

Paycheck Fairness Act

December 2021

To achieve economic security for all women, AAUW advocates pay equity and fairness in compensation and benefits.

Despite civil rights laws and advancements in women's economic status, workplace discrimination still persists. Women working full-time, year-round are typically paid only [83 cents](#) for every dollar paid to non-Hispanic white men. The pay gap is even wider for women of color—Black women and Latinas make, respectively, 64 and 57 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, or 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—women still earn 7% less than men just one year out of college. The pay gap compounds and widens over time, reducing women's Social Security and retirement savings and contributing to the racial wealth gap.

The Equal Pay Act of 1963 is the federal law that prohibits pay discrimination on the basis of sex. While the pay gap has narrowed since the passage of the Equal Pay Act, progress has largely stalled due to weak remedies and limited enforcement tools. The Paycheck Fairness Act (PFA) would provide a much-needed update to the Equal Pay Act. The PFA passed the House of Representatives with bipartisan support on April 15, 2021, but failed in the Senate in a procedural vote in June 2021. Urge your Senators to show their support for pay equity by passing the Paycheck Fairness Act [here](#).

AAUW in Action

All public policy actions take direction from the [AAUW Public Policy Priorities](#), voted on by members every two years. AAUW is a nonpartisan organization—but nonpartisan does not mean “non-political.” Since its first meeting in 1881, AAUW has been a catalyst for change. Together, through our coordinated and strategic advocacy, we've enacted invaluable legislation at the federal, state, and local levels. The 2021-2023 Public Policy priorities directly identify the need to achieve pay equity and economic security for all women.

The public policy team engages in many efforts on this key issue, including but not limited to:

- Working in coalition with other gender equity organizations, including leading the Paycheck Fairness Act Coalition.
- Authoring [letters and testimony](#) at the federal, state and local levels to advance pay equity.
- Mobilizing AAUW advocates and members through targeted calls to action on important legislation, like the [Paycheck Fairness Act](#), the Pay Equity for All Act, and the Fair Pay Act.
- Engaging directly with elected leaders and the public through calls, [letters](#) to political offices, and comments and testimonies in hearings.
- Providing voter education resources on key equity issues to consider during elections and offering information on how elected officials have voted in the past (more about this and Get Out the Vote guides at the [AAUW Action Fund](#)).

Closing the Pay Gap

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

Ensuring Non-retaliation for Wage Disclosure

The 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. The 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 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 their previ-

ous 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 PFA clarifies the reasons an employer can legally use to justify differences in pay between men and women. Current law allows an employer to defend a difference in pay between men and women 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. The bill 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. The 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

The 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.

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

The PFA requires pay data collection and supports salary negotiation training programs to give workers the tools they need 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 make progress towards closing it.

Additional Resources

[*Two-Minute Activist: Pass the Paycheck Fairness Act*](#)
American Association of University Women (AAUW)

[*Know Your Rights: The Equal Pay Act*](#)
American Association of University Women (AAUW)