



QUICK FACTS

Why We Need the Paycheck Fairness Act

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The American Association of University Women believes that pay equity and equal opportunity are matters of simple fairness. AAUW is a leader in the fight to end wage discrimination and open doors for women in the workplace.

Despite civil rights laws and advancements in women's economic status, workplace discrimination still persists. As AAUW's report *The Simple Truth about the Gender Pay Gap* explains, the latest numbers from the U.S. Census Bureau once again revealed that on average, women working full-time, year-round are paid only 82 cents for every dollar paid to men. And the pay gaps are even wider for women of color. Black women and Latinas make, respectively, 63 and 55 cents on the dollar as compared to non-Hispanic, white men.

We know that women take home less money than they have rightfully earned in every industry, no matter what they do, how much education they have and where they are from. AAUW research found that even when controlling for factors known to affect earnings, such as education and training, marital status, and hours worked, college-educated women still earn 7 percent less than men just one year out of college. Over time, the pay gap compounds and widens, impacting women's social security and retirement.

While the gap has narrowed since passage of the Equal Pay Act of 1963, progress has largely stalled. Because of limited enforcement tools and weak remedies, the law has not been able to fulfill its promise. The Paycheck Fairness Act (PFA) provides a much-needed update to the Equal Pay Act.

PFA would give women the tools they need to successfully challenge pay discrimination and to provide incentives to employers to comply with the law. The bill takes several important steps, including:

Guaranteeing Non-Retaliation for Wage Disclosure

PFA prohibits retaliation against workers for discussing or disclosing wages, while also protecting certain confidential wage information. It's often difficult for workers to learn how their pay compares with that of fellow employees. Many employers explicitly prohibit employees from discussing their salaries. PFA would ensure that women are no longer silenced in the workplace, and instead able to talk about wages with coworkers without the fear of being fired. Allowing workers to discuss their salaries without fear of losing their jobs will help women to know whether or not they're being treated equally.

Prohibiting the Use of Salary History

The bill bars employers from relying on an employee's salary history to determine their future pay, so that prior pay discrimination doesn't follow workers from job to job. If a worker faced a pay gap at one job – perhaps because of discrimination – basing their next job's salary on this earlier one only perpetuates that pay gap. Even a well-meaning employer could be carrying forward a salary that was tainted with discrimination. It makes sense that employers should establish salaries based on market research and the duties of the job in question rather than on factors that could introduce bias.

Ensuring Job-Relatedness

The bill clarifies the reasons an employer can legally use to justify differences in pay between men and women. One way current law allows an employer to defend a difference in pay between men and women is by asserting that the difference is based on "any factor other than sex." Courts have interpreted this phrase so broadly that it can embrace some factors that themselves can be based on sex, like prior salary or perceived negotiation skills. PFA closes this

loophole by requiring that employers show that pay gaps between men and women are justified by a business necessity and are related to the job.

Equalizing Remedies

The bill ensures women can receive the same robust remedies for sex-based pay discrimination that are currently available to those subjected to discrimination based on race and ethnicity. The current limited remedies are often inadequate to compensate plaintiffs who have experienced sex discrimination, and can be viewed by employers simply as the cost of doing business. Allowing individuals to recover the full amount of their injuries, as they can in race discrimination cases, strengthens the penalties that courts may impose for sex-based equal pay violations and provides a much stronger deterrent effect.

Helping Challenge Systemic Discrimination

The Equal Pay Act was adopted before the current federal class action rules and thus has a different process for joining together for a suit: workers must opt-in, rather than opt-out. This is a more difficult process and could exclude women who are not aware of their claim or afraid to affirmatively join a suit. PFA would allow Equal Pay Act lawsuits to proceed as opt-out class actions, like other civil rights cases, making it easier for women to band together to challenge systemic discrimination.

Clarifying Comparable Establishments

PFA would eliminate artificial geographic limits, allowing a woman to reasonably compare her salary to male colleagues with the same employer, so long as the facilities are in similar geographic regions. Current law forbids unequal pay within the same “establishment,” which some courts have interpreted narrowly to mean the employees being compared must be in the same physical location. This interpretation unfairly limits employees’ ability to bring cases under the Equal Pay Act. In many

workplaces, particularly in the case of managers or supervisors, there are no similarly situated employees of the opposite sex at the same physical place of business, but there are within the same county or region.

Providing for Pay Data Collection and Additional Assistance and Resources for Businesses

PFA requires pay data collection and supports salary negotiation skills training programs to give workers the tools to advocate for higher wages. The bill also provides technical assistance for businesses, including an exemption for small businesses.

The pay gap is persistent and new tools, like those in the Paycheck Fairness Act, are necessary to help make progress towards closing it.

Additional Resources

AAUW Letters to Congress Supporting the Paycheck Fairness Act

<https://www.aauw.org/app/uploads/2021/01/AAUW-Paycheck-Fairness-Act-House-Letter.pdf>

<https://www.aauw.org/app/uploads/2021/01/AAUW-Paycheck-Fairness-Act-Senate-Letter.pdf>

AAUW Statement for House Hearing on the Paycheck Fairness Act in 2019

<https://www.aauw.org/app/uploads/2020/02/AAUW-Statement-for-House-Education-and-Labor-Subcommittees-Hearing-on-the-Paycheck-Fairness-Act-nsa.pdf>

The Gender Pay Gap by State and Congressional District

<https://www.aauw.org/resources/article/gender-pay-gap-by-state/>

The Simple Truth about the Gender Pay Gap

<https://www.aauw.org/resources/research/simple-truth/>

AAUW advances equity for women and girls through advocacy, education, and research. Since 1881, AAUW has been one of the nation’s leading voices promoting education and equity for women and girls. AAUW has a nationwide network of more than 170,000 members and supporters across the United States, as well as 1,000 local branches and 800 college and university partners.