

## **AAUW CAPITOL HILL LOBBY CORPS**

### **Paycheck Fairness Act (H.R. 12)**

#### **I. SUMMARY**

The House will vote on both the Paycheck Fairness Act and the Lilly Ledbetter Fair Pay Act either today or tomorrow. Both bills passed with substantial margins in the 110th Congress and were introduced individually with over 150 cosponsors a piece in the 111th Congress.

The Paycheck Fairness Act is a comprehensive bill and a much needed update to the 45-year-old Equal Pay Act, one of the primary laws that address wage discrimination. It would take meaningful steps to create incentives for employers to follow the law, empower women to negotiate for equal pay, and strengthen federal outreach and enforcement efforts. Together, these bills can help to create a climate where wage discrimination is not tolerated, and give the new administration the enforcement tools it needs to make real progress on pay equity.

#### **II. BACKGROUND**

The American Association of University Women has long fought to end wage discrimination. As early as 1922, AAUW's legislative program called for a reclassification of the U.S. Civil Service and for a repeal of salary restrictions in the Women's Bureau. In 1955, AAUW supported a bill introduced by Reps. Edith Green (D-OR) and Edith Rogers (R-MA) requiring "equal pay for work of comparable value requiring comparable skills." Congress enacted the Equal Pay Act,<sup>1</sup> a version of the 1955 bill, in 1963. AAUW's 2005-2007 Public Policy Program states that AAUW is committed to supporting "fairness in compensation, equitable access and advancement in employment, and vigorous enforcement of employment antidiscrimination statutes."<sup>2</sup>

##### **The Wage Gap Persists**

According to the U.S. Census Bureau and Bureau of Labor statistics, women who work full time earn about 78 cents for every dollar men earn.<sup>3</sup> Minority women face a larger wage gap. Compared to white men, African American women make 67 cents on the dollar (African American men make 75 cents); Hispanic women make almost 58 cents (Hispanic men make almost 66 cents).<sup>4</sup>

##### **Origins of the Wage Gap**

One partial explanation for the wage gap is occupational segregation. According to AAUW research, women are still pigeonholed in "pink-collar" jobs, which tend to depress their wages. The AAUW Educational Foundation's 2003 report, *Women at Work*, found that women are still concentrated in traditionally female-dominated professions, especially the health and education industries. Women's achievements in higher education during the past three decades are considered to be partly responsible for narrowing the wage gap.<sup>5</sup> At every education level, however, women continue to earn less than similarly educated men. Educational gains have not yet translated into full equity for women in the workplace.

## **The Impact of Education on the Wage Gap**

The impact of education levels on the wage gap is of particular importance to AAUW. Women with a college degree earn more than women without this credential. For example, on an hourly basis, women with a four-year college degree earned about 80 percent more than women with only a high school degree in 2001. Moreover, during the past two decades, this difference has grown. Men and women with college degrees enjoyed a real increase in the purchasing power of their earnings between 1973 and 2001. Women without these credentials saw little or no improvement, and men with a high school education or less saw a decline in the purchasing power of their earnings. Nevertheless, while women with a college education earn considerably more than women without this credential, women continue to earn less than men with similar educational backgrounds.<sup>6</sup>

Wage inequalities are not simply a result of women's qualifications or choices. Wage discrimination persists despite women's increased educational attainment. The new report from AAUW released on April 23, 2007, *Behind the Pay Gap*, examines the gender pay gap for college graduates. One year out of college, women working full time earn only 80 percent as much as their male colleagues earn. Ten years after graduation, women fall farther behind, earning only 69 percent as much as men earn<sup>7</sup>. Controlling for hours, occupation, parenthood, and other factors normally associated with pay, college-educated women still earn five percent less than men one year out of college and 12 percent less than men 10 years out of college<sup>8</sup>.

## **The Ledbetter Case**

In this case, the plaintiff, Lilly Ledbetter, a supervisor at the Goodyear Tire & Rubber Company in Gadsden, Ala., sued her employer for paying her less than its male supervisors. Ms. Ledbetter filed a complaint with the EEOC and a jury found that Goodyear violated her rights under Title VII of the Civil Rights Act of 1964.

Goodyear argued that Ms. Ledbetter filed her complaint too late and, by a 5-4 margin, the Supreme Court agreed. Title VII requires employees to file within 180 days of "the alleged unlawful employment practice." The court calculated the deadline from the day Ms. Ledbetter received her last discriminatory raise, rather than – as the EEOC practice had previously made clear – from the day she received her last discriminatory paycheck. As a result, Ms. Ledbetter was unable to challenge any discrimination against her, even though the discrimination continued unabated for years.

AAUW believes the Supreme Court's decision in *Ledbetter v. Goodyear* is inconsistent with Congress's intent and the Court's own precedents. It severely limits the ability of victims of pay discrimination to sue under Title VII. Under this new rule, employers are immunized from accountability for their discrimination once 180 days have passed. AAUW believes the Court's decision ignores the realities of today's workplace; employees generally don't know enough about what co-workers earn or how pay decisions are made to file a complaint precisely when a discriminatory pay decision is made.

## **Legislative Efforts to Close the Wage Gap**

AAUW believes that equal pay for equal work is a simple matter of justice for women.

But despite the Equal Pay Act and many improvements in women's economic status over the past 40 years, wage discrimination still persists and is attributable in part to the Equal Pay Act's limited scope:

- It fails to provide equal pay for jobs that are comparable but not identical.
- It fails to cover wage discrimination based on race (although Title VII of the 1964 Civil Rights Act addresses this issue).
- It fails to cover part-time or contingent workers.
- It fails to allow groups of workers to file class action suits (again, Title VII does allow for this action; however its statute of limitations has a much shorter timeframe than that of the Equal Pay Act).

Although enforcement of the Equal Pay Act as well as other civil rights laws have helped to narrow the wage gap, significant disparities remain which need to be addressed.

### III. TALKING POINTS

**Current Wage Gap:** According to the U.S. Census Bureau and Bureau of Labor statistics, women who work full time earn about 78 cents for every dollar men earn.<sup>9</sup> AAUW has recently published updated state by state numbers on the pay gap. Please find them here: [http://www.aauw.org/research/statedata/upload/table\\_data.pdf](http://www.aauw.org/research/statedata/upload/table_data.pdf).

- Among issues identified as important to women, 90 percent say equal pay for equal work is a priority.<sup>10</sup>
- With a record 70.2 million women in the workforce,<sup>11</sup> wage discrimination hurts the majority of American families.
  - On top of pervasive wage discrimination, women are as affected as men, if not more, by recent economic downturns. A new report - released this week - by the Joint Economic Committee found that the 2001 recession was particularly difficult for women – the percent of jobs lost by women often exceeded that of men in the industries hardest hit by the downturn.<sup>12</sup>
- In addition, wage discrimination lowers total lifetime earnings, thereby reducing women’s benefits from Social Security and pension plans and inhibiting their ability to save not only for retirement but for other lifetime goals such as buying a home and paying for a college education.
  - New research calculates that the pay inequity shortfall in women’s earnings is about \$210,000 over a 35-year working life.<sup>13</sup>
- In 2006, college-educated women 25 and older earned 75 percent of what their male peers earned.<sup>14</sup>
  - This gap emerges within the first year after graduation and widens during the first ten years in the workforce.
- Wage discrimination persists despite women’s increased educational attainment, greater level of experience in workforce, and decreased amount of time spent out of the workforce raising children, according to a study by the Government Accountability Office.<sup>15</sup>

### WHAT THE LEDBETTER FAIR PAY ACT WOULD ACCOMPLISH

- The Ledbetter Fair Pay Act (H.R. 11) clarifies that each discriminatory paycheck is in fact another act of discrimination. The *Ledbetter v Goodyear* Supreme Court decision stated that discrimination can only be charged in the 180 days following the last discriminatory raise, even though the EEOC has consistently interpreted the law to mean last discriminatory paycheck.
- This legislation restores the law to how it was previously been applied, which is 180 days from the last discriminatory paycheck, not 180 days from the last discriminatory raise.

## **WHAT THE PAYCHECK FAIRNESS ACT WOULD ACCOMPLISH**

The Paycheck Fairness Act is a comprehensive bill and a much needed update to the 45-year-old Equal Pay Act, one of the primary laws that address wage discrimination. The Paycheck Fairness Act would take meaningful steps to create incentives for employers to follow the law, empower women to negotiate for equal pay, and strengthen federal outreach and enforcement efforts. The Paycheck Fairness Act would:

- Clarify acceptable reasons for differences in pay by requiring employers to demonstrate that wage gaps between men and women doing the same work are truly a result of factors other than sex.
- Deter wage discrimination by strengthening penalties for equal pay violations, and by prohibiting retaliation against workers who inquire about employers' wage practices or disclose their own wages. The bill's measured approach would ensure that women can obtain the same remedies as those subject to discrimination on the basis of race or national origin. AAUW would strongly oppose any efforts to add such caps.
- Provide women with a fair option to proceed in a class action suit under the Equal Pay Act, and allow women to receive punitive and compensatory damages for pay discrimination.
- Clarify the establishment provision under the Equal Pay Act, which would allow for reasonable comparisons between employees to determine fair wages.
- Authorize additional training for Equal Employment Opportunity Commission staff to better identify and handle wage disputes. It would also aid in the efficient and effective enforcement of federal anti-pay discrimination laws by requiring the EEOC to develop regulations directing employers to collect wage data, reported by the race, sex, and national origin of employees.
- Require the U.S. Department of Labor to reinstate activities that promote equal pay, such as: directing educational programs, providing technical assistance to employers, recognizing businesses that address the wage gap, collecting wage-related data, and conducting and promoting research about pay disparities between men and women.
- Establish a competitive grant program to develop salary negotiation training for women and girls.

## **IV. STATUS**

The Paycheck Fairness Act (H.R. 12) was introduced by Rep. Rosa DeLauro on January 6, 2009 and has 175 cosponsors.

The Ledbetter Fair Pay Act (H.R. 11) was introduced by Rep. George Miller on January 6, 2009 and has 168 cosponsors.

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<sup>1</sup> Public Law No. 88-38.

<sup>2</sup> 2005 – 07 AAUW Public Policy Program (approved June 2005).

<sup>3</sup> U.S. Census Bureau and the Bureau of Labor Statistics. (August 2008). *Annual Demographic Survey*. Retrieved December 11, 2008, from [http://pubdb3.census.gov/macro/032008/perinc/new05\\_000.htm](http://pubdb3.census.gov/macro/032008/perinc/new05_000.htm).

<sup>4</sup> U.S. Department of Labor, U.S. Bureau of Labor Statistics. Highlights of Women's Earnings in 2005, Report 995. <http://www.bls.gov/cps/cpswom2005.pdf> Accessed January 16, 2007.

<sup>5</sup> See, for example, Francine Blau and Lawrence Khan, "The Gender Pay Gap: Going, Going ... But not Gone," Paper presented at the Cornell University Inequality Symposium, "The Declining Significance of Gender," September 2001, 23–24.

<sup>6</sup> Economic Policy Institute. *The State of Working America 2004-2005*, Table 2.18 and Table 2.19.

<sup>7</sup> AAUW Educational Foundation. *Behind the Pay Gap*, 2.2007...

<sup>8</sup> AAUW Educational Foundation. *Behind the Pay Gap*, 11.2007...

<sup>9</sup> U.S. Census Bureau and the Bureau of Labor Statistics. (August 2008). *Annual Demographic Survey*. Retrieved December 11, 2008, from [http://pubdb3.census.gov/macro/032008/perinc/new05\\_000.htm](http://pubdb3.census.gov/macro/032008/perinc/new05_000.htm).

<sup>10</sup> Center for the Advancement of Women. (June 2003). *Progress and Perils: New Agenda for Women*. Retrieved December 27, 2007, from [http://www.advancewomen.org/learn/progress\\_perils/](http://www.advancewomen.org/learn/progress_perils/).

<sup>11</sup> U.S. Department of Labor, Women's Bureau. (2007). *Employment Status of Women and Men in 2006*. Retrieved December 27, 2007, from <http://www.dol.gov/wb/factsheets/Qf-ESWM06.htm>.

<sup>12</sup> Joint Economic Committee. (July 2008). *Equality in Job Loss: Women are Increasingly Vulnerable to Layoffs During Recessions*. Retrieved July 22, 2008 from

[http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore\\_id=96ceea86-d36b-4d00-a522-fb765c556e58](http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore_id=96ceea86-d36b-4d00-a522-fb765c556e58).

<sup>13</sup> Institute for Women's Policy Research. (July 2008). *Improving Pay Equity Would Mean Great Gains for Women*. Retrieved July 22, 2008 from <http://www.iwpr.org/pdf/payequityrelease.pdf>.

<sup>14</sup> Snyder, T.D., Dillow, S.A., and Hoffman, C.M. (2007). *Digest of Education Statistics 2006* (NCES 2007-017, Table 377). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education.

Washington, DC: U.S. Government Printing Office. Retrieved December 28, 2007, from <http://nces.ed.gov/pubs2007/2007017.pdf>.

<sup>15</sup> U.S. General Accounting Office. (October 2003). *Women's Earnings: Work Patterns Partially Explain Difference between Men's and Women's Earnings*, (GAO-04-35). Retrieved December 28, 2007, from <http://www.gao.gov/new.items/d0435.pdf>.