



ISSUE ADVISORY: Working Women - Progress Made Towards Pay & Workplace Equity

**By Hannah Brown, NOW Government Relations Intern
September 28, 2015**

Analysis from the most recent data released by the U.S. Census Bureau indicates that the gender wage gap was at 78.6 percent for full-time, year round workers in 2014. The gap has narrowed only a few percentage points over the last 15 years and, as has been pointed out, if the annual earnings ratio (the wage gap) continues at the same snail-paced rate it has maintained since 1960, women's pay will not reach parity with men's until 2059.

Efforts to narrow that stubborn gap, for the most part, have met with stiff resistance. As examples of those efforts, the Paycheck Fairness Act and legislation to improve workers' benefits, such as paid sick and parental leave and to increase the poverty-level minimum wage are stalled in the 114th Congress – thanks to the uber-conservative Republican leadership. However, a few cities and several states are moving forward with such measures.

The good news is that initiatives recently taken by the Obama administration could have a beneficial impact on the gender wage gap and also improve many workers' pay and benefits. The initiatives involve a series of executive orders and presidential memoranda, affecting mostly federal employees and employees of federal contractors, but with some affecting private sector workers have been issued. Several of those executive orders have taken effect already, while others are scheduled to take effect soon.

Paid Sick Leave Executive Order Welcomed - On Labor Day, during a speech to union leaders in Boston, President Obama unveiled his latest executive order (EO). This one will guarantee up to seven days of paid sick leave for employees of federal contractors and subcontractors, which could benefit some 300,000 workers. Paid sick leave could be used for physical or mental illness, injury, or medical conditions, plus obtaining medical diagnosis or preventive care. Additionally, leave can be taken to care for a child or relative.

Importantly, sick leave is made available under this EO to survivors of domestic violence, sexual assault or stalking when in need of care and for seeking protection, legal assistance or court appearances. NOW welcomes the news of this much needed directive; it will take effect in early 2017.

In his Labor Day message, President Obama noted that only 12 percent of private sector workers have paid family leave, but said that there is a growing momentum in the country for paid leave. The president said, "Right now, you've got dozens of cities – Pittsburgh, Phillie, Atlanta – who have adopted paid sick leave or paid family leave." He added, "Microsoft, Facebook companies, including small businesses, support these policies [because] they understand it helps with recruitment and retention. It helps you keep good employees."

The president also talked about the lack of paid maternity leave, noting that the U.S. is the “only advanced nation on Earth that does not guarantee paid maternity leave.” He continued, “...one study found that nearly one in four working moms return to work within two weeks of childbirth. Think about that. Now, for the men in the audience in particular, think about that. We wouldn’t even go to work if we had to carry around somebody for nine months. The human race would evaporate. We couldn’t even take it.” His comments were followed by laughter and applause.

Executive Order Promotes Pay Transparency – On Equal Pay Day, April 8, 2014, several actions taken by the president nudged women workers closer to achieving pay equity. The first was an EO that banned federal contractors from retaliating against workers who discuss their salaries. As federal contract employees constitute a quarter of the civilian workforce, this is an essential step forward. It is long-held practice by companies to forbid employees from discussing their salaries with other employees, often with the implicit threat of being fired.

The Lilly Ledbetter case demonstrated how unfair pay secrecy is for workers as Ledbetter had no idea she was being paid dramatically less over many years at the Goodyear Tire & Rubber Company in Gadsden, Ala. Ledbetter worked as an area manager, yet received about a third less in salary than men with equal or less seniority and substantially similar job responsibilities. She only learned about this pay disparity when someone confidentially slipped her a note with that information. Ledbetter retired and sued Goodyear.

Ledbetter won her case at the lower court level, but the U.S. Supreme Court ruled against her, in a narrow interpretation of the law finding that she hadn’t filed her suit 180 days from her first pay check (even though she was unaware of the difference in pay at the time). It took an act of Congress, the Lilly Ledbetter Fair Pay Act of 2009, to correct this injustice by loosening the timeliness requirements. But, because Ledbetter lost at the Supreme Court level, she was not able to recover what is a substantial amount of income.

Transparency for employee compensation is absolutely essential in women’s efforts to gain equal pay. The final rule ending pay secrecy gags will take effect on January 11, 2016.

Gender and Race Compensation Data Required - A Presidential Memorandum issued at the 2014 Equal Pay Day event instructs the Secretary of Labor to establish new regulations requiring federal contractors to submit summary data on compensation, including data by gender and race. Such data will help identify patterns of discrimination and aid the Department of Labor (DOL) in encouraging voluntary compliance with equal pay laws and to better target enforcement where there are discrepancies. This data is critically important in challenging pay disparities for which there is no valid justification based on education, experience and skills or knowledge required.

Overtime Pay Executive Order for Five Million Workers - Millions of workers who have jobs classified as managerial have been taken advantage of because their employers were allowed to classify them as “managers” – yet many of these positions did not have the typical duties of a manager, such as hiring or firing. Companies have been able to require these employees to work many hours past 40 per week, but not have to pay them time and one-half overtime compensation as the Fair Labor Standards Act (FLSA) of 1938 requires for non-managerial employees.

In 2004, the George W. Bush administration opened the doors to denial of overtime pay when the rules were redefined to determine which administrative, professional and executive employees got overtime pay. This was a move clearly intended to enrich company owners and shareholders, at the expense of workers. The new definitions meant that six million workers lost overtime pay – which for many resulted in a significant loss of income.

In March 2014, Obama issued a presidential memorandum directing the Department of Labor to prepare new overtime rules to make more workers eligible for time and a half pay. This executive order will extend overtime pay eligibility to 40 percent of workers in the United States (right now, it only applies to eight percent) making it one of the most widely felt employment initiatives of the Obama administration.

Called one of the most far-reaching executive actions by President Obama, this initiative would extend overtime benefits to more than five million workers, 56 percent of whom are women and 53 percent of whom hold a college degree. The new regulations from DOL would raise the threshold to qualify for overtime pay to all workers making less than \$50,440 a year. (<https://www.whitehouse.gov/the-press-office/2015/06/30/fact-sheet-middle-class-economics-rewarding-hard-work-restoring-overtime>)

Since 1970 the threshold has been updated only once and that was during the Bush administration in 2003, when it was set where it has remained at \$23,660, well below the poverty line for a family of four. To ensure no future erosion of overtime pay, the memorandum directs the Department of Labor to automatically raise the threshold annually and tie it to either inflation or wage growth over time.

Incidentally, this order disproportionately affects women as 54% of newly eligible workers are women, bringing the percentage of workers eligible for overtime pay who are women up to 65 percent. This is an important step in guaranteeing fair pay for hard work and enhancing working women's pay.

The National Organization of Women submitted formal comments in support of the proposed overtime pay rule change. The final rule is expected to go into effect early 2016. More details about overtime pay appears on the NOW website at, <http://now.org/resource/issue-advisory-good-news-obama-pushes-for-higher-overtime-pay-threshold-guaranteeing-millions-higher-wages/>

Fair Pay and Safety for Federal Contract Employees - The Fair Pay and Safe Workplaces Executive Order issued by President Obama in July 2014, is a big step forward in ensuring that employees receive fair wages and are not unduly exposed to danger on the job. A 2013 investigation by the Senate Health, Education, Labor and Pensions Committee showed that a significant number of federal contractors disregard anti-discrimination, safety and health laws. As a result, they deny overtime pay, unfairly discriminate in hiring and compensation, and put their employees' health and safety at risk. The report found that 42 workers had lost their lives over the six-year period of the study due to violations of occupational and safety regulations by companies holding federal contracts.

The order is aimed at increasing transparency regarding federal contractors' violations of labor laws by requiring extra scrutiny regarding past violations and making sure that the government considers this record when deciding whether those companies would receive government contracts. Given that over 22 percent of the labor force is employed by government contractors, these are important initiatives that will protect and benefit a significant number of workers.

NOW submitted formal comments to the Department of Labor in August, urging the adoption and swift implementation of this executive order. More information on this issue can be found at, <http://now.org/resource/issue-advisory-good-news-obama-pushes-for-higher-overtime-pay-threshold-guaranteeing-millions-higher-wages/>

Minimum Wage Moved to \$10.10 an Hour - In February of 2014, President Obama issued an executive order to raise the hourly minimum wage for workers on new federal government contracts from \$7.25 to \$10.10 per hour, beginning in January, 2015. Regulations were issued in October. The order provides for annual increases in the minimum wage as determined by the Secretary of Labor based on the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

At the same time, the EO directed employers of tipped workers that they were to be paid at least \$4.90 per hour, effective January 1, 2015. The full amount to be paid tipped workers includes tips combined with the \$4.90, the total of which must rise to the \$10.10 per hour minimum wage level. Stepwise increases were ordered for successive years. Hopefully, this sets a standard to be emulated – or even exceeded – in the private sector where the tipped minimum wage has remained for more than 20 years at \$2.13! Since women comprise the majority of tipped workers this inhumanly-low wage has been a big factor in perpetuating women's poverty.

LGBTQIA Persons Protected from Discrimination - In July, 2014, a two-part executive order was issued expanding protections for LGBTQIA federal workers and prohibiting contractors and subcontractors from discriminating against employees based on their sexual orientation or gender identity. In signing the EO, Obama said, "in too many states and in too many workplaces, simply being gay, lesbian, bisexual or transgender can still be a fireable offense. So I firmly believe that it's time to address this injustice for every American."

Gay-rights groups had campaigned for this action ever since Obama campaigned on the issue in 2008. A 2012 survey of LGBT adults by the Pew Research Center found that 21 percent report facing workplace discrimination.

The order does contain a provision from a 2002 executive order signed by President George W. Bush that exempts religious organizations that discriminate based on religious beliefs. (More information at <https://www.whitehouse.gov/blog/2014/07/21/president-obama-signs-new-executive-order-protect-lgbt-workers>)

No Sex Discrimination in Health Care - On September 3rd, the Department of Health and Human Services issued a proposed rule to implement section 1557 of the Affordable Care Act (ACA), a key provision that broadly prohibits discrimination in health care programs by any

health programs that receive federal funding. This provision of the ACA was intended to prohibit health insurance companies from unfairly charging women higher premium rates for the same or comparable level of services than rates for men. Additionally, insurance companies excluded maternity care in their plans. The prohibition could also assure that women are adequately represented in medical research trials and women doctors are paid equally. The rule would also prohibit denial of care for LGBTQIA individuals. Public comments on this proposed rule are due in early November.

Two Million Home Health Care Workers Covered Under FLSA – Another job sector where women employees predominate and suffer from poor labor protections is home health aides. Over 90 percent of home health aides are women; more than half are women of color. Yet these hardworking women who provide a vital service to millions of elderly individuals and persons with disabilities often do not receive even a minimum wage or have basic overtime protections. In fact, a quarter of all home health aides are paid less than minimum wage, despite the fact that third party companies typically charge roughly \$20 per hour for this service (profit margins in the industry are routinely 30-40 percent). Home care work is incredibly undervalued. Its roots in slavery and its continued devaluation as “women’s work,” and especially the work of women of color, contribute to its underpaid status.

In 1974, the Fair Labor Standards Act (FLSA) was expanded to provide coverage to domestic workers in private homes, a major breakthrough in ensuring women’s equality and financial stability. But the “companion exemption,” which was meant to exclude casual babysitters and the like, created a loophole that the Department of Labor broadly interpreted in 1975 to include home care workers working for third-party companies.

In fact, this interpretation of the new provisions in the FLSA now robbed many home health care workers that had previously been covered by its protections. Home health care companies have continued to exploit this loophole to the present day, enriching managers, company owners and shareholders – at the expense of some of the lowest paid workers in the U.S.

In 2011, President Obama announced his support for a revised interpretation by the Department of Labor that would ultimately extend FLSA coverage to most home health aides, about two million workers in total. After nearly two years of delay, the final rule was published in 2013. The change was not to be put into effect for 15 months and was given another six-month non-enforcement period, ostensibly to allow an industry that went unregulated for decades, time to prepare.

The new law was set to take effect on January 1, 2015, but has since been delayed by legal challenges, most recently at the D.C. Circuit Court of Appeals (which ruled in favor of the law). The D.C. Circuit rejected arguments that the new regulation would make home care less affordable and create an incentive to re-institutionalize the elderly and persons with disabilities. The Court relied on a lack of evidence that this had occurred in states that already had minimum wage and overtime protections for third-party employed home health care workers. (See <http://www.wagehourblog.com/2015/08/articles/wage-and-hour-policies/court-of-appeals-restores-dol-regulation-barring-third-party-employers-from-claiming-exemptions-for-companionship-and-live-in-domestic-service-workers/>)

It is unclear whether the law will be appealed further, which, if granted Cert to be reviewed by the Supreme Court, would effectively put the regulation on hold until at least the summer of 2016. If it is not appealed, we may see fair wages and other labor protections for home health aides in the near future – finally!