

## **AAUW CAPITOL HILL LOBBY CORPS**

### **Paycheck Fairness Act (S.182)**

#### **I. SUMMARY**

AAUW applauds Congress and the Obama Administration for moving quickly to pass the Lilly Ledbetter Fair Pay Act. It is a critical new law to preserve the rights of victims of pay discrimination to seek vindication. However, the Ledbetter bill is only a down payment on making real progress in closing the wage gap. The next critical step is for the Senate to pass the Paycheck Fairness Act (S. 182/H.R. 12); the House already passed the measure in January 2009 by an even stronger bipartisan vote (256-163) than the Ledbetter bill (247-171).

Passing both bills is critical to the overall goal of achieving pay equity for all. The Lilly Ledbetter Fair Pay Act amended Title VII of the Civil Rights Act of 1964 and righted the wrongs done by the Supreme Court, regaining ground we'd lost. Ledbetter was a narrow fix that will simply return legal practices and EEOC policies to what they were the day before the Ledbetter decision was issued in 2007 – nothing more, nothing less. The Paycheck Fairness Act is a much needed update of the 45-year-old Equal Pay Act, closing longstanding loopholes and strengthening incentives to prevent pay discrimination. Together, these bills can help to create a climate where wage discrimination is not tolerated, and give the 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>.

### **Equal Pay is an Economic Engine**

It is critical that these tough economic times aren't used as an excuse to roll back the hard fought gains women have made. Instead, policy makers need to ensure that women workers – *all* workers – don't just survive the downturn but continue the march toward fair pay and workplace opportunity. Empowering women is one investment that always pays long-term dividends, not only for the women themselves but their families and the entire nation as well. Legislation promoting pay equity is especially critical given the current state of the economy, which has been officially in recession for more than a year and counting.

For the past quarter of a century, American families have relied increasingly upon women's wages to make ends meet. From 1980 to 2006, women's income as a share of total family income rose from 26.7 percent to 35.6 percent.<sup>9</sup> The impact of the current recession, during which the importance of a working woman's wage continues to grow, will intensify this trend even further. Furthermore, as the recession continues, for the first time ever women are poised to become the majority of the American workforce. According to a recent report, the percentage of women who work has remained fairly constant since the recession began, with female-dominated healthcare and education sectors bearing less of the brunt from the downturn. However, with more male-

dominated sectors such as construction and manufacturing being especially hard hit, 82 percent of recent job cuts have befallen men.<sup>10</sup> Consequently, women are increasingly becoming the sole breadwinners for their families – making pay equity not just a matter of simple fairness, but the key to families making ends meet.

The American Recovery and Reinvestment Act, signed into law in February, is intended to save or create 3.5 million jobs over the next two years. According to a White House report, an estimated 42 percent of the jobs created – nearly 1.5 million – are likely to go to women.<sup>11</sup> The recovery package clearly is counting on women to play a leading role in bringing us out of economic recession, and their ability to do so is strengthened considerably when their paycheck is a fair reflection of their work.

### III. WHAT THIS BILL WILL DO

The Paycheck Fairness Act is a comprehensive bill that strengthens the Equal Pay Act by taking 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 bill would also 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 Paycheck Fairness Act would:

- **Close a loophole in affirmative defenses for employers:** The legislation clarifies acceptable reasons for differences in pay by requiring employers to demonstrate that wage gaps between men and women doing the same work have a business justification and are truly a result of factors other than sex.
- **Fix the “Establishment” Requirement:** The bill would clarify the establishment provision under the Equal Pay Act, which would allow for reasonable comparisons between employees within clearly defined geographical areas to determine fair wages. This provision is based on a similar plan successfully used in the state of Illinois.
- **Prohibit Employer Retaliation:** The legislation would deter wage discrimination by prohibiting retaliation against workers who inquire about employers' wage practices or disclose their own wages (NOTE: employees with access to colleagues' wage information in the course of their work, such as human resources employees, may still be prohibited from sharing that information.) This non-retaliation provision would have been particularly helpful to Lilly Ledbetter, because Goodyear prohibited employees from discussing or sharing their wages. This policy delayed her discovery of the discrimination against her by more than a decade.
- **Improve Equal Pay Remedies:** The bill would deter wage discrimination by strengthening penalties for equal pay violations by providing women with a fair option to proceed in an opt-out class action suit under the Equal Pay Act, and allowing women to receive punitive and compensatory damages for pay discrimination. The

bill's measured approach levels the playing field by ensuring that women can obtain the same remedies as those subject to discrimination on the basis of race or national origin. For this reason, AAUW would strongly oppose any efforts to cap damages.

- **Increase Training, Research and Education:** The legislation would 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. The bill would also 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, and conducting and promoting research about pay disparities between men and women.
- **Establish Salary Negotiation Skills Training:** The bill would create a competitive grant program to develop salary negotiation training for women and girls.
- **Improve Collection of Pay Information:** The bill would also reinstate the Equal Opportunity Survey, to enable targeting of the Labor Department's enforcement efforts by requiring all federal contractors to submit data on employment practices such as hiring, promotions, terminations and pay. This survey was developed over two decades and three presidential administrations, was first used in 2000, but was rescinded by the Department of Labor in 2006.

#### IV. STATUS

The Paycheck Fairness Act (S. 182) was introduced by former Sen. Hillary Clinton (D-NY) and has 31 cosponsors.

[Sen Akaka, Daniel K.](#) [HI] - 1/8/2009  
[Sen Boxer, Barbara](#) [CA] - 1/8/2009  
[Sen Brown, Sherrod](#) [OH] - 1/8/2009  
[Sen Burris, Roland](#) [IL] - 4/28/2009  
[Sen Cantwell, Maria](#) [WA] - 1/8/2009  
[Sen Cardin, Benjamin L.](#) [MD] - 1/8/2009  
[Sen Casey, Robert P., Jr.](#) [PA] - 3/5/2009  
[Sen Dodd, Christopher J.](#) [CT] - 1/8/2009  
[Sen Durbin, Richard](#) [IL] - 1/8/2009  
[Sen Feingold, Russell D.](#) [WI] - 1/8/2009  
[Sen Gillibrand, Kirsten E.](#) [NY] - 3/2/2009  
[Sen Harkin, Tom](#) [IA] - 1/8/2009  
[Sen Inouye, Daniel K.](#) [HI] - 2/25/2009  
[Sen Kaufman, Edward E.](#) [DE] - 3/16/2009  
[Sen Kennedy, Edward M.](#) [MA] - 1/8/2009  
[Sen Kerry, John F.](#) [MA] - 1/8/2009

[Sen Klobuchar, Amy](#) [MN] - 1/8/2009  
[Sen Lautenberg, Frank R.](#) [NJ] - 1/8/2009  
[Sen Leahy, Patrick J.](#) [VT] - 1/8/2009  
[Sen Levin, Carl](#) [MI] - 1/8/2009  
[Sen Menendez, Robert](#) [NJ] - 1/8/2009  
[Sen Merkley, Jeff](#) [OR] - 1/8/2009  
[Sen Mikulski, Barbara A.](#) [MD] - 1/8/2009  
[Sen Murray, Patty](#) [WA] - 1/8/2009  
[Sen Reed, Jack](#) [RI] - 1/8/2009  
[Sen Reid, Harry](#) [NV] - 1/8/2009  
[Sen Sanders, Bernard](#) [VT] - 1/9/2009  
[Sen Schumer, Charles E.](#) [NY] - 1/8/2009  
[Sen Stabenow, Debbie](#) [MI] - 1/8/2009  
[Sen Udall, Tom](#) [NM] - 4/27/2009  
[Sen Wyden, Ron](#) [OR] - 1/9/2009

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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> Heather Boushey. *Testimony before the House Committee on Education and Labor, Subcommittee on Workforce Protections Hearing entitled "Encouraging Family-Friendly Workplace Policies."* Retrieved March 5, 2009, from

<http://edlabor.house.gov/documents/111/pdf/testimony/20090303HeatherBousheyTestimony.pdf>.

<sup>10</sup> Catherine Rampell. As Layoffs Surge, Women Pay Pass Men in Job Force. Retrieved March 5, 2009, from <http://www.nytimes.com/2009/02/06/business/06women.html>.

<sup>11</sup> Jared Bernstein and Christina Romer. *The Job Impact of the American Recovery and Reinvestment Act*. Retrieved March 5, 2009, from [http://otrans.3cdn.net/ee40602f9a7d8172b8\\_ozm6bt5oi.pdf](http://otrans.3cdn.net/ee40602f9a7d8172b8_ozm6bt5oi.pdf).