

# LAF/UPDATE

Winter 2009

## From the Board President



Barbara O'Connor

As we begin a new year, with a new administration that expresses strong commitment to pay equity, it couldn't be better timing for the AAUW Legal Advocacy Fund's own frontal assault on workplace discrimination. This year, we are launching our enhanced emphasis on case support for strategic sex discrimination litigation. Our expanded vision for LAF will be more inclusive and will support plaintiffs in any workplace.

We are looking to organizational partners, collaborators, and you, our members, to help us target cases in which AAUW's voice will make a difference, and we are already receiving case recommendations. We hope that, with your help, we can continue to learn about cases that can set precedents we need and want, not only to gain justice for the plaintiffs we support, but also to prevent future discrimination and create a climate that lets employers know that workplace discrimination will be punished. Please send your case recommendations to [laf@aauw.org](mailto:laf@aauw.org).

We are also strengthening our online presence. Important updates relating to LAF work are always listed on the main LAF web page, [www.aauw.org/laf](http://www.aauw.org/laf). Visit our blog, AAUW Dialog, <http://blog-aauw.org>, anytime and read posts by LAF staff discussing relevant news items and LAF events. You may also want to visit the Online Resource Library, [www.aauw.org/advocacy/laf/lafnetwork/library/index.cfm](http://www.aauw.org/advocacy/laf/lafnetwork/library/index.cfm), to access updated and expanded sections on topics like pay equity, sexual harassment, Title IX and athletics, FMLA, pregnancy discrimination, and sexual assault on campus. In addition, new this year, you can access a list of current news stories that address our issues to help you keep up with these topics in national and regional news.

Thank you for your support. You make LAF work possible!

A handwritten signature in blue ink that reads "Barbara L. O'Connor".

Barbara L. O'Connor  
President, AAUW Educational Foundation

## Also in This Edition

- Women Still Face Pregnancy Discrimination
- LAF's New Case Support Criteria
- Latest Case Updates

## Women and the Economic Crisis

Americans are facing severe economic challenges, and the new administration and Congress are struggling to implement strategies that can fix the recession.

With job losses, stagnant wages, rising prices, unprecedented losses in retirement savings, and a collapsing housing market, most Americans have been affected by the recent economic downturn. Women face particular hardship, because they are likely to fall behind men in the economy. About one-third (37 percent) of female-headed households and about two-fifths (43 percent) of children living in female-headed households lived in poverty in 2007. And once these families are forced into poverty, they will likely find it difficult to escape: an estimated 60 percent of families that are in the bottom fifth of income levels are still there 10 years later.

Women are losing jobs or are underemployed in record numbers. Female workers have lost more than 300,000 jobs over the past year. Female unemployment rose from 4.1 percent in 2000 to 5.2 percent in 2008. Single mothers were especially likely to lose a job; April saw a 6.8 percent unemployment rate for female heads of household (not adjusted seasonally), which was considerably higher than the previous April.

Unemployment is also rising among college-educated women and men along with the rest of the workforce, although female and male college-educated workers are less likely to lose a job. While sex discrimination in the workplace can happen in any economic climate, the current downturn could generate a wave of discrimination cases, as economic pressures drive some managers to discriminate in firing and hiring.

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# Women Still Face Pregnancy Discrimination

Fair treatment for women who are, or who could become, pregnant is essential to the majority of working women and their families. According to a recent *Business Week* article, 75 percent of the 68 million working women in the United States will become pregnant at some point in their lives, and most women who become pregnant while working return to their jobs within a year. Not only is the end to pregnancy discrimination a matter of fairness for many people, but the income and health care benefits these working women receive on the job can keep them and any family members dependent on them out of poverty. Additionally, the end to pregnancy discrimination would increase the number of women

## Under the Pregnancy Discrimination Act

- Employers with more than 15 employees are required to treat women who are pregnant the same way they treat other employees with temporary disabilities.
- Facially discriminatory policies that limit or preclude women from performing specific jobs simply because they are fertile or pregnant is prohibited.
- Actions by employers that result in disparate treatment or impact toward women because of their ability to become pregnant are also prohibited.
- An employer cannot refuse to hire a pregnant woman because of her pregnancy or because of a pregnancy-related condition.

### *AT&T v. Hulteen*

In October, AAUW joined the National Women's Law Center in signing an *amicus* brief in support of employees in a pregnancy discrimination case before the U.S. Supreme Court. The case, *AT&T v. Hulteen*, involves a group of women who took pregnancy leave before the Pregnancy Discrimination Act passed, which resulted in smaller pensions than those of women who took pregnancy leave at AT&T after 1978.

The women argue that their pensions should reflect the new pregnancy leave policy, not the older, discriminatory policy. The U.S. Court of Appeals for the 9th Circuit ruled in favor of the employees, but AT&T appealed.

The Supreme Court heard oral arguments in the case in December and, as of this printing, no decision has been announced. The court's interpretation in *Ledbetter v. Goodyear*, which limited the time frame within which one could file suit over unequal pay, may be crucial to the ultimate decision in this case.

promoted and given raises in their fields.

It is also better business not to discriminate against pregnant women or other employees who need to take temporary leave, because it saves money and resources by not having to look for, hire, and train new employees. It also helps prevent low employee morale and productivity. Thanks to the passage of the Pregnancy Discrimination Act in 1978, pregnancy discrimination is virtually illegal, but recent reports and studies on the topic show that it is far from over.

In October 2008, AAUW celebrated the 30th anniversary of the passage of the PDA with a new section in its Online Resource Library ([www.aauw.org/advocacy/laf/lafnetwork/library/PDA.cfm](http://www.aauw.org/advocacy/laf/lafnetwork/library/PDA.cfm)). You can read a brief history of the law, learn about recent landmark cases involving pregnancy discrimination, find out how to make sure the law is enforced, and read answers to frequently asked questions.

At a recent symposium hosted by the National Partnership for Women & Families and the U.S. Equal Employment Opportunity Commission, attendees learned about pregnancy discrimination reports and heard suggestions for ending such discrimination, including the following highlights:

- Pregnancy discrimination complaints to the EEOC rose 65 percent between

1992 and 2007. A recent study by the National Partnership for Women & Families ([www.nationalpartnership.org](http://www.nationalpartnership.org)) found that

1. There is no single cause for the rise in pregnancy discrimination claims.
2. Women of color reported the most significant increase in complaints.
3. More than half of the claims were filed in industries that have a high percentage of women workers.
4. Claims revealed negative stereotypes about pregnant women being less productive and committed to the job than their nonpregnant peers.

- Elizabeth Grossman, an attorney with the EEOC in New York, has found that more than half of the pregnancy discrimination cases she has worked on have involved discharge and that women face discrimination at all stages of their pregnancy: when they first tell their supervisor, when they are near their due date, and when they return to work.
- Cynthia Calvert, an attorney and deputy director and general counsel of WorkLife Law, reported that 45 percent to 55 percent of calls received on their hotline for caregiver discrimination are

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# Case Updates

As directed by the AAUW Educational Foundation Board of Directors, the remaining 2008 AAUW Legal Advocacy Fund plaintiffs are eligible for one more round of funding in early February 2009, from the 2008 donations designated to case support and specific plaintiffs. All the plaintiffs and their attorneys from 2008 have been informed about the updated case support process and are welcome to apply to be considered for support under the new program (see story, p. 5, for details). Thus far, one 2008 plaintiff has indicated an intent to do so.

New cases will be considered on a rolling basis throughout the year, and past and future plaintiffs will continue to travel to AAUW events. Recommendations for new case support are already coming in.

## Pending Cases

### *Jaureguito v. Feather River Community College, Thein v. Feather River Community College, Wartluft v. Feather River Community College*

The plaintiffs are still waiting for a hearing by California's State Personnel Board on the whistle-blower portion of the case. Hearing dates have been scheduled and rescheduled many times in the past 14 months. The latest hearing is set for March 2009. The federal trial dates for the Title IX claims of all three cases have been postponed until January 2010.

### *Mansourian, et al. v. Regents of the University of California, et al.*

The plaintiffs are still waiting for a date for a trial in the U.S. Court of Appeals for the 9th Circuit.

### *Potera-Haskins v. Gamble, Montana State University, et al.*

The trial date for the Title IX claims in this case has been rescheduled from October 2008, to June 2009.



"I believe the support from AAUW was a critical aid in bringing my case to a resolution that was satisfactory to all parties. And I am so grateful for the emotional support of the many AAUW members who took a personal interest in my case."

– Sherry Towers



"Some days, the LAF support I receive has been the single thing that keeps me going forward with this long and drawn-out legal battle! I miss seeing all the AAUW members I have had the privilege of meeting over these past few years."

– Claire Schuster

"Claire and her counsel greatly appreciate the support of AAUW and its members to date and hope that their continued support will enable this important legal struggle to be carried to an ultimately victorious conclusion."

– Robert W. Bishop, Bishop & Associates, P.S.C.

## *Schuster v. Berea College*

In August 2008, the Kentucky Court of Appeals reversed the judgment entered in the lower court that favored Berea College. The appeals court held that the trial court had repeatedly denied Schuster use of critical discovery. Berea College challenged that decision, filing a motion for reconsideration.

In December 2008, the Kentucky Court of Appeals once again ruled in favor of Schuster, denying Berea College's motion to reconsider and sustaining the court's prior opinion. Berea College is now petitioning the Kentucky Supreme Court for discretionary review of the primary appellate court's decision. Schuster and her counsel will oppose this petition and, if the Supreme Court denies discretionary review, the case will return to the trial court for the appellate-mandated discovery.

## Settlements and Decisions

### *Towers v. State University of New York at Stony Brook*

Sherry Towers, a postdoctoral research scientist in the physics department of the State University of New York, Stony

Brook until 2005, lost her job after complaining about discriminatory behavior displayed by her immediate supervisor. According to her complaint, Towers' supervisor became hostile toward her when she told him that she was pregnant and that she needed to cut back her current 60 to 70 hours-per-week schedule following the birth of her child. She alleges that she was effectively fired in retaliation for complaining to the department head. In fall 2008, Towers settled her case to the mutual satisfaction of all parties.

## LAF Plaintiff Travel Grants

LAF Plaintiff Travel Grants were awarded to the following states for their annual conventions:

- Florida
- Minnesota
- New York

# AAUW Legal Advocacy Fund Major Donors

We extend sincere thanks to the donors whose contributions to the Legal Advocacy Fund, a program of the AAUW Educational Foundation, were received between July 1, 2008, and December 15, 2008.

## Guardian

(\$5,000 and up)

Karline K. Tierney (MD)

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(\$1,000–\$4,999)

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## A Message From Development

Please remember that without financial support, we cannot provide these essential programs. We hope you will join other generous donors and support our crucial work by using the enclosed donation envelope. If you have any questions or would prefer to make a contribution over the phone, please contact Tremayne Parquet at 202/728-7611 or Pamela Kreeger at 202/785-7766 for assistance.

## Women Still Face Pregnancy Discrimination continued from page 2

pregnancy-related and that few women calling their hotline end up filing claims for fear of retaliation from their employer.

- CEO Donna Klein of the Corporate Voices for Working Families discussed a study her organization conducted that found that the availability of flexible scheduling—even one day each month—was directly correlated to the commitment of employees to their job. Flex scheduling helped companies retain key employees and increase revenue.

The following are a few of the suggestions from the symposium:

- The National Partnership for Women & Families: A comprehensive enforcement campaign is needed to work on

strategies for ending pregnancy discrimination.

- Elizabeth Grossman: Include a clear nondiscrimination policy in employee handbooks and train employers and supervisors to adhere to that policy.
- Cynthia Calvert: Employers should educate their staff about their pregnancy and family and medical leave policies and set up a clear and efficient communication and complaint policy to handle any complaints that do arise.

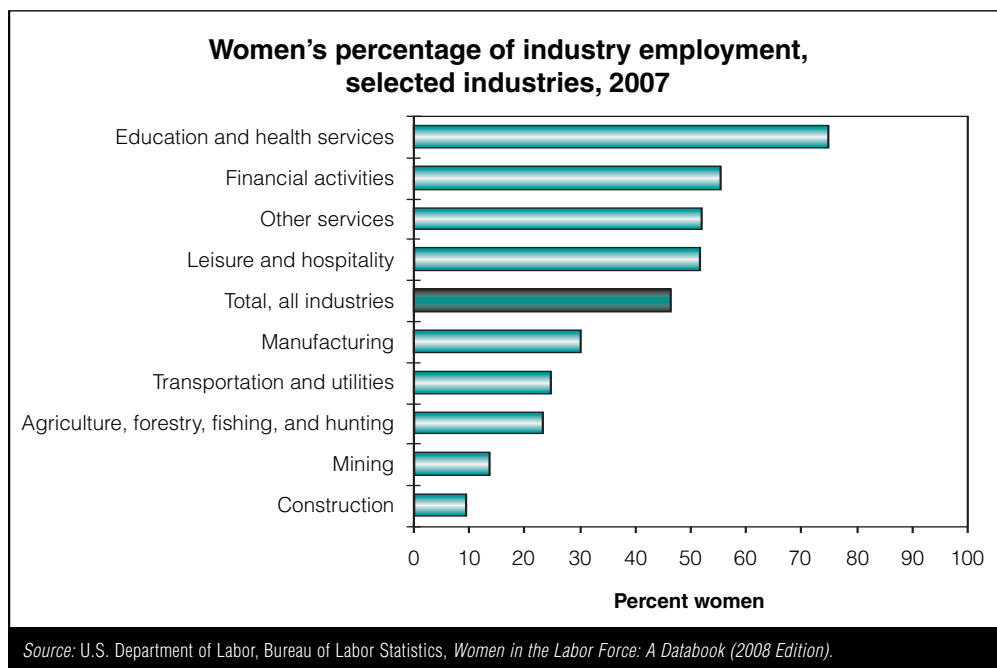
While both subtle and overt pregnancy discrimination is widespread, major changes like these take time. It is no longer legal or accepted for women to be fired upon pregnancy or denied a job because of parental responsibilities. Unless there is greater enforcement, it could take ano-

ther 30 years before all companies will have flexible scheduling and policies in place that will allow all employees, including those who are pregnant, to take care of their families without losing or jeopardizing their job.

## Online Resource Library

Visit the latest sections of the LAF Online Resource Library and learn about your rights at work and what to do if they've been violated.

- Pregnancy Discrimination
- Sexual Harassment in the Workplace



Women are also losing their homes in record numbers, in large part because women are more likely than men to have a subprime mortgage loan. The cost and terms of supprime loans put homeowners at greater risk of foreclosure than traditional loans. In particular, African American fe-male homeowners are at high risk because more than 60 percent of them hold subprime mortgages.

For many families, the primary solution to surviving a slow economic time is to rely on personal savings. Women, particularly those who are the primary wage earners in the family, are at a disadvantage

because they generally have fewer savings to draw upon. Women still account for the majority of part-time, low-wage workers; they are more than twice as likely as men to have these jobs. They are, therefore, less likely to be able to set aside any money in a savings account.

Additionally, many workers, both men and women, are being forced from full-time into part-time work. While, again, some of these workers will be able to supplement that lower income with savings, women, who were presumably making less than their male counterparts to begin with, would have a lower savings balance.

Economic analysts expect that this recession will last well into 2009. At press time, President-elect Barack Obama was urging Congress to pass a stimulus package by mid-February to help all Americans through the economic crisis.

It remains to be seen whether the stimulus package will help women as much as men, but proposals for the package have focused on industries that are traditionally male-dominated, such as public works and technology. Nationally, women comprise less than 10 percent of all construction workers (8 percent of whom work in low-paying administrative jobs) and only 20 percent of information technology professionals.

Women's organizations have suggested passing a stimulus package for the social infrastructure as well. Their proposal includes hiring more teachers, childcare workers, librarians, and homecare workers, which would benefit the predominantly female workforce that makes up these fields.

Additionally, any measures that mandate paid leave, flexible work schedules, subsidized child care, and educational and training programs for low-income women can help women find and stay in good jobs and meet the challenges of the economic crisis. Whatever happens, AAUW hopes women progress economically this year, not regress into further poverty.

## LAF's New Case Support Criteria

**A** AUW works to break down educational and economic barriers so that all women have a fair chance.

This Value Promise guides case support decisions for the AAUW Legal Advocacy Fund's expansion from a focus only on cases in academia to those that arise in any workplace. Along with this expansion, LAF is concentrating on identifying

strategic cases that may provide significant protection for women in the future. (For details, please read the updated LAF briefing on the AAUW website).

Consistent with these transitions, and after lengthy discussions with AAUW members, the AAUW Educational Foundation Board of Directors has published and disseminated procedures for establishing LAF case support eligibility.

To be eligible for LAF support, cases must

- Address a workplace issue within AAUW's mission such as discrimination related to economic security, education, civil rights, or Title IX. The workplace can include college and university campuses.

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- Have the potential for significance with respect to future cases and the likelihood to set or reinforce precedent that will discourage gender discrimination and benefit women.
- Be filed in state or federal court, preferably at the appellate level.
- Request support to advance the legal case. Financial support will not be provided to reimburse personal expenditures.
- Have litigants who are willing to engage in branch visits and make appropriate public appearances with AAUW.
- Allow AAUW to publicize support for the case internally and externally, including in the media, on the website, and in electronic and print communications.

AAUW offers both financial and nonfinancial support to selected applicants, including funding for

- Court filing fees
- Preparation of briefs, filings, and other case-based costs
- Plaintiff court travel
- Specified immediate, essential plaintiff needs

AAUW can also offer nonfinancial support, including

- Signing an *amicus* brief
- An official statement of support
- AAUW members at the court
- AAUW members at a rally

Case recommendations are welcome from many sources, including collaborating organizations, lawyers familiar with appropriate cases, AAUW members, and AAUW affiliates who have knowledge of important cases. If you would like to make a recommendation, please contact [laf@aauw.org](mailto:laf@aauw.org) to receive a case recommendation form. If the case meets the initial case support criteria, applicants will receive a more thorough application to complete and submit. Cases will undergo a review process to determine their suitability for LAF support.

### Campus Outreach

Please contact Holly Kearl at [kearlh@aauw.org](mailto:kearlh@aauw.org) if you need funding to organize a campus outreach event in your community.

## About LAF

The AAUW Legal Advocacy Fund, a program of the AAUW Educational Foundation, partners with other civil and women's rights organizations to support strategic litigation that affects women in all workplaces. Through our campus programs and online resource library, LAF educates campuses and the general public about barriers faced by women and the legal rights, policies, and strategies that can help to eradicate sex discrimination in higher education and the workplace.

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