

## FACT SHEET:

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# EQUAL PAY

Nearly fifty years after the Equal Pay Act became law, American women still earn, on average, only 77 cents for every dollar earned by their male peers. Mothers fare even worse: married mothers earn only 69 cents for every dollar earned by their male counterparts and single mothers earn 58 cents for every dollar earned by married men with children.<sup>1</sup> While some of the wage gap can be explained by choices women make, a large portion remains unexplained, and results from discrimination. Unfair pay threatens families who rely on mothers' income, and working women need to know how to protect themselves from this kind of discrimination.

### What does the law provide?

Two federal laws, Title VII of the Civil Rights act of 1964 (Title VII) and the Equal Pay Act of 1963 (EPA), make it illegal to discriminate on the basis of sex in the payment of wages or benefits.

- Title VII broadly prohibits sex discrimination in compensation, whereas the EPA prohibits employers from paying men and women in the same workplace unequal wages for equal work. (Claims under the EPA can be harder to prove as they require a comparison between similarly situated male and female workers, and not all workplaces have such diversity for comparison.)
- Both laws cover all forms of compensation including salary, overtime pay, bonuses, vacation and other benefits.
- Title VII's ban on sex discrimination applies to employers with 15 or more employees, but the EPA applies to any employer with two or more employees.

### Do jobs have to be identical to be considered equal work?

No. In general, two jobs are equal for the purposes of the EPA when both require *equal levels of skill, effort, and responsibility and performed under similar conditions*. The focus is on the duties performed. Job titles, classifications and descriptions may factor in but do not, by themselves, determine the answer.

### When are different wages justified?

Wage differentials are permitted when they are based on a seniority system, a merit system, a system that measures earnings by quantity or quality of production, "or a differential based on any other actor other than sex."<sup>2</sup> Typically, a "factor other than sex" is job-related.

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<sup>1</sup> Ann M. O'Leary, *Lilly Ledbetter Fair Pay Act Won't Close Wage Gap Between Men and Women*, S.F. Chron., Feb. 4, 2009, [http://articles.sfgate.com/2009-0204/opinion/17188326\\_1\\_wage\\_gap\\_obama's\\_first\\_sick\\_family\\_member](http://articles.sfgate.com/2009-0204/opinion/17188326_1_wage_gap_obama's_first_sick_family_member).

<sup>2</sup> 29 U.S.C. § 206 (2011).



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- *Ex. An employer who pays male employees more than female employees doing the same job, just because their work occurs at different times of day, discriminates based on sex. Time of day alone is not a sufficient factor other than sex to justify unequal pay.<sup>3</sup>*
- *Ex. An employer may pay different wages to employees with different levels of job-related education.*

### What about part-time workers?

Part-time workers across occupations are paid at a lower hourly rate than full-time employees<sup>4</sup> and the Equal Employment Opportunity Commission (EEOC), the federal agency that enforces anti-discrimination laws, has recognized this as a problem.<sup>5</sup> Some of these workers may be able to make out a case of pay discrimination when they are performing “substantially equal” work. However, proving substantially equal work can be difficult, as courts have interpreted the law very narrowly.

- *Ex. A female engineer who worked 30 hours a week was allowed to compare herself to a full-time male colleague with similar title, duties and responsibilities for purposes of proving unequal pay.<sup>6</sup>*

### What should I do if I think my rights have been violated?

File a charge of discrimination with the EEOC. Although you are not required to file a charge with the EEOC under the EPA, you are required to do so under Title VII. Since your equal pay claim may overlap with a Title VII sex discrimination claim, it’s best to file charges under both laws at the same time.

You should file your charge as soon as you can, but thanks to recent change in the law, know as the Ledbetter Fair Pay Act, you now have 180 days from the time you receive a discriminatory pay check to file an equal pay lawsuit. Before this amendment, an employee would need to file a charge of discrimination within 180 days of the discriminatory decision to pay her less, which was often difficult to discover in time.

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<sup>3</sup> *Corning Glass Works v. Brennan*, 417 U.S. 188 (1974).

<sup>4</sup> “The Earning Penalty for Part-Time Work: An Obstacle to Equal Pay,” Report by the Joint Economic Comm., Rep. Carolyn Maloney, Chair (April 20, 2010).

<sup>5</sup> *A Fair Share for All: Pay Equity in the New American Workplace: Hearing Before the U.S. Senate Comm. On Health, Educ., Labor*, 113<sup>th</sup> Cong. (March 11, 2010)(statement of Stuart Ishimaru, Acting Chairman of the Equal Employment Opportunity Commission).

<sup>6</sup> *Lovell v. BBNT Solutions*, 295 F. Supp. 2d 611 (E.D. Va. 2003).



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Your employer cannot punish you in any way for filing an equal pay discrimination charge or lawsuit. Retaliation of this kind is prohibited by law.

### **What else can be done to combat unfair pay practices?**

Congress and some states are considering laws to expand protections for working women. Politicians need to hear from their constituents about these proposals, and understand that the pay gap is harming families like yours.

- ***The Paycheck Fairness Act of 2009*** (S. 3772, H.R. 12)– This law would allow victims of wage discrimination based on gender to seek compensatory and punitive damages, would close loopholes in existing equal pay law, and prohibit punishment of employees who share salary information with their coworkers in order to uncover wage disparities.
- ***The Fair Pay Act of 2009*** (S. 904, H.R. 2151) – This law would target wage discrimination in female-dominated jobs by establishing equal pay for equivalent or comparable (rather than equal) work. For example, an employer that hired mainly female secretaries and mostly male security personnel, and considered the two positions comparable in worth to the company, could not consistently pay the secretaries less than the security personnel.

### **Where can I learn more about the wage gap and what I can do to combat it?**

Equal Employment Opportunity Commission (<http://www.eeoc.gov/>)

National Committee on Pay Equity (<http://www.pay-equity.org/index.html>)

National Equal Pay Taskforce  
([http://www.whitehouse.gov/sites/default/files/rss\\_viewer/equal\\_pay\\_task\\_force.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/equal_pay_task_force.pdf))

National Women's Law Center (<http://www.nwlc.org/>)

WAGE Project (<http://www.wageproject.org/>)

If you have questions about your rights at work, or want to share your story about part-time work, please contact A Better Balance at [info@abetterbalance.org](mailto:info@abetterbalance.org) or call us at (212) 430-5982.