



## Happy Women's Equality Day! We Are Inching Towards Equality

August 26, 2016

As we celebrate Women's Equality Day, August 26, it seems like a good time to take stock. Predictably, we find a mixed record of modest advances towards equality and the stubbornly persistent inequalities. Here's a quick rundown, starting with the important advances.

### THE GOOD NEWS

Thirty-four state legislatures saw equal pay bills introduced during the 2014-2015 session – a strong indication that public support is growing for better laws to assure pay equity for women. According to an analysis prepared by the American Association of University Women (AAUW), six states already have strong equal pay protections: California, Illinois, Maryland, Massachusetts, Minnesota and Vermont. AAUW's chart (<http://www.aauw.org/resource/state-equal-pay-laws/>) shows that Arizona, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Missouri, Michigan, New Mexico, North Carolina, South Carolina, Texas, Utah, Virginia, and Washington state have poor equal pay protections, with the states of Alabama and Mississippi having enacted no equal pay protection laws. The rest of the states all have moderate equal pay protections.

**Strong New Law in Massachusetts** - Earlier this month, Massachusetts Gov. Charlie Baker, a Republican (!), signed strong equal pay protection bill that promotes equal pay for men and women doing substantially similar work. The “substantially similar” term gets around the problem of “equal pay for equal work” which was guaranteed in the 1963 Equal Pay Act, but which has prevented women from achieving pay parity. The new Massachusetts law also prohibits employers from requiring applicants to disclose salary history as a condition of being interviewed or of continuing to be considered for employment. This “first in the nation” provision is cited by experts as significant protection that addresses the problem of women usually being paid less and encourages employers to think about what an equitable salary should be based on the value of the job.

Other features of the new law (which should be part of any state's equal pay protection laws) include a prohibition against employers preventing employees from talking about their salaries and benefits; a provision that encourages employers to proactively take steps to eliminate wage discrimination on the basis of gender; and, a provision which prohibits reduced seniority due to time spent on leave due to a pregnancy-related condition and protected parental, family, and medical leave. This latter provision addresses the widespread problem of the “mommy penalty” where employers routinely reduce compensation for women who become pregnant, take parental leave or just have children in the home. Fathers, of course, do not experience the same penalty; in fact, studies show that their pay increases when they have children.

**California and New York Strengthen Laws** – Both states passed laws in recent years which strengthened their existing equal pay protections. No doubt inspired by Patricia Arquette’s advocacy for equal pay during the 2015 Academy Awards ceremonies, California lawmakers were quick to adopt a strong comparable worth-type bill. California Gov. Jerry Brown (D) signed the legislation in October of what then described as the toughest equal pay law in the country. A critical element is the prohibition against employers paying employees less than those of the opposite sex for “substantially similar work,” even if the job titles are different or the employees work at different sites. Essentially, this is a “comparable worth” measure that pay equity advocates have been seeking for decades, but consistently faced opposition from the conservative business community and Republicans. In the case of both the Massachusetts and California equal pay laws, some Republican politicians and business leaders recognized the value of stronger laws. If a lawsuit is brought, the California law requires employers to show that wage differences are due to factors other than sex, such as merit or seniority; that they are job-related and reasonable; and that they are not due to discrimination.

New York’s strengthened equal pay law, also adopted in 2015, includes provisions similar to the California comparable worth provision and triples damages for violations to 300 percent. It also forbids employers from requiring that employees keep their compensation information secret. The new law was part of a Women’s Equality legislative package that women’s rights groups had been pushing for several years. Former New York State NOW president, Zenaida Mendez, ardently lobbied for the package, which was stalled for two years due to Republican opposition to a bill in the package that would have codified abortion rights.

**Lobby your Legislators for Better Equal Pay Protections** - Other states which have adopted better equal pay laws in 2015 include Connecticut, Delaware, Illinois, North Dakota, and Oregon. If your state is one of those that failed to adopt equal pay protections or to strengthen existing laws during the recent legislative sessions, make sure that you meet with your legislators during this election season to advocate for stronger provisions. In addition to the comparable worth provision, here are several addition protections that should be included in any strong equal pay bill:

- Banning employers from keeping their workers from discussing wages
- Prohibiting questions about prior salary history during hiring
- Requiring contractors to be certain that they complete with state and federal equal pay regulations
- Clearly delineating the reasons an employer may use for paying unequal salaries
- Prohibiting discrimination against employees who exercise their rights related to equal pay laws, including protecting those who bring legal action
- Increasing damages that workers may recuperate for being wronged and allow for recovery of costs and attorney’s fees

**Progress at Federal Level** – Even though the Paycheck Fairness Act is blocked from consideration in Congress by conservative Republicans, leadership on the issue has been undertaken by the White House. In addition to President Obama speaking out on the importance of equal pay, the White House maintains a page with resources for advocates, <https://www.whitehouse.gov/issues/equal-pay> A

National Equal Pay Task Force, composed of a number of related federal agencies, was established and has worked to improve enforcement of equal pay laws, among other objectives. More significant, though, are a handful of initiatives made by the administration through new regulations and Executive Orders.

**White House Equal Pay Campaign** - In April, 2014, Obama signed an Executive Order (EO) to prevent workplace discrimination and empower workers to take control over negotiations regarding pay. He also signed a Presidential Memorandum directing the Secretary of Labor to require federal contractors to submit data on employee compensation by race and gender. Over 22 percent of the labor force is employed by government contractors.

**Paid Sick Leave Guarantees** - On Labor Day, 2015, the president announced an Executive Order that would guarantee up to seven days of paid sick leave for employees of federal contractors and subcontractors, which could benefit 300,000 workers. Sick leave is made available under this EO for survivors of domestic violence, sexual assault or stalking when in need of care and for seeking protection, legal assistance or court appearances. This Executive Order becomes effective in early 2017.

**Data to Identify Discrimination** - Another EO issued on Equal Pay Day, April 8, 2014 prohibits retaliation against employees for sharing information about their pay. A Presidential Memorandum issued that same day 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 information is invaluable in identifying patterns of gender- and race-based discrimination.

Currently, a proposed regulation by the Equal Employment Opportunity Commission would require of employers not only race and gender data, but that information to be connected to occupational category and compensation. NOW submitted a formal comment letter earlier this month in support of requiring that information to be collected on what is known as the employer's EEO-1 form; if the regulation is adopted, this will be an very important step to understanding more about systemic patterns of discrimination as well as helping employer's better determine what is appropriate compensation for various employment positions.

**Five Million Workers to Benefit** - The George W. Bush administration had opened the doors to denial of overtime pay when the rules were redefined to determine which administrative, professional and executive employees got overtime pay. Really, the action was intended to benefit company owners and shareholders at the expense of workers. A very important Executive order to better clarify who is a "manager" and who is or is not entitled to overtime pay was issued in March, 2014 potentially benefitting five million workers. Many employers had classified certain employees as "managers" – yet many of these positions did not have the typical duties of a manager, such as hiring or firing. This misclassification allowed the employer to avoid having to pay the employee for any overtime work (beyond 40 hours per week) at the federal standard of time and one-half compensation. More than half of these workers are women; 54 percent of newly eligible workers are women, bringing the percentage of workers eligible for overtime pay who are women up to 65 percent!

**Fair Pay and Safe Workplaces EO** – The Fair Pay and Safe Workplaces Executive Order issued by President Obama in July 2014 requires increased transparency and accountability for federal contractors regarding violations of safety standards. Additionally, the EO prohibits unfair discrimination in hiring and compensation by federal contractors and subcontractors. Obama had issued an Executive Order in February, 2014 to raise the hourly minimum wage from \$7.25 an hour to \$10.10 an hour for employees of federal contractors. The EO also directed employers of tipped workers that they were to be paid at least \$4.90 per hour, effective January 1, 2015, with the full amount combined with the tip to equal the \$10.10 minimum.

**Republicans Attempt to Stop Initiatives** - It should be noted that despite the clear need for these Executive Orders, Presidential Memoranda and regulations, Republicans in Congress are doing what they can to halt implementation. They have included in various budget bills provisions that would withhold funds from the relevant agencies to carry out the orders or implement new regulations. The question remains, however, whether there will be a FY 2017 federal budget adopted by Congress. Most observers think that this is not likely given the many dramatic reductions in funding for programs Democrats support and the provisions that would undermine many of Obama's initiatives.

## THE NOT-SO-GOOD NEWS

**ERA and Equal Means Equal** - We do not yet have a constitutional guarantee of equal rights, but activists continue to press for the Equal Rights Amendment (ERA) in a handful of states and in waging a national public education campaign. NOW has made constitutional equality one of our three major national Strategic Action Programs, with a special focus on how the ERA would benefit women of color. Several Equal Rights Amendment bills have been introduced in Congress, but are not expected to move this term. But the outcome of the November election will determine whether legislation in Congress gets a fair hearing in the 115<sup>th</sup> Congress.

Awareness of the need for a constitutional protection of equality may increase with the imminent release of a new film, *Equal Means Equal*, [<http://equalmeansequal.com/>] Private screenings of the film are taking place in various cities in conjunction with Women's Equality Day.

**Gender Wage Gap Widened** - The inequality that many women feel most acutely – the gender wage gap – is where we see an unfortunate backslide. A painfully slow narrowing of the gap between women's and men's median *weekly* full-time earnings which occurred up until 2005 began to stall out, with losses and gains alternating in the following years. In 2014, women's median weekly earnings dropped from 82.5 percent to 81.1 percent in 2015, thereby widening the gender gap to 18.9 percent from 17.5 the previous year, according to the Institute for Women's Policy Research (IWPR). While median weekly earnings for both women (0.9 percent) and men (2.6 percent) increased over that period, the increase for men was more substantial. Hopefully, that is a trend that does not continue. Note: the median for *year-round* full time women workers in 2015 was 78.6 percent.

**Job Segregation Big Factor** - Women are paid less than men in 107 out of 110 occupations, according to research in 2011 by IWPR. In the lowest-paid ten occupations, two-thirds of workers are women contrasted with the same proportion in the male-dominated highest-paying ten occupations. Francine D. Blau and Lawrence M. Kahn reported in their January, 2016 report, “The Gender Wage Gap: Extent, Trends, and Explanations,” that the largest factor in the persistent wage gap is the lack of women in specific jobs and industries or, in other words, the segregation of women into lower paying job categories.

**Graduating to a Gap** - Ground-breaking research by the American Association of University Women (AAUW) has documented that just after one year of graduating from college that women were paid 82 percent of what their similarly qualified male counterparts were paid. This disparity continued to widen even though women were more likely to earn an advanced degree; after ten years the gap had widened to 69 percent. Even accounting for an array of factors, there remained a seven percent unexplained difference between the sexes. Sex-based pay disparity is found in virtually every major occupational category reaching up into such professions as computer programmers, college athletic coaches, stockbrokers, lawyers and even physicians. One factor for the widening disparity, no doubt, was the mommy penalty, described earlier in this article.

**Black Women’s Wage Gap Wider** - African American women’s equal pay day was observed on August 23, representing the number of working days into a second year that they must work to be paid the same amount that white, non-Hispanic men are paid in one year. As calculated by IWPR, their wage of 66.8 percent of white men’s earnings is contrasted with the 61.5 cents paid to Latinas, with Asian American women having the smallest wage gap at 95.3 percent.

A closer examination by IWPR of Black women’s wages, concluded that between 2004 and 2014, Black women’s real median annual earnings for full-time, year-round work declined by 5.0 percent – more than three times as much as women’s earnings overall; Native American women’s earnings declined even more at 5.8 percent and White women’s earnings declined by just 0.3 percent. Only Asian/Pacific Island women’s earnings increased at 1.2 percent over that ten year period.

The good news is that increases in median weekly earnings between 2014 and 2015 were seen for Asian women at 4.2 percent, Latinas by 3.2 percent and white women by 1.1 percent. Black women saw the smallest increase in median weekly earnings among women at 0.5 percent and real wages for black men did not grow at all during the same period. As IWPR researchers note, earnings for a full-time week of work put Hispanic (Latina) women well below, and Hispanic men and black women not much above, the qualifying threshold for receipt of food stamps of \$505 per week for a family of four.

**\$500 Billion lost to Gender-Based Pay Discrimination** - The gender wage gap for all women (measured at the median of 79 cents, 2014) means a yearly loss of \$10,800 – added up over a 40 year working career is a huge loss. On average, women employed full time in the U.S. lose a combined total of nearly \$500 billion every year due to the wage gap, according to the National Partnership for Women and Families. Sex- and race-based pay discrimination play a large role in the economic insecurity experienced by millions of workers and the perpetuation of this country’s yawning wealth gap. Lawmakers need to

embrace strong equal pay protections to both reduce poverty and to begin shrinking that wealth gap. Feminist activists have a role in pushing those lawmakers to do the right thing – for women and for the country.

**More information:**

The White House Equal Pay webpage, <https://www.whitehouse.gov/issues/equal-pay/resources> and Equal Pay Task Force Accomplishments, Fighting for Fair Pay in the Workplace, [https://www.whitehouse.gov/sites/default/files/equal\\_pay\\_task\\_force.pdf](https://www.whitehouse.gov/sites/default/files/equal_pay_task_force.pdf)

American Association of University Women, The Simple Truth About the Gender Pay Gap (2016), <http://www.aauw.org/resource/the-simple-truth-about-the-gender-pay-gap/> and Graduating to a Pay Gap, <http://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf> and AAUW's Policy Guide to Equal Pay in the States, <http://www.aauw.org/resource/state-equal-pay-laws/>

Institute for Women's Policy Research, The Gender Wage Gap: 2015, Earnings Differences by Race and Ethnicity, <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-2015-earnings-differences-by-race-and-ethnicity> and Black Women are Among Those who Saw the Largest Declines in Wages over the Last Decade, <http://www.iwpr.org/publications/pubs/black-women-are-among-those-who-saw-the-largest-declines-in-wages-over-the-last-decade>

National Committee on Pay Equity, <http://pay-equity.org/>

National Conference of State Legislatures, Equal Pay Laws, <http://www.ncsl.org/research/labor-and-employment/equal-pay-laws.aspx>