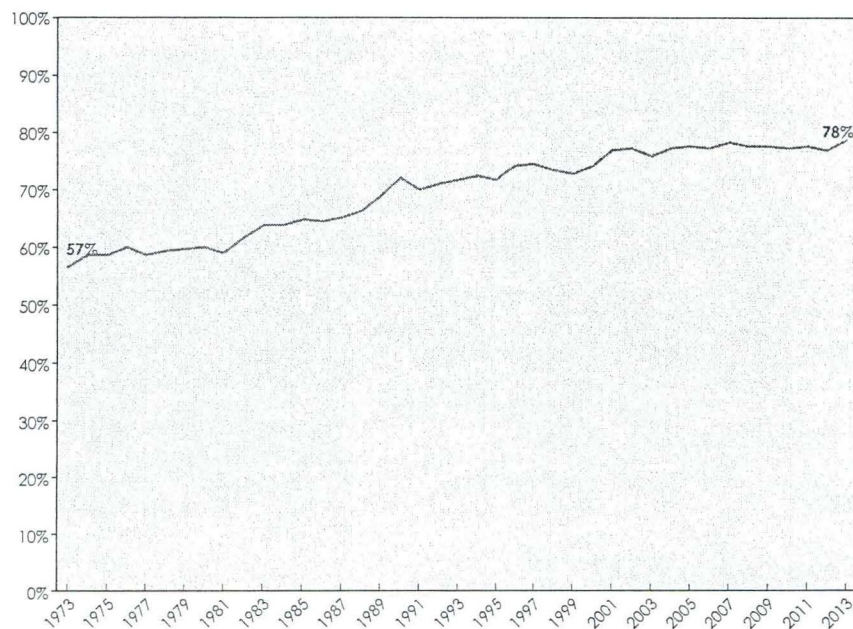
Linda D. Hallman, CAE
AAUW Executive Director




Introduction

Did you know that in 2013, women working full time in the United States typically were paid just 78 percent of what men were paid, a gap of 22 percent? The gap has narrowed since the 1970s (Figure 1), due largely to women's progress in education and workforce participation and to men's wages rising at a slower rate. Progress has stalled in recent years, and the pay gap does not appear likely to go away on its own.

Figure 1.
Women's Median Annual Earnings as a Percentage of Men's Median Annual Earnings for Full-time, Year-round Workers, 1973–2013¹



Note: Includes people ages 15 and older beginning in 1980; for previous years, includes people ages 14 and older as of the following year. Before 1989, only civilian workers are included.



Equal pay is not simply a women's issue—it's a family issue. Between 1967 and 2010, the percentage of mothers who brought home at least a quarter of the family's earnings rose from less than a third (28 percent) to nearly two-thirds (64 percent).² Families increasingly rely on women's wages to make ends meet.

A large majority of mothers are in the paid labor force, and about one-third of employed mothers are the sole breadwinners for their families. For the 34 percent of working mothers who are their families' sole breadwinner—either because they are single parents or their spouses are not in the labor force—the gender pay gap can contribute to poor living conditions, poor nutrition, and fewer opportunities for their children.³ For these women, closing the gender pay gap is much more than a point of pride.

This guide provides key facts about the gender pay gap in the United States, along with explanations and resources. Information is organized around six common questions:

- 1. What is the pay gap?**
- 2. Is the pay gap really about women's life choices?**
- 3. How does the pay gap affect women of different demographics?**
- 4. Is there a pay gap in all jobs?**
- 5. What can I do to make a difference?**
- 6. What should I do if I experience sex discrimination at work?**

The information in this guide will help you to effectively and confidently advocate for pay equity for all workers in your community.



What Is the Pay Gap?

The pay gap is the difference in men's and women's median earnings, usually reported as either the earnings ratio between men and women or as an actual pay gap, as defined below. The median value is the middle value, with equal numbers of full-time workers earning more and earning less.

$$\text{Earnings ratio} = \frac{\text{Women's median earnings}}{\text{Men's median earnings}}$$

$$\text{Pay gap} = \frac{[\text{Men's median earnings} - \text{Women's median earnings}]}{\text{Men's median earnings}}$$

In 2013, median *annual* earnings in the United States for women and men working full time, year round were \$39,157 and \$50,033, respectively.


$$\text{2013 earnings ratio} = \frac{\$39,157}{\$50,033} = 78\%$$

$$\text{2013 pay gap} = \frac{[\$50,033 - \$39,157]}{\$50,033} = 22\%$$

Earnings can also be reported on a weekly basis. The gender pay gap in weekly earnings tends to be slightly smaller than the pay gap in terms of annual earnings. In 2013, the pay gap in median weekly earnings was 18 percent, according to the U.S. Department of Labor.

Where do the data come from?

Federal agencies such as the Census Bureau, the Department of Education, and the Bureau of Labor Statistics conduct surveys of individuals, households, and businesses to gather information about people's salaries and other earnings.



Most reports on national workforce participation, pay, and pay differences depend on data from the Current Population Survey (CPS) (www.census.gov/cps), the country's primary source of labor force statistics. The CPS is a monthly survey of about 50,000 households conducted by the U.S. Census Bureau for the Bureau of Labor Statistics.

The estimate of the pay gap using *weekly* earnings is based on the annual average of median weekly earnings for the previous year, usually released in January of each year by the Bureau of Labor Statistics (www.bls.gov/cps). The estimate of the pay gap using *annual* earnings is based on the CPS Annual Social and Economic Supplement data, which is published each September by the Census Bureau and the Bureau of Labor Statistics. In recent years, this data has been published in *Income, Poverty, and Health Insurance Coverage in the United States*.⁴

State-level data

A pay gap can also be calculated for each state (Figure 2). The American Community Survey (ACS) (www.census.gov/acs) is often used to estimate the pay gap at the state level and for specific racial/ethnic groups because it includes more households than the CPS. The Census Bureau began the ACS in 1996 as the successor to the “long form” of the decennial census. The ACS results are released annually in September, and briefs based on the survey can be found on the bureau's website.⁵ According to ACS data, in 2013 the pay gap was smallest in Washington, D.C., where women were paid 91 percent of what men were paid, and largest in Louisiana, where women were paid 66 percent of what men were paid.

Figure 2.

Median Annual Earnings and Earnings Ratio for Full-time, Year-round Workers, Ages 16 and Older, by State and Gender, 2013⁶

	Men	Women	Earnings Ratio		Men	Women	Earnings Ratio
1 Washington, D.C.	\$67,610	\$61,760	91%	27 Wisconsin	\$46,801	\$36,884	79%
2 New York	\$51,414	\$44,114	86%	28 Texas	\$45,820	\$36,032	79%
3 Maryland	\$58,746	\$50,211	85%	29 New Hampshire	\$52,954	\$41,542	78%
4 Florida	\$40,809	\$34,419	84%	30 Connecticut	\$60,990	\$47,623	78%
5 California	\$50,268	\$42,199	84%	31 South Carolina	\$41,599	\$32,385	78%
6 Arizona	\$44,284	\$37,021	84%	32 Kentucky	\$42,425	\$32,951	78%
7 Hawaii	\$48,440	\$40,370	83%	33 Iowa	\$45,930	\$35,602	78%
8 Nevada	\$42,682	\$35,557	83%	34 Ohio	\$47,323	\$36,569	77%
9 Vermont	\$46,175	\$38,316	83%	35 Arkansas	\$40,306	\$31,015	77%
10 North Carolina	\$42,146	\$34,917	83%	36 Mississippi	\$39,956	\$30,667	77%
11 Georgia	\$43,084	\$35,626	83%	37 Pennsylvania	\$50,231	\$38,368	76%
12 Tennessee	\$41,493	\$34,301	83%	38 Alaska	\$55,639	\$42,350	76%
13 Delaware	\$50,413	\$41,655	83%	39 Idaho	\$41,278	\$31,368	76%
14 Rhode Island	\$51,695	\$42,455	82%	40 Alabama	\$42,913	\$32,451	76%
15 New Mexico	\$42,305	\$34,591	82%	41 Michigan	\$49,449	\$37,258	75%
16 Massachusetts	\$60,588	\$49,470	82%	42 South Dakota	\$41,328	\$31,038	75%
17 Maine	\$43,950	\$35,420	81%	43 Oklahoma	\$42,116	\$31,539	75%
18 Oregon	\$46,679	\$37,555	80%	44 Nebraska	\$45,037	\$33,385	74%
19 Minnesota	\$51,340	\$41,082	80%	45 Indiana	\$46,300	\$34,180	74%
20 New Jersey	\$60,815	\$48,640	80%	46 Montana	\$42,942	\$31,564	74%
21 Washington	\$52,482	\$41,897	80%	47 North Dakota	\$49,231	\$34,549	70%
22 Colorado	\$50,950	\$40,671	80%	48 Utah	\$50,396	\$35,252	70%
23 Virginia	\$52,453	\$41,545	79%	49 West Virginia	\$44,994	\$31,240	69%
24 Missouri	\$43,921	\$34,708	79%	50 Wyoming	\$51,708	\$35,829	69%
25 Illinois	\$51,510	\$40,679	79%	51 Louisiana	\$48,318	\$31,865	66%
26 Kansas	\$45,463	\$35,869	79%	United States*	\$50,033	\$39,157	78%

*National data include workers ages 15 and older and are based on data from the U.S. Census Bureau's Current Population Survey.



Is the Pay Gap Really about Women's Life Choices?

Critics charge that pay differences between men and women are simply a matter of personal choices. AAUW addressed this argument in our 2012 report, *Graduating to a Pay Gap: The Earnings of Women and Men One Year after College Graduation*. Our analysis found that just one year after college graduation, women were paid just 82 percent of what their male counterparts were paid.⁷ An earlier report, *Behind the Pay Gap* (AAUW, 2007), found that 10 years after graduation, the pay gap widened, and women were paid only 69 percent of what men were paid.⁸

In part, these pay gaps do reflect men's and women's choices, especially the choice of college major and the type of job pursued after graduation. For example, women are more likely than men to go into teaching, and this contributes to the pay gap because teachers tend to be paid less than other college graduates. This portion of the pay gap is considered to be explained, regardless of whether teachers' wages are considered fair.

Yet not all of the gap can be "explained away." After accounting for college major, occupation, economic sector, hours worked, months unemployed since graduation, GPA, type of undergraduate institution, institution selectivity, age, geographical region, and marital status, *Graduating to a Pay Gap* found that a **7 percent difference in the earnings of male and female college graduates one year after graduation was still unexplained.**

Similarly, *Behind the Pay Gap* found a **12 percent** unexplained difference in earnings among full-time workers 10 years after college graduation. Other researchers have also found that the gender pay gap is not fully accounted for by women's and men's choices.^{9, 10}

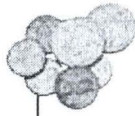
Becoming a parent is an example of a choice that often has different outcomes for men and women. *Behind the Pay Gap* found that 10 years after graduation, 23 percent of mothers were out of the workforce, and 17 percent worked part time. Among fathers, only 1 percent were out of the workforce, and only 2 percent worked part time.

Many stay-at-home and part-time working mothers will eventually decide to return to the full-time workforce, and when they do they may encounter a “motherhood penalty” that extends beyond the actual time out of the workforce. Experimental research has documented that employers are less likely to hire mothers compared with childless women, and when employers do make an offer to a mother, they offer her a lower salary than they do other women. Fathers, in contrast, do not suffer a penalty compared with other men.¹¹ Clearly, parenthood often affects men and women very differently in terms of labor force participation and how they are viewed by employers, and that difference may be reflected in a worker’s salary.



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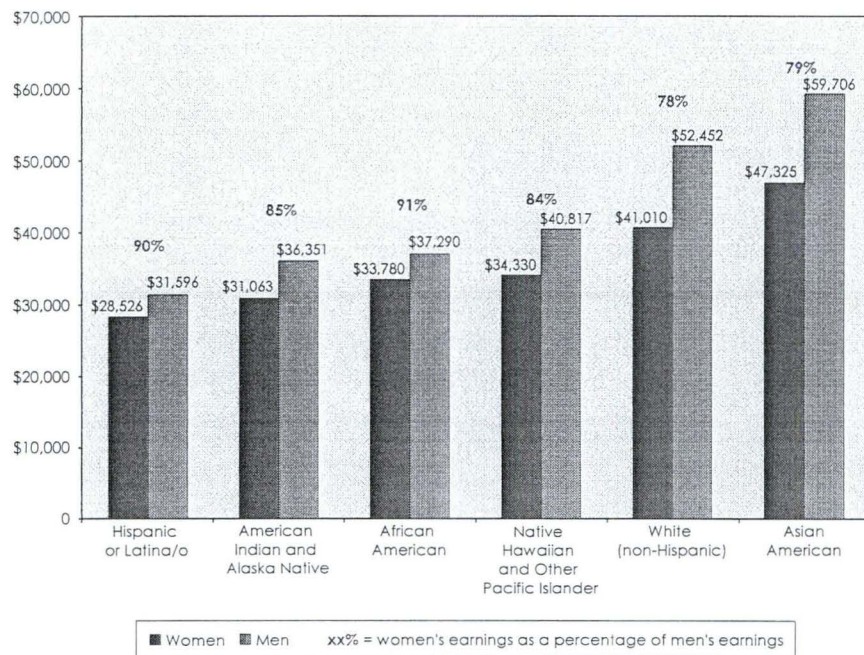
"Yes, I agree that equal pay for equal work is an idea that we should
DEFINITELY think about."



How Does the Pay Gap Affect Women of Different Demographics?

The pay gap affects women from all backgrounds, at all ages, and of all levels of educational achievement, although earnings and the gap vary depending on a woman's individual situation.

Figure 3.
Median Annual Earnings, by Race/Ethnicity and Gender, 2013¹²



Note: Based on median annual earnings of full-time, year-round workers, ages 16 and older

Race/ethnicity

Among full-time workers in 2013, Hispanic, American Indian, African American, and Native Hawaiian women had lower median annual earnings compared with non-Hispanic white and Asian American women. But within racial/ethnic groups, African American, Hispanic, American Indian, and Native Hawaiian women experienced a smaller gender pay gap compared with men in the same group than did non-Hispanic white and Asian American women (Figure 3).

Using a single benchmark provides a more informative picture. Because non-Hispanic white men are the largest demographic group in the labor force, they are often used for that purpose.

Compared with salary information for white male workers, Asian American women's salaries show the smallest gender pay gap, at 90 percent of white men's earnings. The gap was largest for Hispanic and Latina women, who were paid only 54 percent of what white men were paid in 2013 (Figure 4). The smaller gender pay gap among African Americans, Hispanics, American Indians, and Native Hawaiians is due solely to the fact that those men of color were paid substantially less than non-Hispanic white men in 2013.

Figure 4.
Earnings Ratio, by Race/Ethnicity, 2013¹³

	Women's earnings as a percentage of men's earnings within race/ethnicity	Women's earnings as a percentage of white men's earnings
Hispanic or Latina	90%	54%
American Indian and Alaska Native	85%	59%
African American	91%	64%
Native Hawaiian and Other Pacific Islander	84%	65%
White (non-Hispanic)	78%	78%
Asian American	79%	90%

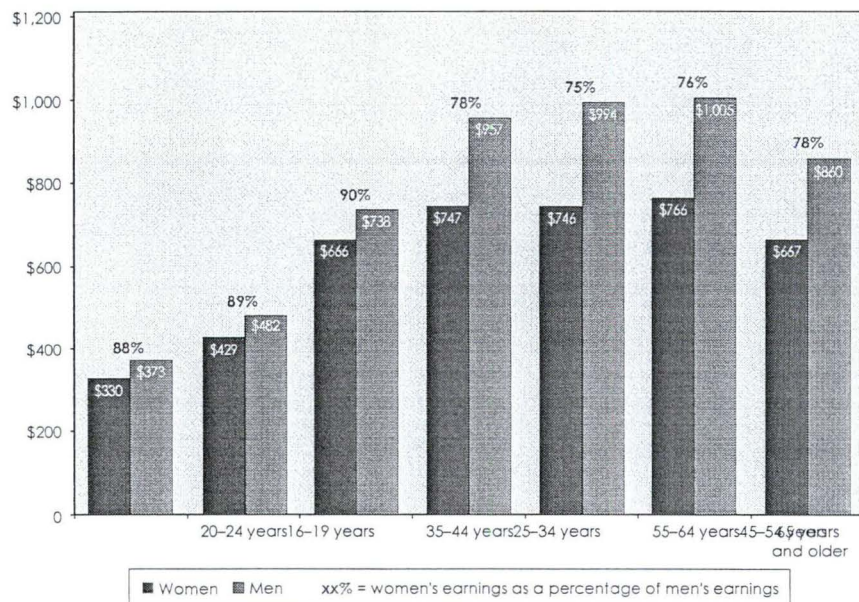
Note: Based on median annual earnings of full-time, year-round workers, ages 16 and older

Age

Earnings for both female and male full-time workers tend to increase with age, with a plateau after 45 and a drop after age 65. The gender pay gap also grows with age, and differences among older workers are considerably larger than gaps among younger workers.

In 2012, for full-time workers ages 20–24, women were paid 89 percent of what men were paid on a weekly basis. Among workers 55–64 years old, women were paid only 76 percent of what their male peers were paid. Women typically are paid about 90 percent of what men are paid until around the age of 35, at which point median earnings for women start to grow much more slowly than median earnings for men. From around age

Figure 5.
Median Weekly Earnings, by Age and Gender, 2012¹⁴



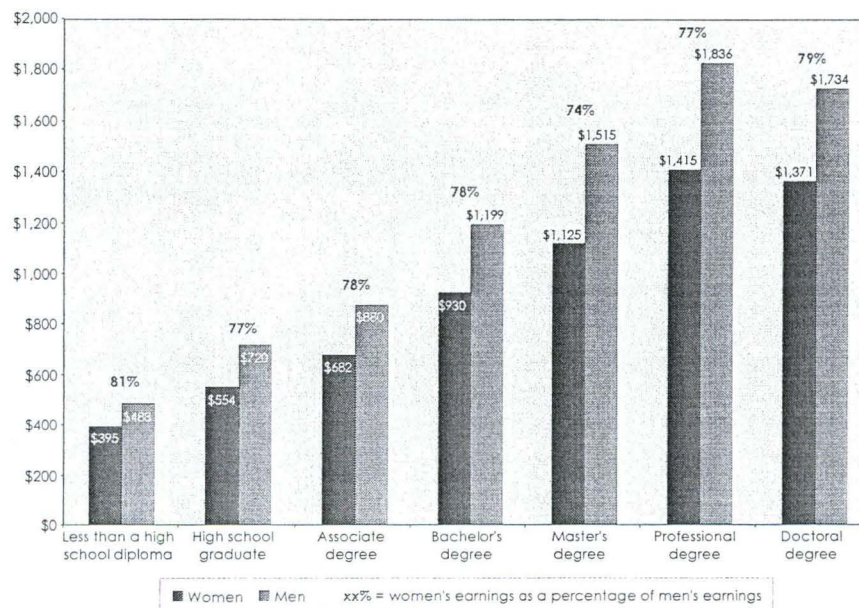
Note: Based on median usual weekly earnings of full-time wage and salary workers, 2012 annual averages

35 through retirement, women are typically paid 75 to 80 percent of what men are paid (Figure 5).

Education

As a rule, earnings increase as years of education increase for both men and women. While more education is an effective tool for increasing earnings, it is not an effective tool against the gender pay gap. At every level of academic achievement, women's median earnings are less than men's median earnings, and in some cases, the gender pay gap is larger at higher levels of education (Figure 6).

Figure 6.
Median Weekly Earnings, by Level of Education and Gender, 2011¹⁵

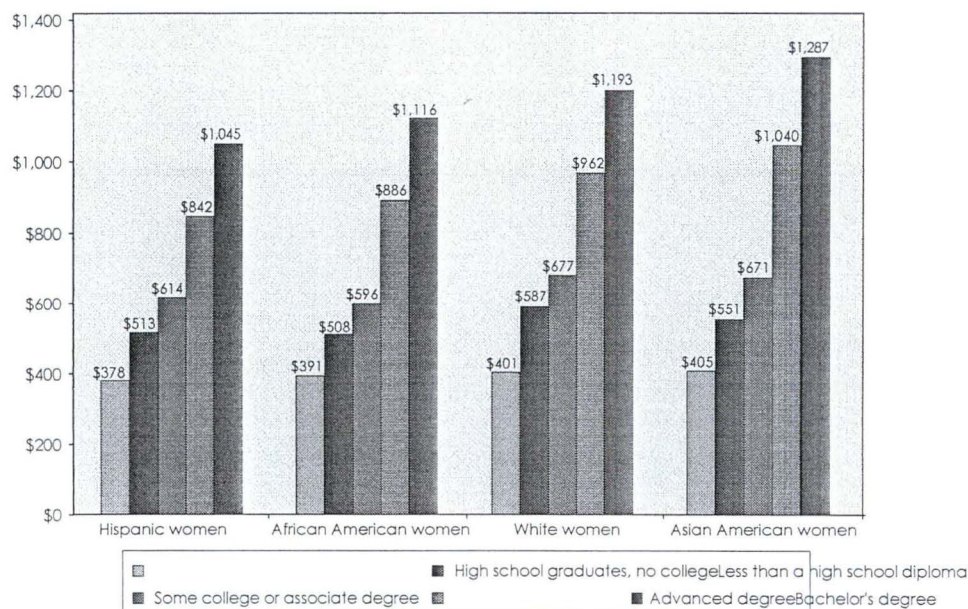


Note: Based on median usual weekly earnings of full-time wage and salary workers, ages 25 and older, 2011 annual averages

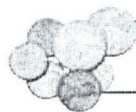
Education improves earnings for women of all races and ethnicities, but earnings are affected by race and ethnicity as well as gender. White women are paid more than African American and Hispanic women at all education levels (Figure 7).

Research suggests that differences in education and other measurable factors explain part of the difference in earnings between racial and ethnic groups. However, as is the case with gender, part of the racial/ethnic pay gap cannot be explained by factors known to affect earnings and is likely due, at least in part, to discrimination.¹⁶

Figure 7.
Median Weekly Earnings of Women, by Race/Ethnicity and Level of Education, 2013¹⁷



Note: Based on median usual weekly earnings of full-time wage and salary workers, ages 25 and older, 2013 annual averages



Is There a Pay Gap in All Jobs?

In nearly every line of work, women face a pay gap. Among the many occupations for which the Bureau of Labor Statistics collects data that allow for valid comparison, women's earnings are higher than men's in only a handful.¹⁸

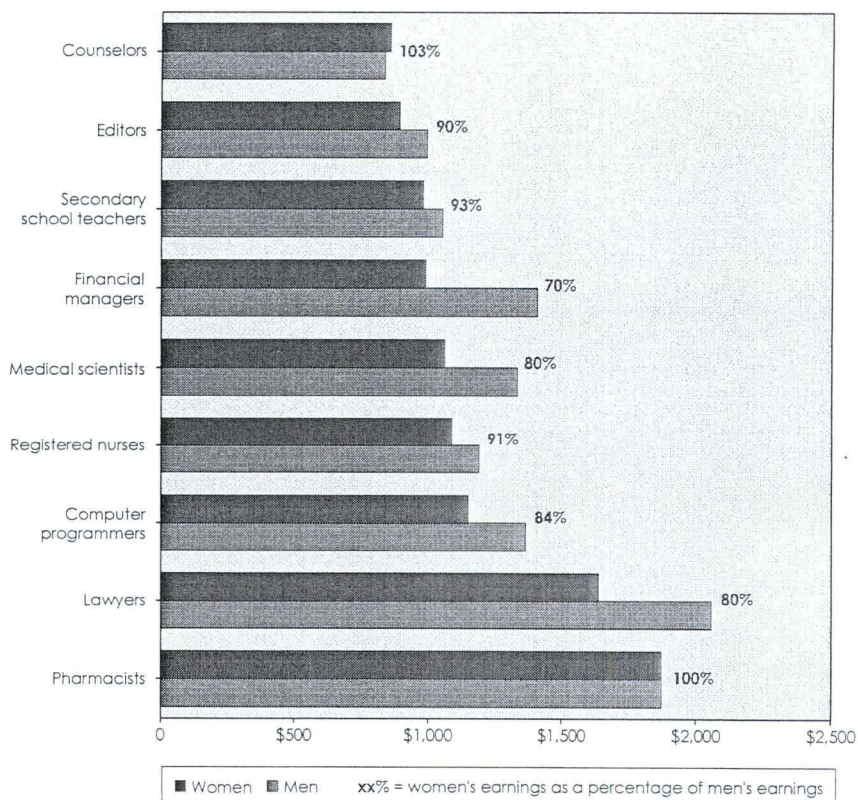
While a pay gap exists in nearly every occupational field, jobs traditionally associated with men tend to pay better than traditionally female jobs for the same level of skill required. And even in 2014, women and men still tend to work in different kinds of jobs. This segregation of occupations is a major factor behind the pay gap.^{19, 20}

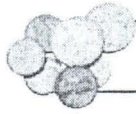
In 2012, the U.S. civilian workforce included slightly more than 140 million full- and part-time employed workers; 53 percent were men, and 47 percent were women.²¹ Nearly 40 percent of working women were employed in traditionally female occupations such as social work, nursing, and teaching. In contrast, fewer than 5 percent of men worked in these jobs. Forty-five percent of working men were in traditionally male occupations, such as computer programming, aerospace engineering, and firefighting, compared with just under 6 percent of women in those jobs.²² Women are more likely to work in professional, office and administrative support, sales, and service occupations, and men are more likely to work in construction, maintenance and repair, and production and transportation occupations.

Although men and women still tend to work in different jobs, occupational gender segregation has decreased over the last 40 years. The reduction in gender segregation is largely due to women moving into previously predominantly male jobs, especially during the 1970s and 1980s,²³ and to faster growth of more mixed-gender occupations in the 1990s.²⁴

Increasing the number of women in traditionally male fields is likely to improve wages for women, but it is unlikely to fully eliminate the pay gap. Women in “male” jobs such as computer programming still face a pay gap compared with their male counterparts (Figure 8), even though they may be paid higher salaries than women in traditionally female fields. It will take more than individual women pursuing careers in “male” fields to ensure fair pay for all.

Figure 8.
The Gender Pay Gap in Median Weekly Earnings among Full-time Workers, Selected Occupations, 2012²⁵






How Can I Make a Difference?

The gender pay gap is unlikely to go away on its own, but there are many things that we can do in our workplaces and in our communities to make a difference. Here are some steps that employers, individuals, and governments can take to ensure fair pay.

Individuals

Many personal decisions have profound implications for our economic security. Pursuing a college education has long been viewed as an important step toward ensuring a middle-class lifestyle. But not all college majors will provide an equal foundation for a secure financial future. In addition, the kinds of jobs pursued early in a career set the stage for an entire career of earnings. Because benefits and subsequent raises are generally based on initial wages, a lower starting salary could mean a lifetime of lower compensation and smaller retirement benefits. Decisions about marriage, children, and caregiving also play critical roles in women's economic security.

Developing negotiation skills can help workers to be paid fairly. Because most employers have some latitude when it comes to salaries, negotiating can pay off. But negotiation skills are especially tricky for women because some behaviors, like self-promotion, that work for men may backfire on women.^{26, 27} Knowing what your skills are worth, making clear what you bring to the table, emphasizing common goals, and maintaining a positive attitude are some negotiation tactics that have been shown to be effective for women.²⁸ AAUW offers Start Smart and Work Smart salary negotiation workshops to train women how to negotiate.



Beyond their personal lives, individuals can also take steps to influence employers and governments. There are more ways to make your voice heard than ever before—letters to your legislators and local papers, blogs, and tweets are just a few examples. Joining an organization like AAUW can make all these activities easier, especially if you use our Programs in a Box and other resources and connect with our ready-made network of activists.

Employers

Companies should know by now that paying workers fairly is necessary for legal and ethical reasons. Indeed, fair pay can be good for the bottom line. Believing that an employer is fair improves workers' morale,^{29, 30} and employees are less likely to be absent when they perceive that their employer is fair. Work performance has also been linked to the perception of organizational justice.³¹ In other words, a worker who believes that she or he is paid fairly is more likely to contribute her or his best effort to the job.

But not every employer has taken this lesson to heart. Companies like Home Depot, Novartis, and Smith Barney have paid hundreds of millions of dollars to settle cases of gender pay discrimination brought by women employees under the Equal Pay Act and Title VII of the Civil Rights Act. Wal-Mart recently spent billions of dollars defending what would have been the largest class-action lawsuit in history, brought by women employees alleging systemic pay and promotion discrimination.

As U.S. Supreme Court Justice Louis Brandeis once noted, "Sunshine is the best disinfectant." Transparency in compensation is one policy that can make a difference. A recent survey by the Institute for Women's Policy Research (IWPR) found that about half of employees said they worked in a setting where discussions of wages and salaries are either formally prohibited or discouraged by managers.³² According to IWPR, pay secrecy is much


more common in the private sector, where 61 percent of employees are either discouraged or prohibited from discussing wage and salary information. In contrast, only 14 percent of public-sector employees reported that pay discussions were either discouraged or prohibited. This higher degree of transparency in the public sector may be related to the greater gender pay equity found in the federal government. Federal workers can easily see how their salaries compare with others at their grade level and geographical location because the U.S. Office of Personnel Management makes public the salary and wage range for each level of federal worker and additional locality pay for areas where the cost of living is higher.³³ A 2009 report found that, among federal workers, women were paid 89 percent of what men were paid, compared with 78 percent in the workforce as a whole.³⁴

Employers can also use audits to monitor and address gender pay differences. The state of Minnesota requires public-sector employers to conduct



" Sorry, but hiring only men allows me to avoid gender politics. "

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a pay equity study every few years and eliminate pay disparities between female-dominated and male-dominated jobs that require comparable levels of expertise. Employers use a job evaluation tool to compare jobs on dimensions such as the complexity of issues encountered, the depth and breadth of knowledge needed, the nature of interpersonal contacts required, and the physical working conditions. This allows employers to identify jobs—for example, delivery van drivers and clerk typists—that, despite being different, require similar levels of knowledge and responsibility. An analysis is then done to compare wages for predominantly female jobs with those of predominantly male jobs of comparable skill levels. If the results of the study show that women are consistently paid less than men for jobs requiring similar levels of knowledge and responsibility, the employer makes the necessary salary increases. For more information on the audits, visit Minnesota’s pay equity web page.³⁵

Government

In 1963, Congress passed the Equal Pay Act, which requires employers to give men and women employees “equal pay for equal work.” A year later, in 1964, the Civil Rights Act was passed. Title VII of that act bars all discrimination in employment, including discrimination in hiring, firing, promotion, and wages on the basis of race, color, religion, sex, or national origin.

Yet these legal protections have not ensured equal pay for women and men. The first piece of legislation signed into law by President Barack Obama, the Lilly Ledbetter Fair Pay Act of 2009, provides some additional protection against discrimination. The law clarifies that pay discrimination occurs when a pay decision is made, when an employee is subject to that decision, or at any time an employee is injured by it; employees have 180 days from any of those instances to file a claim.³⁶

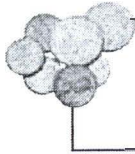
This is an essential law, but it is by no means sufficient. Additional legislation is needed to provide more effective equal pay protections. During



each session of Congress since the Equal Pay Act was passed, bills designed to update it have been introduced and sometimes voted on. In 2009, the House of Representatives passed the Paycheck Fairness Act, a comprehensive bill aimed at updating the Equal Pay Act by closing loopholes, strengthening incentives to prevent pay discrimination, and prohibiting retaliation against workers who inquire about employers' wage practices or disclose their own wages. But despite widespread backing from the American public, the strong leadership of AAUW, and the diligent efforts of our members and coalition partners—as well as the support of a majority of senators and the White House—the Senate defeated the Paycheck Fairness Act in November 2010 in a procedural vote (58-41). AAUW lobbied hard for the Paycheck Fairness Act in the 112th Congress after it was reintroduced. Unfortunately, the act failed in procedural votes in summer 2012, this time in both the Senate and the House. In the 113th Congress, the Senate voted to fully debate the Paycheck Fairness Act for the first time ever. The bill did not get the necessary 60 votes to overcome a second procedural hurdle and move forward to an up-or-down vote, but AAUW was encouraged that a majority of senators agreed to talk about the bill for the first time.

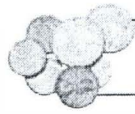
In April 2014, President Obama signed two executive orders on equal pay that AAUW members and supporters had long been pushing for. The first bans federal contractors from retaliating against workers who talk about their salaries. The second tells the U.S. Department of Labor to collect wage data from federal contractors, including the race, sex, and national origin of employees. This will help identify patterns of discrimination and support voluntary compliance.

AAUW continues to advocate for strong pay equity legislation, regulation, and enforcement to protect employees and assist employers. AAUW also educates the public about this persistent problem and its effect on working families. These efforts are critical elements as we work to close the gender pay gap.



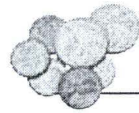
What Should I Do If I Experience Sex Discrimination at Work?

1. **Put it in writing.** Always put everything in writing so you have a record and a timeline.
2. **Do your homework.** For more information on your rights, call the U.S. Equal Employment Opportunity Commission (EEOC) hotline at 800.669.4000.
3. **Seek help.** Talk with your supervisor or human resources representative at work to learn about the grievance procedure.
4. **Avoid loose lips.** While the desire to talk about your case is understandable, the threat of countersuits for defamation is real.
5. **Get legal advice.** Talk to a lawyer who has specific experience with sex discrimination in the workplace. For a referral in your state, e-mail the AAUW Legal Advocacy Fund at laf@aauw.org.
6. **Act quickly.** There is a statute of limitations on filing complaints with the EEOC.
7. **Watch your nickels and dimes.** Talk to a lawyer or an accountant about the financial burdens of a lawsuit.
8. **Visit your doctor—yes, your doctor.** You may experience a physical and emotional toll that should be addressed and documented.
9. **Prepare for the long haul.** Filing a discrimination lawsuit is a long process, but others have succeeded in fighting discrimination, and you can too.
10. **Find a support network.** AAUW branches can help support you. Find a branch near you at www.aauw.org.



AAUW Resources

- Visit AAUW's pay equity resource page on the AAUW website at www.aauw.org/issues/economic-justice for current information on the status of legislation, federal policies, and action that you can take to narrow the pay gap.
- Join AAUW's Action Network to keep up with equal pay advocacy and receive notices to tell your legislators what you think: www.aauw.org/actionnetwork.
- Visit the LAF online resource library to learn more about pay equity and what you can do if you believe you're being paid unfairly: www.aauw.org/what-we-do/legal-resources.
- Learn about your rights at work by visiting www.aauw.org/what-we-do/legal-resources/know-your-rights-at-work.
- Get ideas for programming and advocacy at fightforfairpay.org.
- Visit AAUW's \$tart \$mart salary negotiation page at www.aauw.org/what-we-do/campus-programs/start-smart-salary-negotiation-workshop to find out how to attend a salary negotiation workshop.
- Read more about the pay gap at www.aauw.org/what-we-do/research.
- Join AAUW and help ensure pay equity for all: www.aauw.org/join.



Notes

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36. The law came in response to *Ledbetter v. Goodyear Tire & Rubber*, which overturned 40 years of EEOC policies and precedents on statutes of limitations in discrimination cases.



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By Judy Goldberg Dey and Catherine Hill



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Foreword

Founded in 1881, the American Association of University Women has championed the rights of women and girls in higher education and the workplace for more than 125 years. During this time, women have gone from a small minority on college campuses to a majority of the student body. College-educated women have achieved positions of leadership in every field of endeavor, including making remarkable gains in traditionally male fields, such as medicine, business, and law. Yet women's earnings continue to lag behind those of their male peers in nearly every occupation and at every educational level.

Why have women's educational accomplishments failed to close the gender pay gap in the workplace? This question is a focal point of AAUW's research and advocacy work. Four years ago the AAUW Educational Foundation published *Women at Work* (2003), a report documenting sex segregation in the workplace. The report found that while women's overall levels of education and participation in the paid labor force had increased, women remained segregated in lower-paying occupations.

Over time, the gender pay gap cumulates into substantial differences in economic security. As noted in the Educational Foundation's report *Mom's Retirement Security* (2006), women are twice as likely as men to spend their retirement years living alone, in or near poverty.

Behind the Pay Gap examines how the choices made in college affect later earnings and, by implication, economic security throughout a lifetime. Building on the Educational Foundation's previous research on workplace equity, including *Women at Work* and *Public Perceptions of the Pay Gap* (2005), this report analyzes the gender pay gap and presents strategies for its dismantling.



Barbara O'Connor, President
AAUW Educational Foundation
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Executive Summary

Women have made remarkable gains in education

during the past three decades, yet these achievements have resulted in only modest improvements in pay equity. The gender pay gap has become a fixture of the U.S. workplace and is so ubiquitous that many simply view it as normal.

Behind the Pay Gap examines the gender pay gap for college graduates. One year out of college, women working full time earn only 80 percent as much as their male colleagues earn. Ten years after graduation, women fall farther behind, earning only 69 percent as much as men earn. Controlling for hours, occupation, parenthood, and other factors normally associated with pay, college-educated women still earn less than their male peers earn.

Individuals can, however, make choices that can greatly enhance their earnings potential. Choosing to attend college and completing a college degree have strong positive effects on earnings, although all college degrees do not have the same effect. The selectivity of the college attended and the choice of a major also affect later earnings. Many majors remain strongly dominated by one gender. Female students are concentrated in fields associated with lower earnings, such as education, health, and psychology. Male students dominate the higher-paying fields: engineering, mathematics, and physical sciences. Women and men who majored in “male-dominated” subjects earn more than do those who majored in “female-dominated” or “mixed-gender” fields. For example, one year after graduation, the average female education major working full time earns only 60 percent as much as the average female engineering major working full time earns.

The choice of major is not the full story, however. As early as one year after graduation, a pay gap is found between women and men who had the same college major. In education, a female-dominated major, women earn 95 percent as much as their male colleagues earn. In biological sciences, a mixed-gender major, women earn only 75 percent as much as men earn. Likewise in mathematics—a male-dominated major—women earn only 76 percent as much as men earn. Female students cannot simply choose a major that will allow them to avoid the pay gap.

Early career choices, most prominently occupational choices, also play a role in the gender pay gap. While the choice of major is related to occupation, the relationship is not strict. For example, some mathematics majors choose to teach, while others work in business or computer science. One year after graduation, women who work in computer science, for instance, earn over 37 percent more than do women who are employed in education or administrative, clerical, or legal support occupations. Job sector also affects earnings. Women are more likely than men to work in the nonprofit and local government sectors, where wages are typically lower than those in the for-profit and federal government sectors.

The division of labor between parents appears to be similar to that of previous generations. Motherhood and fatherhood affect careers differently. Mothers are more likely than fathers (or other women) to work part time, take leave, or take a break from the work force—factors that negatively affect wages. Among women who graduated from college in 1992–93, more than one-fifth (23 percent) of mothers were out of the work force in 2003, and another 17 percent were working part time. Less than 2 percent of fathers were out of the work force in 2003, and less than 2 percent were working part time. On average, mothers earn less than women without children earn, and both groups earn less than men earn.

The gender pay gap among full-time workers understates the real difference between women’s and men’s earnings because it excludes women who are not in the labor force or who are working part time. Most college-educated women who are not working full time will eventually return to the full-time labor market. On average, these women will then have lower wages than will their continuously employed counterparts, further widening the pay gap.

What can be done about the gender pay gap? To begin with, it must be publicly recognized as a problem. Too often, both women and men dismiss the pay gap as simply a matter of different choices, but even women who make the same occupational choices that men make will not typically

end up with the same earnings. Moreover, if “too many” women make the same choice, earnings in that occupation can be expected to decline overall.

Women’s personal choices are similarly fraught with inequities. The difference between motherhood and fatherhood is particularly stark. Motherhood in our society entails substantial economic and personal sacrifices. Fatherhood, on the other hand, appears to engender a “wage premium.” Indeed, men appear to spend *more* time at the office after becoming a father, whereas women spend considerably less time at work after becoming a mother. Women who do not have children may still be viewed as “potential mothers” by employers, who may, as a result, give women fewer professional opportunities.

Ideally, women and men should have similar economic opportunities and equal opportunities to enjoy meaningful unpaid work, such as parenting. Improving women’s earnings could have positive consequences for men who would like to spend more time with their children but who can’t afford to reduce their work hours. Likewise, workplace accommodations for parenting could be valuable for fathers as well as mothers. Other groups may also benefit from greater flexibility in the workplace, including older workers seeking “partial retirement,” students hoping to combine work with study, and workers with other kinds of caregiving responsibilities.

The pay gap between female and male college graduates cannot be fully accounted for by factors known to affect wages, such as experience (including work hours), training, education, and personal characteristics. Gender pay discrimination can be overt or it can be subtle. It is difficult to document because someone’s gender is usually easily identified by name, voice, or appearance. The only way to discover discrimination is to eliminate the other possible explanations. In this analysis the portion of the pay gap that remains unexplained after all other factors are taken into account is 5 percent one year after graduation and 12 percent 10 years after graduation. These unexplained gaps are evidence of discrimination, which remains a serious problem for women in the work force.

Women’s progress throughout the past 30 years attests to the possibility of change. Before Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, employers could—and did—refuse to hire women for occupations deemed “unsuitable,” fire women when they became pregnant, or limit women’s work schedules on the basis of gender. Schools could—and did—set quotas for the number of women admitted or refuse women admission altogether. In the decades since these civil rights laws were enacted, women have made remarkable progress in fields such as law, medicine, and business as well as some progress in nontraditional “blue-collar” jobs such as aviation and firefighting.

Despite the progress women have made, gender pay equity in the workplace remains an issue. Improvements to federal equal pay laws are needed to ensure that women and men are compensated fairly when they perform the same or comparable work. Flexibility, meaningful part-time work opportunities, and expanded provisions for medical and family leave are important to help women and men better balance work and family responsibilities. Making gender pay equity a reality will require action by individuals, employers, and federal and state governments.

Chapter 1. Why the Pay Gap Matters

Women have made remarkable gains in education

during the past three decades, yet improvements in women's earnings have been relatively modest during this time (see Figure 1). In the 1970s, men outnumbered women on college campuses, with 38 percent of young men ages 18 through 24 enrolled in college in 1974 compared to 33 percent of young women in this age group. During the intervening decades, college attendance grew for both women and men, but women made more rapid gains. By 2003, 51 percent of young women and 41 percent of young men had attended, or graduated from, some kind of college (U.S. Department of Education, 2005a). Despite the dramatic increase in women's participation in higher education, the gender pay gap narrowed only somewhat during these decades.

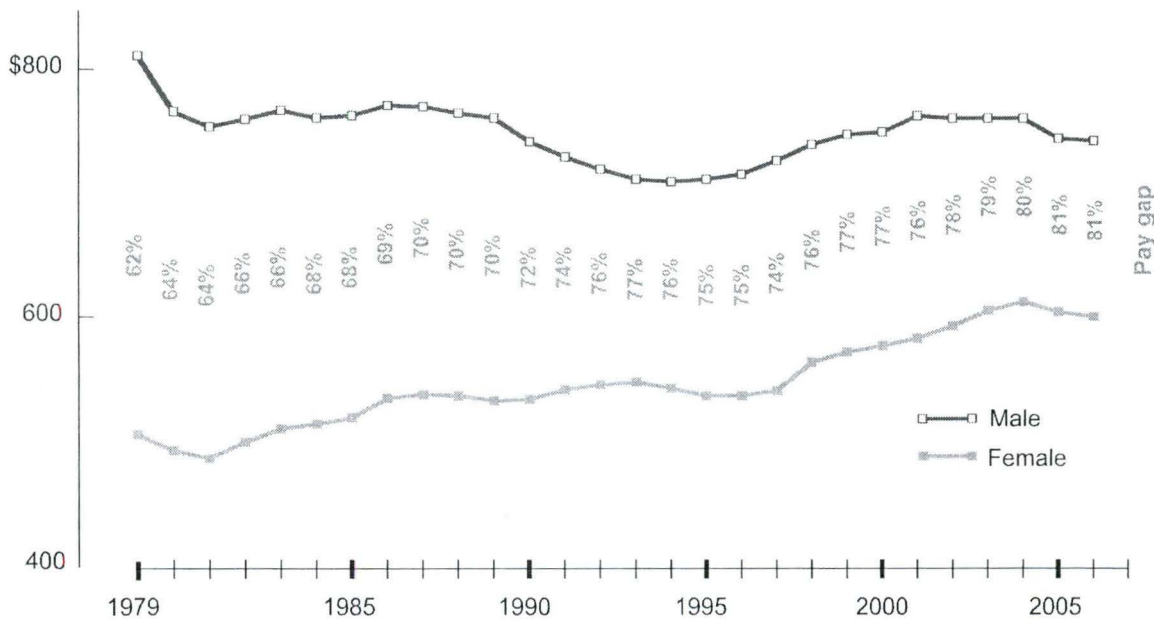
In part, pay equity is simply a matter of fairness. When women are paid less than men are for comparable work, women have fewer resources to support themselves and their families. Some women experience real deprivation as a result of the pay gap, especially when they enter their retirement years. The pay gap impedes women's ability to negoti-

ate in the workplace, at home, and in the political arena. Because women earn less, most couples are likely to prioritize the higher-earning husband's well-being in child care, choice of residence, and other household decisions.

In marriages that last a lifetime, these compromises could conceivably work out well for both parties. Yet as the economic lives of women and men have grown farther apart, the gender pay gap proves especially troubling. Nearly one-half of U.S. women did not live with a husband in 2005, and while most women marry at some point, most also spend a large part of their lives on their own. Furthermore, women are much more likely than men to be single parents, and many mothers shoulder the full responsibility for the care of their children with little or no financial assistance from fathers. In this way, pay equity for women is a children's issue as well as a women's issue.

The larger issue at stake in pay equity, however, revolves around family values. Many critics have charged that the U.S. workplace is unnecessarily rigid and punitive toward any time out of the work force. As described in Chapters 3

Figure 1. Median Usual Weekly Earnings of Full-Time Wage and Salary Workers (25 Years and Older), Annual Averages in 2006 Dollars



Source: Authors' analysis of U.S. Bureau of Labor Statistics data.

and 4, mothers pay a hefty price if they reduce their hours or temporarily leave the work force to care for children. Fathers do not pay this penalty, nor do they typically reduce their work hours when they become parents. Ironically, many men who might want to spend more time with their children are prevented from doing so because their wives do not make equivalent salaries. Improving gender equity in the workplace is truly a family value.

The U.S. economy is characterized by “masculine” values of competition and individual achievement. Both women and men reap economic rewards for competing successfully in the workplace. With few exceptions, workers are rewarded for working more hours, and those who fail to work long hours are off the “fast track”—probably for good. Women who professionally care for young children or disabled adults are among the worst-paid workers in the economy. Closing the pay gap demands that caregiving work be valued and adequately compensated (Crittenden, 2001).

Few dispute that women earn less than men earn, but there is little agreement about what to do about it or, indeed, whether anything should be done. Do we see the pay gap disappearing for the younger work force? Is the gap larger or smaller among the college-educated population than it is among the whole work force?

Behind the Pay Gap addresses these questions by analyzing early career choices and earnings for female and male graduates one year and 10 years out of college. These segments of the labor force represent the upcoming generation of educated workers, and understanding pay differences within these populations provides us with insight into the future of the pay gap.

The group one year out of college should arguably be the least likely to show a gender pay gap. Women and men grad-

uating from four-year colleges have made a considerable investment in their education, and it is reasonable to assume that both plan to have a career. Furthermore, neither male nor female graduates are likely to have children yet, so both enter the work force without this constraint. With some exceptions, both female and male graduates enter the work force without significant prior experience, eliminating another potential source of pay differences. If the pay gap can be expected to disappear “naturally” over time, as many claim that it will, we would expect to see small differences among young female and male college graduates at the beginning of their careers, and we would expect any differences to shrink as their careers progress.

The first decade after graduation is a formative time in the careers of women and men. Many pursue additional professional and graduate training, and many start families. For this group, a more narrow pay gap might indicate that women increase their earnings by attending graduate or professional school, while a wider pay gap might suggest that motherhood is exacting a penalty on women’s earnings. In either case, the examination of these graduates provides a valuable perspective on the relative importance of educational, occupational, and parenting choices and offers a unique opportunity to link educational choices with later earnings.

Behind the Pay Gap uses data from the U.S. Department of Education’s *Baccalaureate and Beyond Longitudinal Study* (B&B), which provides a nationally representative sample of students graduating with bachelor’s degrees in selected years.¹ Two sets of data were analyzed: 1992–93 graduates, who were interviewed in 1994, 1997, and 2003, and 1999–2000 graduates, who were interviewed in 2001.² The 1999–2000 graduates are the source for the analysis of outcomes one year out of college, and the 1992–93 graduates are the source for the analysis of outcomes 10 years after graduation.³

¹ The B&B is conducted by the U.S. Department of Education, National Center for Education Statistics. Student cohorts are drawn from the National Post Secondary Student Aid Study—a large, nationally representative sample of institutions, students, and parents.

² *Behind the Pay Gap* focuses on the full-time work force, although part-time workers and those out of the work force are included as noted. Because age (and presumably experience) is often associated with earnings, only individuals who graduated from an undergraduate institution at or before age 35 were included, resulting in the exclusion of about 10 percent of the B&B population who received their first bachelor’s degree after age 35. For the 1999–2000 group, more than 10,000 women and men were interviewed. For the 1992–93 group, 9,000 women and men were interviewed.

³ A comparison of these two groups reveals few significant differences related to the variables studied here (Bradburn, 2006, pp. 43–44).



1982

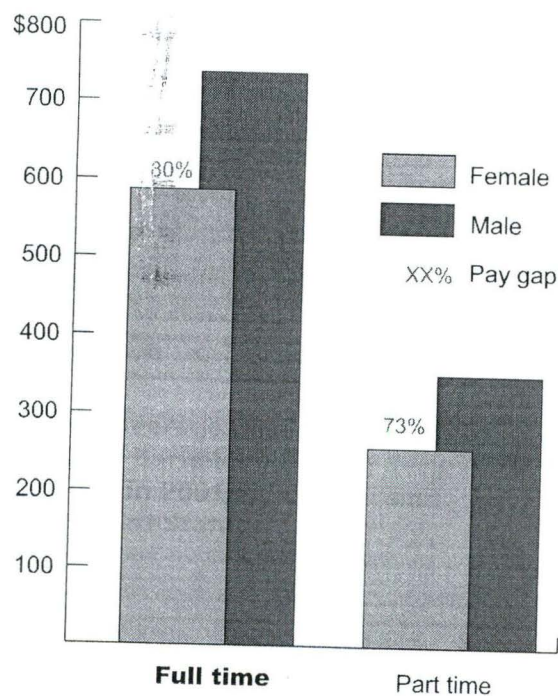
1982

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**Chapter 2. One Year After Graduation,
the Pay Gap Is Already Established**

If the pay gap is going to disappear naturally over time, we would expect that pay differences among full-time female and male workers after college would be small or even nonexistent. Most new college graduates are at the beginning of their careers and typically don't have extensive professional experience. Few graduates have started a family, so parenthood is a less important factor than it will be later in their career. Yet, one year after college, female graduates working full time earn only about 80 percent as much as male graduates earn. Among part-time workers, the gap is larger, with women earning 73 percent as much as their male colleagues earn (see Figure 2).

Figure 2. Average Weekly Earnings of 1999–2000 Bachelor's Degree Recipients Employed in 2001, by Gender and Employment Status



Notes: Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job. Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 *Baccalaureate and Beyond Longitudinal Study*.

More women than men graduated in 1999–2000.

About 57 percent of students who received a bachelor's degree in 1999–2000 were women. Women made up 60 percent of graduates ages 22 or younger and 67 percent of students ages 40 or older at graduation. About half of bachelor's degree recipients received their degree before age 22.

Women and men attended similar kinds of colleges.

Most women and men receiving a bachelor's degree attended "moderately selective" schools, (59 percent of women and 54 percent of men). Among graduates in the full-time work force, men were more likely to have attended "very selective" institutions (35 percent of men and 28 percent of women). About half of women (50 percent) and men (49 percent) took classes at a community college at some time, and nearly half graduated from public doctoral institutions (46 percent of women and 49 percent of men), with the remainder attending nondoctoral or private doctoral institutions (see Figure 3).

Women outperformed men academically.

Among those working full time one year after graduation, women as a group had a slightly higher grade point average (3.16 on a 4.0-point scale) than did their male peers (3.04). Women were also more likely to have a GPA of 3.75 or higher. For all graduates, employed or not, women's GPA was 3.19 and men's was 3.07 on average. Women's GPAs were higher than men's in every major, including science and mathematics. At the very least, a comparison of GPA by gender does not provide evidence that women are less likely to be successful than men in the work force.

Women are more likely to earn a professional license or certificate.

Women are slightly more likely than men to hold a professional license or certificate after graduation (34 percent of women and 28 percent of men). One year after completing a bachelor's degree, 12 percent of full-time workers enroll in some kind of graduate education, and 2 percent complete a graduate certificate or master's degree. Participation in work-related training one year out of college is comparable for women and men.

Figure 3. Undergraduate Institution Characteristics of 1999–2000 Bachelor’s Degree Recipients Employed Full Time* in 2001, by Gender

	Female	Male
Ever attended less-than-four-year institution	50%	49%
Degree-granting institution sector		
Public doctoral	46%	49%
Private nonprofit doctoral	13%	15%
Public four-year nondoctoral	21%	18%
Private nonprofit four-year nondoctoral	19%	17%
Private for-profit	1%	1%
Degree-granting institution selectivity		
Very selective	28%	35%
Moderately selective	59%	54%
Minimally selective	8%	7%
Open admission	5%	4%

* Includes respondents with multiple jobs, regardless of hours worked in any job.

Notes: Excludes graduates older than 35 at bachelor’s degree completion. Gender differences are not statistically significant.

Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 *Baccalaureate and Beyond Longitudinal Study*.

Women and men choose different majors.

Women and men who received bachelor’s degrees in 1999–2000 made different choices about their undergraduate major (see Figure 4). Women earned the majority of bachelor’s degrees in education (79 percent versus 21 percent), psychology (78 percent versus 22 percent), and health professions (73 percent versus 27 percent). Men earned the majority of bachelor’s degrees in engineering (82 percent versus 18 percent), mathematics and physical sciences (61 percent versus 39 percent), history (59 percent versus 41 percent), and business and management (55 percent versus 45 percent).

Looked at another way, about 13 percent of women majored in education compared to only 4 percent of men. Conversely, 25 percent of men majored in business and management compared to 17 percent of women, and 12 percent of men majored in engineering compared to

2 percent of women. Women and men were about equally likely to major in biological sciences (3 percent each) and social science (8 percent each) (see Figure 5).

Choice of major plays a significant role in future wages.

Choice of major emerges as the leading difference between women and men in their education and training. When we look at women’s and men’s wages by undergraduate major, some clear patterns emerge. Students who graduated in female-dominated majors tend to get jobs that pay less than do students who graduated in male-dominated majors. For example, one year after graduation, the average full-time-employed female education major earns just 60 percent as much as the average full-time-employed female engineering major earns (\$520 versus \$872 per week). Men who majored in education also earned only 60 percent as much as men who majored in engineering (\$547 versus \$915 per week).

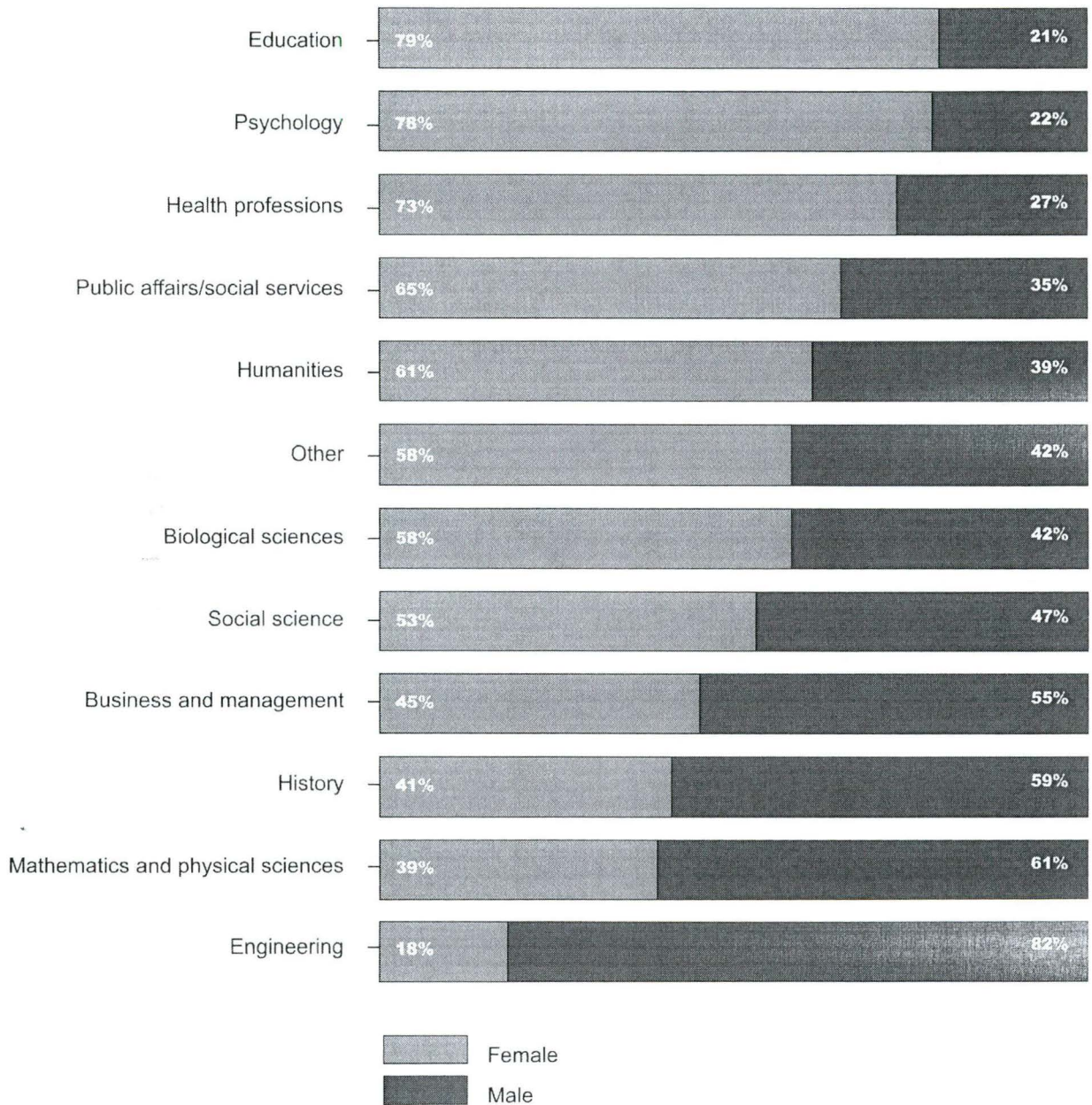
But even within majors, women earn less than men earn.

One year out of college, female full-time workers earn less than men earn in nearly every major; however, the size of this gap varies (see Figure 6). In education, a female-dominated major (and occupation), women earn 95 percent as much as their male colleagues earn. In biology, a mixed-gender major, women make only 75 percent as much as men make; likewise in humanities—another mixed gender major—women earn only 73 percent as much as men earn. The one major where women earn more than men earn—history—accounts for a very small proportion of graduates.

Most women and men work full time in the year following graduation.

Most women and men (89 and 87 percent respectively) are employed one year following graduation. Men are more likely to be working full time for one employer (74 percent of men and 67 percent of women). A sizeable minority of women and men enroll in graduate education instead of or in addition to working. Overall, women are slightly less likely to work full time and slightly more likely to be out of the work force or enrolled in an educational program.

Figure 4. Gender Composition of Undergraduate Majors of 1999–2000 Bachelor’s Degree Recipients Employed Full Time* in 2001

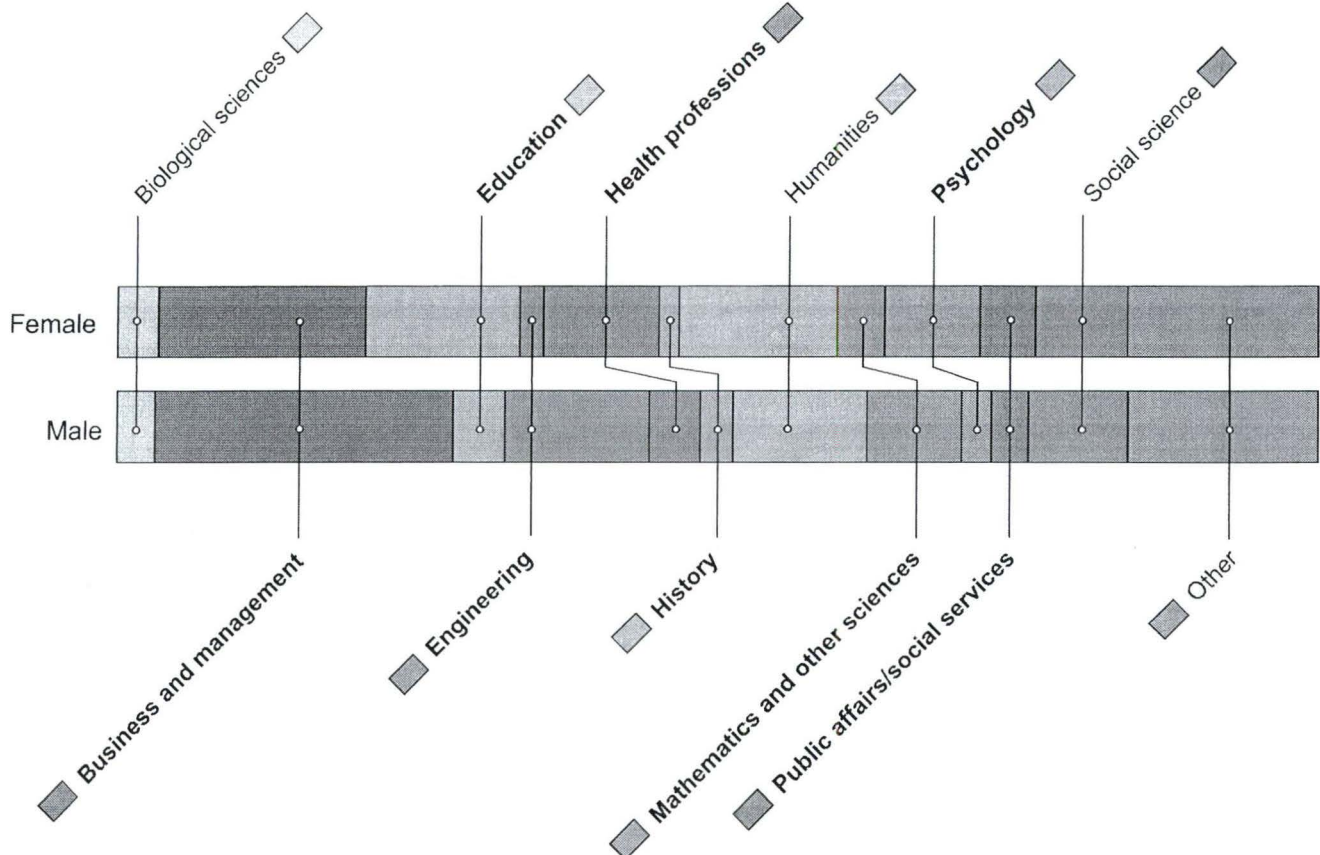


* Includes respondents with multiple jobs, regardless of hours worked in any job.

Note: Excludes graduates older than 35 at completion of bachelor's degree.

Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 *Baccalaureate and Beyond Longitudinal Study*.

Figure 5. Choice of Undergraduate Major of 1999–2000 Bachelor’s Degree Recipients Employed Full Time* in 2001, by Gender



Women and men work in different occupations.

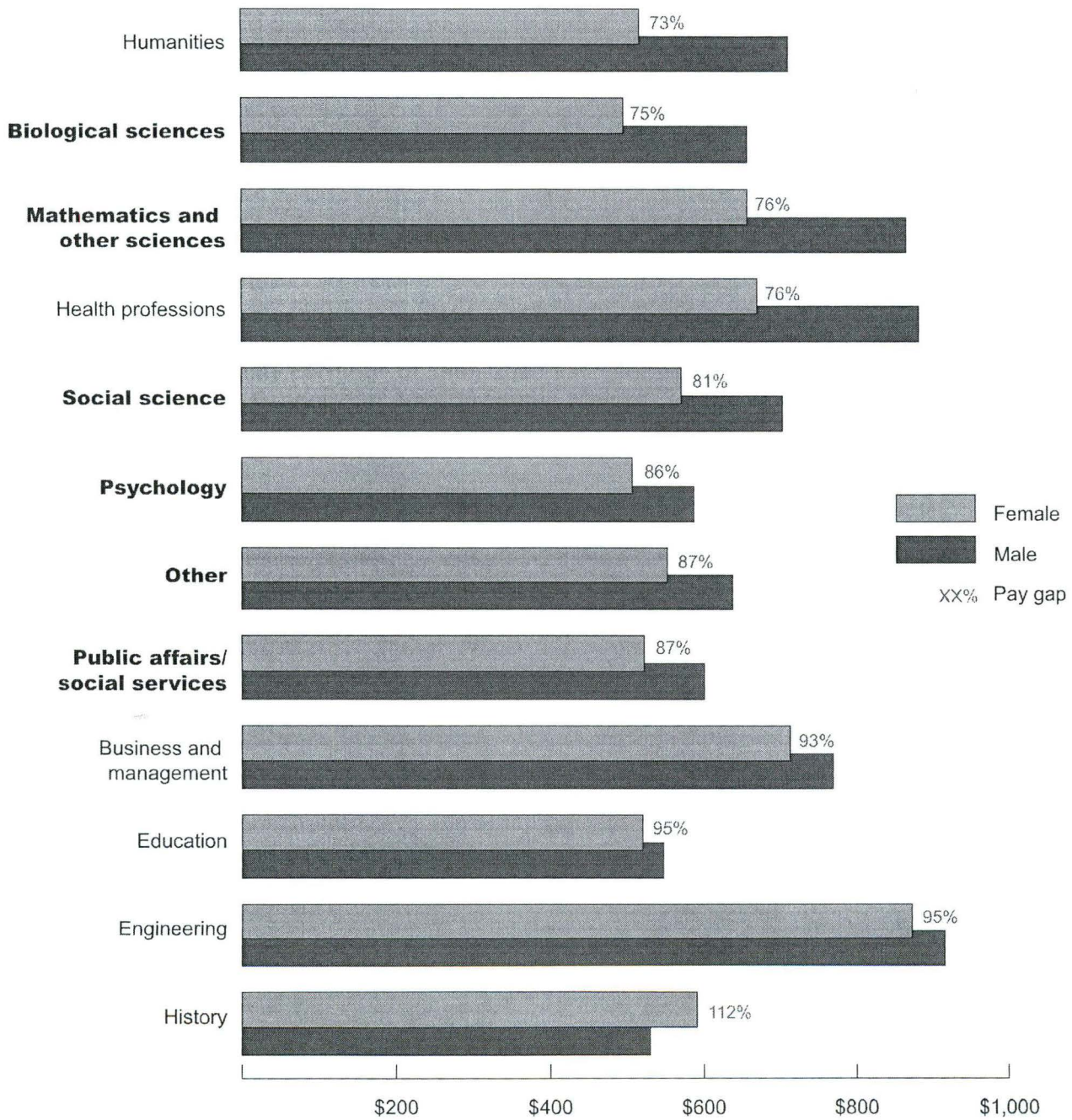
Echoing segregation in choice of major, women and men tend to work in different occupations one year out of college (see Figure 7). Women are more likely to work in education, medical professions, and administrative/clerical/legal support jobs. Men are more likely to be engineers/architects or computer scientists or employed in research, science, or technology.

Occupational choices translate into different earnings for women and men (see Figure 8). The “within occupation” pay gap varies considerably, ranging from parity among engineers (105 percent), medical professionals (99 percent), and educators (98 percent) to wide disparities in the service (75 percent) and business (81 percent) occu-

pations. The relationship between the percentage of female college graduates entering an occupation and the pay gap is not linear. For example, computer science and administrative jobs have a similar pay gap (92 and 93 percent respectively), but women make up 29 percent of those working in computer science and 72 percent of those working in administrative jobs. In mixed-gender occupations such as business, women earn only 81 percent as much as men earn.

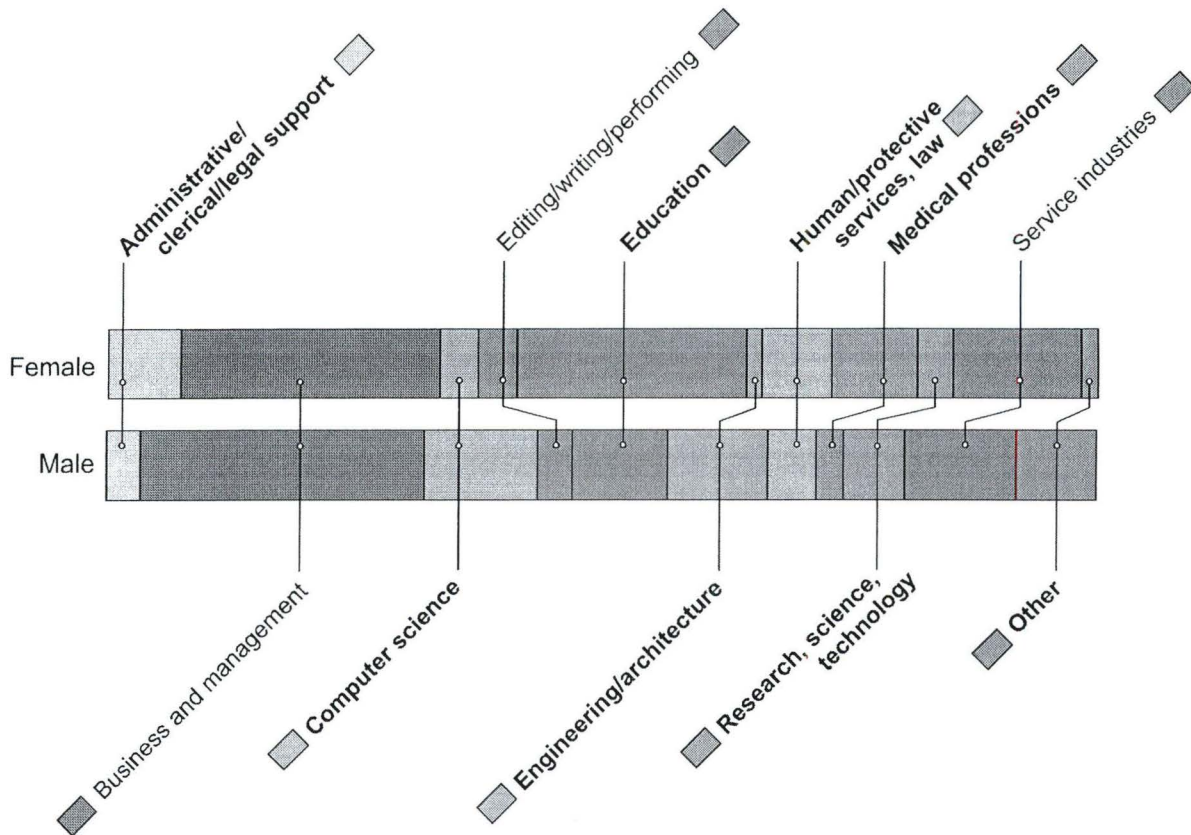
Similar pay differences also exist by sector of the economy. Women are more likely to work in the nonprofit or local government sectors, which typically pay less, whereas men are more likely to work in the for-profit or federal government sectors, where salaries tend to be higher.

Figure 6. Average Weekly Earnings of 1999–2000 Bachelor’s Degree Recipients Employed Full Time* in 2001, by Gender and Undergraduate Major



* Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job. Notes: Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test). Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 *Baccalaureate and Beyond Longitudinal Study*.

Figure 7. Occupation of 1999–2000 Bachelor’s Degree Recipients Employed Full Time* in 2001, by Gender



* Includes respondents with multiple jobs, regardless of hours worked in any job.

Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 *Baccalaureate and Beyond Longitudinal Study*.

Men report working more hours than women report working.

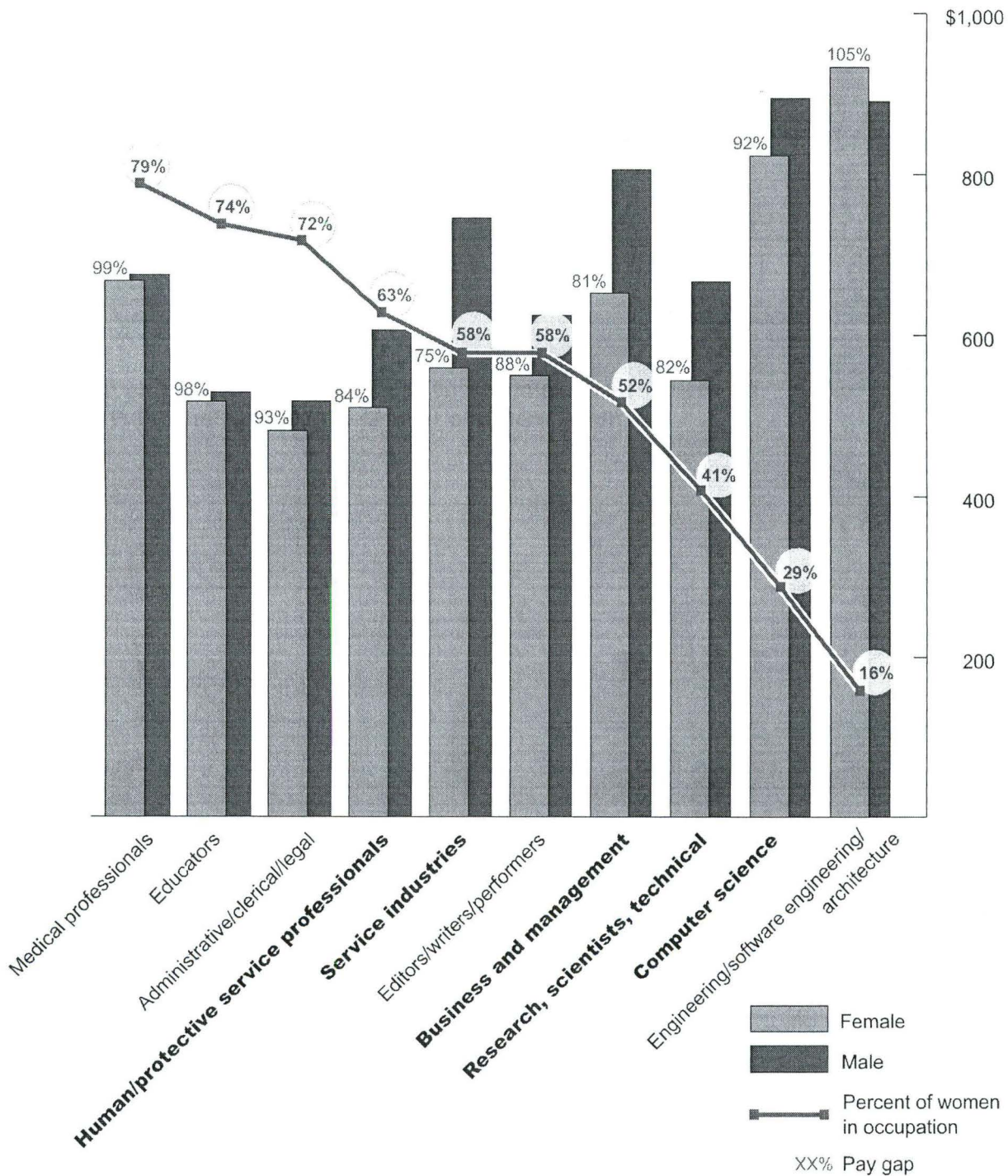
One year out of college, women in full-time jobs report working an average of 42 hours per week compared to men, who report working an average of 45 hours per week. In fact, 15 percent of full-time employed men and 9 percent of full-time employed women report working more than 50 hours per week (see Figure 9). Men working part time report averaging about 22 hours a week, and female part-time workers report working 20 hours per week.

Women graduates are not trading lower earnings for flexibility or other benefits.

Women and men graduating in 1999–2000 are about equally likely to report that their jobs are very flexible.⁴ Among those who say their jobs are flexible, however, female full-time workers are more likely to say that they would not be able to work in the job without that flexibility (21 percent of women and 16 percent of men). Men are more likely to say that they can telecommute (30 percent of men and 21 percent of women). Among those who can telecommute,

⁴ Teachers were not asked to report on job flexibility or whether they could telecommute.

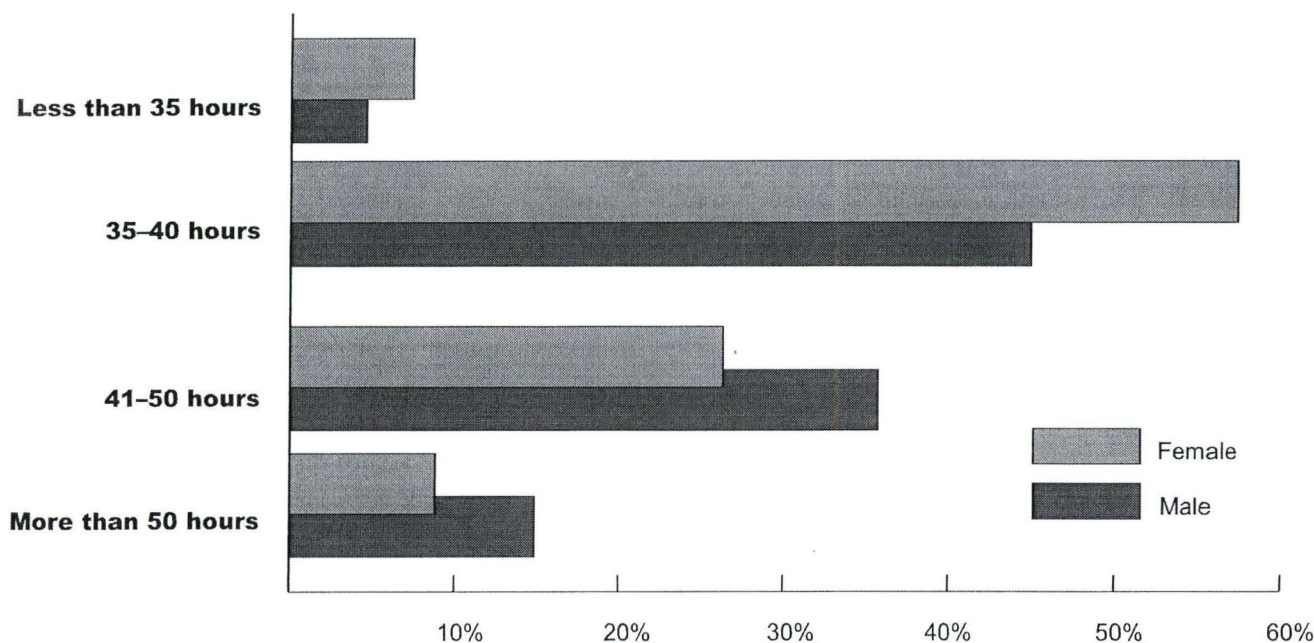
Figure 8. Average Weekly Earnings of 1999–2000 Bachelor's Degree Recipients Employed Full Time* in 2001, by Gender and Occupation



* Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job. Notes: Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 Baccalaureate and Beyond Longitudinal Study.

Figure 9. Hours Worked Per Week of 1999–2000 Bachelor's Degree Recipients Employed Full Time* in 2001, by Gender



* Includes respondents with multiple jobs, regardless of hours worked in any job.

Notes: Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 *Baccalaureate and Beyond Longitudinal Study*.

however, women and men do so with similar frequency. Most fringe benefits are available to similar proportions of women and men. Eighty-seven percent of full-time workers have health insurance, and 71 percent have life insurance. About four of five full-time workers have dental, optical, or other insurance and retirement benefits.

A large portion of the gender pay gap is not explained by women's choices or characteristics.

Discrimination cannot be measured directly. It is illegal, and for the most part, people do not believe that they discriminate against women or other groups. One way to

discover discrimination is to eliminate other explanations for the pay gap. To uncover discrimination, regression analysis was conducted to control for the different choices women and men make. An analysis of weekly earnings one year after graduation was examined as a function of full-time employees' characteristics, including job and workplace, employment experience and continuity, education and training, and demographic and personal characteristics.⁵

If a woman and a man make the same choices, will they receive the same pay? The answer is no. The evidence shows

⁵ A fuller description of the analyses can be found in the appendix and Bradburn (2006). The regressions were run for women and men separately. T -tests were used to compare regression coefficients for women and men to determine if differential effects on earnings were statistically significant. In addition, women and men were combined in the third regression, and a dependent variable of gender was used to see whether, after controlling for other choices and characteristics, statistically significant systematic differences were seen in women's and men's wages.

that even when the “explanations” for the pay gap are included in a regression, they cannot fully explain the pay disparity. The regressions for earnings one year after college indicate that when all variables are included, about one-quarter of the pay gap is attributable to gender. That is, after controlling for all the factors known to affect earnings, college-educated women earn about 5 percent less than college-educated men earn. Thus, while discrimination cannot be measured directly, it is reasonable to assume that this pay gap is the product of gender discrimination.

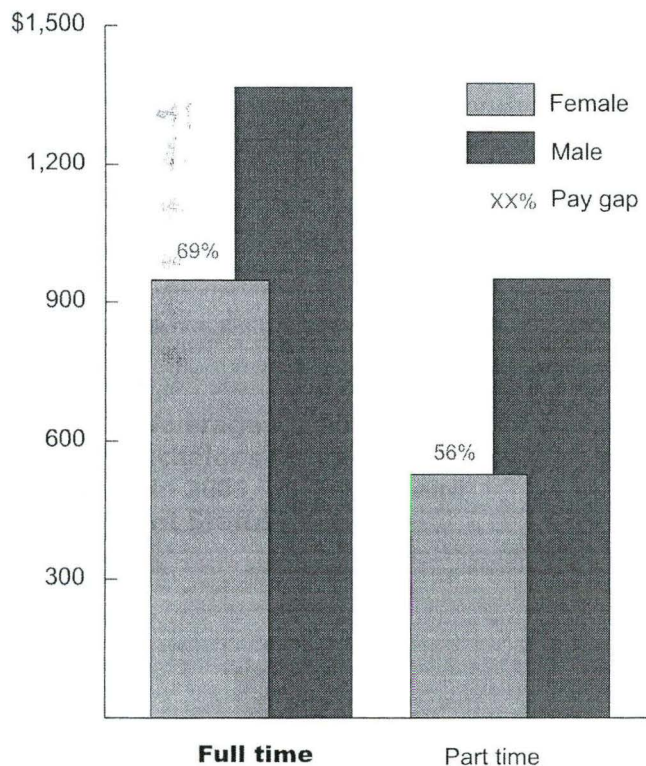
One year out of college, the pay gap is already established.

Women and men who received bachelor’s degrees in 1999–2000 attended similar kinds of colleges. Women earned slightly higher grades, on average, and in other respects appear to be men’s equals in the classroom. Most women entered full-time employment following graduation. One year later, women earn only 80 percent as much as their male colleagues earn—about the same as the pay gap for the work force as a whole. Gender segregation in undergraduate majors and the subsequent segregation of the work force partly explain the pay gap. Yet the pay gap within fields of study and occupations suggests that the answer is not so simple. Indeed, after accounting for all factors known to affect wages, about one-quarter of the gap remains unexplained and may be attributed to discrimination.

Chapter 3. Ten Years After Graduation, the Pay Gap Widens

Choices made in the decade after college graduation establish a career trajectory. Through graduate training and early job experiences, graduates define themselves professionally during this period. Both women and men also start families in these years and begin the time-consuming work associated with babies and young children. Understanding how these competing forces affect pay differences provides a valuable perspective on the future pay gap for this group, as well as for the work force as a whole.

Figure 10. Average Weekly Earnings of 1992–93 Bachelor’s Degree Recipients Employed in 2003, by Gender and Employment Status



Notes: Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job. Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*.

Ten years after graduation, women working full time earn only 69 percent as much as men working full time earn, down from 80 percent one year after graduation (see Figure 10). Did women and men make different choices during the course of these 10 years? Did similar choices result in different outcomes? To what extent is the pay gap explained by observable differences in men’s and women’s characteristics?

About half of women and men have children.

Ten years after graduation, female and male graduates are about equally likely to be married and have children (49 percent of women and 48 percent of men). A little less than one-fifth of women and men are married but do not have children (20 percent of women and 19 percent of men). About a quarter of women and men are single and childless (25 percent of women and 29 percent of men) (see Figure 11).

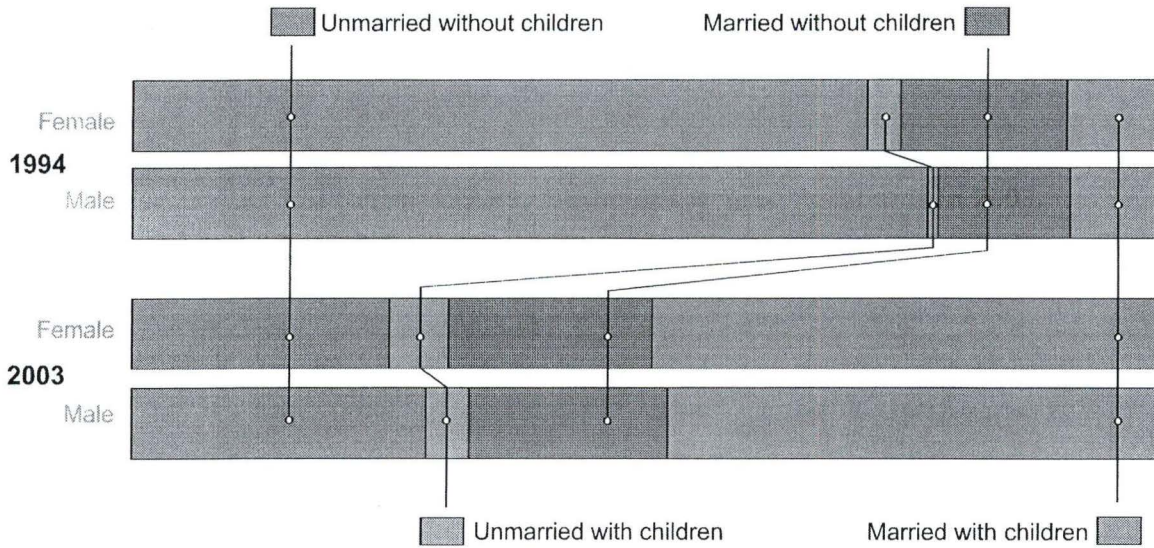
Women are more likely than men to take time off to care for children.

Labor-force participation rates confirm that women and men take different approaches to work-life balance (see Figure 12). Ten years after graduation, 81 percent of men are employed full time, while only 61 percent of women are employed full time.

When parents are considered, the gender difference is stark. About one-fifth (23 percent) of mothers are out of the work force and another 17 percent work part time, while only 1 percent of fathers are out of the work force and only 2 percent work part time. Stay-at-home dads appear to be a rare breed; indeed, most fathers do not work fewer hours than their peers without children work. Women’s and men’s labor-force participation rates are much closer for those who don’t have children than for those who do.

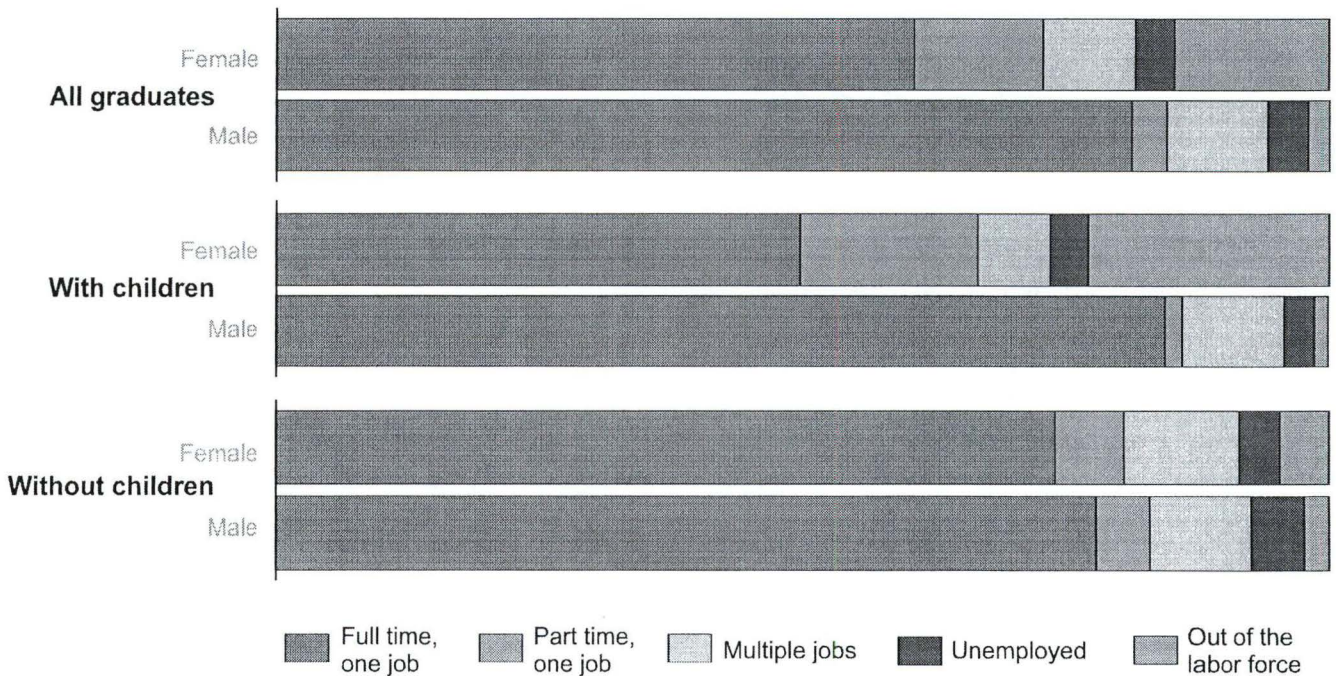
By necessity, estimates of the gender pay gap include only full-time workers who are working at the time of the interview. Women who are not working at that time can be expected to have lower wages when they return to the labor market than will the full-time workers included in the analysis for two reasons: Women are less likely to take breaks if

Figure 11. Marital and Parental Status of 1992–93 Bachelor’s Degree Recipients in 1994 and 2003, by Gender



Note: Excludes graduates older than 35 at bachelor's degree completion.
 Source: U.S. Department of Education, National Center for Education Statistics, 2003 *Baccalaureate and Beyond Longitudinal Study*.

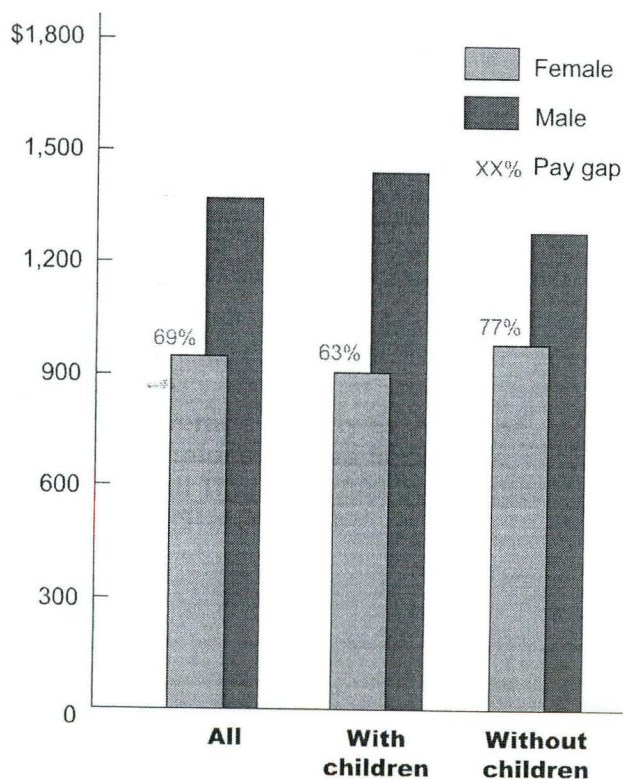
Figure 12. Employment Status of 1992–93 Bachelor’s Degree Recipients in 2003, by Gender and Parental Status



Note: Excludes graduates older than 35 at bachelor's degree completion.
 Source: U.S. Department of Education, National Center for Education Statistics, 2003 *Baccalaureate and Beyond Longitudinal Study*.

they have high wages (Lundberg & Rose, 2000), and leaving the labor force usually results in lower pay upon return. Research shows that mothers who maintain employment after childbirth have higher earnings than do mothers who leave the work force (ibid.). Even among women who are employed full time, having children exacts a pay penalty (see Figure 13). In contrast, men with children earn more, on average, than do those without children. Thus, the results presented here, if anything, understate the pay gap.⁶

Figure 13. Average Weekly Earnings of 1992–93 Bachelor’s Degree Recipients Employed Full Time* in 2003, by Gender and Parental Status



* Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job.
 Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).
 Source: U.S. Department of Education, National Center for Education Statistics, 2003 *Baccalaureate and Beyond Longitudinal Study*.

Women and men remain segregated in the work force.

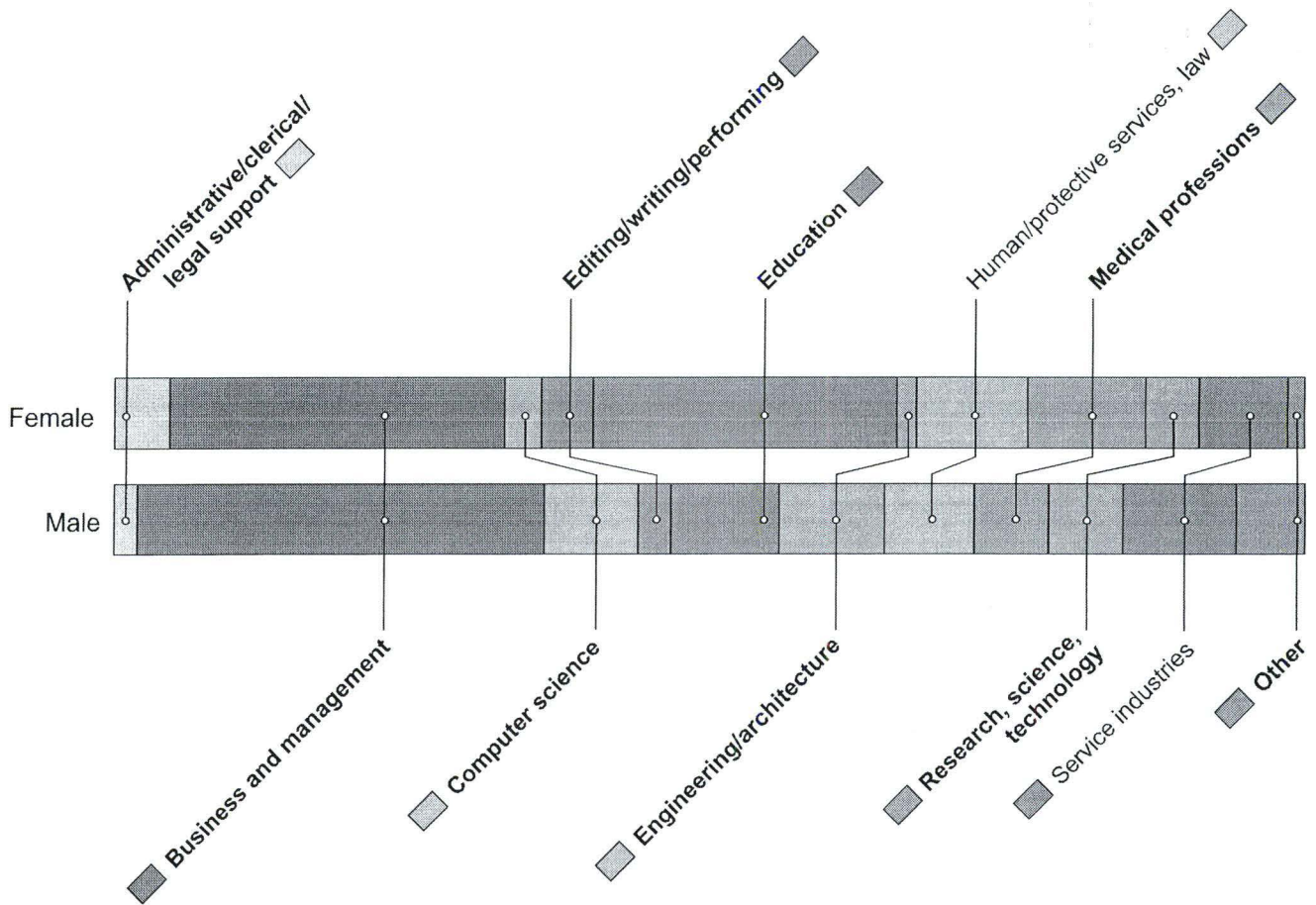
Gender segregation in the work force remains largely unchanged between one year and 10 years after graduation (see Figure 14). About as many women work in education as in business and management—26 and 28 percent respectively—followed by medical professions (10 percent) and human/protective services, law (9 percent). Business and management (34 percent) is the largest occupation for male college graduates, with the remainder of the male work force spread quite evenly across the remaining occupations. With two exceptions—service industries and human/protective services, law—the proportion of full-time employed women and men differs in all occupational groups.

Earnings differences within occupations, however, widen considerably in the 10 years following graduation (see Figure 15). Whereas women earn more than men earn in the first year after college in engineering and architecture, 10 years later women working full-time in these occupations earn only about 93 percent of their male peers’ earnings. In business and management, the gap widens from 81 percent to 69 percent and in education from near equality to 87 percent. In medical professions the pay gap widens from parity to 67 percent, in part reflecting the high number of women in nursing. Women do not make gains in any fields relative to their male counterparts. In fields with the fewest women, such as engineering/architecture and computer science, the gap appears to be narrower than in occupations in which women are a majority, such as administrative/clerical/legal support and education.

The gender segregation found in occupations is mirrored in the gender division by industry across the economy. Nearly one-third (30 percent) of female full-time employees work in the education sector and another 14 percent work in the health-care sector, the only industries with a larger proportion of women than men. Most other industries are male-dominated.

⁶ In fact the earnings regression in Figure 24 in the appendix does not show a penalty for having children, contrary to most estimates of the motherhood pay gap. For a review of the literature on the motherhood pay gap, see Anderson, Binder, and Krause (2003) or Budig and England (2001).

Figure 14. Occupation of 1992–93 Bachelor’s Degree Recipients Employed Full Time* in 2003, by Gender



* Includes respondents with multiple jobs, regardless of hours worked in any job.
 Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).
 Source: U.S. Department of Education, National Center for Education Statistics, 2003 *Baccalaureate and Beyond Longitudinal Study*.

Differences in employment by sector of the economy are also found (see Figure 16). Nearly two-thirds (65 percent) of full-time employed men work in the for-profit sector, compared with 55 percent of women (these figures exclude teachers). Conversely, women are twice as likely to work for a nonprofit employer (22 percent of women and 11 percent of men).

Part-time workers are much more likely than full-time workers to be self-employed, particularly among men. Part-time workers are also more likely to work for a nonprofit organization.

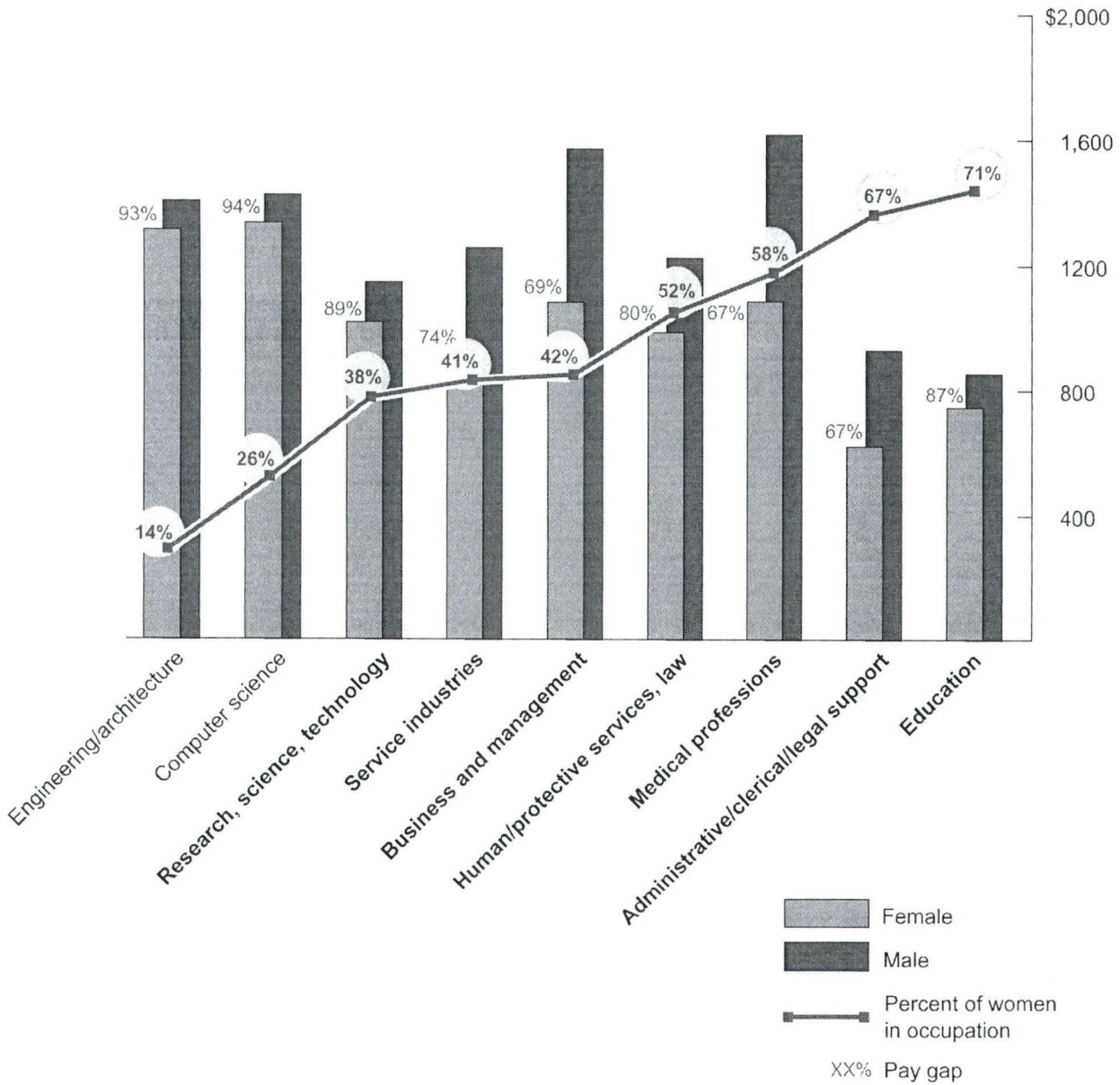
Men report working more hours than women report working.

Ten years after graduation, full-time employed men report working about 49 hours each week at their primary job, compared to 44 hours per week reported by their female counterparts. Most men report working more than 40 hours per week, and most women report working 40 or fewer hours.

Men have more authority and flexibility than women have in the workplace.

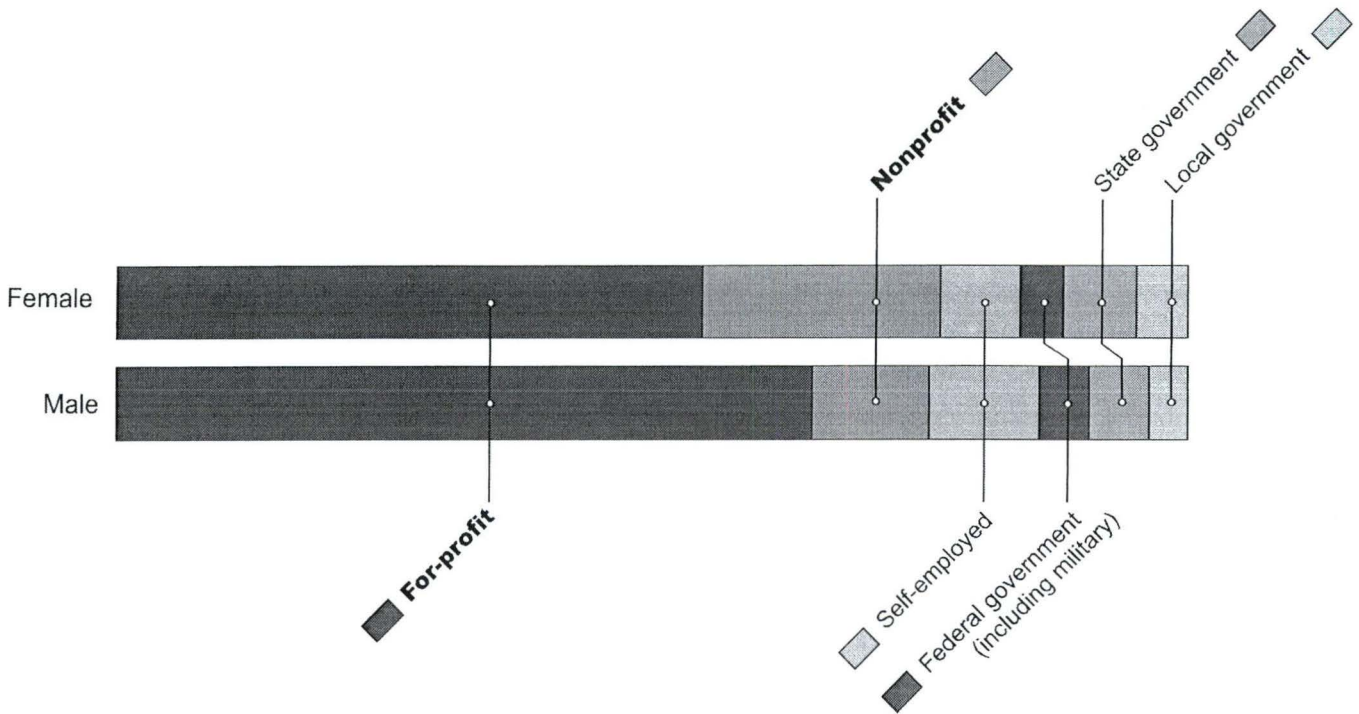
Ten years after graduation, male college graduates working full time have more workplace authority than do their female

Figure 15. Average Weekly Earnings of 1992–93 Bachelor’s Degree Recipients Employed Full Time* in 2003, by Gender and Occupation



* Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job.
 Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).
 Source: U.S. Department of Education, National Center for Education Statistics, 2003 *Baccalaureate and Beyond Longitudinal Study*.

Figure 16. Employment Sector of 1992–93 Bachelor’s Degree Recipients Employed Full Time* in 2003, by Gender



* Includes respondents with multiple jobs, regardless of hours worked in any job.

Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*.

counterparts (see Figure 17). Men are more likely to supervise others (66 percent of men and 54 percent of women), participate in hiring and firing decisions (51 percent of men and 38 percent of women), or set pay rates (29 percent of men and 18 percent of women). Gender differences are even more pronounced when the entire work force is considered because women are more likely to work part time, and these kinds of authority are found less often among part-time workers.

Men are more likely than women to report that they are basically their own boss (16 percent of men and 10 percent of women). Men are also more likely to be able to telecommute, while women are more likely to say that telecommuting does not make sense for the job.

Women continue to invest in their education.

Ten years after graduation, women are more likely than men to complete some graduate education (see Figure 18). Among full-time workers, women are more likely to have completed a master’s degree (25 percent of women and 19 percent of men), while men are more likely to have completed a doctorate (which is still relatively uncommon: 3 percent of men and 2 percent of women). As in 1994, women are slightly more likely to be enrolled in school while employed full time (8 percent of women and 6 percent of men). Women are more likely to have an occupational license or certification (42 percent of women and 34 percent of men) or to have taken work-related training in the past year (55 percent of women and 45 percent of men). A regression analysis of weekly earnings shows that

Figure 17. Workplace Authority and Flexibility of 1992–93 Bachelor’s Degree Recipients Employed Full Time* in 2003, by Gender

	Female	Male
Workplace authority		
Supervise work of others	54%	66%
Help set salary rates for others	18%	29%
Participate in hiring/firing decisions	38%	51%
Workplace autonomy		
Someone else decides what you do and how you do it	4%	4%
Someone else decides what you do, but you decide how you do it	28%	24%
You have some freedom in deciding what you do and how you do it	57%	55%
You are basically your own boss	10%	16%
Describe job as “very flexible”	24%	25%
Telecommuting availability		
Option to telecommute	21%	28%
Telecommuting does not make sense for job	64%	56%
Telecommuting possible but not offered	15%	15%

* Includes respondents with multiple jobs, regardless of hours worked in any job.

Notes: The level of autonomy was not asked of those who were self-employed. Excludes graduates older than 35 at bachelor’s degree completion. **Bold** numbers indicate a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*.

these investments increase women’s earnings more than men’s (see Figure 24 in the appendix and Bradburn [2006]).

Women are more likely to use family leave, work part time, or leave the labor force for some period.

Women and men have similar tenure with their present employer and within the job title. In the previous six years, women were more than twice as likely to take leave and paid leave for child care, regardless of employment status. Among those who took leave for child care, women stayed out more than three months longer than men did. Full-time employed women were more likely than men to leave the labor force entirely (16 percent of women and 6 percent of men) or spend more time working part time (see Figure 19).

Figure 18. Education and Training of 1992–93 Bachelor’s Degree Recipients Employed Full Time* in 2003, by Gender

	Female	Male
Educational attainment		
Bachelor’s degree	54%	60%
Some graduate enrollment, no completion	15%	13%
Master’s degree	25%	19%
Professional degree	4%	5%
Doctorate	2%	3%
Currently enrolled	8%	6%
Other license or certification	42%	34%
Took work-related training or classes in past 12 months	55%	45%

* Includes respondents with multiple jobs, regardless of hours worked in any job.

Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** numbers indicate a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*.

College selectivity appears to affect earnings for all workers.

College selectivity appears to matter for both women and men, with graduates from “very selective” institutions earning more than their peers earn (see Figure 20). Attending a very selective institution does not insulate women from the pay gap, e.g., women from very selective colleges earn about the same (\$1,071) as do men from “minimally selective” colleges (\$1,101). Attending a school with “open admission” rather than a very selective school does not result in lower wages for men, but it results in statistically significant lower wages for women.

The unexplained portion of the gender pay gap increases over time.

On average, women and men make different choices during the first 10 years after graduation. Yet this analysis shows that graduates’ choices explain less of the widening gender pay gap during this period.

Figure 19. Employment Experience and Continuity of 1992–93 Bachelor's Degree Recipients Employed in 2003, by Gender and Employment Status

	Full Time*		Part Time	
	Female	Male	Female	Male
Years at employer	5.0	5.3	4.6	4.6
Years at job title regardless of employer	5.6	5.3	5.6	5.7
Since graduation				
Number of jobs	6.0	5.5	5.7	6.1
Ever unemployed	45%	46%	43%	64%
Number of unemployment periods	1.5	1.5	1.6	1.9
Total months unemployed	7.7	7.9	8.1	13.1
Since 1997				
Number of employers	2.3	2.2	2.3	2.7
Number of jobs	2.8	2.8	2.8	3.0
Ever unemployed	11%	11%	10%	25%
Number of unemployment periods	1.4	1.4	1.8	—
Total months unemployed	6.7	7.6	11.4	—
Ever out of the labor force	16%	6%	47%	20%
Number of periods out of the labor force	1.4	1.5	1.5	—
Total months out of the labor force	15.2	16.0	13.2	—
Years worked part time	1.4	1.1	3.1	3.8
Ever took leave for child care	33%	15%	63%	11%
Total months of leave	4.8	1.6	7.6	—
Took paid leave for child care	28%	13%	49%	6%
Total months of paid leave	2.8	1.3	3.2	—

* Includes respondents with multiple jobs, regardless of hours worked in any job.

— Too few cases for a reliable estimate.

Notes: Excludes graduates older than 35 at bachelor's degree completion. **Bold** numbers indicate a significant gender difference ($p < .05$, 2-tailed t -test).

Source: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*.

As mentioned in Chapter 2, discrimination cannot be measured directly. One way to discover discrimination is to eliminate other explanations. A multiple regression was used to control for variables known to affect earnings, such as experience (including work hours), training, education, and personal characteristics (see the appendix and Bradburn [2006] for details). After 10 years, variables such as education, training, and experience explained less of the gender pay gap. In other words, more of the gap is unexplained and may be attributed to discrimination.

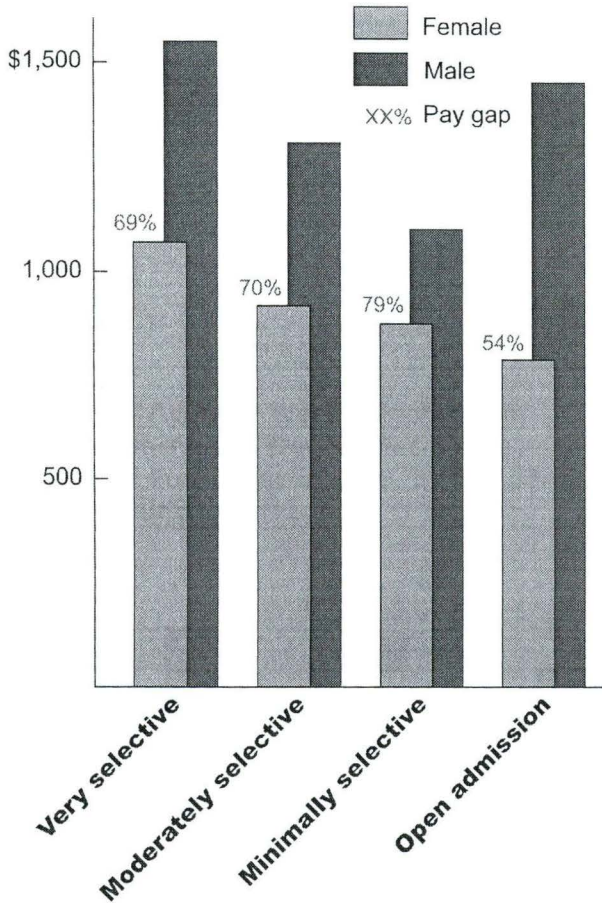
When women's and men's earnings equations were run simultaneously, a gender variable was included to see how

much of the pay gap could be explained by gender, after controlling for the other variables. Once job and workplace, demographic and experience, and education and training variables were added, an unexplained pay gap of 12 percent remained. Thus, it is reasonable to conclude that the negative effects of gender discrimination on women's pay have worsened over time.

Ten years after college graduation, the gender pay gap widens.

The 10 years after graduation is a decade of changes for women and men: A majority of both begin careers, marry, and start families. In addition, many complete postgraduate

Figure 20. Average Weekly Earnings of 1992–93 Bachelor’s Degree Recipients Employed Full Time* in 2003, by Gender and College Selectivity



* Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job.
 Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).
 Source: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*.

education and training, such as earning credentials for law, medicine, or business. During this time, the pay gap widens and becomes even larger than it is for the work force as a whole. For these college graduates, who on average are now in their early thirties, the pay gap is firmly entrenched and appears to be heading in the wrong direction.

Choice of major and occupation remain important factors driving wages for both women and men. Interestingly, although motherhood is not associated with lower earnings among full-time workers, mothers are much more likely than other women (or men) to take time out of the paid work force or work part time, and these choices are penalized.

Ten years after graduation, the portion of the gender pay gap that remains unexplained increases from 5 percent to 12 percent. This widening gap cannot be attributed to employment, educational, or personal choices, which suggests that discrimination may worsen over time or that the effects of gender discrimination are cumulative.

**Chapter 4. What Can We Do
About the Pay Gap?**

Field of study and occupational gender segregation, motherhood and work-force participation, and discrimination emerge as the critical factors behind the gender pay gap. This chapter ties key findings to recent research in economics, psychology, sociology, and public policy and makes recommendations for action.

Integrate majors and occupations.

Occupational gender segregation is a leading factor in the gender pay gap. Based on the regression analyses (see appendix), job and workplace characteristics explain about one-third of the variation in women's wages and one-fourth of the variation in men's wages. Reducing gender segregation in the classroom and in the workplace should improve women's economic opportunities.

Promote careers in science, technology, engineering, and mathematics in ways that appeal to girls and women.

A survey of undergraduate women majoring in traditionally female fields found that the overwhelming majority of women do not select technical majors because the courses are "not interesting" (Weinberger, 2004). Information about the societal benefits of engineering as well as hands-on experience with science, engineering, technology, and mathematics (STEM) helps boost girls' and women's interest in these fields (Klein, et al., in press).

Many programs are available for promoting girls and young women in STEM fields, yet most of these programs remain small-scale pilot programs held during after-school hours. Many programs operate on a shoestring budget and rely heavily on volunteers (AAUW Educational Foundation, 2004). Funding programs to encourage girls to participate in STEM fields and integrating these programs as part of the regular school day could go a long way toward preparing girls and young women to enter the STEM work force.

Encourage girls to take advanced courses in mathematics.

Gender segregation in the job market begins in the classroom. Taking trigonometry, precalculus, or calculus in high

school has been found to influence the likelihood of majoring in math or science in college. In fact one study found that a one-unit increase in calculus in high school doubled the odds that women would later choose a science or math major (Trusty, 2002).

Another factor is self-assessment. The higher students assess their abilities in a subject, the more likely they are to enroll in classes in that subject or choose it as their major. Men make higher assessments of their mathematical abilities than do women (above and beyond actual differences in achievement), contributing to men's higher participation in STEM majors (Correll, 2004).

Encourage women to negotiate for better quality jobs and pay.

Even women who majored in mixed-gender or male-dominated disciplines are more likely than men to enter clerical or other low-paid occupations. Female science and business majors, for example, are twice as likely as their male counterparts to enter clerical work (Joy, 2006). Men in these majors are more likely to go into management jobs (Joy, 2000, 2006). Thus, encouraging women to choose STEM college majors will not necessarily address the problem of occupational segregation: Women must also find employment where they can build upon the skills acquired in college.

Further magnifying these gender differences, women expect less and negotiate less pay for themselves than do men. Researchers have found that women expect less, see the world as having fewer negotiable opportunities, and see themselves as acting for what they care about as opposed to acting for pay. These learned behaviors and expectations (which may be based on experiences) tend to minimize women's pay (Babcock & Laschever, 2003).

Individual differences in negotiating skills may lead to pay variation among workers with similar skill sets. Employers have a fair amount of discretion in setting wages as long as they pay at least the minimum wage and do not discriminate based on gender, race, ethnicity, age, or other protected

group.⁷ One study by Babcock and Laschever (2003) found that starting salaries for male students graduating from Carnegie Mellon University with master's degrees were about 7 percent higher (almost \$4,000) than the starting salaries for similarly qualified women. Babcock and Laschever argue that this gap in part reflects differences in men's and women's willingness to negotiate. It may also reflect women's perceptions about the labor market, expectations about the wages they'll receive, and willingness to take a lower-wage job (Orazem, Werbel, & McElroy, 2003).

On a related front, several economic experiments have demonstrated that regardless of their actual work performance in a competitive setting and their beliefs about their performance, more women than men choose noncompetitive payment schemes over tournament (where a winner gets a prize and a loser gets nothing) or competition rates of payment for a task (Niederle & Vesterlund, 2005).

While women's competitiveness or negotiation skills may account for some of the wage differences between women and men, they do not explain the origin of these behaviors. As with occupational choice, women may be strongly socialized to be less competitive, and far from being a choice, lack of competitiveness or negotiation skills may simply be learned behaviors. In fact, research shows that women are viewed negatively when they behave confidently and assertively and rewarded when they behave in a self-effacing manner (Rudman, 1998).

But integrating women into male-dominated fields is only part of the solution.

Eliminating gender segregation in college and the workplace is only part of the solution to the pay gap for several reasons. First, women earn less than men earn in every field, so only a portion of the pay gap could be overcome in this way. Second, as more women enter a field, wages tend to decrease, especially after the field reaches a "tipping point" (when the field is perceived to no longer be the domain of one gender or the other). Research confirms that the higher

the proportion of women in an occupation, the lower the compensation (Reskin & Bielby, 2005).

Support mothers in the workplace.

Mothers earn considerably less than other women earn. Although this regression analysis did not find a motherhood penalty among full-time women 10 years after graduation, it did observe a large number of women leaving the full-time labor force for at least some portion of time. Research indicates that leaving the work force or working part time results in less work experience and diminished earnings potential (Gabriel, 2005; Felmler, 1995; Bowlus, 1997; Waldfogel, 1998).

Encourage employers to offer high-quality part-time employment opportunities.

Given the need for a reduced-hour schedule, many women turn to part-time jobs. The evidence shows, however, that part-time workers earn substantially less per hour than do full-time workers (Hirsch, 2005). One of the reasons for lower wages in the part-time sector is occupational segregation. In general, lower-paying occupations have part-time jobs and higher-paying occupations do not. In a national survey, 61 percent of employees working in organizations that have part-time workers said that those workers receive less compensation on a pro rata basis than do full-time employees (Galinsky, Bond, & Hill, 2004). Lettau (1997) also found that part-time employees earn less on an hourly basis than do full-time employees working in the same firms at the same occupations. Although those who desire to obtain part-time jobs often must change employers, jobs, or occupations (Gornick & Meyers, 2003), part-time work is penalized even if workers stay in the same occupation or with the same employer.

Clearly a large gap exists between the needs of workers, especially women workers, and the availability of high-quality part-time jobs. Many large firms have learned that providing the flexibility to move in and out of part-time status has radically increased the retention of women

⁷ Federal and state laws determine minimum wages, and employees are entitled to the higher of the two. Various groups of workers are not covered under federal minimum wage law, such as agricultural workers and tipped employees (who have a separate, lower minimum hourly wage). Only employers who do at least \$500,000 in business per year are covered under minimum wage rules (see www.bls.gov for more information).

workers (Hewlett & Luce, 2005). Federal employment standards should also be investigated to determine ways to promote part-time work (Garrett, 1999).

Rethink using hours as the measure of productivity.

U.S. employees work more annual hours than do employees in almost any other country in the industrialized world. In most other countries, annual hours are declining, while in the United States the trend is in the other direction. In their national study of the changing work force, Galinsky, Bond, and Hill (2004) found that 61 percent of wage and salaried workers want to work fewer hours. Nearly two-thirds of dual-earner couples work more than 80 combined hours a week (Gornick & Meyers, 2003).

The issue of long work days is particularly relevant for college-educated women, who are more likely than less educated women to be in a dual-earner household (Jacobs & Gerson, 2001). Long work hours make it particularly hard for women and men to be involved parents and probably encourage women to leave the work force altogether. According to a Catalyst (2000) survey of 45 professional and managerial women with reduced-hours options, 60 percent of them would leave if their jobs did not offer flexibility.

Inefficient competition may be a reason that work hours are so long. A number of economists have shown theoretically that when workers perceive others working long hours, they believe that they must work the same number of hours to compete (Eastman, 1998). The national survey of employees echoes this notion. When asked why they did not work their preferred hours, about half of employees responded that they feel they need to succeed or make their organization successful (Galinsky, Bond, & Hill, 2004).

In their study of lawyers, Landers, Rebitzer, and Taylor (1996) found evidence that lawyers work inefficiently long hours to gain promotions. Kuhn and Lozano (2005) also found that men use long hours to win promotions and higher compensation. Using long hours as a measure of

productivity or as the basis for promotions is a disadvantage for women, who typically have more family responsibilities than men have (Hewlett & Luce, 2006).

Many firms are successfully challenging the notion that more hours are equivalent to more productivity. One recent example is the company Best Buy. Faced with retention and morale issues, this retailer instituted a policy called ROWE (Results-Only Work Environment), where workers set their own schedules and are responsible for meeting performance goals. The results have been positive, with improved retention and productivity (Conlin, 2006).

Protect and extend the Family and Medical Leave Act.

The Family and Medical Leave Act of 1993 requires that all employers with 50 or more employees provide up to 12 weeks of annual unpaid family and medical leave to their workers. Among other things, family leave enables parents to care for a child after birth or adoption. Typically, workers take only short leaves under FMLA, e.g., in 2000 the typical leave was 10 days, and 90 percent of employees using the policy took 12 weeks or less (Waldfoegel, 2001).

A major limitation of FMLA is that it ensures only *unpaid* leave, and many people cannot afford to take time off without pay. Only 8 percent of private sector employers provide paid leave (U.S. Department of Labor, Bureau of Labor Statistics, 2006). While disability insurance covers some workers (*ibid.*), only 22 percent of families have access to paid leave of four weeks or more (Gornick & Meyers, 2003).

Unfortunately, short leaves are associated with worse health outcomes for both mothers and children (Berger, Hill, & Waldfoegel, 2005). In addition to being good health policy, maternity leave helps women stay in the labor force. Working women with maternity leave are more likely to return to work than are women without maternity leave (Heymann, Earle, Simmons, Breslow, & Keuhnhoff, 2004; Waldfoegel, 1998). Currently at least 80 percent of women

will be mothers,⁸ so these policies affect most women at some point. Nearly all working women (99 percent) who have a child take maternity leave, and more than 25 percent must leave their job as a result (Overturf Johnson & Downs, 2005).

Federal and state policy-makers should consider ways to improve upon FMLA by finding mechanisms to provide paid leave (Levin-Epstein, 2006). A promising example for the federal government is the state of California, which extends paid family leave to residents through its disability insurance program. Funding family leave may also encourage more men to take leave, possibly diminishing the pay differences between women and men (Gornick & Meyers, 2003).

Another necessary expansion to FMLA is universal national sick leave policies. Only 68 percent of the work force receives paid time off for personal illness.⁹ Low-wage workers are less likely than higher-paid workers to receive paid personal sick days. More than half of employees are unable to take time off to care for sick children without losing pay, having to use vacation leave, or fabricating an excuse to use their own sick leave. Only 30 percent of the 51 percent who have paid sick leave are allowed to use it to care for sick children (Lovell, 2004). The less the worker earns, the more likely she or he does not have time off to care for children.

U.S. employees receive an average of 14 days per year of vacation time (Galinsky, Bond, & Hill, 2004), far less than Europeans receive. One impact on families is the care of children during school breaks (Gornick & Meyers, 2003). The lack of coordination between work and school schedules increases family pressures. Since mothers tend to be the primary caregivers for their children, this pressure disproportionately affects women. Long work hours and the lack of time for personal responsibilities or caring for

others put women at risk for work separation and attendant pay penalties.

Increase women's employment options by supporting high-quality child care in conjunction with other family-friendly policies.

Most parents cannot work outside the home unless they can arrange care for their children. While all states provide kindergarten, no national system of child care exists for younger children. Even when children are old enough to attend school, school hours and calendars do not match standard work schedules. Reliance on the market to obtain child care means that poorer families either choose not to work or sometimes have to rely on lower-quality child care. Low wages in the child care and education industry are not conducive to attracting and retaining highly qualified child-care workers (ibid.). Programs should be developed to better assess community needs, monitor home-based care, increase compensation, and build career ladders in the child-care industry (Hamm, Gault, & Jones-DeWeever, 2005).

Currently only high-income families and a portion of very low-income families have access to high-quality child care. Today's child-care market does not work, and state and federal governments must explore policies to resolve the problem (Brandon, Maher, Li, & Joesch, 2004).

End gender discrimination.

This report finds that the pay gap between female and male college graduates cannot be fully accounted for by factors known to affect wages. An extensive body of research also finds that some gap in pay between women and men is unexplained. While researchers disagree about the portion of the pay gap that is unaccounted for, many have attributed the unexplained portion to gender discrimination (Blau & Kahn, 2000; U.S. General Accounting Office, 2003; Hellerstein, Neumark, & Troske, 2002).

⁸ As of June 2004, 19 percent of women ages 40 through 44 were childless, and this estimate assumes that these women are at the end of their potential fertility. We do not know what the fertility rates of young women will be as they age; therefore, this number is an approximation.

⁹ This figure does not include the self-employed.

In addition to evidence of pay discrimination nationwide, researchers also found it within particular occupations, including college administrators (Monks & McGoldrick, 2004), accountants (Smithson, Lewis, Cooper, & Dyer, 2004), Wall Street securities analysts (Roth, 2003), veterinarians (Smith, 2002), corporate executives (Bertrand & Hallock, 2002; Healy Burress & Zucca, 2004), and engineers (Morgan, 1998, 2000; Alessio & Andrzejewski, 2000).

While factors vary across the analyses, in all cases at least some of the gender earnings differential cannot be explained by individual factors or work characteristics. In fact a recent comprehensive look by Bayard, Hellerstein, Neumark, and Troske (2003) used a data set covering all industries and occupations and found that women are segregated into lower-paying occupations, industries, and establishments and one-half the pay gap remains attributable to an individual's gender.

Gender pay discrimination can be overt or subtle. It is difficult to document discrimination because gender is usually easily identified by name, voice, or appearance. One study in which gender was masked completely showed evidence of discrimination. Goldin and Rouse (2000) found that the adoption of "blind auditions" by symphony orchestras—in which a screen was used to conceal the identity of the candidate—explained 25 percent of the increase in the number of women in top U.S. symphony orchestras, from less than 5 percent of musicians in 1970 to 25 percent by 2000.

In another case, economist David Neumark sent women and men with equally impressive backgrounds and resumes to apply for jobs as wait staff in upscale restaurants in Philadelphia. He found that women were 40 percent less likely than men to get called for interviews and 50 percent less likely to receive job offers if they did get interviews. While women were generally viewed as being capable of serving food, male waiters were considered more desirable, simply because of their gender (Babcock & Laschever, 2003).

Gender pay discrimination also happens in more subtle forms. For example, managers may equate good organiza-

tional skills with management talent in men and secretarial talent in women (Murphy, 2005). Employers may subconsciously make discriminatory decisions about hiring, performance, and pay based on personal beliefs about gender roles.

Action must happen on multiple levels.

To address pay inequity, action must take place simultaneously, among employees, employers, and the public (Murphy, 2005). Strong national legal remedies may be warranted (National Women's Law Center, 2006). To make pay equity a reality, pressure must come from every level.

Individuals must take action at work.

Women should collect information about their workplaces and become advocates for themselves and other women employed there. By educating themselves and collecting hard evidence on inequities, women can apply pressure to employers to create change. For example, at the Massachusetts Institute of Technology, professor Nancy Hopkins was dismayed to discover that her lab space was smaller than that of colleagues with fewer credentials. She then looked at wages, research assistant allocation, and budgets for women and men. Her detailed and complete information, along with the support of other women faculty, was brought to the university president, who instituted policies to change the situation (Murphy, 2005).

When women find pay inequities in the workplace, they need to confront the problem. Women are better negotiators when they have solid knowledge about what their job is worth (Babcock & Laschever, 2003). Many resources are available for women seeking to learn negotiation skills.

Leaders in the workplace must embrace change.

Leadership is critical to changing pay inequities within an organization. Without a concerted commitment at the top, policies and changes are unlikely to be taken seriously by managers and employees (Murphy, 2005).

Once the leaders have made a commitment, an audit of an organization's jobs for gender composition, necessary skills, and pay scale is a good place to start. An obvious and often

overlooked second step is to implement the findings of the audit and change salaries to reflect its findings. In practice, salary increases may need to be implemented over time. In addition, an audit must be updated on a regular basis, and policies must be in place to ensure fair-pay practices.

Fair-pay policies can be effective in improving equity for women and usually improve productivity and retention as well (Chicago Area Partnerships, 2003; Murphy, 2005; Burk, 2005).

The public sector should be a model employer.

The public sector should model fair-pay practices. The state of Minnesota has been a leader in the pursuit of gender pay equity. It used an audit to evaluate job attributes (including complexity, danger, and required levels of experience and education). Each job was then assigned points, and the state compared the gender concentration of each job and its points and pay. The audit found that jobs with more women paid much less than similarly ranked jobs for men, e.g., jobs of delivery van driver and clerk typist were given the same number of points, but the delivery van driver job was filled mostly by men and paid \$1,900 a month, while the clerk typist job was filled mostly by women and paid \$1,400 a month. The state raised the wages of affected workers in all cases of disparity (State of Minnesota, 2006).

National legislation must be strengthened.

The Equal Pay Act of 1963 provides a valuable foundation for gender equity in the workplace. Legislative efforts to improve enforcement of the Equal Pay Act, including the Paycheck Fairness Act and the Fair Pay Act, are pending in Congress. Both proposals would extend the scope of the Equal Pay Act and improve protections for those who attempt to use it. "Equal pay for comparable work" lies at the core of both proposals, with technical fixes to help make the Equal Pay Act workable. For example, the Fair Pay Act eliminates the "gag rule" on wage disclosure, prohibiting employers from punishing employees who discuss their wages with a co-worker. The Paycheck Fairness Act requires that employers affirmatively prove that pay differences between women and men are caused by something other than sex, as opposed to simply demonstrating that the dif-

ference is not the result of discrimination. Rules and procedures that force employers to look carefully at pay differences and monitor inequities are the key to overcoming gender equities in the workplace.



Appendix. Methodology

Overview

Regression analysis was used to better understand the reasons for the gender pay gap. While the analysis presented in the text allows us to understand the correlation between each variable and earnings, it does so only one variable at a time, e.g., to what extent various factors such as college major or occupation affect earnings. The regression analysis allowed us to assess the relative impact of each of the factors at the same time.

In estimating the regression equations, the dependent variable was defined as the natural log of average weekly earnings. This form has the advantage that the resulting regression coefficients can be interpreted as the percentage change in weekly earnings for a one-unit change in the independent variable. For each regression, a traditional earnings equation was specified, where log weekly earnings one year after graduation are a function of the full-time employee's characteristics, including job and workplace, employment experience and continuity, education and training, and demographic and personal characteristics (see Figure 21 and Bradburn [2006] for a list of the variables used in each category). Most variables from the analysis presented in the report were included in the regression analysis.

A separate analysis was performed one year after graduation for the 1999–2000 graduates and 10 years after graduation for the 1992–93 graduates. For each group, the regressions were run separately for women and men. *T*-tests were used to compare regression coefficients for women and men to determine whether the differential effects of factors on earnings were statistically significant.

Women and men were combined in the third regression, and an independent variable of gender was used to see whether women's and men's earnings were statistically significantly different after controlling for other choices and characteristics. The regression coefficient of gender can be interpreted as the remaining percentage difference in earnings when taking into account the other variables in the model.

Figure 21. Key Variables Used in Regression Analysis, by Category

Job and Workplace Characteristics

- Occupation
- Industry
- Employer sector (e.g., nonprofit)
- Hours worked per week
- Whether employee worked multiple jobs
- Workplace flexibility, ability to telecommute
- Months at employer

Education and Training Characteristics

- Educational attainment (bachelor's and any graduate enrollment or completion)
- Current enrollment status
- Other license or certification
- Work-related training
- Undergraduate GPA
- Undergraduate major
- Ever attended less-than-four-year institution
- Institution sector
- Institution selectivity

Demographic and Personal Characteristics

- Gender
- Age
- Highest education of either parent
- Race/ethnicity
- U.S. citizen
- Disabled
- Region of residence
- Marital status
- Has children
- Volunteered in past year

Source: Bradburn (2006).

Data

The *Baccalaureate and Beyond Longitudinal Studies*, conducted by the U.S. Department of Education National Center for Education Statistics, are used in this research. These studies provide nationally representative information on the lives of two groups of U.S. college graduates. As of 2006, two studies have been conducted. The first followed the 1992–93 bachelor's degree recipients for 10 years after college graduation, interviewing them first in 1994 and then in 1997 and 2003. Approximately 9,000 recipients participated to some extent in all rounds of this study. The second study followed the 1999–2000 bachelor's degree recipients for one year and included more than 10,000 participants.

In both studies, the base year provided a wealth of information on the respondents as well as a retrospective look at the undergraduate experience. The base year covered a variety of topics: enrollment (field of study, institution type, attendance and enrollment patterns, financial aid), employment (occupation, hours per week), plans and expectations for the future (employment after graduation, graduate school enrollment, entry into the teaching profession), and basic demographic information (sex, age, race/ethnicity, marital status).

The first follow-ups, which were conducted one year after the initial interviews, focused primarily on the lives of bachelor's degree recipients after graduation. Topics included postgraduation employment (occupation, hours per week, job search strategies, job training, job entry), post-bachelor's degree enrollment (graduate school enrollment, field of study, financial aid), family formation, civic participation, and undergraduate experiences (coursework, institutions, credits earned, grade point average). The first follow-up of the 1992–93 cohort also included an analysis of undergraduate study transcripts.

Sample Selection

To avoid the confounding influence of prior bachelor's degrees, the sample in each year was restricted to those for whom the bachelor's degree that qualified them for participation was their first bachelor's degree. Prior certificates, licenses, associate degrees, or postsecondary enrollment

without program completion were permitted. Demographic characteristics included age at bachelor's degree completion as indicated by graduates' age on Dec. 31 of the academic year in which they graduated. To minimize the effect of outliers, the sample in each year was restricted to those who were age 35 or younger at the time of bachelor's degree completion.

Employment Status

The sample was divided by employment level, which was based on the response to the first question about employment status. Response categories included working full time and working part time, laid off, disabled, or homemaker. For these rounds, employment was determined based on the answer to the first question, and respondents who indicated they worked full or part time were included.

In a few cases, a question or set of questions excluded a subset of these employed people. Elementary and secondary school teachers were sometimes excluded because they completed an additional detailed survey section on their employment experiences. Self-employed respondents were sometimes excluded from questions thought to be irrelevant to them, and where appropriate, their responses were imputed.

Once employment was determined, information about the number of jobs respondents held was used to determine who worked in multiple jobs, and these respondents were combined with those who worked full time in one job; part-time workers were analyzed separately. Approximate unweighted sample sizes are shown in Figure 22.

Regression Results for 1999–2000 Graduates One Year After Graduation

The regression analysis of earnings one year after graduation for the combined sample of women and men shows a gender pay difference of 5 percent, controlling for educational and occupational choices as well as demographic and personal characteristics (see Figure 23). That is, when all the selected job and workplace, education and training, and demographic and personal variables were included, women

Figure 22. Sample Sizes of 1992–93 and 1999–2000 Cohorts, by Employment Status

Employment status	Cohort	Unweighted sample size
Full time or multiple jobs	1992–93	5,600
Full time or multiple jobs	1999–2000	6,100
Part time	1992–93	1,100
Part time	1999–2000	780

Note: The 1992–93 cohort was interviewed in 1994; the 1999–2000 cohort was interviewed in 2001.
Source: Bradburn (2006).

earned 5 percent less than men earned (seen at the top of Figure 23 as the gender coefficient).

Job and Workplace Characteristics

The regression results show that occupational choice appears to be especially important to women. Women have higher earnings when they choose business and management; engineering/architecture; computer science; editing/writing/performing; research, science, technology; or service industry occupations as opposed to education; human/protective services, law; administrative/clerical/legal support; or “other” occupations.

Choice of industry and sector of the economy affect both women’s and men’s earnings. For women, working in the business services industry tends to increase pay relative to other choices. Employment in all sectors other than the nonprofit or self-employed sectors increases earnings for women. For men, industries such as manufacturing, utilities, communications, transportation, finance, insurance, and real estate are associated with a pay advantage over other industries. Men in the for-profit sector, especially self-employed men, earn more than those working for nonprofit companies earn.

Education and Training Characteristics

Women see significant earnings returns for completing a graduate program, certificate, or license after graduation. They also see penalties for being currently enrolled. For both women and men, having work-related training in the last 12 months increases pay.

Undergraduate major choice affects pay for women and men similarly. Majoring in business and management, engineering, and health professions increases pay for both women and men. Women see positive returns from majoring in public affairs or social services; men see positive returns from majoring in mathematics or other sciences.

The type of institution attended has only weak effects on pay, with penalties for men who attended institutions other than those providing doctoral programs. Women seem to experience pay gains from first attending a community college (though this effect is only marginally significant).

Demographic and Personal Characteristics

For both women and men, age at the time of bachelor’s completion affects earnings positively (for the group in the sample that excluded those over 35). For women, being a black/African American is associated (marginally significantly) with higher earnings, whereas for men, being an Asian/Pacific Islander is associated with higher pay. Women living in the Midwest or South generally earn less. Neither marriage nor children have significant effects at this point in the respondent’s career.

Summary

Overall, the regression analysis of earnings one year after graduation suggests that a 5 percent pay gap between women and men remains after accounting for all variables known to affect earnings. Women who choose male-dominated occupations appear to earn more than do other women. Undergraduate majors in business and management, engineering, health professions, or public affairs and social services enhance both women’s and men’s earnings.

Regression Results for 1992–93 Graduates 10 Years After Graduation

The results of this model show a significant gender difference in earnings for women and men, controlling for educational and occupational choices as well as demographic and personal characteristics. When selected job and workplace, education and training, and demographic and personal variables were included, women earned 12 percent less than men earned (seen at the top of Figure 24 as the gender coefficient).

Job and Workplace Characteristics

Sector of employment matters for both women and men. Men who work in for-profit organizations and self-employed men earn about one-third more than do those in the nonprofit sector. For women, working in a for-profit organization increases pay. Autonomy and authority at work are associated with higher pay for both women and men. Occupations associated with higher pay for women include business and management; engineering/architecture; computer science; and research, science, technology. For men, working in engineering/architecture, computer science, and medical professions increases pay.

Undergraduate Education Characteristics

Choice of major still has an effect on wages 10 years after graduation. Women who majored in engineering, health professions, social science, or “other” earn more than do peers who majored in education, public affairs/social services, history, humanities, or psychology. Men earn more from majoring in business and management, engineering, health professions, public affairs/social services, mathematics and other sciences, social science, and psychology than do peers who majored in education or humanities.

Ten years after graduation, institution selectivity appears to matter for women and men, with those graduating from very selective institutions earning more than their peers earn.

Graduate Education and Training Characteristics

For women more than men, obtaining a graduate degree is associated with higher pay. Current enrollment is negatively associated with pay for both women and men.

For women, past employment (number of jobs since graduation, months unemployed, months out of the labor force, and years working part time) negatively affects pay. Only past unemployment has a negative effect on men’s earnings. The data do not show a direct penalty associated with having children. For men, but not women, having children is positively associated with pay.

Summary

The portion of the gender gap that remains unexplained increased from 5 percent to 12 percent 10 years after graduation, after controlling for a similar set of characteristics. This gap among full-time workers may understate the full gender disparities, because those excluded from the sample—those working part time or those temporarily out of the work force—include a disproportionate share of women, many of whom can expect to pay a penalty when they return to full-time employment or may have lower wages than the women in the sample.

A Note on Presentation of Figures 23 and 24

For each group, three main regressions were conducted and presented together in one table, for a total of six regressions. The regressions for the 1999–2000 graduates one year after graduation are reported in Figure 23, and the regressions for the 1992–93 graduates 10 years after graduation are reported in Figure 24. Each table has three columns that refer to three different regressions. The first column is the regression for women, the second is for men, and the third column is for all the women and men in the sample.

Figure 23. Significant Coefficients From Regressions of Weekly Earnings, 1999-2000 Bachelor's Degree Recipients Employed Full Time* in 2001

	Female ‡	Male ‡	All -0.049
Gender (female)			
Job and Workplace Characteristics and Employment Experience			
Occupation			
Administrative/clerical/legal support	†	-0.197	[-0.080]
Business and management	0.142	†	0.121
Computer science	0.348	†	0.276
Editing/writing/performing	0.145	†	—
Education	†	†	†
Engineering/architecture	0.355	†	0.229
Human/protective services, law	†	†	†
Medical professions	—	†	—
Research, science, technology	0.146	†	—
Service industries	0.145	†	0.095
Other	†	†	†
Industry			
Agriculture, forestry, and fisheries	-0.182	-0.298	-0.196
Business services	0.110	†	—
Education	†	[-0.088]	—
Finance, insurance, and real estate	†	0.146	[0.037]
Health care	†	—	—
Manufacturing	†	0.140	—
Mining, petroleum, construction	[-0.279]	—	—
Personal/hospitality services, entertainment/recreation	-0.209	[-0.172]	-0.223
Professional and related services	†	†	†
Public safety and administration	—	†	—
Retail and wholesale trade	-0.075	†	-0.095
Utilities, communications, transportation	†	0.130	—
Other	†	†	†
Employer sector			
For-profit	0.100	[0.077]	0.119
Nonprofit	†	†	†
Federal government (including military)	[0.119]	†	—
State government	[0.083]	†	—
Local government	0.182	†	0.157
Self-employed	†	0.339	0.245
Other	—	—	0.107
Hours worked per week	0.068	0.045	0.057
(Hours worked per week) squared	-0.0006	-0.0003	-0.0005
Had multiple jobs	—	-0.170	-0.120
Had option to telecommute	0.086	0.066	0.047
Months at employer	0.002	—	0.001
Education and Training Characteristics			
Educational attainment			
Bachelor's degree	†	†	†
Some graduate enrollment, no completion	†	†	†
Graduate program completed	0.178	—	0.134
Currently enrolled	-0.080	—	-0.062
Other license or certification	0.095	‡	[0.043]
Work-related training in past 12 months	0.081	0.151	0.098
Undergraduate major			
Biological sciences	†	†	†
Business and management	0.187	0.095	0.170
Education	†	†	†
Engineering	0.272	0.296	0.269

(continued)

	Female	Male	All
Health professions	0.190	0.208	0.233
History	†	†	†
Humanities	†	†	†
Mathematics and other sciences	—	0.276	0.174
Psychology	†	†	†
Public affairs/social services	0.120	†	0.121
Social science	†	[0.054]	0.064
Other	†	†	†
Ever attended less-than-four-year institution	[0.042]	‡	[0.027]
Institution sector			
Public doctoral	†	†	†
Private nonprofit doctoral	†	†	†
Public four-year nondoctoral	—	[-0.117]	-0.050
Private nonprofit four-year nondoctoral	—	-0.057	[-0.046]
Private for-profit	n/a	-0.160	-0.226
Institution selectivity			
Very selective	†	†	†
Moderately selective	-0.067	—	-0.050
Minimally selective	[-0.066]	—	-0.078
Open admission	†	†	†
Demographic and Personal Characteristics			
Age in bachelor's completion year	0.012	0.018	0.014
Race/ethnicity			
Asian/Pacific Islander	†	0.131	—
Black/African American	[0.063]	†	—
Latino/a (any race)	†	†	†
Native American/other/more than one race	†	†	†
White	†	†	†
U.S. citizen	‡	[-0.132]	—
Region of residence			
Midwest	-0.114	‡	-0.100
Northeast	†	‡	†
South	-0.127	‡	-0.098
West	†	‡	†
Outside U.S.	n/a	‡	-0.472
Marital status			
Divorced, separated	†	†	†
Married	—	[0.045]	0.031
Single, never married	†	†	†
Widowed	—	n/a	—
Has any children	—	—	—
Volunteered in past year	‡	—	-0.038
Multiple R ²	0.403	0.296	0.384
Percent of subpopulation included			
Unweighted	71.2%	80.1%	70.7%
Weighted	61.4%	77.3%	61.1%

* Includes respondents with multiple jobs, regardless of hours worked in any job.

— Results not significant ($p > 0.10$).

n/a Not applicable; category empty.

† Reference category for comparison.

‡ Not included in model.

Notes: Results in brackets [] are significant at $0.05 < p < 0.10$, and other results shown are significant at $p < 0.05$. Coefficients in **bold** type were significantly different for women and men (shown only if the coefficient was significant in at least one of the two equations). Coefficients were tested for gender differences only if the variable was categorized identically for men and women. Excludes graduates older than 35 at bachelor's degree completion.

Sources: U.S. Department of Education, National Center for Education Statistics, 2000–01 *Baccalaureate and Beyond Longitudinal Study*. Figure from Bradburn (2006, Table 31B).

Figure 24. Significant Coefficients From Regressions of Weekly Earnings, 1992-93 Bachelor's Degree Recipients Employed Full Time* in 2003

	Female ‡	Male ‡	All
Gender (female)			-0.124
Job and Workplace Characteristics			
Occupation			
Administrative/clerical/legal support	†	†	†
Business and management	0.156	—	0.097
Computer science	0.351	0.151	0.220
Editing/writing/performing	†	†	†
Education	†	†	†
Engineering/architecture	0.192	[0.119]	0.169
Human/protective services, law	†	†	†
Medical professions	—	0.216	0.166
Research, science, technology	0.123	—	—
Service industries	†	†	†
Other	†	—	—
Industry			
Agriculture, forestry, and fisheries	†	—	[-0.119]
Business services	†	†	†
Education	†	†	†
Finance, insurance, and real estate	†	0.194	0.101
Health care	—	—	—
Manufacturing	†	†	†
Mining, petroleum, construction	†	†	†
Personal/hospitality services, entertainment/recreation	-0.133	—	-0.143
Professional and related services	†	†	†
Public safety and administration	†	†	†
Retail and wholesale trade	-0.178	†	-0.083
Utilities, communications, transportation	†	†	†
Other	†	0.078	0.078
Employer sector			
For-profit	0.250	0.305	0.256
Nonprofit	†	†	†
Federal government (including military)	0.238	0.274	0.236
State government	—	—	—
Local government	0.112	0.155	0.132
Self-employed	—	0.305	0.245
Hours worked per week	0.047	0.054	0.053
(Hours worked per week) squared	-0.0004	-0.0004	-0.0004
Hours at nonprimary job	‡	[-0.005]	—
Reported that job requires bachelor's degree	0.208	0.126	0.154
Reported being basically one's own boss	‡	[0.075]	0.073
Helped set salary rates for others	0.129	—	0.097
Participated in hiring/firing decisions	0.089	0.106	0.094
Had option to telecommute	0.101	0.129	0.127
Employment Experience and Continuity			
Number of jobs since graduation	-0.010	—	-0.007
Months unemployed since graduation	-0.005	-0.007	-0.007
Months out of the labor force since 1997	-0.006	‡	-0.005
Years part time since 1997	-0.056	—	-0.041
Education and Training Characteristics			
Educational attainment			
Bachelor's degree	†	†	†
Some graduate enrollment, no completion	†	†	†
Master's*	0.136	—	0.081
Professional	0.383	0.267	0.334

(continued)	Female	Male	All
Doctoral	0.282	[0.109]	0.194
Currently enrolled	-0.024	-0.100	-0.057
Work-related training in past 12 months	—	[0.042]	0.035
Undergraduate GPA	‡	0.113	0.077
Undergraduate major			
Biological sciences	—	—	—
Business and management	—	0.179	0.143
Education	†	†	†
Engineering	0.272	0.192	0.156
Health professions	0.174	0.268	0.214
History	†	—	—
Humanities	†	†	†
Mathematics and other sciences	—	0.177	0.115
Psychology	†	0.128	0.118
Public affairs/social services	†	0.239	0.158
Social science	0.089	0.166	0.137
Other	0.053	0.119	0.097
Institution selectivity			
Very selective	†	†	†
Moderately selective	-0.075	-0.112	-0.093
Minimally selective	—	-0.165	-0.118
Open admission	-0.142	—	-0.103
Demographic and Personal Characteristics			
Age in bachelor's completion year	—	—	—
Race/ethnicity			
Asian/Pacific Islander	—	‡	—
Black/African American	†	‡	†
Latino/a (any race)	†	‡	†
Native American/other/more than one race	†	‡	†
White	†	‡	†
Region of residence			
Midwest	-0.125	†	-0.085
Northeast	†	†	†
South	-0.130	†	-0.090
West	†	†	†
Outside U.S.	—	—	—
Marital status			
Cohabiting	‡	†	†
Divorced/separated	‡	†	†
Married	‡	—	—
Single, never married	‡	†	†
Widowed	‡	†	†
Has any children	—	0.073	—
Volunteered in past year	—	‡	[-0.034]
Multiple R ²	0.426	0.306	0.375
Percent of subpopulation included			
Unweighted	80.9%	79.2%	77.8%
Weighted	78.9%	77.0%	75.6%

*. Includes respondents with multiple jobs, regardless of hours worked in any job.

— Results not significant ($p > 0.10$).

† Reference category for comparison.

‡ Not included in model.

Notes: Results in brackets [] are significant at $0.05 < p < 0.10$, and other results shown are significant at $p < 0.05$. Coefficients in **bold** type were significantly different for women and men (shown only if the coefficient was significant in at least one of the two equations).

Coefficients were tested for gender differences only if the variable was categorized identically for men and women. Excludes graduates older than 35 at bachelor's degree completion.

Sources: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*. Figure from Bradburn (2006, Table 21B).



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HB 1257

House Industry, Business and Labor Committee
House Bills 1257, ~~1293~~, 1294
January 21, 2015

To the North Dakota Legislature,

I request for the people of North Dakota to take a deeper look at the wage gap that exists in the North Dakota. We as a state has an obligation to take care of all our workers,

My name is Jonnie Cassens and I'm a female truck driver. I've driven for 11 years, 3 of them in the Bakken. I've experienced a lot of sex discrimination.

In job interviews I'm repeatedly told "our company doesn't cater to females". I am not asking to be catered to I just want an equal opportunity. I was denied housing (the biggest expense in the Bakken) because I was a woman. They didn't allow females in their housing. I said "fine, what about a per diem I could use for finding myself housing and meals." I was told "no."

In another case, I was personally told that "there has never been a female hired onto this company and it's because you're a distraction on job sites." Why am I the problem? The sexual harassers should be the problem.

Another friend of mine joined me in looking for work. She's a single mother raising a young daughter. She worked for a larger company trucking fleet in North Dakota. She was hired to do accounting. Her pay is half what another man half a thin wall behind her is paid for the same position.

As a single mother, and there are many in ND, she can barely pay for child care and housing. At the end of the month there is nothing left. She knows women and children in dangerous situations because they lack housing and childcare.

Equal pay matters. It would bring better conditions for our children and more economic independence for everyone.

I encourage the North Dakota Legislature to take a deeper look into the issue. Even small adjustments would lead to healthier and more respectful lives for women in this great State of North Dakota.

Jonnie Cassens
701-400-4361
jonniecassens@gmail.com

Industry, Business, and Labor Committee
House of Representatives
January 21, 2014
House Bills 1257, 1293, and 1294

HB 1257

Mr. Chairman, Members of the Committee:

My name is Ellen Chaffee. I live in Bismarck and worked for the State of North Dakota in the university system for 31 years, 1969-1977 and 1985 through 2008. I urge your support for House Bills 1257, 1293, and 1294.

I am grateful for the leadership opportunities the State of North Dakota afforded me and, like so many others in service to the State, I worked long and hard to fulfill that trust. In all of my roles, over all of those years, I encountered and experienced practices that treated women unfairly relative to men. Many times, an equitable salary for a single mother would enable her to further her education or care for her children instead of taking a second job. It would lift a struggling two-income family into warmer, safer vehicles and living quarters. And in leadership positions, an equitable salary would recognize the very same qualities it recognizes in men and put her on a more level playing field as an advocate for her organization. All of these benefits to women circle back and become benefits to the employer as well in the form of retention and recruitment success.

It is still true that a man who asks about his salary is seen as ambitious and self-confident, while a woman is seen as – well, in less flattering ways. Moreover, the man is more likely to get the raise even when she does ask. That is one of the reasons I led two independent universities 75 miles apart for nine years for the same salary I would have made for serving just one of them. Some matters are cultural and cannot be addressed directly by law. What we can do, however, is create supportive conditions for both women and men to advance the cause of pay equity. These bills help do that, and I urge your support.

Thank you.

Jan 21, 2015

Good Morning. For the record, my name is Nick Archuleta and I am the President of North Dakota United. My organization represents some 10,000 K-12, HE, and Public Employees.

On behalf of those members, I stand today in support of **HB 1257**.

Equal pay for equal work, has been an immutable principle in education. As all K-12 teachers in North Dakota perform their duties under a collectively bargained agreement, all teachers are paid based on where they fall on a salary schedule, regardless of gender.

All workers in North Dakota should enjoy that same right. But they don't. Many of the women who send their kids to our schools are single parents. My mother was a single parent of 7 kids for much of my life. Being the sole breadwinner in one's family is hard enough but knowing that you are making less money than a colleague because you're a woman makes it even harder.

Finally in 2015 it's time to let women know that they will receive equal pay for equal work.

- North Dakotans work hard and every North Dakota woman should be rewarded equally for that work.
- There is no basis, no rationale, which justifies unequal pay.
- The only way that we can achieve equal pay is if the government makes a law to ban this practice. The marketplace has, thus far, been unable or unwilling to remedy this injustice.

This committee has a chance to make a difference for our wives, mothers, daughters and sisters. Please give HB 1257 a do pass recommendation.

Thank you. I'll stand for any questions.

HB 1257



January 21, 2015

N.D. House Industry, Business, and Labor Committee
Subject: Equal Pay
TJ Jerke

Mr. Chairman, and members of the Industry, Business, and Labor Committee, My name is TJ Jerke. I am here on behalf of the North Dakota Human Rights Coalition.

The North Dakota Human Rights Coalition is a broad-based coalition of individuals and organizations around North Dakota. Since 2002, the Coalition has been passionately working to effect change so that all people in North Dakota enjoy full human rights. We do this through information, education and legislative action. The Coalition deeply values mutual respect for all people, seeking a common good without denying individual rights, and proactively promoting social and economic justice.

The North Dakota Human Rights Coalition is in support of legislation that will work to diminish the gender pay gap in our state. Recognizing that House Bills 1257, 1293 and 1294, alone will not eliminate this pay inequity, it will send a strong message that "North Dakota is open for business" and seeks to provide an attractive work environment for ALL workers while giving them the respect they deserve.

Please, join the Coalition's mission and help effect change so that all people in North Dakota enjoy full human rights. Give these bills a favorable consideration.

Jan 21, 2015
HB 1257

Good Morning Committee Chairman Keiser and members of the House Industry, Business and Labor committee.

For the record my name is Tom Ricker, I am the President of the North Dakota AFL-CIO, representing working men and women in North Dakota.

I would like to start by thanking Representative Oversen for introducing this important legislation.

The North Dakota AFL-CIO is 100% in support of this package of Equal Pay legislation. While union employees are contractually guaranteed equal pay for equal work, regardless of gender, the majority of North Dakota's working women do not labor under this basic guarantee.

According to research published earlier this year by the National Women's Law Center, North Dakota women are paid just 70.2% of what men are paid, well below the national average of 78.3%. The research found that North Dakota ranked 47th in pay equity. For perspective, Utah, West Virginia and Wyoming all rank higher than North Dakota in regard to pay equity.

Workers produce a product or provide a service to their employer that is of value to the employer. The value of that product or service is the same to the employer whether it is produced by a man or a woman. The cost to the customer is the same, so why shouldn't the pay to the employee be the same?

According to the 2013 United States Census Bureau, women account for 48.9% of all North Dakotans and 46.1% of North Dakota workers are women. This legislation would positively impact nearly ½ of all North Dakota workers, particularly the 23,464 North Dakota households that are headed by women.

Personally I don't like to think of North Dakota women as a statistic though. I prefer to think of these women as our mothers, our daughters and our sisters who deserve to be treated equally in the workplace, especially with respect to wages and benefits.

Thank you for allowing me the opportunity to speak in support of HB 1257, 1293 and 1294. I would encourage you all to vote yes to recommend a do pass on HB

1257, 1293 and 1294 and send a strong, unified message to your colleagues in the House that you support all working women in North Dakota.

I will stand for any questions.

MINIMUM WAGE

Higher State Minimum Wages Promote Fair Pay for Women

October 2014 | Julie Voigtman and Katherine Gallagher Robbins

Women working full time, year round typically make only 78 percent of what their male counterparts make—leaving a wage gap of 22 cents on the dollar.¹ One reason for this wage gap is that women are concentrated in low-wage jobs: two-thirds of minimum wage workers as well as two-thirds of workers in tipped occupations are women.⁴

Raising the minimum wage would help close this gap by increasing wages for workers at the bottom of the spectrum. **Raising the minimum wage and the tipped minimum wage are important steps towards fair pay for women—especially women of color.**

The Federal Minimum Wage & Tipped Minimum Wage

- The federal minimum wage is \$7.25 per hour and the federal minimum cash wage for tipped workers is just \$2.13 per hour.
- Neither minimum wage is indexed for inflation, which means they lose value over time. Congress has raised the minimum wage only three times in 30 years. The tipped minimum wage has been frozen for over 20 years.²
- A full-time, year-round minimum wage worker earns just \$14,500—more than \$4,000 below the poverty line for a mother and two children.³

States with higher-than-federal minimum wages also have smaller wage gaps.

- The average wage gap in states with a minimum wage at or above \$8.00 (17.7 cents) is 22 percent smaller than the average wage gap in states with a \$7.25 minimum wage (22.7 cents).⁵
- In 2013, six of the ten states with the narrowest wage gaps had minimum wages above the federal level of \$7.25 per hour. Among the ten states with the widest wage gaps, only one had a minimum wage above \$7.25.⁶

States with the 10 smallest wage gaps, 2013

State	Women's Earnings/ Men's Earnings	Wage Gap	Minimum Wage
District of Columbia	91.3%	8.7%	\$8.25
New York	85.8%	14.2%	\$7.25
Maryland	85.5%	14.5%	\$7.25
Florida	84.3%	15.7%	\$7.79
California	83.9%	16.1%	\$8.00
Arizona	83.6%	16.4%	\$7.80
Hawaii	83.3%	16.7%	\$7.25
Nevada*	83.3%	16.7%	\$8.25
Vermont	83.0%	17.0%	\$8.60
North Carolina	82.8%	17.2%	\$7.25

States with the 10 widest wage gaps, 2013

State	Women's Earnings/ Men's Earnings	Wage Gap	Minimum Wage
Louisiana	65.9%	34.1%	\$7.25
Wyoming	69.3%	30.7%	\$7.25
West Virginia	69.4%	30.6%	\$7.25
Utah	69.9%	30.1%	\$7.25
North Dakota	70.2%	29.8%	\$7.25
Montana	73.5%	26.5%	\$7.80
Indiana	73.8%	26.2%	\$7.25
Nebraska	74.1%	25.9%	\$7.25
Oklahoma	74.9%	25.1%	\$7.25
South Dakota	75.1%	24.9%	\$7.25

Notes: Earnings ratios and wage gaps are NWLC calculations are based on the 2013 American Community Survey, the most recent data available. For comparability 2013 minimum wages are listed (see U.S. Department of Labor, Wage and Hour Division, Minimum Wage Laws in the States *Changes in Basic Minimum Wages, 1968 to 2013*). Since 2013 a number of states have enacted legislation to raise the minimum wage (see NWLC's resource *Women and the Minimum Wage, State by State* for the current status of each state, available at <http://www.nwlc.org/resource/women-and-minimum-wage-state-state>).

*Nevada's minimum wage in 2013 was \$7.25 if the employer provided health insurance. In Montana, the minimum wage for businesses with gross annual sales of \$110,000 or less was \$7.25 per hour.

Minimum wage workers are disproportionately women, particularly women of color.

- Women made up about two-thirds of all workers who were paid minimum wage or less in 2013, and 60 percent of full-time minimum wage workers.⁷ Women were also two-thirds of workers in tipped occupations in 2013.⁸
- Women of color are disproportionately represented among minimum wage workers. Twenty-two percent of minimum wage workers are women of color, compared to less than 16 percent of workers overall.⁹
- In every state, women are about half or more of the workers making at or below the state's minimum wage. In 25 states, women represent more than six in ten of the workers making at or below the state minimum wage, including four states where women represent more than seven in ten of the workers making at or below the state minimum wage.¹⁰

Raising the minimum and tipped minimum wages would help close the wage gap.

- In 2013, women working full time, year round were typically paid 78 cents for every dollar paid to their male counterparts. The wage gap was even larger for

women of color: African American women working full time, year round typically made only 64 cents, and Hispanic women only 56 cents, for every dollar paid to their white, non-Hispanic male counterparts.¹¹

- By lifting wages for the lowest-paid workers while leaving wages unchanged for those at the top, raising the minimum wage would likely narrow the range of wages paid to workers across the economy—and because women are the majority of workers who would see their pay go up, the wage gap would narrow as well.¹²
- The White House Council of Economic Advisers projects that raising the minimum wage to \$10.10 and indexing it to inflation could close the wage gap by five percent.¹³
- Raising the minimum wage would be especially helpful for women of color, who experience wider wage gaps and are disproportionately represented among minimum wage earners.
- It is critical to raise the tipped minimum wage along with the minimum wage. When tips fall short of the minimum wage, employers are supposed to make up the difference, but often fail to do so.¹⁴ Raising the tipped minimum wage would ensure a more stable and adequate base for a low-paid and predominantly female workforce.

1 NWLC, *The Wage Gap is Stagnant For Nearly A Decade* (Sept. 2014), available at <http://www.nwlc.org/resource/wage-gap-stagnant-nearly-decade>.

2 NWLC, *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage* (Sept. 2014) available at

<http://www.nwlc.org/resource/fair-pay-women-requires-increasing-minimum-wage-and-tipped-minimum-wage>. "Minimum wage workers" refers to workers making the minimum wage or less.

3 Sylvia A. Allegretto & David Cooper, *Econ. Policy Inst. & Ctr. on Wage & Employment Dynamics, Univ. of Ca., Berkeley, Twenty-Three Years and Still Waiting for Change*, at 3 (July 2014), available at <http://s2.epi.org/files/2014/EPI-CWED-SP379.pdf>.

4 NWLC calculation assuming 40 hours per week, 50 weeks per year at \$7.25 per hour. U.S. Census Bureau, *Poverty Thresholds for 2013* <https://www.census.gov/hhes/www/poverty/data/threshld/index.html> (last visited Sept. 24, 2014).

5 This average wage gap in all states with minimum wages above \$7.25 per hour (19.3 cents) is also smaller than the average wage gap in states with minimum wages of \$7.25. NWLC calculations of state wage gaps based on U.S. Census Bureau, 2013 American Community Survey, Tables R2001 and R2002, available at <http://www.census.gov/acs/www/>. U.S. Department of Labor, Wage and Hour Division, *Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected years 1968 to 2014*, available at <http://www.dol.gov/wld/state/stateMinWageHis.htm> (last visited Sept. 27, 2014). D.C. is considered a state for the purposes of this comparison.

6 *Id.*

7 NWLC, *Fair Pay for Women*, *supra* note 2. This is true for both those 16 and older (62 percent) and 25 and older (64 percent).

8 *Id.*

9 *Id.*

10 NWLC calculations based on unpublished U.S. Department of Labor, Bureau of Labor Statistics data for all wage and salary workers. Figures are annual averages for 2013. Available data do not permit a precise calculation of the percentage of women making the state minimum wage in all states due to the increments by which wages are reported. Estimates are based on the share of workers who are women at or below the reported wage levels immediately above and below the relevant state's minimum wage. For more information see NWLC, *Women and the Minimum Wage, State by State*, <http://www.nwlc.org/resource/women-and-minimum-wage-state-state> (last visited Sept. 26, 2014).

11 NWLC, *The Wage Gap is Stagnant For Nearly A Decade*, *supra* note 1.

12 A higher minimum wage generally would narrow the wage distribution, effectively narrowing the wage gap. Nicole M. Fortin & Thomas Lemieux, *Institutional Changes and Rising Inequality*, *Journal of Economic Perspectives*, Spring 1997, 75-96, at 78, available at <http://www.jstor.org/stable/2128227>. See also Francine D. Blau & Lawrence M. Kahn, *Swimming Upstream*, *Journal of Labor Economics*, Jan. 1997, 1-42, at 28, available at <http://www.jstor.org/stable/2535313>.

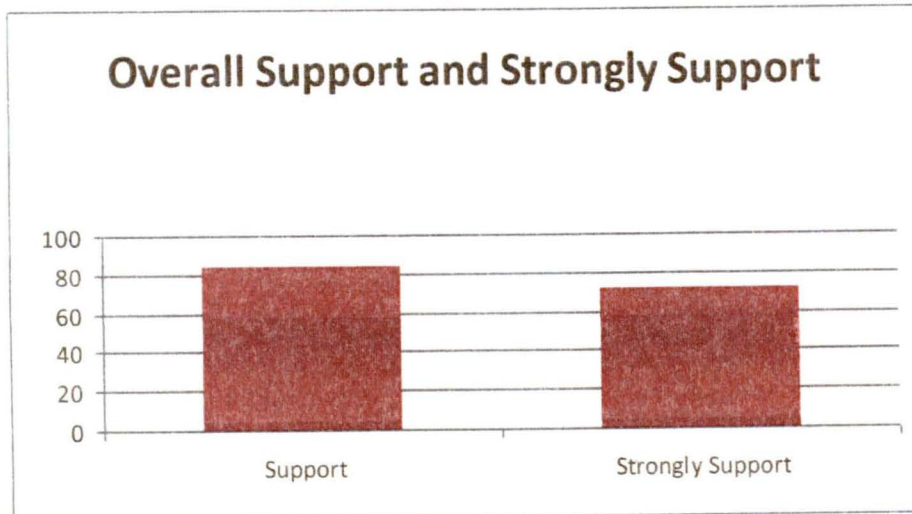
13 The White House, *The Impact of Raising the Minimum Wage on Women*, at 2 (Mar. 2014), available at <http://www.whitehouse.gov/sites/default/files/docs/2014/0325minimumwageandwomenreportfinal.pdf>.

14 *Id.*

Paycheck Fairness Act Coalition

New Polling Data Shows Voters Overwhelmingly Support the Paycheck Fairness Act

In a nationwide poll of registered voters, **84% said they support** “a new law that would provide women more tools to get fair pay in the workplace.” When respondents were told that the “law will also make it harder for employers to justify paying different wages for the same work and ensure that businesses that break the law compensate women fairly,” **72% strongly support** such a law.¹

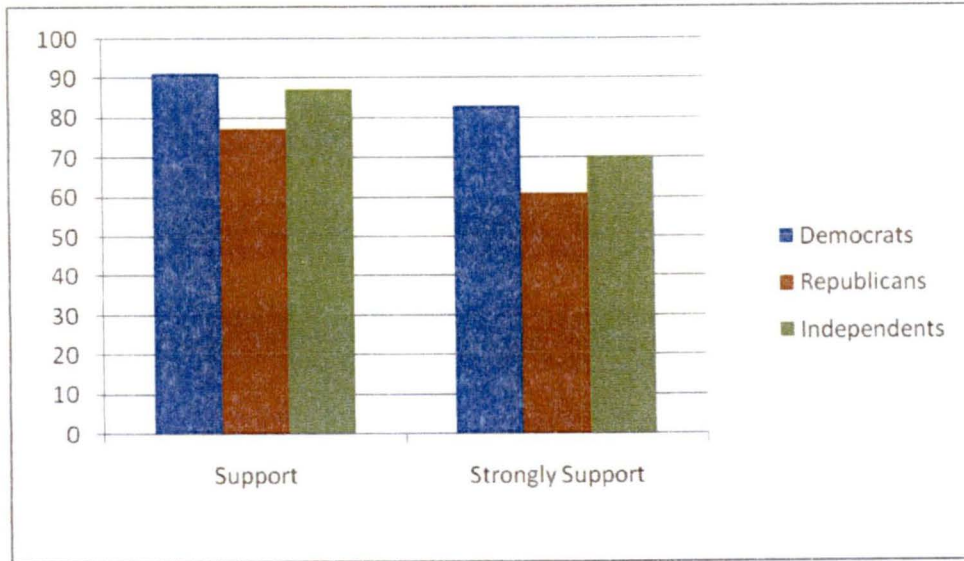


For a listing of the over 80 state and national organizations that are members of Paycheck Fairness Action Coalition go to
<http://www.nwlc.org/pdf/SignOnSenatePaycheckFairness2009.pdf>

Members of All Political Parties Strongly Support Improving our Equal Pay Laws:

91% of Democrats, 77% of Republicans and 87% of Independents support the new law.

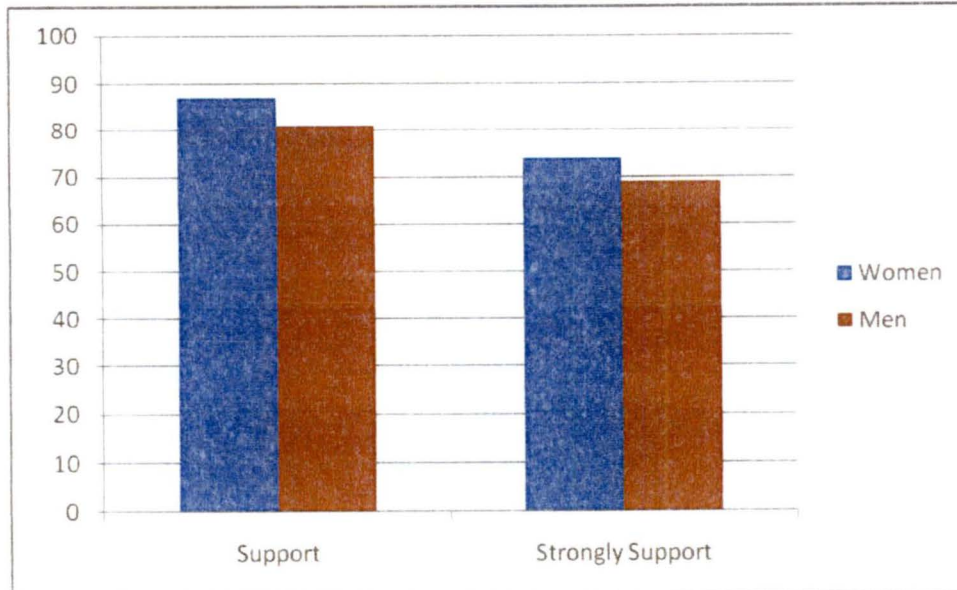
83% of Democrats, 61% of Republicans and 70% of Independents strongly support the new law.



Women and Men Strongly Support Improving our Equal Pay Laws:

87% of women and 81% of men support the new law.

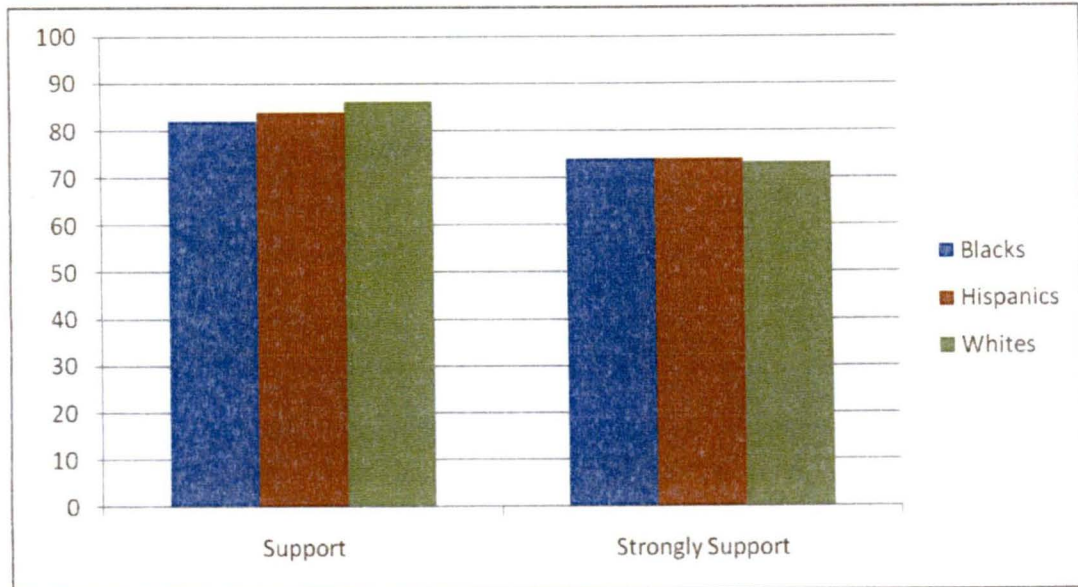
74% of women and 69% of men strongly support the new law.



Members of all Racial and Ethnic Groups Strongly Support Improving our Equal Pay Laws:

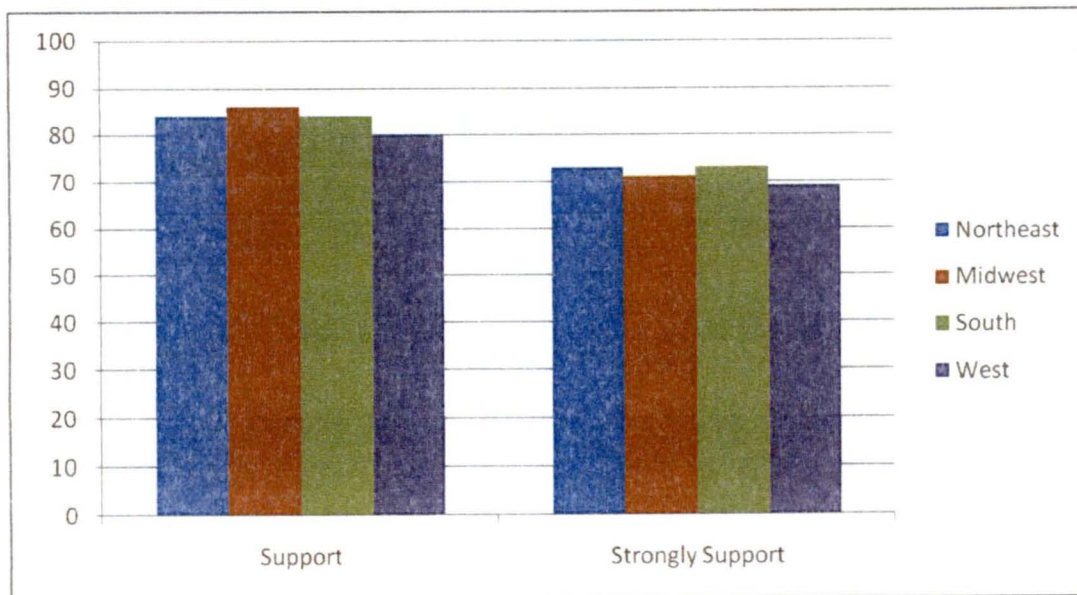
82% of Blacks, 84% of Hispanics and 86% of Whites support the new law.

74% of Blacks, 74% of Hispanics and 73% of Whites strongly support the new law.



Voters in All Geographic Regions Strongly Support Improving our Equal Pay Laws:

84% of the Northeast, 86% of the Midwest, 84% of the South and 80% of the West support the new law. **73% of the Northeast, 71% of the Midwest, 73% of the South and 69% of the West** strongly support the new law.



To Protect Families' Economic Security, the Senate Needs to Pass the Paycheck Fairness Act

In 2008, women working full-time, year-round were paid only about 77 cents for every dollar paid to men. African-American women were paid only 61 cents, and Latinas only 52 cents, for every dollar paid to by white, non-Hispanic men.²

The pay gap translates into \$10,622 a year³ or \$431,000 over a woman's lifetime of lost earnings.⁴

Women are responsible for the economic security of their families. Nearly four in ten mothers (39.3%) are primary breadwinners, bringing home the majority of the family's earnings, and nearly two-thirds (62.8%) are breadwinners or co-breadwinners, bringing home at least a quarter of the family's earnings.⁵

Women and the families that depend upon them deserve fair pay. The Paycheck Fairness Act (S182) has already passed the House and has 40 co-sponsors in the Senate. It is time to pass the Paycheck Fairness Act!

Questions on the poll? Contact Sharyn Tejani, National Partnership for Women and Families, 202.986.2600, stejani@nationalpartnership.org.

¹ The poll was conducted from May 21-24, 2010 by Lake Research Partners. A nation-wide sample of 932 registered voters was asked the following question:

Congress is considering a new law that would provide women more tools to get fair pay in the workplace. The law will also make it harder for employers to justify paying different wages for the same work and ensure that businesses that break the law compensate women fairly.

Would you support or oppose such a law?

(IF SUPPORT/OPPOSE) Is that STRONGLY (support) (oppose) or NOT-SO-STRONGLY (support) (oppose)?

² U.S. Census Bureau, Current Population Survey, 2009 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2008 – People 15 Years Old and Over by Total Money Earnings in 2008, Age, Race, Hispanic Origin, and Sex, available at http://www.census.gov/hhes/www/cpstables/032009/perinc/new05_000.htm (last visited January 14, 2010).

³ National Women's Law Center, "Women's Lower Wages Worsen their Circumstances in a Difficult Economy," (April 2010) available at <http://www.nwlc.org/pdf/lowerwageshurtwomen.pdf> (last visited June 3, 2010).

⁴ Heather Boushey, "Families Can't Afford the Gender Wage Gap," Center for American Progress (April 2010), available at http://www.americanprogress.org/issues/2010/04/pdf/equal_pay_day.pdf (last visited June 3, 2010).

⁵ Heather Boushey, "The New Breadwinners," in *The Shriver Report: A Women's Nation Changes Everything*, available at http://www.americanprogress.org/issues/2009/10/womans_nation.html/#breadwinners (last visited April 13, 2010).



Real Possibilities in

North Dakota

House Bills 1257 and 1293 - SUPPORT

January 21, 2015

House Industry, Business and Labor Committee

Josh Askvig - AARP North Dakota

jaskvig@aarp.org or 701-989-0129

Chairman Keiser and members of the House Industry, Business and Labor Committee, I am Josh Askvig, Associate State Director of Advocacy for AARP North Dakota. We rise in support of the package of gender equity bills before you today (House Bills 1257 and 1293).

Dr. Ethel Percy Andrus, a retired educator and AARP's founder, became an activist in the 1940s when she found a retired teacher living in a chicken coop because she could afford nothing else. Dr. Andrus couldn't ignore the need for health and financial security in America and set the wheels in motion for what would become AARP. We are a nonprofit, nonpartisan membership organization with 85,000 members in North Dakota and 38 million nationwide. We understand the priorities and dreams of people 50-plus and are committed to helping them live life to the fullest, including here in North Dakota.

The two bills you are hearing this morning are aimed at addressing and closing some important pay equity concerns on the basis of gender. AARP policy "...supports efforts to eliminate all barriers to women's employment and ensure equality in employment opportunities, pay, and benefits." Occupational segregation by sex and pay inequity among workers lead to less retirement income for women. Pay equity is key to enhancing women's wages and retirement income.

Mr. Chairman, thank you for your time and we urge this committee to support these two bills.

Testimony of Andy Peterson
Greater North Dakota Chamber of Commerce

HB 1257

January 21, 2015

Mr. Chairman and members of the committee, my name is Andy Peterson; I am the President and CEO of the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of the theory behind House Bill 1254, but we ultimately oppose this piece of legislation as written.

The Greater North Dakota Chamber supports equal pay for equal work between the sexes. Over the last fifty years, as a nation we've embraced the idea of equality and take steps each and every day to ensure all people are treated equally under the law. This bill seeks to codify that philosophy and put our stamp on equality policy. That being said, we have found a number of issues with this bill that we would like to draw your attention to.

First and most concerning is this bill makes litigation much easier. Litigation should never be hard. People should always be able to have access to the court to solve any issues that cannot be resolved outside of a courthouse. This bill, however, swings too far in the opposite direction and makes litigation the easiest possibility for any person upset with their compensation or with some perceived grievance. At the end of the day, the real winners of this bill are the attorneys.

Additionally, the burden shift referenced on page 3, lines 21-26 is a huge issue. This section says that if the employee can show that he or she is not being paid the same amount as an employee doing comparable work on jobs that have comparable requirement, the burden shifts to the employer to prove that the difference is not sex based and to prove it with a preponderance of the evidence. This puts business owners in a precarious position. There are an infinite amount of reasons why two employees may be paid differently. Those reasons may or may not be acceptable to the employee, but that does not give the employee the right to waste company time and resources defending their compensation decisions.

The Greater North Dakota Chamber supports the idea of gender equality in the workplace. This bill is a valiant effort toward that goal. Until these issues are addressed, and this bill is changed to protect the employer from frivolous lawsuits, we have to ask for a do not pass recommendation on HB 1257.

Thank you and I will now entertain any questions.

Jack Dalrymple
Governor

Troy T. Seibel
Commissioner



State Capitol
600 E. Boulevard Ave. - Dept. 406
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

Testimony on HB 1257
Prepared for the
House Industry, Business and Labor Committee

January 21, 2015

Good morning Chairman Keiser and members of the Industry, Business and Labor Committee, my name is Troy Seibel, and I am the Commissioner of Labor. I appear before you today neutral on HB 1257. I am here to provide information about the current statutes regarding equal pay for men and women and how HB 1257 alters these statutes and its impact on the Department of Labor and Human Rights.

N.D.C.C. ch. 34-06.1

North Dakota's Equal Pay for Men and Women Act is codified at N.D.C.C. ch. 34-06.1. This chapter prohibits discrimination on the basis of gender by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite gender for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility. The chapter is carried out by the Labor Commissioner, who has the power to: 1) inspect payroll records with a court order or with the consent of an employer, 2) examine witnesses under oath and require the production of certain documents, 3) eliminate unlawful pay practices by informal methods of conciliation and persuasion, and 4) issue regulations as necessary to carry out the chapter. The Commissioner is also able to bring legal action in district court at the request of an employee who claims the chapter has been violated. The Commissioner does not have the power to receive formal complaints from employees, conduct administrative investigations, or issue a formal determination that the chapter has been violated.

Federal Equal Pay Act of 1963 (29 U.S.C. § 206)

The Department has entered into a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC). The EEOC is the federal agency charged with enforcing the Equal Pay Act of 1963, a federal statute that is similar to North Dakota's Equal Pay for Men and Women Act. Under this work-sharing agreement, the Department and EEOC routinely ask one another to investigate charges of discrimination issued under federal law. At this time the Department asks the EEOC to investigate all equal pay complaints it receives, as the

Department does not have authority to conduct such investigations under state law.

Equal Pay vs. Discrimination Complaints


I would like to discuss the difference between a complaint under an equal pay statute vs. a complaint made under the various discrimination statutes. Specifically, it is important to point out that many complaints received by the Department regarding disparate pay based upon gender are currently lodged under the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and Title VII (42 U.S.C. § 2000e, *et seq.*) and subsequently investigated by the Department. How the complaint is received by the Department will determine whether it is viewed as a discrimination complaint or an equal pay complaint.

For example, if an employee files a complaint with the Department alleging all female employees at XYZ, Inc. are paid less than their male counterparts, the Department will treat the complaint as one being made under the North Dakota Equal Pay for Men and Women Act and the Equal Pay Act of 1963 and refer the complainant to the EEOC. However, if an employee files a complaint with the Department alleging she is paid less than her male co-workers because she is female, the Department will treat the complaint as one being made under the North Dakota Human Rights Act and, if applicable, Title VII, as discrimination based upon gender in the terms and conditions of her employment. The vast majority of complaints received by the Department are of the latter type. Again, these are filed as employment discrimination complaints under the North Dakota Human Rights Act and, if appropriate, Title VII, investigated by the Department, and a formal determination is issued.

HB 1257 and its Impacts

HB 1257 would make significant changes to N.D.C.C. ch. 34-06.1. Among several changes, the bill would now require the Department to receive administrative complaints alleging the North Dakota Equal Pay for Men and Women Act was violated, investigate these complaints, and issue determinations. These types of investigations are very resource intense. They require a complete examination of an employer's payroll and employment records to determine if a pattern of unequal pay based upon gender exists. In addition, they typically involve class-action lawsuits for enforcement. The Department's current staffing and budget levels do not provide sufficient resources to conduct investigations of this type.

A fiscal note was not requested on this bill. However, if HB 1257 passes, the Department will be required to request additional funds to carry out its requirements under the chapter. The EEOC has the resources available to carry out these large-scale investigations. Further, the Department's work-sharing agreement with the EEOC currently provides that the EEOC will undertake these types of investigations for the Department. I would also point out that between the North Dakota Equal Pay for Men and Women Act, the Equal Pay Act of 1963,



the North Dakota Human Rights Act, and Title VII, current law provides numerous protections against unlawful discrimination in the workplace in the form of unequal pay based on gender.

Thank you and I'd be happy to answer any questions you may have.

Jack Dalrymple
Governor

Troy T. Seibel
Commissioner



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Bismarck, ND 58505-0340

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**DEPARTMENT OF LABOR
AND HUMAN RIGHTS**

**Testimony on HB 1257
Prepared for the
House Industry, Business and Labor Subcommittee**

January 26, 2015

Good afternoon Chairman Sukut and members of the subcommittee on HB 1257, my name is Troy Seibel, and I am the Commissioner of Labor. As requested by this subcommittee, I have reviewed the Department's records regarding allegations of unequal pay on the basis of gender and offer the following statistical information to aid the subcommittee.

Alleged Violations of Equal Pay Act Investigated by the EEOC

As I have previously mentioned the Department routinely refers any allegations of violations of the Equal Pay Act to the EEOC. The EEOC has conducted the following number of investigations of allegations of violations of the Equal Pay Act in North Dakota:

FY 2009 - 0	FY 2012 - 0
FY 2010 - 0	FY 2013 - 1
FY 2011 - 3	

Basis of Charges of Discrimination under the Human Rights Act or Title VII

Many complaints received by the Department regarding unequal pay based upon gender are currently lodged under the Human Rights Act and Title VII and investigated by the Department. As requested by this subcommittee, I reviewed the factual allegations behind the cases closed by the Department on the basis of sex/gender for 2014. The Department closed a total of 48 cases of discrimination based upon sex in 2014. For reference, the Department closed a total of 150 discrimination cases of all types in 2014.

Of these 48 cases, 6 were at least partly based on an allegation of unequal pay on the basis of gender. Of these 6 cases, the Department referred 1 to the EEOC (which found no merit to the claim), 1 was settled before we issued a determination, and the remaining 4 cases were investigated by the Department. Following an investigation in these 4 cases, the Department found all were without merit. Interestingly, one of these cases investigated by the Department was made by a male employee alleging he received less pay than female co-workers for the same work.

Thank you and I'd be happy to answer any questions you may have.

Testimony
HB Bill 1257, 1294
House Industry, Business, & Labor Committee
January 26, 2015 (submitted)

Chairperson Keiser, and other honorable members of this committee. My name is C.T. Marhula, 617 Plain Hills Drive, Grand Forks, ND. This is written testimony for your consideration.

My background, I was one of the first people in North Dakota to be a certified Senior Professional in Human Resource Management, the highest designation in the HR field. I served nine years as a neutral on the City of Grand Forks Civil Service Commission. While I have never practiced law, until recently, I was a licensed attorney in both North Dakota and Minnesota. I have an MBA and JD from the University of North Dakota. I have been the chief negotiator for both labor and management on collective bargaining agreements.

I urge you to pass legislation that mandates equal compensation for comparable worth jobs.

Below are some of the actual practices I have been aware of in my career.

A single mother passed over in the hiring process in favor of a person who had existing health insurance policy through a spouse. A married female passed over because her spouse did not have health insurance at his job. While another female was hired, she had coverage through her spouse. A man passed over for promotion as retaliation because he refused to cancel his family insurance and go on his spouses' policy.

While these are anecdotal and impossible to prove, any HR professional who denies this does not happen is either naïve or lying. At today's costs, these are \$15-20,000 bottom line decisions.

A decision maker used "market research" to set wages. The result, the market justified raises for males, and nearly all females had their wages frozen. While the market is a useful tool, no one can deny traditional female careers paid less than traditional male jobs, and this was the result of our cultural values at the time. It was also impacted by the fact nearly all decision makers were male. As to the claim that the market always self-corrects, let me just point out the following fact. Judge Judy makes about \$47 million per year. Chief Justice Roberts make about \$260,000 per year. Nuff said.

On a positive note, in the past, the City of Grand Forks used a point factor system to analyze each job. Thus, any employee, male or female, who had a job that scored at 275 points were on the same pay scale. I understand they may have gone back to using just market. If true, this is a huge step backwards for the rank and file workers of both sexes, especially women.

Minnesota has an Equal Pay Act which mandates government units test and comply with comparable worth rules. Even with this strong law, I saw a male official order the consultant to rework the numbers so a higher ranked female's lower pay than a male would not trigger noncompliance with the act.

It is my professional opinion that both cultural and institutionalized discrimination still exists with regard to the compensation of women based on marital status, spousal employment situation, number of dependents and/or gender. Both sexes face discrimination based on sexual orientation.

While progress has been made, it is time to end it completely.

On another note, I am troubled some people actually advance the premise that a parent (usually the mother) who takes time off from the workforce to be a stay at home parent somehow is less of an employee than one who does not. To suggest that a parent/employee who embraces traditional family values deserves to be punished with lower compensation is laughable. To promote family values, employers should be mandated to give longevity credit to those who take parental leave for the time they are absent. This is a value all should be able to support.

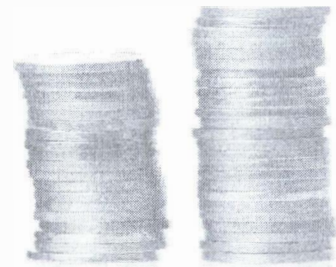
In summary, passage of these bills will protect both employers and employees and insure North Dakota is a great place to live and work for all citizens.

Thank-you.

C.T. Marhula
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HB 1257
Jan 26, 2015

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50 years & counting:

the unfinished business of
achieving fair pay

HB 1257
Jan 24, 2015

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Introduction

THE EQUAL PAY ACT OF 1963 is the landmark law that requires employers to pay male and female employees equally for substantially equal work. Until the Act was signed into law it was perfectly legal and common practice to openly pay women lower wages than men for the same job. Women working full time, year round were typically paid only 59 cents for every dollar paid to their male counterparts¹ and job postings routinely listed separate salaries for male and female employees.²

THIS HISTORIC ACT ENCOUNTERED INITIAL RESISTANCE.

Opponents of the Equal Pay Act argued that the legislation was unnecessary, that it would be detrimental to women and to businesses, and that employers would respond to the law by refusing to hire women.³ Some attempted to justify the pay differences between men and women, claiming that women were less skilled, had higher rates of absenteeism, and were "more prone to homemaking and motherhood."⁴ In contrast, today the tide of public opinion has turned strongly in favor of equal pay. In fact, 84 percent of Americans say they support new laws to give women more tools to obtain fair pay.⁵

Moreover, the last five decades have proven any critics of the Equal Pay Act wrong. This crucial legislation laid the groundwork for two other core nondiscrimination laws that followed – Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Together, these laws vastly expanded opportunities for women and girls at work and in school. Since passage of the Equal Pay Act, women's labor force participation and education levels have increased dramatically. While in 1963 only 38 percent of adult women overall were in the labor force, today that figure is 59 percent.⁶ Likewise, in 1963, less than 7 percent of women 25 years and older were college graduates, but today nearly 31 percent of women have graduated from college.⁷ Women have also entered professions that were previously closed to them, using Title VII to fight back against exclusionary policies and practices.⁸

But a substantial wage gap still remains. In 2011, the most recent year for which data are available, women working full time, year round were typically paid just 77 cents for every dollar paid to their male counterparts – a loss of \$11,084 in 2011.⁹ Although women have narrowed the gap by 18 cents over the past five decades, the wage gap today stands at 23 cents.¹⁰ For some women of color the numbers are especially shocking: African-American women working full time, year round are typically paid only 64 cents and Hispanic women are typically paid only 55 cents for each dollar paid to their white, non-Hispanic male counterparts.¹¹ These gaps resulted in a loss of \$18,817 for African-American women and \$23,298 for Hispanic women in 2011 alone.¹²

Fifty years later women are still paid less than men in nearly every occupation. One study examining wage gaps within occupations found that out of 265 major occupations, men's median salaries exceeded women's in all but one.¹³ This is true whether women work in predominately female occupations, predominantly male occupations, or occupations with a more even mix of men and women.¹⁴ It is also true for women in jobs across the income spectrum.¹⁵

And, as the following graph shows, while there has been some slow progress since 1963 toward closing the wage gap, the last decade has resulted in no progress at all.

THE WAGE GAP OVER TIME

RATIO OF MEDIAN EARNINGS OF FULL-TIME, YEAR-ROUND WORKERS



Source: Census Bureau, Current Population Survey

Furthermore, women are still paid less at every level of education.¹⁶

Even women with the lowest levels of education experience a significant wage gap, as compared to their male counterparts. Women without a high school degree earn \$844,520 over a 40-year career working full time, year round, as compared to men without a high school degree who earn \$1,216,920 over a 40-year career, working full time, year round.¹⁷

THE WAGE GAP BY EDUCATION LEVEL

Education Level	Women's Earnings/ Men's Earnings	Wage Gap
Started high school, but did not finish	69%	31%
High school graduate (including GED)	74%	26%
Some college, no degree	73%	27%
Associate degree	77%	23%
Bachelor's degree	74%	26%
Master's degree	73%	27%
Professional degree	68%	32%
Doctorate degree	77%	23%

Source: NWLC calculations based on Current Population Survey, Annual Social and Economic Supplement, 2012. Figures are for full-time, year-round workers.

And the wage gap between men and women starts early, even among those with college degrees. A study by the American Association of University Women found that college graduates experience a wage gap as soon as one year after graduation.¹⁸ One year out, after accounting for variables such as "occupation, economic sector, hours worked per week, multiple jobs, months unemployed since graduation, undergraduate GPA, undergraduate major, undergraduate institution sector, institution selectivity, age, region of residence, and marital status," women were paid only 93 percent of what men were paid.¹⁹

The fact that women overall working full time, year round are typically paid just 77 cents for every dollar paid to their male counterparts translated to a gap of \$11,084 less per year in median earnings in 2011. This gap adds up over time: a woman who worked full time, year round would typically lose \$443,360 in a 40-year period due to the wage gap, and have to work 12 years longer than her male counterpart to make up this gap.²⁰ The older women are, the larger the wage gap they experience.²¹

THE WAGE GAP BY AGE

Age	Women's Earnings/ Men's Earnings	Wage Gap
16 to 24	92%	8%
25 to 34	88%	12%
35 to 44	80%	20%
45 to 54	73%	27%
55 to 64	73%	27%
65 and older	70%	30%

Source: NWLC calculations based on Current Population Survey, Annual Social and Economic Supplement, 2012. Figures are for full-time, year-round workers.

The wage gap also has profound consequences for families, who rely on women's earnings now more than ever. Today, women are primary breadwinners in more than 41 percent of families with children.²² In another 23 percent of families with children women are co-breadwinners, bringing in between 25-50 percent of family earnings.²³ Additionally, 8.6 million female breadwinner families are headed by single mothers.²⁴ Families that are low income are the most likely to have female primary breadwinners, and these families can least afford the wage gap.²⁵ The wage gap leaves all of these women and their families shortchanged.²⁶

It does not have to be this way. When President Kennedy signed the Equal Pay Act into law, he described it as only a "first step" and emphasized that "much work remains to be done to achieve full equality of economic opportunity."²⁷ Fifty years later it is past time to finally put in place the set of policies we need to close the wage gap.

This report shines a light on federal and state policies that can help close the wage gap. It identifies the remaining barriers to achieving fair pay for women and concrete steps that can be taken by federal and state policymakers to ensure that women and their families are not struggling indefinitely to make do with less.

Barriers to achieving fair pay

BEFORE THE EQUAL PAY ACT BECAME LAW

employers often advertised for higher-paying jobs in a section of the newspaper labeled “Help Wanted—Male.”²⁸ Lower pay for women was rationalized by the assumption that women’s earnings were not important to the household income and that women would be supported by their fathers and eventually, by their husbands.²⁹ Even after passage of the Equal Pay Act, some employers continued to try to justify paying women less because the market would bear it, under the theory that women should be paid less simply because they would accept lower pay than men.³⁰ But in *Corning Glass Works v. Brennan*, decided in 1974, the Supreme Court held that an employer’s policy of providing higher rates to male inspectors simply because they would not work at the lower rates paid to female inspectors violated the Equal Pay Act.³¹ This case made it unmistakably clear that employers could no longer justify unequal pay simply because the going market rate is lower for women than for men. The vestiges of these policies can be seen today in women’s continued lower pay for the same job; segregation into a set of jobs that are perceived as “women’s work,” several of which are low paying,³² and underrepresentation in high-wage jobs.³³ Similarly, despite women making up nearly half the labor force today, women still fulfill a far greater share of caregiving responsibilities at home than men. And women continue to experience sex discrimination at work because of their actual or perceived caregiving responsibilities. All of these factors depress women’s wages.³⁴

EMPLOYERS CONTINUE TO PAY WOMEN LESS FOR WORK IN THE SAME JOBS AS MEN.

The Equal Pay Act was intended to eradicate the practice of paying women less for the same jobs as men. As Secretary of Labor William Willard Wirtz explained during debate over the bill: “It merely requires an employer to eliminate any differential based on sex”³⁵ Today we no longer have explicitly separate pay scales for men and women. But although pay discrimination is often less overt today than it was in 1963, it continues to flourish. 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.

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.³⁶ 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.³⁷

ALTHOUGH WOMEN ARE NOW 41 PERCENT OF BREADWINNERS, SOME EMPLOYERS CONTINUE TO TELL WOMEN THAT THEY DESERVE TO BE PAID LESS BECAUSE ONLY MEN ARE THE BREADWINNERS

The theory that women work just for the sake of working while men work to provide for their families is still all too common. Published decisions illustrate this point:

- In *Kassman v. KPMG*, the plaintiff's supervisor told her that she did not need to work because her husband was the "breadwinner" in the family.³⁸
- In *Stender v. Lucky Stores, Inc.*, a manager repeatedly made comments like, "[w]omen don't have as much drive to get ahead. Women are not the bread winners[.]" and "[w]omen are considered the weak sex. [So] men do the hard, physical work."³⁹
- In *Grove v. Frostburg Nat'l Bank.*, female employees challenged the Bank's practice of paying health insurance coverage for men automatically and for women "only when they became the family breadwinners, and then only upon request."⁴⁰

The equal pay laws have been vital tools in challenging pay discrimination that is rooted in these outdated stereotypes. But employer accountability for pay discrimination is the exception to the rule. Too many workers lack the basic information necessary to detect pay disparities. And even when they are able to find out that they are being paid less, existing law is riddled with loopholes that make it difficult to obtain justice.

WOMEN CONTINUE TO FACE BARRIERS TO ENTERING HIGHER-PAYING, NONTRADITIONAL 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 weekly earnings for full-time workers, only two are majority female.⁴¹ In contrast, five of the highest-wage occupations are over 90 percent male.⁴² These occupations all have median weekly earnings for full-time workers above \$1,350 – or typical annual salaries over \$70,000 for someone who works year-round.⁴³ In the 25 lowest-wage occupations, the average percentage of women (56 percent) is more than double the average percentage of women in the 25 highest-wage occupations (27 percent).⁴⁴

25 OCCUPATIONS WITH THE HIGHEST MEDIAN WEEKLY EARNINGS

Occupation	Median Weekly Earnings	Percentage of Women in Occupation
Aircraft pilots and flight engineers	\$1,440	4%
Mechanical engineers	\$1,434	5%
Computer network architects	\$1,548	8%
Aerospace engineers	\$1,645	9%
Electrical and electronics engineers	\$1,550	9%
Architectural and engineering managers	\$2,122	11%
Engineers, all other	\$1,439	13%
Information security analysts	\$1,592	15%
Computer hardware engineers	\$1,548	15%
Chemical engineers	\$1,509	18%
Industrial engineers, including health and safety	\$1,393	19%
Software developers, applications and systems software	\$1,591	20%
Computer and information systems managers	\$1,672	27%
Chief executives	\$2,060	27%
Computer systems analysts	\$1,406	31%
Lawyers	\$1,909	31%
Physicians and surgeons	\$1,887	34%
Physical scientists, all other	\$1,456	35%
Database administrators	\$1,376	37%
Financial analysts	\$1,487	37%
Judges, magistrates, and other judicial workers	\$1,637	39%
Management analysts	\$1,452	40%
Marketing and sales managers	\$1,396	45%
Pharmacists	\$1,877	54%
Nurse practitioners	\$1,610	86%
Average share of women among 25 highest-wage occupations		27%

Source: Bureau of Labor Statistics, Current Population Survey, 2012 Annual Averages, Tables 11 and 39. Median weekly earnings figure is for full-time workers, share of women figure is for all workers.

Women's low representation in the science, technology, engineering and math fields has a particular impact on their wages, with women in STEM jobs earning 33 percent more than women in non-STEM careers, all else being equal.⁴⁵ Women earn 35 percent of the degrees in STEM fields,⁴⁶ but make up only 24 percent of college-educated workers in STEM fields.⁴⁷

Women also make up very small percentages of workers in many of the higher-wage traditionally male occupations such as electricians (where women make up 1.8 percent

of workers and the median weekly earnings are \$932); fire-fighters (where women make up 3.4 percent of workers and the median weekly earnings are \$1,068); and police and sheriff's patrol officers (where women make up 12.6 percent of workers and the median weekly earnings are \$979).⁴⁸

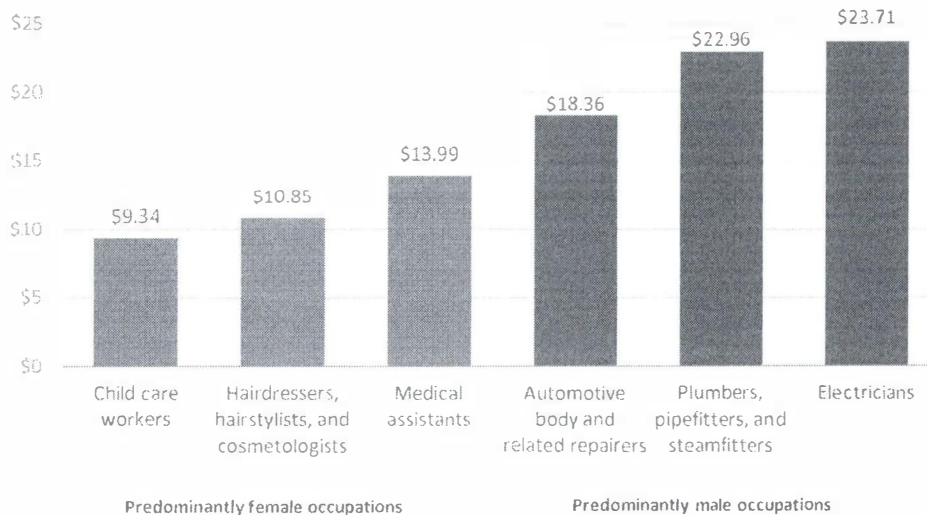
The underrepresentation of women in traditionally male, higher-wage fields cannot be explained away simply by pointing to occupational choice.⁴⁹ Isolation, active discouragement, harassment, outright exclusion, and lack of information about alternative job options are all barriers

to women's entry into higher-wage jobs that are nontraditional for their gender.⁵⁰ For example, in *Wedow v. City of Kansas City*,⁵¹ two female firefighters brought successful claims for sex discrimination against the Kansas City, Missouri Fire Department based on the City's failure to provide them with adequately fitting protective clothing or sanitary facilities, and denial of opportunities to work in successively more career-enhancing positions that were made available to male firefighters of equal or lesser rank. Likewise, in *Burlington Northern & Santa Fe Railway Co. v. White*,⁵² Sheila White, a forklift operator, complained that she was harassed by her supervisor and told that a woman should not be doing her job. After she filed a charge with the Equal Employment Opportunity Commission (EEOC) her employer retaliated by assigning her to perform more arduous tasks and suspending her for 37 days without pay. Likewise, in *Pennsylvania State Police v. Suders*,⁵³ a female police officer filed suit alleging that she was subject to a "continuous barrage of sexual harassment" by her supervisors that included numerous inappropriate comments and threatening behavior. For example, she stated that her supervisor made comments about sexual intercourse every time she entered his office.

And the employment practices related to women in the construction industry in particular have earned it the nickname "the industry that time forgot."⁵⁴ As economist Marc Bendick has explained, these practices include: negative stereotypes about women's ability to perform construction work; sexual tension injected into work contexts; intentions to reserve well-paid employment for men, "who deserve it"; and reluctance by supervisors and other officials to discipline perpetrators of discrimination.⁵⁵

Similar barriers contribute to girls' underrepresentation in education and training programs that are nontraditional for women.⁵⁶ For example, women make up more than 70 percent of secondary level and more than 80 percent of post-secondary level students in "Human Services" career and technical education (CTE) programs, which lead to generally low-paying occupations like child care workers, cosmetologists and nursing home workers.⁵⁷ In contrast, CTE programs that train workers for higher-paying jobs are dominated by men; for example, women make up only 15 percent of secondary level and less than 10 percent of post-secondary level students enrolled in "Architecture and Construction" CTE programs.⁵⁸

WOMEN ARE CONCENTRATED IN CTE PROGRAMS THAT LEAD TO LOWER-WAGE CAREERS



Median Hourly Earnings for Selected Predominantly Female and Male Occupations
 Source: Bureau of Labor Statistics, Occupational Employment Statistics, May 2011.

Source: National Coalition of Women and Girls in Education & National Coalition on Women, Jobs and Job Training, Education Data Show Gender Gap in Career Preparation (March 2013).

WOMEN ARE CLUSTERED IN LOW-PAYING JOBS.

While women are underrepresented in higher-paying jobs, they also are heavily concentrated in jobs at the bottom of the labor market.⁵⁹ Four out of ten women work in female-dominated occupations⁶⁰ and about two-thirds of workers earning the lowest wages are women.⁶¹ 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.⁶²

Jobs that are predominantly done by women are often devalued precisely because they are “women’s work.”⁶³ For example, although job tasks for janitors and building cleaners are extremely similar to job tasks for maids and housekeeping cleaners,⁶⁴ the overall median weekly wage for a male-dominated janitor and building cleaner job is \$85 dollars, which is 21 percent higher than the median weekly wage for a female-dominated maid and housekeeping cleaner job.⁶⁵ And even still there are wage gaps within these occupations.

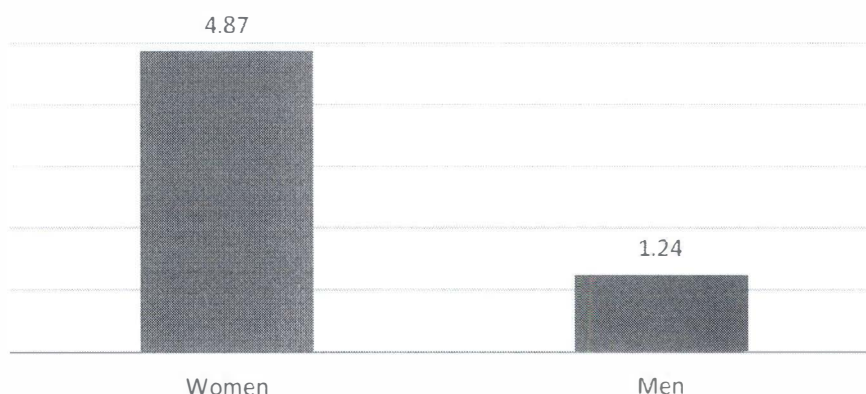
SIMILAR JOBS, DIFFERENT PAY

	Percentage of Women in the Occupation	Men’s Median Weekly Earnings	Women’s Median Earnings
Janitors and Building Cleaners	30%	\$511	\$408
Maids and Housekeeping Cleaners	88%	\$425	\$395

Source: Bureau of Labor Statistics, Current Population Survey, 2012 Annual Averages, Tables 11 and 39.

Four of the most common occupations for women pay less than 100 percent of the federal poverty guidelines for a family of four, and three times as many women as men work in occupations that pay below this poverty guideline for full time work.⁶⁶

MILLIONS OF WORKERS IN OCCUPATIONS WITH MEDIAN EARNINGS FOR FULL-TIME WORK BELOW THE FEDERAL POVERTY THRESHOLD FOR A FAMILY OF FOUR



Source: IWPR, The Gender Wage Gap by Occupation (Apr. 2013).

Indeed, the lowest-paid workers in the labor market, those paid the federal minimum wage or less, are about two-thirds women.⁶⁷ The chances a worker earning the federal tipped minimum wage of \$2.13 an hour is a woman are roughly the same.⁶⁸ Women of color are disproportionately represented among female minimum wage workers: African-American women were just under 13 percent and Hispanic women were just under 14 percent of all employed women in 2012,⁶⁹ but more than 15 percent of women paid the minimum wage were African-American and more than 18 percent were Hispanic.⁷⁰ Most women paid the minimum wage are not relying on a spouse’s income.⁷¹

WOMEN WITH CAREGIVING RESPONSIBILITIES AND PREGNANT WORKERS FACE PARTICULAR WORKPLACE DISCRIMINATION AND ECONOMIC HARDSHIP.

Outmoded assumptions and discrimination against women based on their actual or perceived family responsibilities lower women's wages. Although today women make up nearly half the labor force, they still shoulder the vast majority of caregiving responsibilities.⁷² For example, in dual-income households with children, mothers make a nearly double-time contribution to child care, spending almost twice as much time every week on child care as fathers.⁷³ And single-parent families are much more likely to be headed by women than men.⁷⁴

Women with caregiving responsibilities face stereotypes that these responsibilities render women less committed to their jobs. And, all too often pregnant workers are discriminated against when they need an accommodation to continue safely working during pregnancy, even though these accommodations are provided to other workers. Outdated workplace policies – including lack of paid leave, paid sick days, and flexibility – result in women workers losing pay when they need to take time out from the workplace to care for their families.

Women Face Sex Discrimination Based on Caregiving Responsibilities. Sex discrimination against women with caregiving responsibilities is widespread, and stereotypes about mothers' lesser commitment to their jobs remain particularly strong.⁷⁵ A recent study about the penalty women who are mothers face illustrates this point. In that study, participants recommended mothers with nearly identical resumes to non-mothers for hire less often, recommended lower starting salaries and rated them as less competent than non-mothers.⁷⁶ In contrast, fathers were recommended for hire more often, regarded as more competent, and recommended for higher salaries than non-fathers.⁷⁷ Indeed, motherhood accounts for a large proportion of the wage gap. Women who work full time, year round are typically paid only 77 cents for every dollar paid to their male counterparts.⁷⁸ However, studies show a larger gap between parents: among full-time workers, mothers earn only 60 percent what fathers earn.⁷⁹ Sociologists have documented a wage penalty of approximately four to fifteen percent per child, with low-wage workers suffering the largest penalties.⁸⁰

Pregnant Workers Face Discrimination When Employers Refuse to Provide Accommodations That Are Available to Other Similarly Situated Workers. Although the Pregnancy Discrimination Act (PDA) requires employers to treat pregnant

workers the same as other workers who are similar in their ability or inability to work, too many employers violate the PDA by accommodating workers with disabilities and on-the-job injuries but refusing to accommodate similarly situated pregnant workers.⁸¹ All too often employers deny pregnant workers' requests for accommodations that some of these workers need to continue safely working during pregnancy, such as honoring a lifting restriction, allowing women to stay off high ladders, or even allowing women to drink water, even though they provide these accommodations to other similarly situated workers who are not pregnant.⁸² Instead of accommodating their requests, employers have forced pregnant workers onto unpaid leave or out of their jobs altogether.⁸³

The Lack of 21st Century Workplace Policies Disadvantages Women Workers with Caregiving Responsibilities.

The lack of workplace policies to address the tension between the nearly equal participation of women in the labor force and women's disproportionate caregiving responsibilities is a systemic problem. Only 11 percent of workers in the U.S. have access to paid family leave.⁸⁴ Caregivers who do not have access to any form of paid leave must take unpaid time off to care for their families, and some workers do not even have any unpaid leave. While the Family and Medical Leave Act is designed to ensure job protection and unpaid leave for workers, only 59 percent of workers are eligible for this form of leave.⁸⁵

The numbers are similarly dismal for paid sick days. Over 40 percent of private-sector workers lack paid sick days.⁸⁶ The problem is even worse for low-wage workers – over 80 percent do not have access to paid sick days.⁸⁷ Because so many women do not have paid family leave, paid sick days, or even unpaid job-protected leave, women lose pay when they take time off to care for their families, and sometimes they lose their jobs.

Women who are caregivers take a financial hit in other ways as well. In many low-wage jobs, full-time hours are a reward only for workers who have totally open availability to work any shift at all, even those shifts assigned on a moment's notice.⁸⁸ Workers have reported seeing their coworkers' hours reduced or seeing coworkers fired as a penalty for taking time off to care for family or pick up a sick child.⁸⁹ So workers with caregiving responsibilities may have smaller paychecks in the short term because they are forced to work fewer hours, and smaller paychecks in the long term because they are less likely to be promoted to managerial positions.⁹⁰

Finishing the unfinished business of achieving fair pay

AS WE REFLECT ON THE WAGE GAP OVER THE LAST 50 YEARS and the systemic problems that contribute to unfair pay, it is clear that a serious effort will be required to address the many barriers to women's economic equality. Closing the wage gap will take more than an easy fix. Fortunately, there are commonsense solutions that would improve wages for women and address many of the entrenched barriers that have allowed the wage gap to remain stagnant for the last decade. This section details an approach federal and state policymakers can take to help eliminate the barriers that stand in the way of women being paid fairly by:

- **Strengthening our equal pay laws** to deter employers from paying women less than men for the same job and support women in identifying and remedying pay discrimination;
- **Improving women's access to higher-wage jobs** that are nontraditional for women;
- **Lifting up the wages of workers in the lowest-paid jobs**, who are disproportionately women; and
- **Putting 21st century workplace policies in place** to ensure that workers are not penalized for fulfilling both their work and family obligations.

"EQUAL PAY FOR EQUAL WORK

is a fundamental civil right. Over the past four decades, America has made enormous progress toward ensuring that all its people have an equal chance to enjoy the benefits of this great Nation. Bipartisan civil rights bills have been enacted to expand and strengthen the law to ensure fair pay for all workers. Despite these advances, civil rights is still America's unfinished business."

Source: Statement of the late Senator Edward Kennedy (D-MA) during introduction of the Lilly Ledbetter Fair Pay Act.⁹¹

STRENGTHEN OUR EQUAL PAY LAWS.

There is much more work to be done to make our laws equal to the task of deterring employers from paying women unfairly. It is imperative to address the limitations of our current equal pay laws that make it difficult for women to fight back against pay discrimination. These limitations are described below.

Allowing Employers to Pay Unequal Wages for Equal Work Without a Business Justification Is a Major Loophole in the Equal Pay Laws. Under the equal pay laws, when an employer is found to have paid female employees less than male employees for equal work, the employer may assert an affirmative defense that the pay differential is based on a "factor other than sex." Some

employers have argued for interpretations of this defense that are so broad that they may themselves be sex-based and allow historical wage discrimination to go unchecked.⁹²

The Threat of Retaliation Keeps Workers from Finding Out When They Are Being Paid Less. Workers need explicit protections from retaliation for discussing their pay. Today, over 61 percent of private-sector employees report that discussing their wages is either prohibited or discouraged by employers.⁹³ If employees do not know when they are being paid less than a coworker in the same job, it is nearly impossible to fight back against pay discrimination. Employees should not have to fear that they are putting their jobs at risk by finding out what their coworkers are being paid, in order to determine whether they are victims of pay discrimination.

The Barriers to Coming Together to Fight Back Against Pay Discrimination Make It Difficult for Women to Challenge that Discrimination in the Courts. Under current law, it is extremely difficult for employees to band together to fight back against unfair pay. In 2001, female Wal-Mart workers joined together to challenge company-wide systemic discrimination in pay and promotions.⁹⁴ The women alleged, among other things, that women in the same jobs as men in positions throughout the company were paid less than their male counterparts. In *Wal-Mart Stores, Inc. v. Dukes*, a deeply divided Supreme Court in a narrow 5-4 decision limited workers' ability to come together as a group to challenge discrimination by large employers.⁹⁵ This decision dealt a blow to women's and all workers' ability to enforce their rights under the equal pay and other nondiscrimination laws through class actions. If workers are unable to come together to fight back against pay discrimination, much of this discrimination is likely to go unchecked. This is particularly true for low-wage workers, a group that is disproportionately made up of women.⁹⁶ These workers can least afford to risk retaliation for bringing an individual claim. Further, for these workers the costs and time commitment involved in pursuing individual litigation may often be prohibitive.

Arbitrary Limits on Damages Weaken the Deterrent Effect of the Equal Pay Laws. The promise of the Equal Pay Act will remain unfulfilled without an assurance that employers will be held accountable for breaking the law. Today, the only remedies available under the Equal Pay Act for workers who prove pay discrimination are liquidated damages and back pay awards, which are often small.⁹⁷ In contrast, workers bringing pay discrimination lawsuits on the basis of race or ethnicity may recover both compensatory and punitive damages. Employers must face serious consequences for paying women less and for keeping employees in the dark about their pay. For too many employers today, potential liability for an equal pay violation is an acceptable part of the cost of doing business.

The Failure to Collect Pay Data Inhibits the Enforcement of the Equal Pay Laws. Robust enforcement of the equal pay laws by civil rights agencies is especially important to detect and remedy systemic pay discrimination. But at both the federal and state level, enforcement agencies fail to collect data from private sector employers about what employees are paid. In 2006, the Bush Administration eliminated the tool used by the Department of Labor to detect and remedy wage discrimination by federal contractors.⁹⁸ And the EEOC also does not collect compensation data for private sector employees.⁹⁹ As a result, civil rights enforcement agencies lack sufficient information to adequately enforce the equal pay laws.

FEDERAL STEPS TO STRENGTHEN FEDERAL EQUAL PAY LAWS.

Beyond signing the Lilly Ledbetter Fair Pay Act, the Obama Administration has taken several other steps to date to achieve fair pay. In 2010, the Administration created the National Equal Pay Enforcement Taskforce which has played an active role in recommending and coordinating federal legislative and administrative actions to close the wage gap. The Taskforce's role and impact is described in greater detail on page 16 of this report.¹⁰⁰ In 2013, the Obama Administration took another crucial step forward by rescinding the Bush-era guidelines from 2006 (the "Compensation Standards" and "Voluntary Guidelines") that had previously hampered investigation of pay discrimination claims under Executive Order 11246.¹⁰¹ And a May 2013 presidential memorandum set forth the federal government's plan to identify and implement model pay practices by subjecting its current pay practices to greater scrutiny, including its pay and promotion practices for part-time workers and those who have taken time off to care for families; developing guidance for agencies to promote greater transparency in starting salaries; and analyzing and identifying agency best practices to promote pay equity.¹⁰² But there is much more to be done.

The following legislative and administrative proposals would strengthen the equal pay laws and help close the wage gap.

Federal Legislative Proposals

The Paycheck Fairness Act – A Comprehensive Approach.

The Paycheck Fairness Act is a commonsense piece of legislation that would strengthen the Equal Pay Act in a number of important ways by making it easier to identify and remedy discriminatory pay decisions, closing loopholes in the law and providing incentives for employers to voluntarily comply with the law.¹⁰⁶ The bill would:

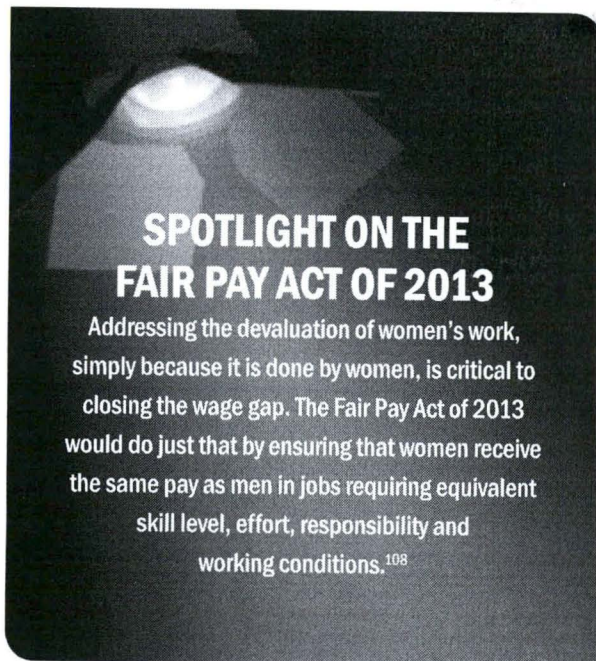
- Bring the remedies for equal pay violations in line with those available for other types of pay discrimination by allowing plaintiffs who win their equal pay cases to recover compensatory and punitive damages;
- Prohibit retaliation against employees for discussing their pay;
- Tighten loopholes in the employer defenses to unequal pay by requiring employers to provide a business justification for paying unequal wages; and
- Collect the pay data need by civil rights enforcement agencies.

The Equal Employment Opportunity Restoration Act of 2012 – Removing Barriers to Workers Banding Together to Fight Back Against Pay Discrimination.

The Equal Employment Opportunity Restoration Act would remove the obstacles the Supreme Court placed in the way of ordinary Americans seeking their day in court and provide a clear avenue for employees to seek redress as a group.¹⁰⁷

THE LILLY LEDBETTER FAIR PAY ACT

The first substantive piece of legislation that President Obama signed into law was The Lilly Ledbetter Fair Pay Act of 2009. This law kept the courthouse doors open so that women could still pursue their equal pay claims, even if they were prevented from learning about pay discrimination until long after the original discriminatory pay decision was made.¹⁰³ In *Ledbetter v. Goodyear Tire and Rubber Co.*, the Supreme Court held that Lilly Ledbetter could not recover for pay discrimination because she did not bring her claims within 180 days of her employer's original decision to pay her less than her male coworkers – even though she did not learn that she was being paid less until years later.¹⁰⁴ Although that original discriminatory decision was reflected in every subsequent paycheck she received, the Supreme Court, in a 5 to 4 decision, held that Lilly Ledbetter's claims were time-barred.¹⁰⁵ Congress acted swiftly to restore the right to fight back against pay discrimination by passing The Lilly Ledbetter Fair Pay Act to make clear that the 180-day time clock is reset each time a discriminatory paycheck is issued.



Federal Administrative Proposals

In addition to the legislative proposals outlined here, there are concrete steps that the Administration can take to help to close the wage gap.

Combat Punitive Pay Secrecy Policies. The EEOC has clarified that employer prohibitions on employees' ability to file a charge with the EEOC violate the anti-retaliation provisions of Title VII because they "have a chilling effect on the willingness and ability of individuals to come forward."¹⁰⁹ Likewise, employer gag rules that keep employees from finding out when they are being paid less have a similar chilling effect on employees' and the agencies' ability to challenge discrimination.

The Administration can improve the law by making clear that policies that keep workers in the dark about their wages interfere with the enforcement of the equal pay laws and are therefore impermissible under these laws, including the Equal Pay Act, Title VII, and Executive Order 11246 (which bans discrimination by federal contractors). The President could also use his executive authority to explicitly prohibit federal contractors from retaliating against their employees for discussing pay information with others. This can be achieved by issuing a new executive order for federal contractors or through agency regulations or guidance. The Office of Federal Contract Compliance Program's (OFCCP) jurisdiction covers over 20 percent of

the civilian workforce,¹¹⁰ so putting in place a no-retaliation policy for this workforce is especially critical to not only strengthening our pay discrimination laws but ensuring that federal tax dollars are not subsidizing discrimination.

Collect Information About Compensation Data. In 2011, OFCCP began the process of developing a new wage data collection tool for federal contractors by seeking input from stakeholders.¹¹¹ Likewise, the EEOC solicited information about existing data collection in a National Academy of Sciences study.¹¹² It is crucial for these agencies to take the next steps forward by developing and implementing methods for collecting employer pay data that can be used in their enforcement efforts.

STATE STEPS TO STRENGTHEN STATE EQUAL PAY LAWS.

Many states have been leaders in the ongoing fight against pay discrimination and have taken critical steps to strengthen their equal pay laws to provide protections beyond those that are available under the federal Equal Pay Act. Below, we highlight several state efforts that may provide helpful models for other states seeking to strengthen their own equal pay laws.

Prohibit Retaliation. A number of states explicitly prohibit retaliation against employees under their fair pay laws, either for enforcing their rights under the law or for discussing their pay. States that have passed laws prohibiting retaliation against employees for exercising their rights under their states' fair pay laws include California,¹¹³ Colorado,¹¹⁴ Illinois,¹¹⁵ Maine,¹¹⁶ Michigan,¹¹⁷ Vermont,¹¹⁸ and, most recently, New Mexico.¹¹⁹ And more states may be on the way. In New York, Governor Andrew Cuomo recently released the "New York Rising" policy agenda, which includes a Women's Equality Act that, among other things, aims to decrease the wage gap by prohibiting employers from retaliating against workers for discussing their pay.¹²⁰ As Governor Cuomo has stated, "Policies against sharing wage information, essentially deny women workers the ability to discover whether their wages are unequal to their male counterparts," and without the non-retaliation provisions of the act, "wage disparities will persist undetected."¹²¹ Similarly, the Louisiana Senate recently passed, and sent to the Louisiana House of Representatives, a bill that would make it illegal to retaliate or take adverse employment actions against public sector employees who "inquir[e] about, disclos[e], compar[e], or otherwise discuss" their wages or others' wages.¹²²

SPOTLIGHT ON NON-RETALIATION IN VERMONT

Vermont passed a law in May 2013 prohibiting employers from requiring employees not to share information about their own pay or ask coworkers what they are paid.¹²³ The new law also prohibits employees from waiving their rights to discuss their wages. Finally, it prohibits retaliation against employees for engaging in these activities. Vermont's longstanding commitment to fair pay is paying off. Vermont is the state with the second-smallest wage gap for women overall, and the smallest wage gaps for African-American women and Hispanic women compared to white, non-Hispanic men.¹²⁴

Improve Pay Data Collection. Collecting information about employee pay is essential to state and local enforcement efforts. Vermont's new equal pay law takes a step in the right direction by requiring state contractors to certify that they are in compliance with that law; and to make their payroll records available on request to the contracting agency or the Attorney General to verify compliance.¹²⁵ New Mexico's executive order has gone a step further.¹²⁶

Tighten Employer Defenses. 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 so broadly that they have allowed employers to flout these laws and continue paying women less. A handful of states have implemented laws making clear that businesses must provide a valid business reason for paying unequal wages to men and women doing the same work. For example, California's Equal Pay Act requires a "bona fide factor other than sex,"¹²⁷ and Kansas' Act Against Discrimination states that employers may not discriminate "in compensation . . .

without a valid business necessity."¹²⁸ Vermont's new equal pay law also changes its defense to ensure that employers can only pay unequal wages for business reasons. Specifically, that law states, "An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration."¹²⁹

SPOTLIGHT ON PAY DATA COLLECTION & REPORTING IN NEW MEXICO SHOWS IT'S POSSIBLE

In 2009, Governor Bill Richardson established the Governor's Task Force on Fair and Equal Pay ("Task Force"). Based on the recommendations of the Task Force, Governor Richardson subsequently issued an executive order that required companies that wanted to contract with the State to provide basic pay equity reports.¹³⁰ The pay reports use the same nine occupational categories used by the federal Equal Employment Opportunity Commission's (EEOC) EEO-1 forms. The reporting requirement applies to all state agencies that let contracts and all categories of purchasing.

About 3,200 firms are covered by the requirements, ranging in size from New Mexico's largest employer, Intel (with more than 3,000 employees) to firms with only 10 employees. This reporting has become a regular part of the contracting process and New Mexico employers have not reported difficulties complying with the law.

SPOTLIGHT ON NEW YORK'S PROPOSED REVISIONS TO THE EMPLOYER DEFENSES TO PAY DISCRIMINATION

New York could close the loophole in employer defenses if it passes the Women's Equality Act.

The proposal would require employers to show that the difference in salary is not based on sex, that it is related to job performance, and that it is consistent with business necessity.¹³¹

Keep the Courthouse Doors Open. Enforcement of the pay discrimination laws would be nearly impossible under the rule established in *Ledbetter v. Goodyear Tire Co.*, which held that a woman could not recover for pay discrimination unless she brought her claim within 180 days of when the original discriminatory pay decision was made.¹³² This is because women often do not find out that they are being paid less than their male coworkers until years after their employer makes the original decision to discriminate by setting their wages below their male coworkers'. Congress restored the law in 2009 by passing the Lilly Ledbetter Fair Pay Act, which makes clear that each discriminatory paycheck (rather than simply the original decision to discriminate) resets the 180-day limit to file a claim.¹³³ While many states generally follow Title VII precedent in interpreting their state's nondiscrimination laws, some courts have declined to follow the Ledbetter Act, relying on the Supreme Court's *Ledbetter* decision to dismiss discrimination claims brought under state law as untimely. For example, a district court in New York specifically noted that because "the New York legislature [has not] enacted a statute similar to the

Ledbetter Act," salary discrimination claims under the New York State Human Rights Law (NYSHRL) "are governed by the Supreme Court's analysis in Ledbetter."¹³⁴

Some state legislatures have passed their own Ledbetter laws to keep the courthouse doors open for women workers. For example, both houses of the Texas legislature passed a Lilly Ledbetter Fair Pay Act in 2013 in response to a Texas Supreme Court decision making clear that when interpreting Texas' nondiscrimination law Texas courts would not apply the federal law's requirement to reset the clock on the statute of limitations with the payment of each discriminatory paycheck unless explicitly required to do so by the Texas legislature.¹³⁵ The bill is now awaiting the Governor's signature.¹³⁶ Maryland's and Illinois' legislatures acted quickly after the *Ledbetter* decision, both enacting their own state Ledbetter laws.¹³⁷

SPOTLIGHT ON MARYLAND'S LEDBETTER LAW

On April 14, 2009, less than three months after President Obama signed the Lilly Ledbetter Fair Pay Act, Governor Martin O'Malley signed Maryland's Lilly Ledbetter Civil Rights Restoration Act into law, which also expanded the time period for employees who have been subject to unlawful pay discrimination to assert their rights under the state law.¹³⁸ The new law has already been successful in providing Marylanders with relief. For example, in *Rogers v. Conmed, Inc.*, the federal district court in Maryland denied a motion to dismiss state law age and race discrimination claims, holding that they were timely following the passage of the Lilly Ledbetter Civil Rights Restoration Act.¹³⁹

Commissioning Change.

Both at the federal level and in the states, commissions and taskforces have played an important role in focusing policymakers on the need to close the wage gap.

The Obama Administration's National Equal Pay Taskforce, composed of representatives from the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the Office of Personnel Management, is tasked with identifying and addressing challenges to ending pay discrimination. The Taskforce has made recommendations to address persistent barriers to equal pay enforcement and the need for better pay data collection; and has announced plans to make recommendations to close the wage gap in the federal workforce, educate the public about the right to fair pay, and advocate for passage of the Paycheck Fairness Act.¹⁴⁰ The Taskforce has contributed to a heightened focus throughout the federal government on ending pay discrimination. For example, since the establishment of the Taskforce, the number of pay discrimination cases resolved by OFCCP has nearly tripled.¹⁴¹

Similarly, many of the states that have implemented strong equal pay policies have begun the process with the help of a commission tasked with identifying solutions to close the wage gap.

- **New Mexico's Taskforce on Fair and Equal Pay.** In 2009, New Mexico's Governor Bill Richardson created the Fair and Equal Pay for All New Mexicans Initiative, which included the Task Force on Fair and Equal Pay. The Commission's work helped lead to the adoption, in 2013 under Governor Susana Martinez, of the Fair Pay for Women Act, which greatly strengthens fair pay protections for New Mexicans by providing a private right of action with no administrative exhaustion requirement; a strong no-retaliation provision; and damages to help deter violations.¹⁴²
- **Maryland's Equal Pay Commission.** Likewise, in 2004, Maryland's General Assembly established an Equal Pay Commission to study issues relating to equal pay. The Commission worked with the Institute for Women's Policy Research to develop recommendations and best practices.¹⁴³ Maryland's Equal Pay Commission also published a report, providing key recommendations to improve the Commission's ability to analyze the issues and invigorate enforcement of equal pay in Maryland.¹⁴⁴
- **Colorado's Pay Equity Commission.** Similarly, in Colorado, the Executive Director of the Department of Labor and Employment, Don Mares, charged the Pay Equity Commission with "determining the scope of pay inequity based on gender and race in Colorado, identifying policies and practices that help produce it and suggesting areas of reform."¹⁴⁵ In response, Colorado's Pay Equity Commission published a comprehensive report on pay equity, including some major setbacks (in particular, the closing of many Civil Rights Divisions) and a thorough list of recommendations.¹⁴⁶
- **Vermont's Standing Commission on Women.** Vermont, the state with the narrowest wage gap,¹⁴⁷ has had a standing Commission on Women since 1964 whose "[c]ommissioners come from all parts of the state and across the political spectrum."¹⁴⁸ The Commission was heavily involved in the passage of the Vermont Equal Pay Act in 2002¹⁴⁹ and, in 2012, the Commission filed an amicus brief in Federal District Court in Vermont in *Dreves v. Hudson Grp. Retail, LLC*, the first case to interpret Vermont's Equal Pay Act.¹⁵⁰ The commission was also involved in the recent passage of Vermont's new pay equity bill.

A hallmark of many of these Commissions is the inclusion of a wide range of stakeholder groups bringing diverse perspectives to understanding the problem of unequal pay. A commission alone is certainly not enough to bring about wholesale change, but as these examples show, state Commissions have helped raise the profile of the issue and launch improvements in the law.

BUILD LADDERS TO HIGH-WAGE JOBS THAT ARE NONTRADITIONAL FOR WOMEN.

Moving the dial on occupational segregation requires vigorous enforcement of the nondiscrimination laws and making the recruitment and retention of women in nontraditional CTE and STEM courses and nontraditional jobs a priority at both the national and state level.

FEDERAL STEPS TO PROMOTE THE EDUCATION AND EMPLOYMENT OF WOMEN FOR NONTRADITIONAL, HIGHER-WAGE JOBS.

Vigorous enforcement of our nondiscrimination laws is critical to removing barriers for women to accessing higher-wage jobs that are traditionally male. Hiring discrimination remains a significant barrier to women's entry into nontraditional jobs.¹⁵¹ However, this form of discrimination is particularly difficult to challenge since today employer policies that operate to keep women out are often covert, rather than explicit; women often do not know when men are being hired in their place; and women who are victims of systemic hiring discrimination very often do not have the resources to fight back against these company-wide policies or practices.¹⁵² And even when they are hired, discrimination, including unchecked harassment, limits the number of women working in nontraditional fields. For all of these reasons, the federal government's engagement in systemic and high-profile enforcement of the prohibitions on discrimination against women and nontraditional jobs, including employment screens that have a disparate impact on women, is crucial to opening up nontraditional jobs to women.

Our public workforce system must also redouble its efforts to promote nontraditional occupations for women. The Workforce Investment Act is the primary federal job training system, funding educational and career training for underserved workers.¹⁵³ Only roughly 3 percent of those exiting Workforce Investment Act programs go into jobs that are nontraditional for their gender.¹⁵⁴ Workforce Investment Act reauthorization should require states to submit plans to increase the numbers of women entering jobs that are nontraditional for their gender after receiving WIA-funded training.¹⁵⁵ The Women WIN Jobs Act would provide much needed grants to states to increase low-income women's participation in higher-wage, high demand occupations in nontraditional fields.¹⁵⁶ Among the authorized activities,

the grants would help states and their partners improve the recruitment of low-income women in apprenticeship programs, develop effective policies for hiring women, and provide funds for outreach activities and training to overcome gender stereotypes.

SPOTLIGHT ON WOMEN IN CONSTRUCTION

In 1978, the Office for Federal Contract Compliance Programs (OFCCP) established a goal to increase the number of women in construction occupations.¹⁵⁷ The goal was set at a modest 6.9 percent, and has yet to change and the "good faith" efforts required of contractors were not rigorous enough to increase women in the construction profession.¹⁵⁸ Still, by 2010, women made up only 2.6 percent of construction trades and related occupations.¹⁵⁹ The Department of Labor needs to increase the goal for the share of women in construction. It also must update the regulations on apprenticeship programs, the major pathway into construction trades and related occupations, to stress equal employment opportunities.¹⁶⁰ The regulations should be updated to:

- ◆ Eliminate criteria and methods that have a disparate impact on women, such as depending heavily on intent to hire letters and irrelevant strength testing.
- ◆ Require apprenticeship programs to have evaluation systems that review for non-discrimination, affirmative action, and equal employment opportunities for on-the-job training.
- ◆ Require women's committees and mentorship programs, as well as actively seek women in instructional and leadership positions.
- ◆ Provide clear consequences for apprenticeship programs that fail to meet these requirements.

Finally, federal policy must hold states accountable for increasing the participation rates of girls in STEM and non-traditional CTE courses. Congress has an opportunity to do just that in the upcoming reauthorization of the Carl D. Perkins Career and Technical Education Act.¹⁶¹ The nontraditional accountability measure in the Perkins Act challenges states to address the barriers that women and girls face in entering nontraditional fields, such as sexual harassment in the classroom; bias in career recruitment, counseling, or mentorship; and a lack of access to appropriate tools or faculty. Congress can also ensure that Office of Vocational and Adult Education (OVAE) plays an important role in improving access to higher-wage CTE fields of study if it has the explicit authority to hold states accountable.

LIFT UP THE WAGES OF WOMEN IN LOW-WAGE JOBS.

The federal minimum wage has been stagnant since 2009, and the tipped minimum wage has not increased since 1991.¹⁶² Raising the minimum wage would help narrow the wage gap for women since most of the workers who will see an increase in pay are women.¹⁶³ Likewise, the many workers being paid slightly above the minimum wage – the majority of whom are women – are likely to get a raise as employers raise the wages of those making just over the minimum wage as well to maintain internal pay scales.¹⁶⁴

FEDERAL STEPS TO RAISE THE WAGES OF WOMEN IN LOW-WAGE JOBS.

The Fair Minimum Wage Act would gradually raise the federal minimum wage from \$7.25 to \$10.10 per hour, increase the tipped minimum cash wage from \$2.13 per hour to 70 percent of the minimum wage, and index these wages to keep pace with inflation.¹⁶⁵ These improvements are important steps toward achieving fair pay for women.

STATE STEPS TO RAISE THE WAGES OF WOMEN IN LOW-WAGE JOBS.

States can help narrow the wage gap by increasing their state's minimum wage.¹⁶⁶ Seven of the ten states with the smaller wage gaps in 2011 had minimum wages above the federal minimum of \$7.25 per hour. Among the ten states with the largest wage gaps, only two had minimum wages above \$7.25 an hour.¹⁶⁷ The average of the wage gaps for states with minimum wages above the federally-mandated minimum is three cents smaller than the average of the wage gaps in those states where the minimum wage is only \$7.25,¹⁶⁸ a substantial difference when you consider that if the national wage gap shrunk by three cents, it would close by more than 13 percent.

STATES WITH HIGHER-THAN-FEDERAL MINIMUM WAGES ALSO HAVE SMALLER WAGE GAPS

States with the 10 Smallest Wage Gaps

State	Women's Earnings/ Men's Earnings	Wage Gap	Minimum Wage
District of Columbia	90.4%	9.6%	\$8.25
Vermont	86.7%	13.3%	\$8.60
Maryland	86.0%	14.0%	\$7.25
Nevada	84.9%	15.1%	\$8.25
California	84.9%	15.1%	\$8.00
Rhode Island	84.8%	15.2%	\$7.75
Arizona	84.7%	15.3%	\$7.80
New York	83.6%	16.4%	\$7.25*
Florida	82.6%	17.4%	\$7.79
Arkansas	82.0%	18.0%	\$7.25

States with the 10 Largest Wage Gaps

State	Women's Earnings/ Men's Earnings	Wage Gap	Minimum Wage
Wyoming	66.6%	33.4%	\$7.25
Louisiana	68.8%	31.2%	\$7.25
Utah	69.0%	31.0%	\$7.25
West Virginia	70.5%	29.5%	\$7.25
North Dakota	72.7%	27.3%	\$7.25
Mississippi	73.5%	26.5%	\$7.25
Michigan	73.8%	26.2%	\$7.40
Alabama	74.2%	25.8%	\$7.25
Montana	74.6%	25.4%	\$7.80
Idaho	75.2%	24.8%	\$7.25

Note: State earnings ratios and wage gaps calculated by the National Women's Law Center (NWLC) are based on the 2011 American Community Survey (<http://www.census.gov/acs/www/>). U.S. Department of Labor, Wage and Hour Division, Minimum Wage Laws in the States – January 1, 2013, available at <http://www.dol.gov/whd/mnwage/america.htm>.

*Under recently enacted legislation, New York's minimum wage is set to rise to \$9.00 per hour in three steps between Dec. 31, 2013 and Dec. 31, 2015.

A number of states have taken the lead on raising the minimum wage. Nineteen states and the District of Columbia currently have minimum wages above the federal level,¹⁶⁹ and minimum wage increases advanced in several states during the 2013 legislative session. In New York, the minimum wage will rise from \$7.25 to \$9.00 per hour over two years beginning December 31, 2013.¹⁷⁰ The minimum wage in Connecticut will reach \$9.00 per hour by January 1, 2015 (up from \$8.25 per hour today).¹⁷¹ And in New Jersey, the legislature passed a bill that will put a measure on the ballot in November to raise the minimum wage from \$7.25 to \$8.25 per hour in 2014, followed by annual adjustments for inflation.¹⁷² Additional bills to raise the minimum wage are pending in states such as California, Maine, Massachusetts, and Rhode Island.

ADOPT 21ST CENTURY WORKPLACE POLICIES AND ENFORCE EXISTING PROTECTIONS FOR WOMEN IN THE WORKPLACE AGAINST DISCRIMINATION ON THE BASIS OF PREGNANCY AND CAREGIVING.

To end the wage gap, it is crucial to put in place 21st century workplace policies that would stop women from being penalized for taking time out of the workforce to care for their families. Stronger enforcement of those laws that protect women with caregiving responsibilities from discrimination is also vitally important. Finally, it must be unmistakably clear that women who need to make adjustments to their jobs to continue safely working during pregnancy may not be forced off the job when the employer accommodates other similarly situated workers. Federal and state solutions to achieve these goals are described below.

FEDERAL STEPS TO REMOVE PENALTIES FOR WORKERS WITH CAREGIVING RESPONSIBILITIES AND PREGNANT WORKERS.

Adopt Policies That Would Increase the Availability of Paid Family Leave and Paid Sick Days. Twenty-first century policies that enable all workers to take time out from work to care for their families without losing pay would help close the wage gap. At the federal level, the Healthy Families Act would allow employees to earn up to seven paid sick days per year that can be used for their own illness, for preventive care, to take care of a sick family member or to recover from or seek help relating to sexual assault or

domestic violence.¹⁷³ Likewise, advocates have proposed a federal paid family and medical leave insurance program which would create a national paid leave system allowing employees up to 12 weeks of paid leave for their own serious illness, for the serious illness of certain family members, for the birth or adoption of a child, or for the injury of a family member in the military or for exigencies related to military deployment of a family member.¹⁷⁴

Enforce Sex Discrimination Laws on Behalf of Workers with Caregiving Responsibilities. Sex discrimination against women with actual or perceived caregiving responsibilities operates to reduce women's wages by keeping women from being hired for certain jobs and from being considered for higher pay and promotions. The EEOC and OFCCP should seek opportunities to identify and remedy this form of discrimination.

Clarify Employers' Obligation to Accommodate Pregnant Workers. EEOC guidance should make clear that employers' nondiscrimination obligations under the Pregnancy Discrimination Act require them to accommodate pregnant workers when they accommodate, or would be legally required to accommodate, other similarly situated workers who are not pregnant. Similarly, the Pregnant Workers Fairness Act would ensure that pregnant workers have the same rights to reasonable accommodation that are available to workers with temporary disabilities.¹⁷⁵ Both of these policies would lessen the wage gap by making it possible for pregnant workers in need of workplace accommodations to remain in the workforce earning income for their families rather than being forced off the job.

STATE STEPS TO REMOVE PENALTIES FOR WORKERS WITH CAREGIVING RESPONSIBILITIES AND PREGNANT WORKERS.

States and localities can enforce their sex, pregnancy, and caregiver discrimination protections on behalf of workers with caregiving responsibilities and pregnant workers, as well as adopt paid sick days, paid family leave, and pregnancy accommodations laws.

Adopt State and Local Paid Sick Days and Family Leave Laws. Today, advocates are waging paid sick days campaigns in roughly twenty cities and states.¹⁷⁶ And a number of localities have been successful in recent years

in securing paid sick days for their employees. In Washington, D.C. employees may take up to seven paid sick days, depending on the size of the employer, for their own, or a family member's, illness, injury or medical condition.¹⁷⁷ Under the D.C. paid sick days law, sick days can also be used if an employee or an employee's family member is a victim of stalking, domestic violence, or sexual abuse.¹⁷⁸ In San Francisco, employees can accrue up to 72 hours of paid sick leave that they may use if they are ill or injured or for the purpose of receiving medical care, treatment, or diagnosis, or to aid or care for a family member or designated person when that person is ill, injured, or receiving medical care, treatment, or diagnosis.¹⁷⁹ Sick day laws have also passed in Milwaukee, Seattle, Portland, Oregon and most recently, New York City.¹⁸⁰ In 2011, Connecticut became the first state to enact paid sick days.¹⁸¹ Likewise both New Jersey and California have passed paid family leave laws that provide partial income replacement for workers who take time off to care for a newborn, care for a newly adopted child, or to care for a family member with serious health condition.¹⁸²

Enforce State Nondiscrimination Laws Prohibiting Sex and Caregiver Discrimination. States and localities can enforce sex discrimination laws on behalf of women who are caregivers. In addition, three states – Alaska, the District of Columbia and New Jersey – have explicit protections against caregiver discrimination. Alaska prohibits employment discrimination on the basis of “parenthood,”¹⁸³ the District of Columbia prohibits employment discrimination on the basis of “family responsibilities,”¹⁸⁴ and New Jersey prohibits employment discrimination against public employees on the basis of “familial status.”¹⁸⁵ Sixty-three localities in 22 states also prohibit some form of caregiver discrimination in their employment nondiscrimination statutes.¹⁸⁶ In recent years, similar legislation has been introduced in nearly a dozen states.¹⁸⁷

Adopt Laws to Clarify Employers' Obligations Not to Discriminate on the Basis of Pregnancy by Accommodating Pregnant Workers. At the state level, eight states now have laws requiring employers to provide certain types of accommodations to some or all pregnant employees: Alaska, California, Connecticut, Hawaii, Louisiana, Illinois, Texas, and Maryland.¹⁸⁸ These laws may provide useful models for other states considering similar legislative proposals.

Conclusion

FIFTY YEARS AFTER THE EQUAL PAY ACT WAS SIGNED INTO LAW, women working full time, year round are still typically paid 77 cents for every dollar paid to their male counterparts. The wage gap makes it difficult for women – who are more than 40 percent of primary breadwinners in families with children and nearly 50 percent of the labor force – to provide for themselves and their families. Closing this gap requires a serious and sustained commitment at both the federal and state levels to overcoming all of the barriers standing in the way of women achieving fair pay. It requires strengthening our equal pay laws so that women have the tools they need to challenge pay discrimination; removing the roadblocks to women's access to higher-paying nontraditional jobs and job training, including harassment and discrimination; increasing the pay for women in the lowest-paid jobs, many of which have historically been devalued because they are done by women; and ensuring that women with caregiving responsibilities do not face workplace discrimination and economic hardship simply for fulfilling these responsibilities. It is past time to finish America's unfinished business of achieving fair pay.

endnotes

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- 8 See *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 204 (1991) (determining that a company's exclusion of women from certain, high-paying positions based on "fetal-protection policy" was illegal sex discrimination and stating that "women as capable of doing their jobs as their male counterparts may not be forced to choose between having a child and having a job"); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) ("An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not. Title VII lifts women out of this bind."); *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (affirming plaintiff's use of national statistics to make a prima facie case of discriminatory impact under Title VII, which showed that Alabama's statutory height and weight restrictions for prison guards excluded 41.13% of the female population but less than 1% of the male population); *Davis v. City & Cnty. of San Francisco*, 890 F.2d 1438, 1448 (9th Cir. 1989) (affirming a consent decree that settled a Title VII class action alleging racial, gender, and national origin discrimination in the hiring and promotion of firefighters and upholding the affirmative requirements of the decree under Title VII due to the existence of a "manifest imbalance . . . reflecting underrepresentation of women and minorities in traditionally segregated job categories" (citation omitted) (internal quotation marks omitted)).
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- 26 *How the Wage Gap Hurts Women and Families*, *supra* note 20.
- 27 John F. Kennedy: Remarks Upon Signing the Equal Pay Act, June 10, 1963. The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=9267> (last visited June 4, 2013).
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- 31 417 U.S. 188, 205 (1974).
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- 157 *Wage and Hour Division: Enforcement of Minimum Wage and Overtime Compensation* (WHD-1317), *U.S. Department of Labor* (last visited June 4, 2013).
- 158 *Compensation and Benefits Administration: Requirements*, 43 Fed. Reg. 85,750, 85,751 (Dec. 30, 1978) (29 C.F.R. 301.1-19 (1978), pt. 60-4).
- 159 NWLC, *Women in Construction: 6.9 Percent Is Not Enough* (May 2012), available at <http://www.nwlc.org/sites/default/files/pdfs/womeninconstructionfactsheet.pdf>.
- 160 These regulations are located at 29 C.F.R. §§ 301.1-19 (2012).
- 161 20 U.S.C. §§ 2301-2414 (2006); H.R. 497, 113th Cong. (as referred to the House subcommittee, Apr. 23, 2013); S. 453, 113th Cong. (as introduced, Mar. 5, 2013).
- 162 *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage*, supra note 68.
- 163 Under most circumstances, a higher minimum wage would narrow the wage distribution, effectively narrowing the wage gap. Nicole M. Fortin & Thomas Lemieux, *Institutional Change and Rising Inequality: Is There a Linkage?*, 11 *Journal of Economic Perspectives* 75, 93 (1997), available at http://www.aeaweb.org/conference/papers/1997/1997_0107.pdf; Lawrence M. Kahn, *Swimming Upstream: Trends in the Distribution of Wages*, 11 *Journal of Labor Economics* 285, 297 (1997), available at <http://www.nber.org/papers/w6100/papers/w6100.pdf>; J.E. Swenson, *Minimum Wages and the Distribution of Wages*, 11 *Journal of Labor Economics* 285, 297 (1997), available at <http://www.nber.org/papers/w6100/papers/w6100.pdf>.
- 164 See *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage*, supra note 68; *Cooper & Hall*, supra note 164; *Wage to \$10.10 Would Give 4.2 Million Workers a Much-Needed Boost*, 20 *Mar.* 2013, available at http://www.nwlc.org/sites/default/files/pdfs/20130327_fair_min_wage_increase.pdf.
- 165 Fair Minimum Wage Act of 2013, H.R. 1010, 113th Cong. (2013); see *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage*, supra note 68; *Cooper & Hall*, supra note 164.
- 166 NWLC, *Closing the Wage Gap: How Raising the Minimum Wage Promotes Fair Pay for Women* (June 2013), available at <http://www.nwlc.org/sites/default/files/pdfs/minimumwageandwagegap.pdf>.
- 167 NWLC calculations based on U.S. Census Bureau, 2011 *American Community Survey* [hereinafter 2011 ACS] tbls.R2001 & R2002, available at <http://www.census.gov/acs/www/> (last visited June 5, 2013); Wage & Hour Division, *Minimum Wage Laws in the States - January 1, 2013*, U.S. Dep't of Labor, <http://www.dol.gov/eopact/eopactguide.pdf> (last updated Dec. 2011) [hereinafter *Minimum Wage Laws in the States*]. D.C. is considered a state for this calculation.
- 168 The figure represents the number of employees with minimum wage jobs in the state. For states with the state wage gaps for states with minimum wage laws, the gap is 10% for states with minimum wage laws. For states with minimum wage laws, the gap is 10% for states with minimum wage laws. NWLC calculations based on 2011 ACS, supra note 167, tbls.R2001 & R2002; *Minimum Wage Laws in the States*, supra note 167. D.C. is considered a state for this calculation.

- 169 The status of current minimum wage laws can be found at *Minimum Wage Laws in the States*, *supra* note 167.
- 170 See Press Release, N.Y. Division of the Budget, Governor Cuomo and Legislative Leaders Announce Early Passage of 2013-2014 Budget (Mar. 29, 2013), available at http://www.budget.ny.gov/pubs/press/2013/pressRelease13_enactedBudgetReleased.html; see also Press Release, Office of Governor Andrew M. Cuomo, Governor Cuomo Introduces Women's Equality Act Legislation: Groundbreaking Legislation Addresses Gender Equality; Restores New York as Leader of Women's Rights (June 4, 2013), available at <http://www.governor.ny.gov/press/06042013WomensEqualityActLegislation>.
- 171 Governor Signs Law to Increase Minimum Wage to \$9, NBC Conn. (June 6, 2013), <http://www.nbcconnecticut.com/news/politics/Governor-Signs-Law-to-Increase-Minimum-Wage-to-9-210429731.html>.
- 172 See Assemb. Con. Res. 168, 215th Leg. (N.J. 2012), available at http://www.njleg.state.nj.us/2012/Bills/ACR/168_11.HTM; Angela Delli Santi, *NJ Voters To Decide \$1 Minimum Wage Hike in Nov.*, BloombergBusinessweek, Feb. 15, 2013, available at <http://www.businessweek.com/ap/2013-02-15/nj-voters-to-decide-1-minimum-wage-hike-in-nov-dot>.
- 173 H.R. 1286, 113th Cong. (2013); S. 631, 113th Cong. (2013); see also Nat'l P'ship for Women & Families, *The Healthy Families Act* (Apr. 2013), available at http://www.nationalpartnership.org/site/DocServer/HFA_Expanded_Overview.pdf?docID=10741.
- 174 Nat'l P'ship for Women & Families, *The Case for a National Family and Medical Leave Insurance Program (The FAMILY Act)* (Feb. 2013), available at http://www.nationalpartnership.org/site/DocServer/FAMILY_Act_Fact_Sheet.pdf.
- 175 *The Pregnant Workers Fairness Act: Making Room for Pregnancy on the Job*, *supra* note 81.
- 176 North Carolina; Arizona; Minnesota; Massachusetts; Maine; Michigan; Iowa; Illinois; Vermont; Pennsylvania; Maryland; Hawaii; California; New Jersey; Miami, Florida; Oregon; and Orange County, Florida, all have active paid sick days campaigns. See Paid Sick Days Campaigns, Statistics and Stories, Nat'l P'ship for Women & Families: Support Paid Sick Days, http://paysicksdays.nationalpartnership.org/site/PageServer?pagename=psd_campaigns_map (last visited June 5, 2013).
- 177 D.C. Code § 32-131.02 (2013).
- 178 *Id.*
- 179 Office of Labor Standards Enforcement, Presentation, San Francisco Paid Sick Leave Ordinance (Jan. 11, 2007), available at <http://sfgsa.org/modules/ShowDocument.aspx?documentid=1309> ("For employees of employers for which fewer than 10 persons work for compensation during a given week, there is a cap of 40 hours of accrued paid sick leave.").
- 180 See Seattle Municipal Code, ch. 14.16, available at <http://clerk.ci.seattle.wa.us/public/toc/14-16.htm>; Portland Ordinance No. 185926 (2013), available at <http://efiles.portlandoregon.gov/webdrawer.dll/webdrawer/rec/5590514/view> and <http://efiles.portlandoregon.gov/webdrawer.dll/webdrawer/rec/5590515/view>; Kate Taylor, *City Council Approves Bill Mandating Sick-Day Pay*, N.Y. Times, May 8, 2013, available at <http://www.nytimes.com/2013/05/09/nyregion/new-york-council-approves-paid-sick-leave-measure.html>; and Milwaukee Common Council File Number 080420 (2008), available at <http://www.wispolitics.com/1006/080721Sickleave.pdf>.
- 181 Peter Applebome, *In Connecticut, Paid Sick Leave for Service Workers Is Approved*, N.Y. Times, June 4, 2011, available at <http://www.nytimes.com/2011/06/05/nyregion/connecticut-service-workers-to-get-paid-sick-leave.html>.
- 182 *Family Leave Insurance*, N.J. Dep't of Labor & Workforce Development, <http://lwd.dol.state.nj.us/labor/fli/fliindex.html> (last visited June 5, 2013); *Paid Family Leave*, Cal. Emp't Dev. Dep't, http://www.edd.ca.gov/disability/paid_family_leave.htm (last visited June 5, 2013).
- 183 Alaska Stat. § 18.80.220 (2013).
- 184 D.C. Code §§ 2-1401.01, -1401.02(12), -1402.11, -1411.02 (2013).
- 185 N.J. Admin. Code 4A:7-3.1 (2013).
- 186 Stephanie Bornstein & Robert J. Rathmell, Ctr. for WorkLife Law, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination 2* (2009), available at <http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf>.
- 187 Ctr. for WorkLife Law, *WorkLife Law's State FRD Legislation Tracker* (Nov. 2010), available at <http://www.worklifelaw.org/pubs/StateFRDLegisTracker.pdf>. As of November 2010, Alaska, D.C., Connecticut, New Jersey, 63 cities and counties, and federal government employees have FRD legislation on the books.
- 188 Alaska Stat. § 39.20.520(a) (2013); 108 Cal. Gov't Code § 12945 (West 2013); Conn. Gen. Stat. Ann. § 46a-60(7) (West 2013); Haw. Code R. § 12-46-107 (West 2013); La. Rev. Stat. Ann. § 23:342 (2012); 775 Ill. Comp. Stat. Ann. 5/2-102(H) (West 2013); Tex. Loc. Gov't Code Ann. § 180.004(c) (West 2013); H.B. 804, 2013 Gen. Assemb., Reg. Sess. (Md. 2013) (enacted), available at http://mgaleg.maryland.gov/2013RS/Chapters_noln/CH_548_hb0804t.pdf. State laws providing accommodations for pregnant workers are discussed more fully in Noreen Farrell, Jamie Dolkas & Mia Munro, Equal Rights Advocates, *Expecting A Baby, Not A Lay-Off: Why Federal Law Should Require the Reasonable Accommodation of Pregnant Workers* 29-31, available at <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>.

Jan 26, 2015

15.0793.01000

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1257

Introduced by

Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman

Senators Heckaman, Nelson, Oban

1 A BILL for an Act to create and enact a new section to chapter 34-06.1 of the North Dakota
2 Century Code, relating to unequal pay for men and women; to amend and reenact sections
3 34-06.1-03, 34-06.1-05, 34-06.1-06, and 34-06.1-07 of the North Dakota Century Code, relating
4 to unequal pay for men and women; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 34-06.1-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **34-06.1-03. Prohibition of discrimination.**

9 1. ~~No~~An employer may ~~not~~ discriminate between employees in the same establishment
10 on the basis of gender, by paying wages to any employee in any occupation in this
11 state at a rate less than the rate at which the employer pays any employee of the
12 opposite gender for comparable work on jobs ~~which~~that have comparable
13 requirements relating to skill, effort, and responsibility. Differentials that are paid
14 pursuant to established seniority systems, job descriptive systems, merit increase
15 systems, or executive training programs, and which do not discriminate on the basis of
16 gender, are not within this prohibition.

17 2. An employer ~~who~~that is paying a wage differential in violation of this chapter may not,
18 in order to comply with this chapter, reduce the wage rates of any employee. ~~No~~

19 3. A person may ~~not~~ cause or attempt to cause an employer to discriminate against any
20 employee in violation of this chapter. ~~No~~

21 4. An employer may ~~not~~ discharge or discriminate against ~~any~~an employee by reason of
22 any action taken by the employee to invoke or assist in any manner the enforcement
23 of this chapter, except when proven that the act of the employee is fraudulent.

Based on recent
amendment to Civil
Rts Act of 1964 5726

- 1 **5.** An unlawful employment practice occurs under this section when a
2 compensation decision or other practice is adopted; when an individ
3 subject to a discriminatory compensation decision or other practice; or when an
4 individual is affected by application of a discriminatory compensation decision or other
5 practice, including each time wages, benefits, or other compensation is paid, resulting
6 in whole or in part from such a decision or other practice.

7 **SECTION 2. AMENDMENT.** Section 34-06.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **34-06.1-05. Collection of unpaid wages and other relief - District court -**
10 **Commissioner.**

11 1. ~~Any~~An employer ~~who~~that violates the provisions of section 34-06.1-03 is liable to the
12 employee or employees affected in the amount of their unpaid wages, and in
13 instances of willful violation in employee suits up to an additional equal amount of
14 liquidated damages. ~~Action to recover such liability may be maintained in a~~
15 ~~competent jurisdiction by any one or more employees for and in behalf of the~~
16 ~~employee or group of employees and other employees similarly situated. T~~

11 § 14-02.4-19

17 2. Any one or more individuals claiming to be aggrieved by a discriminatory p
18 under section 34-06.1-03 may file a complaint of discriminatory practice with
19 commissioner.

20 3. Any one or more individuals claiming to be aggrieved by an unlawful employment
21 practice under section 34-06.1-03 may bring an action in the district court in the
22 judicial district in which the unlawful employment practice is alleged to have been
23 committed, in the district in which the records relevant to the alleged unlawful
24 employment practice are maintained and administered, or in the district in which the
25 individual would have worked or obtained credit were it not for the alleged unlawful
26 employment practice. In an action brought under this chapter, the court i
27 shall, in cases of violation in addition to any judgment awarded to the pla
28 plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, i
29 the action.

11 to § 14-02.4-19

1 4. An agreement by ~~any such an~~ employee to work for less than the wage to which
2 ~~such the~~ employee is entitled under this chapter ~~is does~~ not a bar to ~~any such an~~ action
3 or ~~to a~~ voluntary wage restitution of the full amount due under this chapter.

4 5. At the written request of ~~any an~~ employee claiming to have been paid less than the
5 wage to which the employee may be entitled under this chapter, the commissioner
6 may bring any legal action necessary ~~in on~~ behalf of the employee to collect ~~such the~~
7 claim for unpaid wages. The commissioner ~~may is~~ not be required to pay the filing fee,
8 or other costs, in connection with ~~such an~~ action under this section. The commissioner
9 ~~has the power to may~~ join various claims against the employer in one claim for relief. In
10 proceedings under this section, the court may order other affirmative action as
11 appropriate, including reinstatement of employees discharged in violation of this
12 chapter. The commissioner ~~has the power to may~~ petition ~~any the district~~ court of
13 ~~competent jurisdiction~~ to restrain violations of section 34-06.1-03, and for ~~such~~
14 affirmative relief as the court may deem appropriate, including restoration 11/14-02.4-19 (4)
15 wages and reinstatement of employees, consistent with the purpose of this

16 6. If a person elects to bring an action in district court under this chapter, the
17 commissioner shall dismiss any administrative action pending before the
18 commissioner which is based on the same alleged unlawful employment p

19 **SECTION 3.** A new section to chapter 34-06.1 of the North Dakota Century Code
20 and enacted as follows:

21 **Prima facie case.**

22 If an employee claiming to be aggrieved by an unlawful employment practice under
23 subsection 1 of section 34-06.1-03 brings an action in district court and establishes a disparity
24 exists between wages received by at least two employees of different sexes when the
25 employees were performing comparable work on jobs that have comparable requirements, the
26 burden shifts to the employer to rebut this prima facie case.

27 **SECTION 4. AMENDMENT.** Section 34-06.1-06 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **34-06.1-06. Statute of limitations.**

30 Court action under this chapter may be commenced no later than two years after the ~~claim-~~
31 ~~for relief occurs~~ unlawful employment practice occurred. However, if a complaint of a

1 discriminatory practice is first filed with the commissioner, this period of limitation for bringing an
2 action in the district court is tolled until the commissioner dismisses the complaint or issues a
3 written probable cause determination.

4 **SECTION 5. AMENDMENT.** Section 34-06.1-07 of the North Dakota Century
5 amended and reenacted as follows:

6 **34-06.1-07. Records and reporting.**

7 Every~~An~~ employer subject to this chapter shall make, keep, and maintain ~~sue~~
8 the wages and wage rates, job classifications, and other terms and conditions of e
9 the ~~persons~~individuals employed by the employer, ~~and~~; shall preserve such records
10 periods of time, as long as the employee is employed and two years thereafter; and shall make
11 such reports ~~therefrom~~from the records as the commissioner prescribes.

Similar to
14-02.4-19 (3)(5)

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1257

Page 1, line 1, after "enact" insert "section 34-05-05 and"

Page 1, line 2, after the first "to" insert "duties of the labor commissioner and"

Page 1, after line 5 insert:

"**SECTION 1.** Section 34-05-05 of the North Dakota Century Code is created and enacted as follows:

34-05-05. Labor commissioner - Notification of state agencies.

If the commissioner determines or becomes aware a district court has determined an employer committed a discriminatory practice under chapter 14-02.4 or section 34-06.1-03, or the commissioner becomes aware of a determination a North Dakota employer committed a comparable discriminatory practice under federal law, the commissioner shall inform the head of each executive branch agency, including institutions of higher education under the control of the state board of higher education, that the prohibited act occurred."

Renumber accordingly

January 29, 2015

1B

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1257

Page 1, line 14, overstrike "job descriptive"

Page 1, line 14, after the second "systems" insert "that measure earnings by quantity or quality of production"

Page 1, line 14, overstrike "increase"

Page 1, line 15, overstrike "executive training programs" and insert immediately thereafter "a bona fide factor other than gender, such as education, training, or experience"

Page 2, line 17, remove "Any one or more individuals claiming to be aggrieved by a discriminatory practice"

Page 2, remove lines 18 and 19

Page 2, line 20, remove "3."

Page 3, line 1, replace "4." with "3."

Page 3, line 4, replace "5." with "4."

Page 3, line 16, replace "6." with "5."

Page 3, line 17, remove "administrative"

Page 3, line 21, after "case" insert "**- Affirmative defense**"

Page 3, after line 21, insert "1."

Page 3, line 23, remove "a disparity"

Page 3, remove line 24

Page 3, line 25, replace "employees were performing comparable work on jobs that have comparable requirements" with "the employer pays different wages to employees of the opposite gender and the employees perform comparable work on jobs requiring comparable skill, effort, and responsibility"

Page 3, after line 26, insert:

"2. If a prima facie case is established under subsection 1, the employer may avoid liability by establishing the wage disparity is justified by one of the following affirmative defenses:

- a. The wages were set under a seniority system that does not discriminate on the basis of gender;
- b. The wages were set under a merit system that does not discriminate on the basis of gender;
- c. The wages were set under a system that measures earnings by quantity or quality of production which does not discriminate on the basis of gender; or

- d. The wages were set under a bona fide factor other than sex, such as education, training, or experience which do not discriminate on the basis of gender.

Page 4, line 2, remove "dismisses the complaint or issues a"

Page 4, line 3, replace "written probable cause determination" with "completes an investigation or otherwise notifies the complainant the commissioner will be taking no further action on the complaint"

Renumber accordingly

Jan 29, 2015 (2)
Mock Up w/amendments

15.0793.01002

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1257

Introduced by

Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman

Senators Heckaman, Nelson, Oban

1 A BILL for an Act to create and enact a new section to chapter 34-06.1 of the North Dakota
2 Century Code, relating to unequal pay for men and women; to amend and reenact sections
3 34-06.1-03, 34-06.1-05, 34-06.1-06, and 34-06.1-07 of the North Dakota Century Code, relating
4 to unequal pay for men and women; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 34-06.1-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **34-06.1-03. Prohibition of discrimination.**

9 1. ~~No~~An employer may not discriminate between employees in the same establishment
10 on the basis of gender, by paying wages to any employee in any occupation in this
11 state at a rate less than the rate at which the employer pays any employee of the
12 opposite gender for comparable work on jobs ~~which~~that have comparable
13 requirements relating to skill, effort, and responsibility. Differentials that are paid
14 pursuant to established seniority systems, ~~job-descriptive~~systems that measure
15 earnings by quantity or quality of production, merit ~~increase~~ systems, or ~~executive-~~
16 ~~training-programs~~a bona fide factor other than gender, such as education, training, or
17 experience, and which do not discriminate on the basis of gender, are not within this
18 prohibition.

19 2. An employer ~~who~~that is paying a wage differential in violation of this chapter may not,
20 in order to comply with this chapter, reduce the wage rates of any employee. ~~No~~

21 3. A person may not cause or attempt to cause an employer to discriminate against any
22 employee in violation of this chapter. ~~No~~

1 4. An employer may not discharge or discriminate against anyan employee by reason of
2 any action taken by the employee to invoke or assist in any manner the enforcement
3 of this chapter, except when proven that the act of the employee is fraudulent.

4 5. An unlawful employment practice occurs under this section when a discriminatory
5 compensation decision or other practice is adopted; when an individual becomes
6 subject to a discriminatory compensation decision or other practice; or when an
7 individual is affected by application of a discriminatory compensation decision or other
8 practice, including each time wages, benefits, or other compensation is paid, resulting
9 in whole or in part from such a decision or other practice.

10 **SECTION 2. AMENDMENT.** Section 34-06.1-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **34-06.1-05. Collection of unpaid wages and other relief - District court -**
13 **Commissioner.**

14 1. ~~Any~~An employer ~~whethat~~ violates the provisions of section 34-06.1-03 is liable to the
15 employee or employees affected in the amount of their unpaid wages, and in
16 instances of willful violation in employee suits up to an additional equal amount as
17 liquidated damages. ~~Action to recover such liability may be maintained in any court of~~
18 ~~competent jurisdiction by any one or more employees for and in behalf of the~~
19 ~~employee or group of employees and other employees similarly situated. The~~

20 2. ~~Any one or more individuals claiming to be aggrieved by a discriminatory practice~~
21 ~~under section 34-06.1-03 may file a complaint of discriminatory practice with the~~
22 ~~commissioner.~~

23 ~~3.~~ Any one or more individuals claiming to be aggrieved by an unlawful employment
24 practice under section 34-06.1-03 may bring an action in the district court in the
25 judicial district in which the unlawful employment practice is alleged to have been
26 committed, in the district in which the records relevant to the alleged unlawful
27 employment practice are maintained and administered, or in the district in which the
28 individual would have worked or obtained credit were it not for the alleged unlawful
29 employment practice. In an action brought under this chapter, the court in such action
30 shall, in cases of violation in addition to any judgment awarded to the plaintiff or

1 plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of
2 the action.

3 4.3. An agreement by ~~any such an~~ employee to work for less than the wage to which
4 ~~such the~~ employee is entitled under this chapter ~~is does~~ not a bar to ~~any such an~~ action
5 or to a voluntary wage restitution of the full amount due under this chapter.

6 5.4. At the written request of ~~any an~~ employee claiming to have been paid less than the
7 wage to which the employee may be entitled under this chapter, the commissioner
8 may bring any legal action necessary ~~in on~~ behalf of the employee to collect ~~such the~~
9 claim for unpaid wages. The commissioner ~~may is~~ not be required to pay the filing fee,
10 or other costs, in connection with ~~such an~~ action under this section. The commissioner
11 ~~has the power to may~~ join various claims against the employer in one claim for relief. In
12 proceedings under this section, the court may order other affirmative action as
13 appropriate, including reinstatement of employees discharged in violation of this
14 chapter. The commissioner ~~has the power to may~~ petition ~~any the~~ district court of
15 ~~competent jurisdiction~~ to restrain violations of section 34-06.1-03, and for ~~such~~
16 affirmative relief as the court may deem appropriate, including restoration of unpaid
17 wages and reinstatement of employees, consistent with the purpose of this chapter.

18 6.5. If a person elects to bring an action in district court under this chapter, the
19 commissioner shall dismiss any ~~administrative~~ action pending before the
20 commissioner which is based on the same alleged unlawful employment practice.

21 **SECTION 3.** A new section to chapter 34-06.1 of the North Dakota Century Code is created
22 and enacted as follows:

23 **Prima facie case - Affirmative defense.**

24 1. If an employee claiming to be aggrieved by an unlawful employment practice under
25 subsection 1 of section 34-06.1-03 brings an action in district court and establishes a
26 ~~disparity exists between wages received by at least two employees of different sexes~~
27 ~~when the employees were performing comparable work on jobs that have comparable~~
28 ~~requirements~~the employer pays different wages to employees of the opposite gender
29 and the employees perform comparable work on jobs requiring comparable skill, effort,
30 and responsibility, the burden shifts to the employer to rebut this prima facie case.

1 2. If a prima facie case is established under subsection 1, the employer may avoid
2 liability by establishing the wage disparity is justified by one of the following affirmative
3 defenses:

4 a. The wages were set under a seniority system that does not discriminate on the
5 basis of gender;

6 b. The wages were set under a merit system that does not discriminate on the basis
7 of gender;

8 c. The wages were set under a system that measures earnings by quantity or
9 quality of production which does not discriminate on the basis of gender; or

10 d. The wages were set under a bona fide factor other than sex, such as education,
11 training, or experience which do not discriminate on the basis of gender.

12 **SECTION 4. AMENDMENT.** Section 34-06.1-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **34-06.1-06. Statute of limitations.**

15 Court action under this chapter may be commenced no later than two years after the claim
16 ~~for relief occurs~~ unlawful employment practice occurred. ~~However, if a complaint of a~~
17 discriminatory practice is first filed with the commissioner, this period of limitation for bringing an
18 action in the district court is tolled until the commissioner ~~dismisses the complaint or issues a~~
19 ~~written probable cause determination~~ completes an investigation or otherwise notifies the
20 complainant the commissioner will be taking no further action on the complaint.

21 **SECTION 5. AMENDMENT.** Section 34-06.1-07 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **34-06.1-07. Records and reporting.**

24 ~~Every~~ An employer subject to this chapter shall make, keep, and maintain ~~such~~ records of
25 the wages and wage rates, job classifications, and other terms and conditions of employment of
26 the ~~persons~~ individuals employed by the employer, ~~and~~; shall preserve such records for ~~such~~
27 ~~periods of time,~~ as long as the employee is employed and two years thereafter; and shall make
28 such reports ~~therefrom~~ from the records as the commissioner prescribes.

Feb 2, 2015

15.0793.01002

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1257

Introduced by

Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman

Senators Heckaman, Nelson, Oban

1 A BILL for an Act to create and enact a new section to chapter 34-06.1 of the North Dakota
2 Century Code, relating to unequal pay for men and women; to amend and reenact sections
3 34-06.1-03, 34-06.1-05, 34-06.1-06, and 34-06.1-07 of the North Dakota Century Code, relating
4 to unequal pay for men and women; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 34-06.1-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **34-06.1-03. Prohibition of discrimination.**

9 1. ~~No~~An employer may not discriminate between employees in the same establishment
10 on the basis of gender, by paying wages to any employee in any occupation in this
11 state at a rate less than the rate at which the employer pays any employee of the
12 opposite gender for comparable work on jobs ~~which~~that have comparable
13 requirements relating to skill, effort, and responsibility. Differentials that are paid
14 pursuant to established seniority systems, ~~job-descriptive~~ systems that measure
15 earnings by quantity or quality of production, merit ~~increase~~ systems, or ~~executive-~~
16 ~~training programs~~ a bona fide factor other than gender, such as education, training, or
17 experience, and which do not discriminate on the basis of gender, are not within this
18 prohibition.

19 2. An employer ~~wh~~that is paying a wage differential in violation of this chapter may not,
20 in order to comply with this chapter, reduce the wage rates of any employee. ~~No~~

21 3. A person may not cause or attempt to cause an employer to discriminate against any
22 employee in violation of this chapter. ~~No~~

1 4. An employer may not discharge or discriminate against anyan employee by reason of
2 any action taken by the employee to invoke or assist in any manner the enforcement
3 of this chapter, except when proven that the act of the employee is fraudulent.

4 5. An unlawful employment practice occurs under this section when a discriminatory
5 compensation decision or other practice is adopted; when an individual becomes
6 subject to a discriminatory compensation decision or other practice; or when an
7 individual is affected by application of a discriminatory compensation decision or other
8 practice, including each time wages, benefits, or other compensation is paid, resulting
9 in whole or in part from such a decision or other practice.

10 **SECTION 2. AMENDMENT.** Section 34-06.1-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **34-06.1-05. Collection of unpaid wages and other relief - District court -**
13 **Commissioner.**

14 1. ~~Any~~An employer ~~whothat~~ violates the provisions of section 34-06.1-03 is liable to the
15 employee or employees affected in the amount of their unpaid wages, and in
16 instances of willful violation in employee suits up to an additional equal amount as
17 liquidated damages. ~~Action to recover such liability may be maintained in any court of~~
18 ~~competent jurisdiction by any one or more employees for and in behalf of the~~
19 ~~employee or group of employees and other employees similarly situated. The~~

20 2. ~~Any one or more individuals claiming to be aggrieved by a discriminatory practice~~
21 ~~under section 34-06.1-03 may file a complaint of discriminatory practice with the~~
22 ~~commissioner.~~

23 ~~3.~~ Any one or more individuals claiming to be aggrieved by an unlawful employment
24 practice under section 34-06.1-03 may bring an action in the district court in the
25 judicial district in which the unlawful employment practice is alleged to have been
26 committed, in the district in which the records relevant to the alleged unlawful
27 employment practice are maintained and administered, or in the district in which the
28 individual would have worked or obtained credit were it not for the alleged unlawful
29 employment practice. In an action brought under this chapter, the court in such action
30 shall, in cases of violation in addition to any judgment awarded to the plaintiff or

renumbering



1 plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of
2 the action.

3 4.3. An agreement by ~~any such an~~ employee to work for less than the wage to which
4 ~~such the~~ employee is entitled under this chapter ~~is does~~ not a bar to ~~any such an~~ action
5 or to a voluntary wage restitution of the full amount due under this chapter.

6 5.4. At the written request of ~~any an~~ employee claiming to have been paid less than the
7 wage to which the employee may be entitled under this chapter, the commissioner
8 may bring any legal action necessary ~~in on~~ behalf of the employee to collect ~~such the~~
9 claim for unpaid wages. The commissioner ~~may is~~ not be required to pay the filing fee,
10 or other costs, in connection with ~~such an~~ action under this section. The commissioner
11 ~~has the power to may~~ join various claims against the employer in one claim for relief. In
12 proceedings under this section, the court may order other affirmative action as
13 appropriate, including reinstatement of employees discharged in violation of this
14 chapter. The commissioner ~~has the power to may~~ petition ~~any the~~ district court of
15 competent jurisdiction to restrain violations of section 34-06.1-03, and for ~~such~~
16 affirmative relief as the court may deem appropriate, including restoration of unpaid
17 wages and reinstatement of employees, consistent with the purpose of this chapter.

18 6.5. If a person elects to bring an action in district court under this chapter, the
19 commissioner shall dismiss any ~~administrative~~ action pending before the
20 commissioner which is based on the same alleged unlawful employment practice.

removed
administrative

21 **SECTION 3.** A new section to chapter 34-06.1 of the North Dakota Century Code is created
22 and enacted as follows:

23 **Prima facie case - Affirmative defense.**

replaced

- 24 1. If an employee claiming to be aggrieved by an unlawful employment practice under
25 subsection 1 of section 34-06.1-03 brings an action in district court and establishes a
26 ~~disparity exists between wages received by at least two employees of different sexes~~
27 ~~when the employees were performing comparable work on jobs that have comparable~~
28 ~~requirements~~ the employer pays different wages to employees of the opposite gender
29 and the employees perform comparable work on jobs requiring comparable skill, effort,
30 and responsibility, the burden shifts to the employer to rebut this prima facie case.

1 2. If a prima facie case is established under subsection 1, the employer may avoid
2 liability by establishing the wage disparity is justified by one of the following affirmative
3 defenses:

4 a. The wages were set under a seniority system that does not discriminate on the
5 basis of gender;

6 b. The wages were set under a merit system that does not discriminate on the basis
7 of gender;

8 c. The wages were set under a system that measures earnings by quantity or
9 quality of production which does not discriminate on the basis of gender; or

10 d. The wages were set under a bona fide factor other than sex, such as education,
11 training, or experience which do not discriminate on the basis of gender.

12 **SECTION 4. AMENDMENT.** Section 34-06.1-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **34-06.1-06. Statute of limitations.**

15 Court action under this chapter may be commenced no later than two years after the claim-
16 ~~for relief occurs~~ unlawful employment practice occurred. However, if a complaint of a
17 discriminatory practice is first filed with the commissioner, this period of limitation for bringing an
18 action in the district court is tolled until the commissioner ~~dismisses the complaint or issues a~~
19 ~~written probable cause determination~~ completes an investigation or otherwise notifies the
20 complainant the commissioner will be taking no further action on the complaint.

21 **SECTION 5. AMENDMENT.** Section 34-06.1-07 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **34-06.1-07. Records and reporting.**

24 ~~Every~~ An employer subject to this chapter shall make, keep, and maintain ~~such~~ records of
25 the wages and wage rates, job classifications, and other terms and conditions of employment of
26 the ~~persons~~ individuals employed by the employer, ~~and~~; shall preserve such records for ~~such~~
27 ~~periods of time,~~ as long as the employee is employed and two years thereafter; and shall make
28 such reports ~~therefrom~~ from the records as the commissioner prescribes.

Feb 2, 2015

15.0793.01003
Title.

Prepared by the Legislative Council staff for
Representative Boschee
January 29, 2015

1A

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1257

Page 1, line 1, after "enact" insert "section 34-05-05 and"

Page 1, line 2, after the first "to" insert "duties of the labor commissioner and"

Page 1, after line 5 insert:

"**SECTION 1.** Section 34-05-05 of the North Dakota Century Code is created and enacted as follows:

34-05-05. Labor commissioner - Notification of state agencies.

If the commissioner determines or becomes aware a district court has determined an employer committed a discriminatory practice under chapter 14-02.4 or section 34-06.1-03, or the commissioner becomes aware of a determination a North Dakota employer committed a comparable discriminatory practice under federal law, the commissioner shall inform the head of each executive branch agency, including institutions of higher education under the control of the state board of higher education, that the prohibited act occurred."

Renumber accordingly

34-05-05. Labor Commissioner - Notification of state agencies.

Except as otherwise provided under this section, if the commissioner determines or becomes aware a district court has determined an employer committed a discriminatory practice under chapter 14-02.4 or section 34-06.1-03 or the commissioner becomes aware of a determination of a North Dakota Employer committed a comparable discriminatory practice under federal law, the commissioner shall inform the head of each executive branch agency, including institutions of higher education under the control of the state board of higher education that the prohibited act occurred. However the commissioner is not required to provide notification under this section if the commissioner determines the employer has taken corrective measures to address discriminatory practices or actions.

Feb 2, 2015

1 B

15.0793.01004
Title.

Prepared by the Legislative Council staff for
Representative Keiser
February 2, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1257

Page 1, line 1, remove "create and enact a new section to chapter 34-06.1 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to unequal pay for men and women; to"

Page 1, line 14, overstrike "job descriptive"

Page 1, line 14, after the second "systems" insert "that measure earnings by quantity or quality of production"

Page 1, line 14, overstrike "increase"

Page 1, line 15, overstrike "executive training programs" and insert immediately thereafter "a bona fide factor other than gender, such as education, training, or experience"

Page 2, line 17, remove "Any one or more individuals claiming to be aggrieved by a discriminatory practice"

Page 2, remove lines 18 and 19

Page 2, line 20, remove "3."

Page 3, line 1, replace "4." with "3."

Page 3, line 4, replace "5." with "4."

Page 3, line 16, replace "6." with "5."

Page 3, line 17, remove "administrative"

Page 3, remove lines 19 through 26

Page 4, line 2, remove "dismisses the complaint or issues a"

Page 4, line 3, replace "written probable cause determination" with "completes an investigation or otherwise notifies the complainant the commissioner will be taking no further action on the complaint"

Renumber accordingly

Testimony - House Bill 1257
Senate Industry, Business, and Labor Committee
March 4, 2015

Chairman Klein and members of the Senate Industry, Business, and Labor committee, my name is Kylie Oversen and I represent District 42 in Grand Forks. I am here to testify in support of HB 1257, which clarifies and expands North Dakota's existing equal pay statute.

For your reference here, I am including the beginning sections of Chapter 34-06.1, outlining the public policy regarding equal pay:

34.06.1-01 - **Declaration of public policy:** The public policy of this state is declared to be that the practice of discriminating on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements unjustly discriminates against the person receiving the lesser rate; leads to low worker morale, high turnover, and frequent labor unrest; discourages workers paid at the lesser wage rates from training for higher level jobs; curtails employment opportunities, decreases workers' mobility, and increases labor costs; impairs purchasing power and threatens the maintenance of an adequate standard of living by such workers and their families; prevents optimum utilization of the state's available labor resources; threatens the well-being of citizens of this state; and adversely affects the general welfare. It is therefore declared to be the policy of this state through exercise of its police power to correct and, as rapidly as possible, to eliminate discriminatory wage practices based on sex.

This first section was enacted in 1965 and has not been amended since then. As you read the reasoning in this section on why unequal pay is harmful, you might think it is outdated or irrelevant. However, there has been recent research that shows that the wage gap still exists across the country and is still harmful for many of the same reasons.

Despite the enactment of equal pay laws in the 1960's at the state and federal level, a significant gap remains between what men earn and what women earn, for equal work. These discrepancies cannot be simply explained away by differentials in education, experience, or performance.

The wage gap is calculated by the difference in men's and women's median earnings. The calculations are based on data from the Census Bureau, the Department of Education, and the Bureau of Labor Statistics. The most recent data shows that in North Dakota, women earn only 70% of what men earn.¹ In real numbers, the 2013 Census showed that the median earnings of North Dakota men were up to \$49,231, an increase from \$46,225 in 2012. For women, the median earnings increased from \$34,438 to \$35,549.² That amount of take home pay that women lose out on significantly affects their ability to care and provide for their families.

HB 1257 cleans up several sections of the equal pay statute. Throughout the bill, there are many minor changes for grammatical errors. On page one, section 1, the new language clarifies the basis on which an employer may vary wage rates, including systems based on quantity or quality, merit, education, or experience.

On page 2, subsection 5 of section 1 defines when an unlawful employment practice occurs, pursuant to this section. This is included here to clarify the statute of limitations found later in the chapter.

Also on page 2, section 2 allows an individual to bring a claim under this chapter in district court, which is current practice. The new language simply clarifies which court may have jurisdiction.

On page 3, section 2, subsection 5 allows the commissioner of labor to dismiss an administrative action if an employee elects to bring the same claim

¹ The Wage Gap: State Rankings 2013, National Women's Law Center, September 2014. Available at www.nwlc.org; See also ¹ The Gender Pay Gap: North Dakota, AAUW, September 2014. Available at www.aauw.org.

² The Gender Pay Gap, *Supra* note 1.

before a district court. Also on page 3, section 3 clarifies the statute of limitations. This allows an employee to bring a claim for relief, with a district court, two years after the unlawful practice occurred. Further, the added language states that if an employee decides to first file the complaint with the commissioner of labor, the time limitation is tolled, or put on pause, while the commissioner investigates or dismisses the claim.

Finally, section 4 amends the records requirements, stating that an employer must keep employee records for the duration of an employee's career with that employer and for two years beyond that time. This allows an employee to appropriately exercise his or her right to bring a claim within two years, as allowed under the previous section.

Overall, the changes to chapter 34.06-1 are intended to clarify the existing language and to allow for better enforcement of the statute.

Mr. Chairman and members of the committee, I urge to you favorably consider HB 1257 and I would be happy to answer any questions that you have.

Industry, Business, and Labor Committee
North Dakota State Senate
March 4, 2014
House Bill 1257

Mr. Chairman, Members of the Committee:

My name is Ellen Chaffee. I live in Bismarck and worked for the State of North Dakota in the university system for 31 years, 1969-1977 and 1985 through 2008. I urge your support for House Bills 1257.

I am grateful for the leadership opportunities the State of North Dakota afforded me and, like so many others in service to the State, I worked long and hard to fulfill that trust. In all of my roles, over all of those years, I encountered and experienced practices that treated women unfairly relative to men. Many times, an equitable salary for a single mother would enable her to further her education or care for her children instead of taking a second job. It would lift a struggling two-income family into warmer, safer vehicles and living quarters. And in leadership positions, an equitable salary would recognize the very same qualities it recognizes in men and put her on a more level playing field as an advocate for her organization. All of these benefits to women circle back and become benefits to the employer as well in the form of retention and recruitment success.

It is still true that a man who asks about his salary is seen as ambitious and self-confident, while a woman is seen as – well, in less flattering ways. Moreover, the man is more likely to get the raise even when she does ask. That is one of the reasons I led two independent universities 75 miles apart for nine years for the same salary I would have made for serving just one of them. Some matters are cultural and cannot be addressed directly by law. What we can do, however, is create supportive conditions for both women and men to advance the cause of pay equity. These bills help do that, and I urge your support.

Thank you.

HB 1257
March 4, 2015

1.5

Halunen Law Files Lawsuit against Oil Services Firm in North Dakota, Alleging Discrimination and Retaliation against Former Female Employee

February 09, 2015 02:45 PM Eastern Standard Time

MINNEAPOLIS--(BUSINESS WIRE)--A woman who worked as an oil field pump operator in the Williston, N.D. area with a Texas-based oil services company, is suing her former employer for gender discrimination, equal pay law violations and retaliation, according to a complaint filed today in federal district court in North Dakota.

[The case file number is 4:15-CV-00018-DLH-CSM.]

Cindy Marchello, an Ogden, Utah resident, alleges that management at C&J Energy Services, Inc. created such intolerable working conditions as to cause her to quit her job. The downward spiral in her workplace treatment accelerated after she filed a human rights complaint against the company with the federal EEOC in August 2014, according to the lawsuit. However, the EEOC complaint came about only after Marchello endured numerous gender-related "insults and indignities" from her supervisors and occasionally from co-workers as well.

"The complaint alleges that C&J punished Cindy Marchello for working in a male-dominated field and for courageously reporting discrimination to authorities. That sort of behavior by an employer is illegal," says Stephen Premo, an attorney with Halunen Law, the Minneapolis-based law firm representing Marchello. "The allegations in the complaint present a harrowing picture of how difficult it was for Ms. Marchello to survive for as long as she did working in such a mean-spirited and misogynistic environment. I have no doubt that a jury of her peers will find her story convincing and that she will prevail."

C&J Services hired Marchello in October 2012 to work as a Class B Pump Operator in the oil fields. As a certified diesel mechanic and with three years of oil shale fracking work experience under her belt, she had the requisite skills for the job. She started working the same time as several other new hires, all men and all working the same types of jobs.

Her beginning wage was \$21 per hour. She agreed to work a "21/21" schedule, meaning she worked 12-hour shifts for 21 days straight, followed by 21 days of time off with full pay. With overtime, she was soon on track to make \$120,000 a year. It's the kind of pay that helps people justify putting in long workdays in the harsh environment of the oil fields.

But Marchello's days as a pump operator were cut short. An official with a C&J client company, Kodiak Oil & Gas, allegedly told her boss – after spotting her on his work site – that he didn't like women working in the field, according to the complaint. Her manager then assigned her the backbreaking task of lugging 50-pound buckets of chemicals around the site for 12 hours a day – a job normally divided between all crewmembers.

Next, C&J pulled her away from field duties to a desk job at the local C&J offices. She had no office skills or training, and pleaded to get her old job back. However, her manager said it was "too dangerous" and "too cold" for her in the field, according to the complaint. Office work offered no opportunities for overtime pay, so her expected annual income shrank to less than 50 percent of what she could make working outside. The company also threatened to cut other benefits such as per diem pay and paid housing.

Ironically, one of her new tasks in the office was to handle payroll. In so doing, the complaint alleges, Marchello learned she was being paid \$2 an hour less than men with equivalent experience and tenure with the company, a clear violation of North Dakota's equal pay for equal work law. When she complained, her supervisor told her to "shut her mouth" if she wanted to keep her job, according to the complaint.

Then a new supervisor arrived, one who allegedly made it clear that he wanted her gone from the company. "You and I have to get along," she told the new man. She alleges in the complaint that he responded, "You will suffer a cruel, slow death at my hands."

Finally, she filed a discrimination complaint with the federal EEOC in August 2014. Shortly after that, two officials from human resources arrived to meet with her and discuss the complaint. One told her she was a "flighty troublemaker," and that "as soon as we make this EEOC thing go away," they would cut her pay and benefits further, according to the lawsuit.

Stressed and fearing for her health and well-being, Marchello resigned from the company in October 2014.

She alleges violations of state and federal laws, including discrimination and reprisal in violation of the North Dakota Human Rights Act, Title VII and the North Dakota Equal Pay Act. The lawsuit seeks damages to compensate for lost wages and emotional distress, as well as punitive damages.

"The pattern of abuse and mistreatment alleged by our client is nearly sinister in scope," says Clayton Halunen, managing partner of Halunen Law. "It's shocking to think that a woman employee could be treated in such a discriminatory manner today by an American company operating in an American state. Every woman has a right to fair and equitable treatment, no matter whether she's working in the rugged shale oil fields of North Dakota or the shimmering office towers of Manhattan. We are pleased to represent Ms. Marchello in her lawsuit, as we would be to represent anyone, man or woman, who believes themselves to be a victim of illegal workplace discrimination and retaliation."

About Halunen Law

With offices in Minneapolis and Chicago, Halunen Law offers experienced legal representation to employees, consumers and whistleblowers in individual and class actions. Halunen Law has achieved a reputation as a fearless, tenacious and successful plaintiffs' law firm, with a laser focus on achieving justice for its clients as well as meaningful social change. For information on the firm, visit the firm's website at halunenlaw.com.

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2



Senate Industry, Business and Labor
House Bills 1257
March 4, 2015

Good morning Chairman Klein and members of the Senate Industry, Business, and Labor committee. I am Renee Stromme representing the North Dakota Women's Network. We are a statewide advocacy organization working to improve the lives of women. We stand in support of House Bill 1257. The time is due for ND to update our laws regarding equal pay for equal work.

When the bill was enacted in 1965, the pay gap was less than 60 cents to every dollar earned by a man. In ND, we've only risen a little over 10 cents to 70.2. The gap represents the overall gap in median earnings of men and women in the state. There are numerous factors that lead to that gap. Pay discrimination is one of those factors. Study after study shows that some of the pay disparities cannot be explained away by legitimate factors, such as differences in vocation, education or experience.¹

1257 provides a clean up to current laws and clarification on jurisdiction, statute of limitations, retention of records, and standards. These changes provide modest updates to ensure our equal pay laws match current standards. These updates are critical to address several gaps in the current statute. Equal pay laws have become an empty promise for many women who experience pay discrimination. These bills set forth a balanced approach to update the tools we have to work toward equal pay for equal work.

Wage discrimination does exist and has consequences. Pay disparities cost women and their families thousands of dollars each year while they are working and thousands in retirement income when they leave the workforce. It is long past time for the state to act to ensure that the promise of equal pay becomes a reality. The North Dakota Women's Network supports 1257 and ask the committee give favorable approval to the bill.

¹ See, e.g., Francine D. Blau & Lawrence M. Kahn, *The Gender Pay Gap: Have Women Gone as Far as They Can?*, 21 ACAD. MGMT. PERSP. 7 (2007); CHRISTIANNE CORBETT & CATHERINE HILL, AM. ASS'N OF UNIV. WOMEN, *GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE GRADUATION* (2012).

Dear Senators,

After visiting and discussing my participation with advocates, I am submitting the following information with the understanding my name, employers name, and any specific identifying information is withheld. In wanting to do what I can to provide testimony on behalf of women's employment issues in North Dakota. I don't want my employer to retaliate further for my involvement. I also don't want to jeopardize my EEOC investigation. I appreciate your cooperation and understanding.

And months of working towards a promotion, the position had finally been posted. The next day my manager pulled me into his office and said he could not get management's approval to pay me 100% of the salary as printed in the position agreement. One reason cited was I would be the highest paid female in the company and it would upset other female employees who had been with the company for quite a bit longer than I had. Another reason, is management did not want the wage to go above another set threshold. At this point, I was upset, but it didn't all hit me until the very next day at the office. I had heard certain male employees would be getting an additional raise. The next day I was given an insubordination letter for not wanting to discuss the real issue at hand (men getting raises when I couldn't even get paid 100% of my salary). Management pulled the job posting and then I was put on paid administrative leave. The union fought and after months I was brought back to work.

I currently have an EEOC charge against my employer under sex discrimination and retaliation for pulling the job posting. Now that I'm back to work I've been subject to micromanagement, changes in accepted past practice, extreme minute to minute documentation of my tasks, monitored, etc. I am being treated differently than everyone else as a form of harassment and retaliation for filing the EEOC complaint and union grievance.

All I want is 100% of the salary for the position that was withdrawn. As a North Dakota woman in 2015, I deserve the same pay for equal work of my male counterparts. I didn't believe sex discrimination was real, maybe I didn't want to believe it could still be happening in today's society. But it is, and I'm proof of it.

Thank you

Here's additional background:

- I'm a homeowner
- I'm white
- I'm a single mom
- I have a MBA
- I'm a voter, tax payer

Senate Industry, Business and Labor Committee
House Bills 1257
March 4, 2015

To the North Dakota Legislature,

I request for the people of North Dakota to take a deeper look at the wage gap that exists in the North Dakota. We as a state has an obligation to take care of all our workers,

My name is Jonnie Cassens and I'm a female truck driver. I've driven for 11 years, 3 of them in the Bakken. I've experienced a lot of sex discrimination.

In job interviews I'm repeatedly told "our company doesn't cater to females". I am not asking to be catered to I just want an equal opportunity. I was denied housing (the biggest expense in the Bakken) because I was a woman. They didn't allow females in their housing. I said "fine, what about a per diem I could use for finding myself housing and meals." I was told "no."

In another case, I was personally told that "there has never been a female hired onto this company and it's because you're a distraction on job sites." Why am I the problem? The sexual harassers should be the problem.

Another friend of mine joined me in looking for work. She's a single mother raising a young daughter. She worked for a larger company trucking fleet in North Dakota. She was hired to do accounting. Her pay is half what another man half a thin wall behind her is paid for the same position.

As a single mother, and there are many in ND, she can barely pay for child care and housing. At the end of the month there is nothing left. She knows women and children in dangerous situations because they lack housing and childcare.

Equal pay matters. It would bring better conditions for our children and more economic independence for everyone.

I encourage the North Dakota Legislature to take a deeper look into the issue. Even small adjustments would lead to healthier and more respectful lives for women in this great State of North Dakota.

Jonnie Cassens
701-400-4361
jonniecassens@gmail.com



Testimony in support of House Bill 1257
From TJ Jerke
Legislative Coordinator, ND Human Rights Coalition
To Senate Industry, Business & Labor
Senator Jerry Klein, Chair
March 4, 2015

Mr. Chairman, and members of the Industry, Business, and Labor Committee, My name is TJ Jerke. I am here on behalf of the North Dakota Human Rights Coalition.

The North Dakota Human Rights Coalition is a broad-based coalition of individuals and organizations around North Dakota. Since 2002, the Coalition has been passionately working to effect change so that all people in North Dakota enjoy full human rights.

Our Coalition is in support of House Bill 1257, which seeks to give men and women equal footing when it comes to compensation, and the opportunity to seek legal remedies if they know they have been unfairly compensated because of their gender.

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being. Accordingly, the conditions in which a person works are highly significant in shaping the whole compendium of psychological, emotional and physical elements of a person's dignity and self-respect.

The process of securing equal pay conditions requires society and employers to actively build equality promoting measures into their practices. House Bill 1257 will help do just that. This transforms the

status of employees, enhancing their capacity to be full participants in their workplace and society. It also recognizes employees as having the capacity to contribute to, and advance within the workplace, and to resist abuse and harassment. It supports and sustains broader economic and social equality as well.

Please, join the Coalition's mission and help effect change so that all people in North Dakota enjoy full human rights. I urge you to give House Bill 1257 a Do Pass Recommendation.



Real Possibilities in

North Dakota

House Bill 1257 - SUPPORT

March 4, 2015

Senate Industry, Business and Labor Committee

Josh Askvig - AARP North Dakota

jaskvig@aarp.org or 701-989-0129

Chairman Klein and members of the Senate Industry, Business and Labor Committee, I am Josh Askvig, Associate State Director of Advocacy for AARP North Dakota. We rise in support of the package of gender equity bill before you today (House Bill 1257).

Dr. Ethel Percy Andrus, a retired educator and AARP's founder, became an activist in the 1940s when she found a retired teacher living in a chicken coop because she could afford nothing else. Dr. Andrus couldn't ignore the need for health and financial security in America and set the wheels in motion for what would become AARP. We are a nonprofit, nonpartisan membership organization with 85,000 members in North Dakota and 38 million nationwide. We understand the priorities and dreams of people 50-plus and are committed to helping them live life to the fullest, including here in North Dakota.

The bill you are hearing this morning is aimed at addressing and closing some important pay equity concerns on the basis of gender. AARP policy "...supports efforts to eliminate all barriers to women's employment and ensure equality in employment opportunities, pay, and benefits." Occupational segregation by sex and pay inequity among workers lead to less retirement income for women. Pay equity is key to enhancing women's wages and retirement income.

Mr. Chairman, thank you for your time and we urge this committee to support HB 1257.