

Gender Pay Gap

Are women paid fairly in the workplace?

More than four decades after Congress passed landmark anti-discrimination legislation — including the Equal Pay Act of 1963 — a debate continues to rage over whether women are paid fairly in the workplace. Contending that gender bias contributes to a significant “pay gap,” reformists support proposed federal legislation aimed at bringing women’s wages more closely in line with those of men. Others say new laws are not needed because the wage gap largely can be explained by such factors as women’s choices of occupation and the amount of time they spend in the labor force. Meanwhile, a class-action suit charging Wal-Mart Stores with gender bias in pay and promotions — the biggest sex-discrimination lawsuit in U.S. history — may be heading for the Supreme Court. Some women’s advocates argue that a controversial high-court ruling last year makes it more difficult to sue over wage discrimination.



Former Goodyear manager Lilly Ledbetter won more than \$3 million in a pay-discrimination suit against the tire firm, but the U.S. Supreme Court overturned the verdict in 2007 for filing her complaint too late.

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Gender Pay Gap

BY THOMAS J. BILLITTERI

THE ISSUES

An insult to my dignity” is the way Lilly Ledbetter described it.¹ For 19 years, she worked at the Goodyear Tire plant in Gadsden, Ala., one of a handful of women among the roughly 80 people who held the same supervisory position she did. Over the years, unbeknownst to her, the company’s pay-raise decisions created a growing gap between her wages and those of her male colleagues. When she left Goodyear, she was earning \$3,727 a month. The lowest-paid man doing the same work got \$4,286. The highest-paid male made 40 percent more than she did.²

Ledbetter sued in 1998, and a jury awarded her back pay and more than \$3 million in damages. But in the end, she lost her case in the U.S. Supreme Court.³

A conservative majority led by Justice Samuel A. Alito Jr. ruled that under the nation’s main anti-discrimination law she should have filed a formal complaint with the federal government within 180 days of the first time Goodyear discriminated against her in pay. Never mind, the court said, that Ledbetter didn’t learn about the pay disparity for years.

“The Supreme Court said that this didn’t count as illegal discrimination,” she said after the ruling, “but it sure feels like discrimination when you are on the receiving end of that smaller paycheck and trying to support your family with less money than the men are getting for doing the same job.”⁴

The *Ledbetter* decision has added fuel to a long-burning debate over sex discrimination in women’s wages and whether new laws are needed to narrow the disparity in men’s and women’s pay.



AP Photo/Noah Berger

A suit filed by Betty Dukes, right, and other female Wal-Mart employees accuses the retail giant of sex discrimination in pay, promotions and job assignments in violation of the Civil Rights Act of 1964. The case, covering perhaps 1.6 million current and former Wal-Mart employees, is the biggest class-action lawsuit against a private employer in U.S. history.

“A significant wage gap is still with us, and that gap constitutes nothing less than an ongoing assault on women’s economic freedom,” declared U.S. Rep. Rosa L. DeLauro, D-Conn., at a congressional hearing on a pay-equity bill she is sponsoring, one of several proposed on Capitol Hill.

But that view is hardly universal. “Men and women generally have equal pay for equal work now — if they have the same jobs, responsibilities and skills,” testified Diana Furchtgott-Roth, a senior fellow at the Hudson Institute, a conservative think tank, and former chief economist at the Labor Department in the George W. Bush administration.⁵

The wrangle over wages is playing out not just in Washington but in cities and towns across America. In the biggest sex-discrimination lawsuit in U.S. history, a group of female Wal-Mart employees has charged the retail giant with bias in pay and promotions. The case could

affect perhaps 1.6 million women employees of Wal-Mart and result in billions of dollars in back pay and damages. (See sidebar, p. 254.)

The enormously complex gender-pay debate encompasses economics, demographics, law, social justice, culture, history and sometimes raw emotion. Few dispute that a wage gap exists between men and women. In 2006 full-time female workers earned 81 percent of men’s weekly earnings, according to the latest U.S. Labor Department data, with the wage gap broader for older workers and narrower for younger ones. Separate U.S. Census Bureau data put the gap at about 77 percent of men’s median full-time, year-round earnings.⁶

The fundamental issues are why the gap exists, how much of it stems from discrimination and what should be done about it.

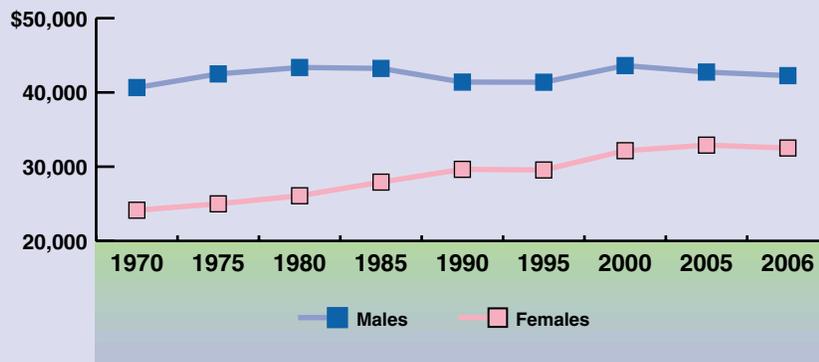
Some contend the disparity can largely be explained by occupational differences between women and men, variations in work experience, number of hours worked each year and other such things.

June O’Neill, an economics professor at the City University of New York’s Baruch College and former director of the Congressional Budget Office in the Clinton administration, says that the most important factors affecting the pay gap stem from differences in the roles of women and men in family life. When the wages of men and women who share similar work experience and life situations are measured, the wage gap largely disappears, she says. Reasons that the earnings disparity may appear bigger in some research, she says, include the fact that many studies do not control for differences in years of work experience, the extent of part-time work

Women Closing the Pay Gap . . . Slowly

More than 40 years after women began demanding equal rights and opportunities, they still earn 77 percent of what men earn. The pay gap has been closing, however, because women's earnings have been rising faster than men's.

Median Annual Earnings of Full-time, Year-round Workers
(By gender, 1970-2006, in constant 2006 dollars)



Source: Carmen DeNavas-Walt, et. al., "Income, Poverty, and Health Insurance Coverage in the United States: 2006," U.S. Census Bureau, August 2007

and differences in training and occupational choices. O'Neill notes that Labor Department data show median weekly earnings of female part-time workers exceed those of male part-timers. She also says the wage gap has been narrowing over time as women's work experience, education and other job-related skills have been converging with those of men.

"Large amounts of discrimination? No," she says. "Individual women may experience discrimination, and it's good to have laws that deal with it," she adds. "But those cases don't change the overall picture. The vast majority of employers don't harbor prejudice against women."

Yet others argue that beneath such factors as occupation and number of hours worked lies evidence of significant discrimination — covert if not overt.

"Women do not realize the enormous price that they pay for gender wage discrimination because they do not see big bites taken out of their paychecks at any one time," Evelyn F. Murphy, president of The Wage Pro-

ject, a nonprofit organization that works on eliminating the gender wage gap and author of *Getting Even: Why Women Don't Get Paid Like Men and What To Do About It*, told a congressional panel last year.⁷

In her book, she told the hearing, she wrote of employers "who had to pay women employees or former employees to settle claims of gender discrimination, or judges and juries ordered them to pay up. The behavior of these employers vividly [illustrates] the commonplace forms of today's wage discrimination: barriers to hiring and promoting qualified women; arbitrary financial penalties imposed on pregnant women; sexual harassment by bosses and co-workers; failure to pay women and men the same amount of money for doing the same jobs," and "everyday discrimination" marked by "the biases and stereotypes which influence [managers'] decisions about women."

Women's advocates point to a 2003 General Accounting Office (GAO) study concluding that while "work patterns"

were key in accounting for the wage gap, the GAO could not explain all the differences in earnings between men and women. "When we account for differences between male and female work patterns as well as other key factors, women earned, on average, 80 percent of what men earned in 2000. . . . We cannot determine whether this remaining difference is due to discrimination or other factors," the GAO report said.⁸

The study said that in the view of certain experts some women trade promotions or higher pay for job flexibility that allows them to balance work and family responsibilities.

Women's advocates point out that many women have little choice but to work in jobs that offer flexibility but pay less because they typically shoulder the bulk of family caregiving duties. And, they argue further, expectations within companies and society — typically subtle, but sometimes not — often channel women away from male-dominated jobs into female-dominated ones that pay less.

"People who argue that [wage discrimination] is small will say a lot of it is due to women's choices," such as the choice to stay home with the children, work part time or enter lower-paying fields, says Reeve Vanneman, a sociology professor at the University of Maryland, College Park, who studies gender inequality. But, he says, it's misleading to explain most of the wage gap in that way, especially when mid-career and older female workers are concerned.

"Why do women make those choices? Part of the reason is because they are discriminated against in the job. They see men getting rewarded more and promoted more than they are."

Women face unequal work not just on the job but at home, too, Vanneman says, with husbands not picking up their share.

Part of the wage gap stems from weak government enforcement, some

argue. A U.S. inspector general's report stated last fall that the Equal Employment Opportunity Commission, which enforces federal employment-discrimination laws, is "challenged in accomplishing its mission" because of "a reduced workforce and an increasing backlog of pending cases." The agency has experienced a "significant loss of its workforce, mostly to attrition and buyouts . . . offered to free up resources," the report said.⁹

The news on gender discrimination in pay is not all bad. The wage gap has narrowed considerably in recent decades. For example, Labor Department data show that for 35- to 44-year-olds, the earnings ratio of women to men rose from 58 percent in 1979 to 77 percent in 2006. For 45- to 54-year-olds, it went from 57 percent to 74 percent.¹⁰ Among the youngest workers, ages 16 to 24, only about 5 percentage points separated median weekly wages of men and women in 2006.¹¹

Still, many experts say the progress of the 1980s and early '90s has slowed or stalled in recent years, with the wage gap stuck in the range of 20 to 24 percent, although it is not entirely clear why. Some argue that entrenched wage discrimination remains a major culprit.

In a study of college graduates last year, the American Association of University Women Educational Foundation found that one year out of college, women working full time earn only 80 percent as much as their male colleagues, and 10 years after graduation the gap widens to 69 percent. Even after controlling for hours worked, training and education and other factors, the portion of the pay gap that remains unexplained is 5 percent one year after graduation and 12 percent a decade afterward, the study found.¹² (See graph, right.)

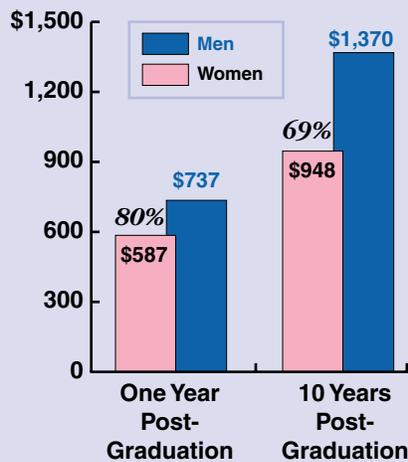
"These unexplained gaps are evidence of discrimination," the study concluded."

Employer advocates challenge such conclusions, though. Michael Eastman, executive director of labor policy at

Gap Widens for College Graduates

College-educated women earn only 80 percent of what their male counterparts earn a year after graduation, when both male and female employees have the same level of work experience and (usually) no child-care obligations — factors often used to explain gender pay differences. The gap widens to 69 percent by 10 years after graduation.

Gap in Average Weekly Earnings for Bachelor's Degree Recipients
(For full-time workers)



Source: "Beyond the Pay Gap," American Association of University Women, based on data from the "2003 Baccalaureate and Beyond Longitudinal Study," National Center for Education Statistics, U.S. Department of Education

the U.S. Chamber of Commerce, questions the assumption "that whatever gap is not explained must be due to discrimination. An unexplained gap is simply that — it's unexplained."

Election-year politics and the recent shift toward Democratic control of Con-

gress — along with the Supreme Court's decision in the *Ledbetter* case — have helped to reinvigorate the pay debate. Proposed gender-pay bills have strong support from women's-rights groups and some economists, who argue that the Equal Pay Act and Title VII of the Civil Rights Act of 1964 — the main avenues for attacking wage discrimination — fall short.

Presidential contender Sen. Hillary Rodham Clinton, D-N.Y., is sponsoring the Senate version of the DeLauro bill; another presidential hopeful, Sen. Barack Obama, D-Ill., is one of the 22 co-sponsors, although he didn't sign on to it until more than a month after she introduced it. Among other things, the measure would raise penalties under the Equal Pay Act, which bars paying men and women differently for doing the same job.¹³

Obama is co-sponsoring a more controversial bill, introduced in the Senate by Sen. Tom Harkin, D-Iowa, that advocates the notion of comparable worth; the idea, generally speaking, suggests that a female-dominated occupation such as social work may merit wages that are comparable to those of a male-dominated job such as a probation officer.¹⁴ The Harkin measure would bar wage discrimination in certain cases where the work is deemed comparable in skill, effort, responsibility and working conditions, even if the job titles or duties are different. (See sidebar, p. 252.)

A third effort would undo the Supreme Court's ruling in the *Ledbetter* case.¹⁵ A bill passed the House last summer, and advocates are hoping the Senate version — sponsored by Sen. Edward M. Kennedy, D-Mass., and co-sponsored by Clinton and Obama — moves forward soon. But the Bush administration has threatened a veto, and business interests are vehemently opposed.

As the debate over wage disparities continues, these are some of the questions being discussed:

Is discrimination a major cause of the wage gap?

When economist David Neumark studied sex discrimination in restaurant hiring in the mid-1990s, he discovered something intriguing: In expensive restaurants, where waiters and waitresses can earn more than they can at low-price places, the chances of a woman getting a wait-staff job offer were 40 percentage points lower than those of a man with similar experience.¹⁶

The study is a telling bit of evidence that the wage gap is real and that discrimination plays a significant part in it, says Vicky Lovell, director of employment and work/life programs at the Institute for Women's Policy Research, an advocacy group in Washington. She estimates that perhaps a third of the wage gap stems from discrimination — mostly “covert” bias that occurs when people make false assumptions about the ability or career commitment of working women.

Lovell has little patience with those who say the wage gap stems from non-discriminatory reasons that simply haven't yet been identified. “That's just specious,” she says. “If we can't explain why women on average get paid less, what is the alternative explanation?”

The role of discrimination lies at the heart of the pay-gap debate. Researchers fall into different camps.

Some see little evidence that bias plays a big part in the gap. When adjusted for work experience, education, time in the labor force and other variables, wages of men and women are largely comparable, they contend.

“This so-called wage gap is not necessarily due to discrimination,” the Hudson Institute's Furchtgott-Roth said in congressional testimony. “Decisions about field of study, occupation and time in the work force can lead to lower compensation, both for men and women.”¹⁷

What's more, “some jobs command more than others because people are willing to pay more for them,” she

said. “Many jobs are dirty and dangerous. . . . Other highly paid occupations have long, inflexible hours. . . . Women are not excluded from these or other jobs but often select professions with a more pleasant environment and potentially more flexible schedules, such as teaching and office work. Many of these jobs pay less.”

Warren Farrell, who in the 1970s served on the board of the New York City chapter of the National Organization for Women, argues in his 2005 book — *Why Men Earn More: The Startling Truth Behind the Pay Gap— and What Women Can Do About It* — that women pay an economic price by seeking careers that are more fulfilling, flexible and safe. With a stated goal of helping women gain higher pay, Farrell offers 25 “differences in the way women and men behave in the workplace.” Those who earn more, he says, work longer hours, are more willing to relocate, require less security and produce more, among other things.

O'Neill, of Baruch College, points out that women are much more likely to go into occupations that will allow them to work part time, and typically “that doesn't pay as well.”

She studies data that track the work histories of women and men over a long period of time. “Women have just not worked as many weeks and hours over their lives as men,” she says. “When you adjust for that, you explain most of the [pay] difference. . . . You're still left with a difference, but then there are other things that become harder to measure.”

The AAUW study found that even women who make the same choices as men in terms of fields of study and occupation earn less than their male counterparts. A typical college-educated woman working full time earns \$46,000 a year compared to \$62,000 for college-educated male workers — a difference of \$16,000.

“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,” the AAUW study says. “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.”¹⁸

“This research asked a basic but important question: If a woman made the same choices as a man, would she earn the same pay? The answer is no,” Catherine Hill, director of research at the AAUW, told a House Committee on Education and Labor hearing last year.

Speaking more generally about pay inequity, Linda Meric, national director of 9to5, National Association of Working Women, a Milwaukee-based advocacy group, says that “when you control for all the other so-called factors” that might explain the wage gap, “there is still a gap.”

“And many of those so-called factors are not independent of discrimination and stereotypes of women. One is time in the work force. If there aren't policies that allow women to get jobs and maintain and advance in employment at the same time they are meeting their responsibility in terms of family caregiving, that's not an independent factor. It's something that influences the pay gap significantly.”

Heather Boushey, senior economist at the Center for Economic and Policy Research, a Washington think tank, noted that time away from the workforce strongly affects lifetime earnings. She said it is a myth that women choose lower-paying occupations because they provide the flexibility to better manage work and family. “The empirical evidence shows that mothers are actually less likely to be employed in jobs that provide them with greater flexibility.”¹⁹

Echoing that sentiment, Beth Shulman, co-director of the Fairness Initiative on Low Wage Work, a public policy advocacy group also in Washington, says, “We have kind of an Ozzie and Harriet workplace, with a full-time worker and the wife at home,” but “70 percent of women with children are in the workplace.” She adds, “Our structures haven’t kept up with that. So women who are primary caregivers get punished.”

Schulman, author of *The Betrayal of Work: How Low-Wage Jobs Fail 30 Million Americans*, says that while overt gender discrimination exists in the job market, an equally important contributor to the wage gap is the lack of flexibility for low-income working women with families. For example, she says, female factory employees with family responsibilities often find it difficult to accept better-paying manufacturing jobs because such jobs often require mandatory overtime.

Shulman also says that three-fourths of women in low-wage jobs don’t have paid sick days. So when a child is sick or an elderly parent needs help, women may be forced to leave the workforce and then re-enter it — something that has a huge effect on wages over time.

“Low-wage workers get kind of ghettoized into these part-time jobs that have poor wages, poor benefits and less government protection,” Shulman says.

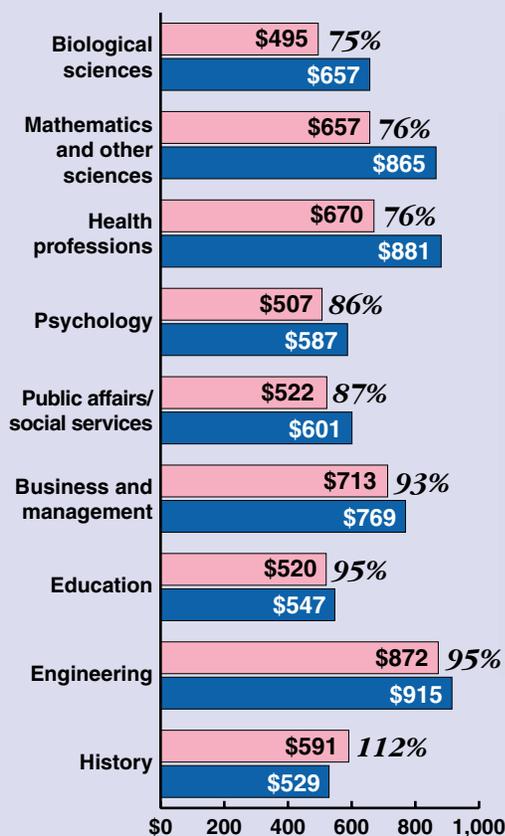
In a 1998 study, Cornell University economists Francine Blau and Lawrence Kahn found that 40 percent of the pay gap is unexplained after adjusting for gender differences in experience, education, occupation and industry. Blau cautions that such an estimate is conservative, because variables such as women’s choices of occupation or industry and even their education and work experience can themselves be affected by discrimination. On the other hand, she acknowledges that some of the unexplained differences may be due to unmeasured productivity characteristics that increase men’s earnings

Pay Gap Exists Despite Women’s Choices

Those who discount the seriousness of gender pay bias often blame differences in men’s and women’s salaries on women’s choices to study “softer” sciences or to have children. But a recent study shows that the pay gap persists even when women choose not to have children and when they choose male-dominated fields of study and occupation — such as business, engineering, mathematics and medicine. The pay gap is greatest in the biology, health and mathematics fields. Women out-earn men only in the history professions.

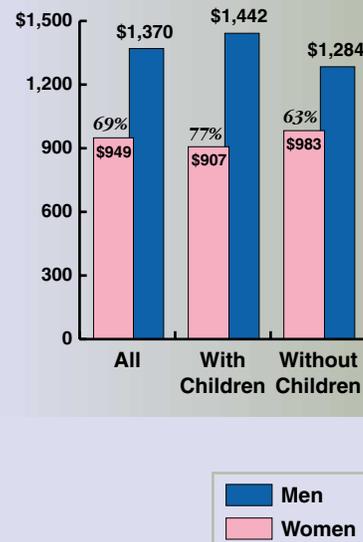
Avg. Weekly Earnings One Year After Graduation

(For full-time workers with bachelor’s degrees)



Avg. Weekly Earnings 10 Years After Graduation

(For full-time workers with bachelor’s degrees)



Source: “Behind the Pay Gap,” American Association of University Women, 2007

relative to women’s earnings.

Applying that 40 percent figure to current government wage-gap data would suggest that 8 to 9 cents of each dollar in wage disparity is unexplained, with an unknown portion of that amount caused by discrimination.

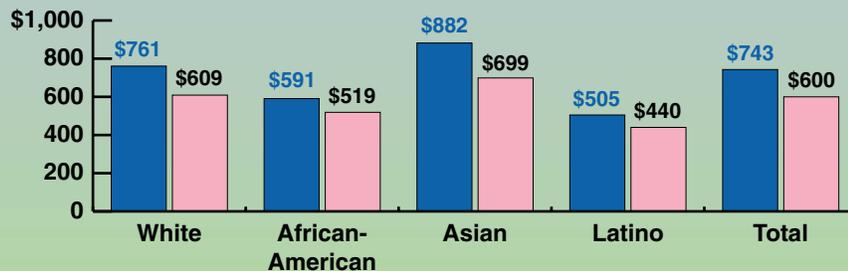
Martha Burk, who directs the Corporate Accountability Project for the National Council of Women’s Organizations, a coalition of more than 200 women’s groups, says some of the pay gap stems from “historical discrimination” rooted in a time when employers

Wage Disparities Highest Among Asians

The median weekly earnings for women are lower than men's across all ethnic groups. The largest disparity is among Asians, where men earn \$183 more on average per week than their female counterparts. The average difference for all groups is \$143.

Median Weekly Earnings of Full-Time Workers

(by gender and ethnicity, 2006)



Source: "Highlights of Women's Earnings in 2006," Bureau of Labor Statistics, September 2007

could legally exclude women from certain jobs and pay them less for the kinds of jobs they typically did hold, such as teaching and clerical work.

Burk, who led the fight to open the Augusta (Ga.) National Golf Club to women, says those female-dominated jobs "were systematically devalued, and that has carried through to modern times."

Are new laws needed to close the gender pay gap?

When President John F. Kennedy signed the Equal Pay Act in 1963, he called it "a first step."²⁰

Over the decades, the pay gap has narrowed significantly, but the push for new laws to curb gender-pay inequity goes on, fueled in part by the view among women's advocates that progress toward wage equity has slowed or stalled in recent years.

"The best way is for corporations to behave as socially responsible corporate citizens [and] examine their wage practices," says Lovell of Women's Policy Research. "But that is not going to happen. I don't see any reason to think the private sector is going to address this

issue on its own. A few will to the extent they can within their own workforces. But if corporations individually or within industry groups aren't going to make this a priority, then that's why we have a government."

Opponents of new laws have sharply different views, though.

Roger Clegg, president and general counsel of the Center for Equal Opportunity, a conservative think tank in Falls Church, Va., says some gender discrimination will always exist but that existing laws can address it. Besides, Clegg says, the amount of gender discrimination that remains in the American workforce "is greatly exaggerated by the groups pushing for legislation."

Much of the support for new laws rests on the view that some jobs pay poorly because females historically have dominated them." Jocelyn Samuels, vice president for Education and Employment at the National Women's Law Center, a Washington advocacy group, told a congressional hearing last year that 95 percent of child-care workers are female while the same proportion of mechanical engineers are male.

Moreover, she said, wages in fields dominated by women "have traditionally been depressed and continue to reflect the artificially suppressed pay scales that were historically applied to so-called 'women's work.'" Maids and housecleaners — 87 percent of whom are women — make roughly \$3,000 per year less than janitors and building cleaners, 72 percent of whom are men, she said. "Current law simply does not provide the tools to address this continuing devaluation of traditionally female fields."²¹

To attack that situation, some advocates back the comparable-worth theory, arguing that women should be paid commensurate with men for jobs of equivalent value to a company, even if the work is different. But critics argue that such an approach violates the free-market principles of supply and demand for labor and that it could hurt both the economy and the cause of women.

"The comparable-worth approach has the government setting wages rather than the free market, and a great lesson of the 20th century is that centrally planned economies and centrally planned wage and price systems do not work," Clegg says.

Carrie Lukas, vice president for policy and economics at the Independent Women's Forum, a conservative group in Washington that backs limited government, contends that "government attempts to 'solve' the problem of the wage gap may in fact exacerbate some of the challenges women face, particularly in balancing work and family."

In an opinion column last year, she criticized the Clinton/DeLauro bill, which calls for guidelines to help companies voluntarily "compare wages paid for different jobs . . . with the goal of eliminating unfair pay disparities between occupations traditionally dominated by men or women." Lukas wrote that the bill would "give Washington bureaucrats more power to oversee how wages are determined, which might prompt businesses to make

employment options more rigid." Flexible job structures would become less common, she argued. Why, Lukas wondered, "would companies offer employees a variety of work situations and compensation packages if doing so puts them at risk of being sued?"²²

Not only might women suffer from new laws, but so would employers, some argue. Washington lawyer Barbara Berish Brown, vice-chair of the American Bar Association's Labor and Employment Law Section, said in a hearing on the Clinton/DeLauro bill that she is "unequivocally committed" to erasing gender-pay bias, but that existing laws suffice.

"All that the proposed changes will do is encourage more employment-related litigation, which is already drowning the federal court docket, and make it much more difficult,

if not impossible, for employers, particularly small businesses, to prove the legitimate, nondiscriminatory reasons that explain differences between the salaries of male and female employees," she said.²³

But longtime activists such as Burk, author of *Cult of Power: Sex Discrimination in Corporate America and What Can Be Done About It*, say existing laws are not effective enough to stamp out wage bias. "It has always been the view of conservatives that if you pay women equally, it's going to destroy capitalism," she says. "So far capitalism has survived quite well."



AP Photo/Ron Edmonds

U.S. Rep. Rosa L. DeLauro, D-Conn., is sponsoring one of several pay-equity bills in Congress. Presidential contender Sen. Hillary Rodham Clinton, D-N.Y., is sponsoring the Senate version of DeLauro's bill; Sen. Barack Obama, D-Ill., is one of the 22 co-sponsors. "A significant wage gap is still with us, and that gap constitutes nothing less than an ongoing assault on women's economic freedom," DeLauro says.

Is equity possible after the Supreme Court's Ledbetter ruling?

After the Supreme Court ruled in the Goodyear pay-discrimination case, Eleanor Smeal, president of the Feminist Majority, urged congressional action to reverse the decision. "We cannot stand by and watch a Bush-stacked court destroy in less than a year Title VII — the bedrock of women's rights and civil rights protection in wage-discrimination cases," she said.²⁴

Yet, such outrage at the Supreme Court is matched by praise from business advocates. "We think the court got it exactly right," says Eastman, the U.S. Cham-

ber of Commerce labor policy official.

In the 5-4 ruling, the court said workers can't sue under Title VII of the Civil Rights Act, the main federal anti-discrimination law, unless they file a formal complaint with the EEOC within 180 days of a discriminatory act. And in Ledbetter's case, the clock didn't start each time a new paycheck was issued. The 180-day timeline applies whether or not the employee immediately spots the discrimination.

Critics argue that because pay decisions are seldom broadcast throughout a company, the ruling makes it difficult — if not impossible — for an employee to detect bias until it may have gone on for years. "The ruling essentially says 'tough luck' to employees who don't immediately challenge their employer's discriminatory acts, even if the discrimination continues to the present time," said Marcia Greenberg, co-president of the National Women's Law Center.²⁵

"With this misguided decision, the court ignores the realities of the 21st-century workplace," Margot Dorfman, chief executive officer of the U.S. Women's Chamber of Commerce, told a congressional panel this year. "The confidential nature of employee salary information complicates workers' abilities to recognize and report discriminatory treatment."²⁶

Lovell, of the Institute for Women's Policy Research, says the *Ledbetter* ruling "seems to reflect a complete lack of understanding of the labor market and a complete lack of concern for individuals who are at any kind of disadvantage in

the labor market.” Workers wouldn’t necessarily know right away that they were being discriminated against, she says. When Congress passed Title VII, it “was trying to establish an avenue for people who are discriminated against to pursue their claims . . . , not trying to make it impossible.”

In a strongly worded dissent to the *Ledbetter* ruling, Justice Ruth Bader Ginsburg noted that pay disparities often occur in small increments, evidence of bias may develop over time, and wage information is typically hidden from employees. At the end of her dissent she wrote that “the ball is in Congress’ court” to correct the Supreme Court’s “parsimonious reading of Title VII” in the *Ledbetter* decision, just as Congress dealt with a spate of earlier Supreme Court decisions with passage of the 1991 Civil Rights Act.

Business groups have stood firm in the face of such impassioned views, though.

An exchange between Eastman of the U.S. Chamber of Commerce and law professor Deborah Brake last fall on the National Public Radio show “Justice Talking” helped underscore how polarizing the *Ledbetter* decision has been between advocates for women and for employers.²⁷

Brake, a professor at the University of Pittsburgh School of Law who once litigated sex-discrimination cases for the National Women’s Law Center, said she thought it was questionable whether the ruling was even good for employers.

“What an employee is supposed to do, let’s say from the moment in time that they are hired, is search around the workplace and make sure that they’re not being paid less if it’s a woman than her male colleagues,” she said on the radio program.

“If she has the slightest inkling or suspicion that she might be paid less than her male colleagues, she’d better immediately file a pay-discrimination claim. At every raise decision she better be sniffing around to make sure that

her raise wasn’t less than that of her male colleagues. And if she hears that someone got a higher raise than her who was a male, to preserve her rights under [the *Ledbetter* ruling] she’d better immediately file an EEOC claim. I don’t think that is in the best interest, long-term, of employer or employees.”

Eastman, though, said Title VII “has a strong incentive for employees to file claims quickly so that matters are resolved while all the facts and evidence are fresh and in people’s minds. And it is very difficult for employers to defend themselves from allegations made many, many years down the line.”

Brake said it wasn’t the 180-day limit that bothered her. “What I’m objecting to is a ruling that starts the clock running before any employee has enough reason or incentive to even think about filing a discrimination claim,” she said. ■

BACKGROUND

Early Wage Gap

From the republic’s beginning, women have played an integral role in American economic growth and prosperity, yet a wage gap has always been present.

During the Industrial Revolution of the 19th century, as the nation’s productivity and wealth exploded, young, single women moved from farm to city and took jobs as mill workers, teachers and domestic servants.

The factory work wasn’t easy, and owners exploited women and girls as cheap sources of labor. In 1830, females often worked 12 hours a day in “boarding-house mills” — factories with housing provided by mill owners. They earned perhaps \$2.50 a week. “Minor infractions such as a few minutes’ lateness were punished severely,” historian Richard B. Morris noted, and

“one-sided contracts gave them no power over conditions and no rewards for work.”²⁸

Still, young women flocked to manufacturing jobs in the cities. In Massachusetts, among the earliest states to industrialize, a third of all women ages 10 to 29 worked in industry in 1850, according to Harvard University economist Claudia Goldin.²⁹

As demand for goods grew along with the nation’s population, the wages of women working full time in manufacturing rose slowly as a percentage of men’s pay. The wage gap narrowed from about 30 percent of men’s earnings in 1820 to 56 percent nationwide in 1885, according to Goldin.³⁰

But progress came more slowly, if at all, in ensuing years and decades.

In manufacturing, Goldin noted in a 1990 book on the economic history of American women, “The ratio of female to male wages . . . continued to rise slowly across most of the nineteenth century but reached a plateau before 1900.”³¹

As the 20th century dawned, some women’s advocates pushed for equal pay for equal work between the sexes. But others questioned the equal-pay idea. In 1891, the British economist Sidney Webb pointed to “the impossibility of discovering any but a very few instances in which men and women do precisely similar work, in the same place and at the same epoch.”³²

By the turn of the 20th century, women’s jobs had started growing more diverse. Women found work not only in domestic service and manufacturing but also in teaching, sales and clerical positions. Still, only 21 percent of American women worked outside the home in 1900, and most left the labor force upon or right after marriage.³³

Women seeking to move up in the business world faced huge cultural hurdles. In 1900 *Ladies’ Home Journal* told its readers: “Although the statement may seem a hard one, and will

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Chronology

1900-1940

Women make economic gains but face discrimination.

1914

Start of World War I marks a period of advancement in the status of women, who go to work in traditionally male jobs.

1919

Women gain the right to vote through the 19th Amendment.

1923

The Equal Rights Amendment is introduced, but it falls three states short of ratification.

1930

Half of single women are in the labor force, and the labor-participation rate among married women approaches 12 percent.

1938

Fair Labor Standards Act establishes rules for a minimum wage, overtime pay and child labor.

1940-1960

Women make major contribution to wartime manufacturing efforts but don't gain wage equality with men.

1942

National War Labor Board urges employers to equalize pay between men and women in defense jobs.

1945

Congress fails to approve Women's Equal Pay Act.

1955

Census Bureau begins calculating female-to-male earnings ratio.

1960-1980

Major anti-discrimination laws helps women to fight pay bias.

1963

Equal Pay Act bans gender pay discrimination in equal jobs.

1963

The Feminine Mystique by Betty Friedan challenges idea that women can find happiness only through marriage.

1964

Title VII of the Civil Rights Act bans job discrimination on the basis of race, color, religion, national origin and sex.

1965

Equal Employment Opportunity Commission founded.

1966

National Organization For Women is formed.

1973

Supreme Court's *Roe v. Wade* ruling overturns laws barring abortion, energizes the women's movement.

1979

National Committee on Pay Equity is formed.

1980-2000

Gender pay gap continues to narrow, but progress toward wage equality shows signs of slowing in the 1990s.

1981

Supreme Court ruling in *County of Washington v. Gunther* allows female jail guards to sue for sex discrimination but declines to au-

thorize suits based on theory of comparable worth.

1993

Family and Medical Leave Act requires employers to grant unpaid leave for medical emergencies, birth and care of newborns and other family-related circumstances.

2001-Present

States expand laws to help working families, while several major corporations face gender-bias accusations.

2001

Wal-Mart employees file for sex-discrimination claim against the retailer, to become the largest class-action lawsuit against a private employer in U.S. history.

2004

California grants up to six weeks partial pay for new parents.

2004

Equal Employment Opportunity Commission and Morgan Stanley announce \$54 million settlement of sex-discrimination suit. . . . Wachovia Corp. agrees to pay \$5.5 million in a pay-discrimination case involving more than 2,000 current and former female employees.

2007

San Francisco requires employers to provide paid sick leave to all employees, including temporary and part-time workers.

2007

In *Ledbetter v. Goodyear*, Supreme Court rules that a female worker's pay-discrimination claim was invalid because it was filed after a 180-day deadline.

Debating the Comparable-Worth Doctrine

Would the approach help close the gender gap?

Imagine a company whose employees include a man who supervises telephone linemen and a woman who supervises clerical employees. They oversee the same number of workers, report to the same number of bosses, work the same hours and their jobs have been deemed of equal value to the company. Should their paychecks be the same?

Should the man get extra points for having to work outside in the cold? Should the woman get extra points for having a college degree or more years of experience?

Or, as some argue, should competitive market forces and the laws of supply and demand determine how much the man and woman earn?

Such questions lie at the heart of the debate over “comparable worth.” The doctrine argues that when jobs require similar levels of skill, effort, responsibility and working conditions, the pay should be the same — even if the duties are entirely different.

Advocates of comparable worth say the market historically has undervalued jobs traditionally held by women — such as social work, secretarial work and teaching — and that such inequity has been a major contributor to the gender pay gap. If comparable worth were taken into account, they argue, it would even out wage inequality between those working in jobs dominated by women and those traditionally held by men when an impartial evaluation deems the jobs are of equal value to an employer.

Advocates also say neither the Equal Pay Act of 1963 — which bars unequal pay for the same job — nor Title VII of the Civil Rights Act of 1964, which bans discrimination based on race, color, gender, religion and national origin in hiring

and promotion, do what the comparable-worth doctrine would do: Root out bias against entire occupations traditionally dominated by females.¹

Although women began entering non-traditional fields decades ago, Labor Department data show that certain occupations still are filled mostly by females. For example, in 2006, 89 percent of paralegals and legal assistants were women, while only 33 percent of lawyers were women. And only 7 percent of machinists were women, while 84 percent of special-education teachers were female.²

“There’s a lot of [job] segregation, and the closer you look, the more segregation you find,” says Philip Cohen, a sociologist at the University of North Carolina who studies gender inequality. “Under current law, it’s very difficult to bring legal action successfully and say the pay gap between men and women is discrimination, because the employer can say ‘they’re doing different jobs.’ ”

But critics say comparable worth would disrupt the traditional market-based system of determining wages based on the laws of supply and demand. “You would have people moving into occupations where there was really no shortage” of workers, says June O’Neill, an economist at the City University of New York’s Baruch College. “You would have gluts in some [job categories] and shortages in others.

In 2000 testimony before a congressional panel, O’Neill outlined what she saw as the dangers of adopting a comparable-worth approach. Because there is no uniform way to rank occupations by worth, she says, such a policy would “lead to politically administered wages that would depart from a market

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unquestionably be controverted, it nevertheless is a plain, simple fact that women have shown themselves naturally incompetent to fill a great many of the business positions which they have sought to occupy. . . . The fact is that no one woman in a hundred can stand the physical strain of the keen pace which competition has forced upon every line of business today.”³⁴

Women’s labor participation gradually rose in the early decades of the 20th century, fueled in part by World War I, which ended in 1918. By 1920, almost a quarter of all U.S. women were in the labor force, and 46 percent of single women worked.³⁵

World War I advanced women’s status, historian Michael McGerr noted. “Although the number of employed women grew only modestly during the 1910s, the wartime departure of men for military service opened up jobs traditionally denied to women in offices, transportation and industry. Leaving jobs as domestic servants, seamstresses and laundresses, women became clerks, telephone operators, streetcar conductors, drill press operators and munitions makers. Women’s new prominence in the work force led in turn to the creation of a Women’s Bureau in the Department of Labor.”³⁶

In 1920 women gained the right to vote with adoption of the 19th Amend-

ment. Soon afterward, Quaker activist Alice Paul introduced the first version of today’s Equal Rights Amendment. In 1923 the amendment fell three states short of ratification, and its passage remains controversial today.³⁷ (See “*At Issue*,” p. 257.)

During the Great Depression of the 1930s, the proportion of single women who were working stayed more or less flat. But the percentage of married women who worked rose to almost 14 percent by 1940 — a jump of more than 50 percent over the 1920 rate.³⁸ World War II brought millions more women into the labor force, as females — characterized by the iconic image of Rosie the Riveter — took

system of wage determination.” Pay in traditionally female occupations would likely rise — appointing people favorable to the comparable-worth idea “would all but guarantee that result,” she said. But that higher pay would raise costs for employers, leading them to put many women out of work, she suggested. “The ironic result is that fewer workers would be employed in traditionally female jobs.”

Not only that, but some employers would respond to the higher wage levels by providing fewer non-monetary benefits, such as favorable working hours, that help accommodate women with responsibilities at home, O’Neill said. “Apart from the inefficiency and inequality it would breed,” she concluded, “I find comparable worth to be a truly demeaning policy for women. It conveys the message that some cannot compete in non-traditional jobs and can only be helped through the patronage of a job evaluator.”

Critics also say that comparable worth would put the government into the role of setting wages for private business, an idea that is anathema to business interests.

“Who determines what is equal value?” asks Michael Eastman, executive director of labor policy at the U.S. Chamber of Commerce. “Equal value to society? Who’s setting wages then? Is the government coming up with guidelines? For example, are truckers equal



AP Photo/Charles Dharapak

Martha Burk directs the Corporate Accountability Project for the National Council of Women’s Organizations.

to nurses, and who’s making that comparison? We’ve never had the government setting private-sector wage rates like that.”

Supporters of comparable worth brush off such concerns. Martha Burk, a long-time women’s activist, notes that a bill proposed by Sen. Tom Harkin, D-Iowa, would require companies to disclose how they pay women and men by job categories, a practice that alone would lead to more equitable wages. “What you have is a government solution that is not telling anybody what to pay their employees,” she says. It would only “increase the transparency so the company can solve its own problem if it has one.”

As to the notion that comparable worth amounts to government intrusion in the private market, Burk says, “Free marketers think anything short of totally unregulated capitalism is interfering in the free market.”

“It may be that markets are efficient from the point of view of employers,” adds Vicky Lovell, director of employment and work/life programs at the Institute for Women’s Policy Research in Washington. “But I don’t think they’re efficient from the point of view of workers.”

¹ For background, see June O’Neill, “Comparable Worth,” *The Concise Encyclopedia of Economics*, The Library of Economics and Liberty, www.econlib.org.
² “Women in the Labor Force: A Databook,” U.S. Department of Labor, Report 1002, September 2007, Table 11, pp. 28-34.

jobs in defense plants doing work traditionally performed by men.

Equal-Pay Initiatives

As women proved their mettle behind the drill press and rivet gun, advocates continued to push for equal pay. In 1942 President Franklin D. Roosevelt had the National War Labor Board urge employers to equalize wage rates between men and women “for comparable quality and quantity of work on the same or similar operations.”³⁹

In the closing months of the war, the first bill aimed at barring gender

pay discrimination came to the floor of Congress. The Women’s Equal Pay Act of 1945 went nowhere, though.⁴⁰

By 1960, more than a third of women were working, and among single, white women ages 25 to 34, the labor participation rate was a then-record 82 percent.⁴¹ But most women continued to work in low-paying clerical, service and manufacturing jobs, and the wage gap between males and females was wide. By 1963, women made only 59 cents for every dollar in median year-round earnings paid to men.⁴² Women who tried to break into so-called “men’s” occupations faced huge resistance.

That year, after decades of struggle by women’s advocates for federal leg-

islation on gender pay equity, Congress passed the Equal Pay Act as an amendment to the Fair Labor Standards Act of 1938. In signing the act, President Kennedy said the law “affirms our determination that when women enter the labor force they will find equality in their pay envelopes.”⁴³

The measure, as finally adopted, stopped short of ensuring the elusive comparable-worth standard that women’s advocates had so long sought. Instead, the bill made it illegal to discriminate in pay and benefits on the basis of sex when men and women performed the same job at the same employer.

Under the law, for example, a company couldn’t pay a full-time female

Did Wal-Mart Favor Male Workers?

Women's suit seeks billions in damages.

Dedra Farmer, the daughter of an auto mechanic, worked in the Tire Lube Express Division of Wal-Mart Stores, the only female in her district who held a salaried manager position in that division. During her 13 years with the retail giant, she told a congressional panel last year, she saw evidence that women — herself among them — earned less than men holding the same jobs.

Farmer said she complained to Wal-Mart's CEO through e-mails, expressed her concern at a store meeting and was assured by the store manager that she'd get a response. "The response I received was a pink slip," she said.¹

Farmer has joined a class-action lawsuit accusing Wal-Mart of sex discrimination in pay and promotions. The case, which could cover perhaps 1.6 million current and former female employees and result in billions of dollars in damages, is the biggest workplace discrimination lawsuit in the nation's history.

Filed in 2001 by Betty Dukes and five other Wal-Mart employees, the case has gone through a series of legal maneuverings, most recently in December, when a three-judge panel of the U.S. 9th Circuit Court of Appeals reaffirmed its certification as a class-action lawsuit but left the door open for Wal-Mart to ask for a rehearing on that status. If the appeals court does not reconsider the class-action designation, the company reportedly will petition the Supreme Court.²

The stakes in the case are high. Goldman Sachs Group last year estimated potential damages at between \$1.5 billion and \$3.5 billion if the retailer loses, and punitive dam-

ages could raise the figure to between \$13.5 billion and \$31.5 billion.³

The company's lawyers have asserted that a class-action suit is an inappropriate vehicle to use because Wal-Mart's employment policies are decentralized, and individual store managers and district managers make pay and promotion decisions.⁴

Theodore J. Boutros Jr., a lawyer for Wal-Mart, has said that decisions by thousands of managers at 3,400 Wal-Mart stores during six years were "highly individualized and cannot be tried in one fell swoop in a nationwide class action."⁵ He has also said the company has a "strong diversity policy and anti-discrimination policy."⁶

But Brad Seligman, executive director of the Impact Fund, a nonprofit group in Berkeley, Calif., representing the plaintiffs, said, "No amount of PR or spin is going to allow Wal-Mart to avoid facing its legacy of discrimination."⁷

A statistician hired by the plaintiffs said it took women an average of 4.38 years from the date of hire to be promoted to assistant manager, while it took men 2.86 years. Moreover, it took an average of 10.12 years for women to become managers compared with 8.64 for men.⁸

The statistician, Richard Drogin, of California State University at East Bay, also found that female managers made an average annual salary of \$89,280, while men in the same position earned an average of \$105,682. Female hourly workers earned 6.7 percent less than men in comparable positions.⁹

Appellate Judge Andrew J. Kleinfeld has dissented in the case, arguing that certifying the suit as a class action deprived the

store clerk less per hour than a male one for doing the same job in stores located in the same city. But the law was silent on situations in which, say, the work of a female secretarial supervisor was deemed to be of comparable worth to that of a male who supervised the same company's truck drivers.

While the Equal Pay Act marked progress, it was far from an airtight guarantee of "equality in . . . pay envelopes." For example, the law initially did not cover executive, administrative or professional jobs; that exemption was lifted in 1972. Yet, one study argues that courts have interpreted the act so narrowly that white-collar female workers have had trouble winning claims through its provisions.⁴⁴

Perhaps more significantly, the law gives companies several defenses for pay disparities: when wage differences stem from seniority or merit systems, are based on quantity or quality of production, or stem from "any other factor other than sex."

That last provision, critics say, can sometimes allow business practices that may seem gender-neutral on the surface but discriminate nonetheless.

The Equal Pay Act took effect in 1964, and that same year Congress passed Title VII of the Civil Rights Act of 1964, a broad measure that prohibits employment discrimination on the basis of race, color, religion, national origin and sex, and covers hiring, firing and promotion as well as pay. A

measure called the Bennett Amendment, sponsored by Rep. Wallace F. Bennett, a Utah Republican, sought to bring Title VII and the Equal Pay Act in line with each other.

In ensuing years, the overlap of the Equal Pay Act and Title VII created confusion but also helped to animate the battle against wage discrimination. Part of the conflict over pay equity played out in the courts in the 1970s and '80s.

Key Court Rulings

In a case that initially raised hopes for the theory of comparable worth, the U.S. Supreme Court ruled 5-4 to

retailer of its right to defend against individual cases alleging bias. In addition, he argued that female employees who were discriminated against would be hurt by class-action status, because women “who were fired or not promoted for good reasons” would also share in any award if Wal-Mart lost the case.¹⁰

Business lobbies also have urged that the class-action certification be reversed. An official of the U.S. Chamber of Commerce, which filed a “friend of the court (*amicus curiae*)” brief in the case, warned of “potentially limitless claims” against companies “with limited ability to defend against them.” He added: “The potential financial exposure to an employer facing a class action of this size creates tremendous pressure to settle regardless of the case’s merit.”¹¹

But women’s advocates argue that a class-action approach is appropriate. It “provides the only practical means for most women in low-wage jobs to redress discrimination in pay because of such workers’ often tenuous economic status,” stated an *amicus* letter written to the appeals court on behalf of the U.S. Women’s Chamber of Commerce.¹²

Added Margot Dorfman, chief executive officer of the group: “A woman with family responsibilities often isn’t in a position to



A Wal-Mart store manager reads the store’s weekly sales results to other workers. Male hourly workers at Wal-Mart earn 6.7 percent more than women in comparable positions, a pay-equity study contends.

Getty Images/Gilles Mingasson

quit her job or risk antagonizing her employer with a challenge to a bad workplace practice.”¹³

¹ Statement of Dedra Farmer before House Committee on Education and Labor, April 24, 2007.

² Amy Joyce, “Wal-Mart Loses Bid to Block Group Bias Suit,” *The Washington Post*, Feb. 7, 2007, p. 1D.

³ Details of the Goldman Sachs analysis are from Steve Painter, “Judges modify sex-bias decision; Wal-Mart appeal likely to see delay,” *Arkansas Democrat-Gazette*, Dec. 12, 2007.

⁴ Steven Greenhouse and Constance L. Hays, “Wal-Mart Sex-Bias Suit Given Class-Action Status,” *The New York Times*, June 23, 2004.

⁵ Joyce, *op. cit.*

⁶ Quoted in Bob Egelko, “Wal-Mart sex discrimination suit advances; Appeals court OKs class action status for 2 million women,” *San Francisco Chronicle*, Feb. 7, 2007, p. B1.

⁷ Joyce, *op. cit.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Painter, *op. cit.*

¹¹ “U.S. Chamber Files Brief in Wal-mart Class Action,” press release, U.S. Chamber of Commerce, Dec. 13, 2004, www.uschamber.com/press/releases/2004/december/04-159.htm.

¹² Mark E. Burton Jr., Hersh & Hersh, San Francisco, et al., letter submitted to 9th U.S. Circuit Court of Appeals, March 27, 2007, www.uswcc.org/amicus.pdf.

¹³ PR Newswire, “U.S. Women’s Chamber of Commerce Joins Fight in Landmark Women’s Class Action Suit Against Wal-Mart,” March 28, 2007.

allow female jail guards to sue for sex discrimination. The women, called “matrons,” earned 30 percent less than male guards, called “deputy sheriffs.”⁴⁵ The women argued that while they had fewer prisoners to guard and more clerical duties than the male guards, their work was comparable. An outside job evaluation showed that the women did 95 percent of what the men were doing, but received \$200 less a month than the men.⁴⁶

Prior to the Supreme Court’s ruling, *The Washington Post* noted at the time, “the only sure grounds for a pay discrimination claim by a woman under federal law was ‘unequal pay for equal work’ — an allegation that she was paid less than a man holding an identical

job. The jail matrons and women’s rights lawyers said that lower pay for a comparable, if not equal, job could also be the basis for a sex-discrimination charge.”

Justice William J. Brennan wrote that a claim of wage discrimination under Title VII did not have to meet the equal work standards of the Equal Pay Act. Thus, noted Clare Cushman, director of publications at the Supreme Court Historical Society, “a woman employee could sue her employer for gender-based pay discrimination even if her company did not employ a man to work the same job for higher pay.”⁴⁷

Still, Cushman wrote, while the court “opened the door slightly for women working in jobs not strictly equal to their male counterparts, it also specif-

ically declined to authorize suits based on the theory of comparable worth.”

In 1985 that theory suffered a blow that continues to resonate today, partly because of the personalities who were involved. In *AFSCME v. the State of Washington*, the 9th U.S. Circuit Court of Appeals overturned a lower court’s ruling ordering Washington to pay more than \$800 million in back wages to some 15,000 state workers, most of them women.⁴⁸

The case turned on the question of whether employers were required to pay men and women the same amounts for jobs of comparable worth, rather than equal wages for the same jobs. It eventually ended in a draw when the state negotiated a settlement with AFSCME

(American Federation of State, County and Municipal Employees union).⁴⁹

Judge Anthony M. Kennedy, who now sits on the U.S. Supreme Court and presumably could help decide a comparable-worth case should one arise before the justices, wrote the appellate court's decision. Kennedy wrote: "Neither law nor logic deems the free-market system a suspect enterprise." During this same period, two other personalities who now sit on the high court also expressed negative views on comparable worth. As a lawyer in the Reagan administration, John Roberts, now chief justice, described it as "a radical redistributive concept."⁵⁰ And the EEOC, then under Chairman Clarence Thomas, rejected comparable worth as a means of determining job discrimination. "We found that sole reliance on a comparison of the intrinsic value of dissimilar jobs — which command different wages in the market — does not prove a violation of Title VII," Thomas stated.⁵¹

The views of Thomas and Roberts reflected the conservative policies of the Reagan administration during the 1980s. Yet despite the political tenor of that era, women made major strides toward workplace equality. From 1980 to 1992, the wage gap in median weekly earnings of full-time female wage and salary workers narrowed from 64 percent to 76 percent after adjusting for inflation. But it shrank only from 77 percent to 81 percent from 1993 — the year that Democratic President Bill Clinton took office and the Family and Medical Leave Act was enacted — to 2006.⁵²

Measuring Progress

Experts debate whether and to what degree women's gains may have slowed or stopped in recent years. Some point to huge political gains in this decade, including Sen. Clinton's role in the presidential race and the rise of Rep. Nancy Pelosi, D-Calif., to

speaker of the House. Others cite such evidence as a recent study showing that female corporate directors, though a small minority in boardrooms, out-earn male directors.⁵³

But many scholars believe women's gains have indeed slowed.

Vanneman, the University of Maryland sociologist, has carefully charted a number of trends linked to the so-called gender revolution, and on his Web site he notes that he and several colleagues are studying the pace of women's progress.

"For much of the last quarter of the 20th century, women gradually reduced gender inequalities on many fronts," he wrote, citing such trends as women entering the labor force in growing numbers, the opening of previously male-dominated jobs to women, the narrowing wage gap, women's role in politics and a growing openness in public opinion about the participation of women in public and community life.

But, he added, "all this changed in the early to mid-1990s." A "flattening of the gender trend lines" is seen in nearly all parts of society, he added: working-class and middle-class, black, white, Asian and Hispanic, mothers with young children and those with older ones, and so on. "All groups experienced major gender setbacks during the 1990s. The breadth of this reversal suggests something fundamental has happened to the U.S. gender structure."

In an interview, Vanneman says he has no theories as to what accounts for that reversal — only hunches — as he continues to study the phenomenon. One hunch is that the flattening started happening in the 1980s but didn't show up in a big way until the 1990s. He also says he suspects the reversal in women's progress gathered momentum in the 1990s as the "culture of parenting" changed. Americans, he says, became less accepting of women trying to balance busy careers with the pressures of motherhood, a shift that has put

women in more of a bind than they felt in previous periods. As a result, many women have backed away from high-paying careers and devoted more time to family, he says.

"There's been tremendous growth in expectations of what it means to be a good parent," Vanneman says.

Cornell University economist Blau agrees that progress in women's wages slowed in recent years, though she sees some evidence that the picture has brightened a bit.

One reason for the slowdown in the 1990s, she says, may have been that the increase in demand for white-collar and service workers shifted into a lower gear compared to the 1980s, when many women benefited from a surge in hiring for white-collar jobs, including ones that required computer skills, while blue-collar jobs dominated by men began to wane.

In addition, Blau says that during the eighties, as many women began to stay in the workforce even after marriage and childbirth, employers' view of the value of female workers improved. That, she says, helped narrow the wage gap at a faster pace than in earlier decades.

Blau also sees evidence that men were doing more at home in the 1980s than ever before. That trend didn't go away in the past decade, she says, but it hasn't grown much either. ■

CURRENT SITUATION

Prospects in Congress

As concerns over the progress of gender equity grow, women's advocates are hoping that the Democrat-controlled Congress will pass new laws

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At Issue:

Is the Equal Rights Amendment to the Constitution still needed?



IDELLA MOORE
EXECUTIVE OFFICER, 4ERA

WRITTEN FOR *CQ RESEARCHER*, FEBRUARY 2008

We still need the Equal Rights Amendment (ERA) because sex discrimination is still a problem in our country. Like race or religious discrimination, gender discrimination is intended to render its victims economically, socially, legally and politically disadvantaged. But unlike racism and religious intolerance — whose practice against certain groups is localized within countries or regions — sex discrimination is universal. Why, then, in our court system are race and religious discrimination considered more serious offenses?

Today, American women — of all races and religions — are still fighting to achieve equal opportunity, pay, status and recognition in all realms of our society. At this moment, the largest class-action lawsuit in the history of this country is being argued on behalf of 1.6 million women who were discriminated against purely because of their gender. If the ERA had been ratified back in the 1970s, by now these types of lawsuits would be extinct.

We still need the ERA because ratification of the amendment will elevate “sex” to, in legal terms, a so-called suspect class. A suspect class has the advantage in discrimination cases. Gender, as yet, is not afforded that advantage. As we’ve seen with race, suspect class status increased the chance of favorable outcomes in discrimination cases. This, in turn, served as a deterrent. Consequently, in our society racism is now socially unacceptable. Sex discrimination, however, is not.

We still need the ERA because the continuing struggle for legal equality for women should be seen as a shameful and embarrassing condition of our society. Yet today lawmakers — sworn to represent all their constituents — proudly voice their objections to granting legal equality to women and without any fear of consequences to their political careers. How different our reactions would be if they were espousing racism.

The Equal Rights Amendment will perfect our Constitution by explicitly guaranteeing that the privileges, laws and responsibilities it contains apply equally to men and women. As it stands today the Constitution is sometimes interpreted that way, but women, as a universally and historically disadvantaged group, cannot rely on such interpretations. We have seen these “interpretations” vary and change, often due to the whims of the political climate. Therefore, without the ERA any gains women make will always be tenuous.

I see the Equal Rights Amendment, too, as a pledge to ourselves and posterity that we recognize that sexism exists and that we as a country are determined to continue perfecting our democracy by proudly and unequivocally guaranteeing that one’s gender will no longer be a detriment to achieving the American dream.



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WRITTEN FOR *CQ RESEARCHER*, FEBRUARY 2008

The Equal Rights Amendment (ERA) was fiercely debated across America for 10 years (1972-1982) and was rejected. ERA has been reintroduced into the current Congress under a slightly different name, but it’s the same old amendment with the same bad effects.

The principal reason ERA failed is that although it was marketed as a benefit to women, its advocates were never able to prove it would provide any benefit whatsoever to women. ERA would put “sex” (not women) in the Constitution and just make all our laws sex-neutral.

ERA advocates used their massive access to a friendly media to suggest that ERA would raise women’s wages. But ERA would have no effect on wages because our employment laws are already sex-neutral. The equal-pay-for-equal-work law was passed in 1963, and the Equal Employment Opportunity Act — with all its enforcement mechanisms — was passed in 1972.

Supreme Court Justice Ruth Bader Ginsburg’s book *Sex Bias in the U.S. Code* spells out the changes ERA would require, and it proves ERA would take away benefits from women. For example, the book states that the “equality principle” would eliminate the concept of “dependent women.” This would deprive wives and widows of their Social Security dependent-wife benefits, on which millions of mothers and grandmothers depend.

Looking at the experience of states that have put ERA language into their constitutions, we see that ERA would most probably require taxpayer funding of abortions. The feminists aggressively litigate this issue. Their most prominent victory was in the New Mexico Supreme Court, which accepted the notion that since only women undergo abortions, the denial of taxpayer funding is sex discrimination.

ERA would also give the courts the power to legalize same-sex marriages. Courts in four states have ruled that the ERA’s ban on gender discrimination requires marriage licenses to be given to same-sex couples. In Maryland and Washington, those decisions were overturned by a higher court by only a one-vote margin. The ERA would empower the judges to rule either way.

If all laws are made sex-neutral, the military draft-registration law would have to include women. We don’t have a draft today, but we do have registration, and those who fail to register immediately lose their college grants and loans and will never be able to get a federal job.

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this year. But proposed legislation is likely to face stiff opposition.

Reversing the Supreme Court's *Ledbetter* decision seems to have the best chance of making it through Congress. The House passed the Ledbetter Fair Pay Act last July 31 by a 225-199 vote, largely along party lines.⁵⁴ A companion bill in the Senate, called the Lilly Ledbetter Fair Pay Restoration Act, had garnered 37 co-sponsors as of early March. Momentum continued this year with a Senate hearing.

In introducing the Senate version of the bill last July, Sen. Kennedy said it "simply restores the status quo" that existed before the *Ledbetter* decision "so that victims of ongoing pay discrimination have a reasonable time to file their claims."⁵⁵

But employer advocates such as the U.S. Chamber of Commerce dispute such descriptions. Pointing to the House version that passed last summer, chamber officials said it would broaden existing law to apply to unintentional as well as intentional discrimination and would lead to an "explosion of litigation second-guessing legitimate employment and personnel decisions."⁵⁶

The Bush administration has threatened a veto, saying last year that if the House bill came to the president, "his senior advisers would recommend that he veto" it.⁵⁷ The measure would "impede justice" by allowing employees to sue over pay or other employment-related discrimination "years or even decades after the alleged discrimination occurred," the administration said. Moreover, the House bill "far exceeds the stated purpose of undoing the court's decision" by "extending the expanded statute of limitations to any 'other practice' that remotely affects an individual's wages, benefits, or other compensation in the future."

Eric Dreiband, a former EEOC general counsel in the Bush administration, told this year's hearing on the

Senate bill that the measure would subject state and local governments, unions, employers and others to potentially unlimited penalties and could expose pension funds to "potentially staggering liability."⁵⁸

Still, women's advocates remain sanguine about the measure's prospects. "My hope is that the bill will move expeditiously [this] spring" in the Senate and that "the president will reconsider and recognize how important this fix to the law is," says Samuels of the National Women's Law Center.

The other two main bills on gender pay equity could have rougher sledding.

Sen. Clinton's Paycheck Fairness Act is similar to a bill by the same name proposed during her husband's presidential administration. As of early March, the bill had garnered 22 co-sponsors in the Senate and 226 in the House.

Among other things, it would strengthen penalties on employers who violate the Equal Pay Act, make it harder for companies to use the law's defense for wage differences based on factors "other than sex," and bar employers from retaliating against workers who share wage information with each other. It also calls for the Labor Department to draw up guidelines aimed at helping employers voluntarily evaluate job categories and compare wages paid for different jobs with the aim of eliminating unfair wage differences between male- and female-dominated occupations.

The bill has drawn enthusiastic support from some women's advocates, but it also has opponents. Washington lawyer Brown said the goal of the provision on voluntary guidelines was "nothing more than the discredited 'comparable-worth' theory in new clothing."⁵⁹

The Fair Pay Act, proposed by Sen. Harkin and Del. Eleanor Holmes Norton, D-D.C., a former EEOC chair, steps even closer to embracing the comparable-worth theory and thus, many observers believe, is likely to

face stiff headwinds. The main ideas have circulated in Congress for years.

As Harkin describes it, the bill requires employers to provide equal pay for jobs that are comparable in skill, effort, responsibility and working conditions, regardless of sex, race or national origin, and it bars companies from reducing other employees' wages to achieve pay equity.⁶⁰

Again, advocates such as Samuels are hopeful Congress will pass both the Paycheck Fairness and Fair Pay Act and that the president won't veto them if they do make it to his desk. "The hope would be that the level of support for these bills both in Congress and among the public is so substantial, and they so clearly are a necessary step toward ensuring true equality of wages, that the president would understand the necessity for them and sign them," she says.

But business opposition is likely to be strong. Eastman at the U.S. Chamber of Commerce lists a variety of complaints about both bills, such as their provisions for punitive damages and their allowances for class-action suits against employers. "The case has not been made that these bills are justified," he says.

State Action

While women's advocates hold out hope for congressional action, they also are turning their attention to the states in hopes of pressing legislatures to stiffen laws on pay equity and make local economies friendlier to gender issues. As of April 2007, all but 11 states and the District of Columbia had laws on equal pay.⁶¹

Minnesota has had a system of comparable worth, or "pay equity," for public employees since the 1980s, and last year proposals were made to expand the system to private employers

that do business with the state. The Minnesota program gave smaller raises to public workers in male-dominated jobs and bigger raises to those in female-dominated ones, according to a former staff member of the Minnesota Commission on the Economic Status of Women. The system shrank the pay gap from 72 percent to nearly equal pay.⁶²

A report by the Institute for Women's Policy Research said in 2006 that while women's wages had risen in all states in inflation-adjusted terms since 1989, "in no state does the typical full-time woman worker earn as much as the typical man." It would take 50 years "at the present rate of progress" for women to achieve wage parity with men nationwide, it said.⁶³

Some advocates are unwilling to wait that long. In Colorado, for example, a Pay Equity Commission appointed by Donald J. Mares, executive director of the state Department of Labor and Employment, worked since last June to formulate policy recommendations to curb gender and racial pay inequities in the private and public sectors. The 12-member commission includes policy analysts, business and labor union representatives, academics and advocates for women and minorities.⁶⁴

Meric, the 9to5 director and a Colorado resident, said her group was instrumental in getting the state to appoint the commission. Although the panel has no authority to force employers to alter pay practices, Meric hopes the commission's work leads to change. One key recommendation, she says, is that employers do more to create flexible policies so that workers — especially women with caregiving responsibilities — aren't penalized for meeting both work and family responsibilities.

Mares told the Colorado Women's Legislative Breakfast in February that another recommendation calls for making the commission permanent, so it

can continue to monitor gender pay equity in the state and help educate businesses on good practices.

In Colorado, he said, the average woman makes 79 cents for every dollar earned by the average man. "Every day you as a community walk in the door," he told the gathering of women, "your pay is being discounted. That's not good."⁶⁵

Better negotiating skills could help narrow the gender wage gap, in the view of women's advocates. The Clinton/DeLauro bill calls for grants to help women and girls "strengthen their negotiation skills to allow the girls and women to obtain higher salaries and the best compensation packages possible for themselves."

It's a talent that many women don't exercise, says Linda Babcock, an economist at Carnegie Mellon University in Pittsburgh and co-author of the recent book *Women Don't Ask: Negotiation and the Gender Divide*. Babcock found in a study of Carnegie Mellon students graduating with master's degrees in public policy that only 12.5 percent of females tried to negotiate for better pay when they received a job offer, while 51.5 percent of males did. Afterward, the females earned 8.5 percent less than the males.

Babcock sees several reasons why women are not inclined to negotiate more, including that they have been socialized by American culture to be less assertive than men. And, she says, women who do try to bargain for better wages often are subjected to "backlash" by employers and peers.

Not that women are incapable of negotiating, Babcock stresses. While they may not always stand up for themselves in seeking higher wages, women outperform men when negotiating on behalf of somebody else, she has found.

"It's really striking," she says. "If we were missing some gene, we wouldn't really be able to turn it on on behalf of somebody else." ■

OUTLOOK

Pressure for Change

Some women's advocates are not especially sanguine about the possibility of big strides on the gender-wage front, at least in the near future.

"I don't think five years is long enough [for there] to be much change, particularly if we don't see much concerted effort among employers," says Lovell of the Institute for Women's Policy Research.

Big change would require a "push from the federal government" or "some dramatic effort on the part of socially conscious employers," she says. "That hasn't happened before, and I don't think it will in the next few years."

Still, observers believe that social and political shifts will produce new pressure for changes in the way employers deal with wage equity.

Meric says 9to5's "long-term agenda" is to have the theory of comparable worth enshrined in law as well as to have "guaranteed minimum labor standards" for all workers that include paid sick leave and expanded coverage under the Family and Medical Leave Act. In Colorado, she hopes the recommendations outlined by the Pay Equity Commission will serve as a model for other states and "move us closer" to that long-term goal. "Basic protections should apply to workers wherever they live in the United States."

"In the last five or 10 years we have seen progress stall in [achieving] gender equality," says Philip Cohen, a sociologist at the University of North Carolina at Chapel Hill who studies gender inequity. But in coming years, he says he is inclined to think that college-educated women

will exert increasing pressure on federal and state lawmakers and employers to make policy changes that can narrow the wage gap.

“If you look back to feminism in the ‘60s,” Cohen says, “a lot of women had college degrees but weren’t able to take advantage of their skills in the marketplace, and that became the ‘feminine mystique’ ” explored in Betty Friedan’s groundbreaking 1963 book.

Today, “Women are outnumbering men in college graduation rates, and I think we are going to see more and more women looking around for better opportunities. If they don’t see gender equality resulting, they’re going to be very dissatisfied.”

And that dissatisfaction, Cohen says, could well show up in the political arena.

Samuels of the National Women’s Law Center hopes the debate in Congress and fallout from the Supreme Court’s *Ledbetter* decision will spur further gains in wage equity for women.

“Unfortunately, over the course of the last several years things have pretty much stagnated,” she says. “I do hope that the recent public attention paid to wage disparity will cause employers to take a look at their pay scales and try to do the right thing.” ■

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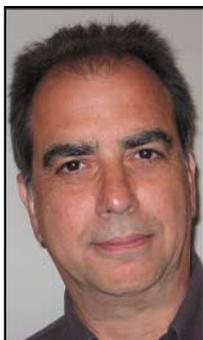
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4ERA, 4355J Cobb Parkway, #233, Atlanta, GA 30339; (678) 793-6965; www.4era.org. Single-issue organization advocating ratification of the Equal Rights Amendment.

Institute for Women's Policy Research, 1707 L St., N.W., Suite 750, Washington, DC 20036; (202) 785-5100; www.iwpr.org. Research organization that focuses on gender pay as well as other issues affecting women, including poverty and education.

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Rivera, Ray, “4th Women Joins U.S. Bias Suit Against Bloomberg LP,” *The New York Times*, Nov. 14, 2007, p. B2.

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