

Gender Pay Equality: The Effectiveness of Federal Statutes and Recent U.S. Supreme Court Decisions

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“We shall not be safe until the principle of equal rights is written into the framework of our government.”¹

Abstract

In 2010, women will make history as a majority of the United States workforce. A majority of women employed in the workforce may call attention to the gender barriers which have promoted pay inequality. However, majority alone will not remove them. Gender pay inequality is real, painful, and overt. It denies women the productivity and output gains to achieve equal pay for equal work. It denies women the opportunity to best utilize and reward their skills, talents, and growth capacity in the workplace. It denies women higher professional opportunities to improve their financial security.

This paper examines the effectiveness of Federal statutes and recent U.S. Supreme Court decisions to achieve gender pay equality in the domestic workforce. Specific national laws speak directly to the issue; yet, their impact is limited in scope and benefit because they have failed to address the deeply rooted causes of employment gender pay inequality. First, they have not stamped out work place gender discrimination which continues to allow employers to pay women less based simply on their gender. Additionally, they have not stopped employers from limiting women employees to traditional female occupations in order to retain female-dominated occupations at lower pay scales. Furthermore, they have not challenged the prevailing measure of employee value based primarily on time in the workforce, rendering women at a pay disadvantage for exercising time out for child rearing and/or caring for aging parents.

Historical Introduction

United States history has laid a solid foundation for the denial of domestic gender equality. Its founding fathers, forging the great experiment in democracy, systematically excluded women from participating in the common purpose of forming one united country, woven together out of thirteen original, separate and distinct British colonies. First, they denied women a voice in the 1776 deliberations in Philadelphia, culminating in the Declaration of Independence; and they purposely left women out of that famous document which states: “...all men are created equal, ... endowed by their Creator with certain inalienable rights, ...life, liberty, and the pursuit of happiness.”² Second, the founding fathers excluded women, once again, from participation in the deliberations of the 1787 Constitutional Convention, where the great national experiment in democracy was consummated. The resulting document, the U.S. Constitution, denied all women the right to vote, thus rendering them less than citizens and less than equal in rights attained by their male counterparts at the time.³

¹ Quote by Alice Paul, who introduced the Equal Rights Amendment to Congress in 1923.

“Women Open Campaign for Equal Rights,” *Equal Rights*, Official Weekly of the National Woman’s Party, July 28, 1923.

² THE DECLARATION OF INDEPENDENCE (U.S. 1776).

³ At time of nation’s founding, assumption existed that only white males with property would vote. Specifically, African-American males and all women were denied constitutional rights.

It took women another 133 years to gain the right to vote, the right to full citizenship participation. Finally, they exercised that right under the law with the 1920 adoption of the Nineteenth Amendment to the U.S. Constitution, which states: "...the right to vote shall not be denied or abridged on account of sex."⁴ It remains today the only explicitly articulated Constitutional guarantee of a right held equally by both women and men.⁵

In the 180 years since U.S. ratification of the Nineteenth Amendment, women have made modest gains, especially, in the political arena. For example, they serve as Governors of six states, hold approximately a quarter of state legislative seats, and women have served as mayors in seven of the fifty largest U.S. cities.⁶ Today, women serve in all elective offices, and a greater number of women than men voted in the 2008 Presidential election.⁷ Yet, these advances have failed to provide women political equality with men.

In the federal arena, Nancy Pelosi presides over the U.S. House of Representatives as Madam Speaker, the first woman to hold that position and third in succession to the Presidency, following the Vice President.⁸ However, "No woman has been nominated by a major political party to be President"⁹; two women have been nominated to be Vice President—one each from the two major national political parties; and three women have served on the U.S. Supreme Court. Women hold 17% of seats in both the U.S. House of Representatives and U.S. Senate, placing the U.S. Congress at 68th in the world in terms of women's participation in national legislatures.¹⁰

Constitutional denial of equal citizenship and women's political rights carried over into other areas of legal denial. For years, the U.S. Supreme Court refused to apply interpretations of the Fourteenth Amendment's Equal Protection Clause to gender equality or women's rights. For example, in *Strauder v. West Virginia*,¹¹ *Ballard v. United States*,¹² and *Hoyt v. Florida*,¹³ the

Christina Wobrecht, *Political Women and American Democracy*, (New York: Vintage, 2008), 3.

<http://www.cup.com/ac.uk/us/catalogue/catalogue.asp?isbn=9780511380617&=exc>

⁴ U.S. CONST. amend. XIX.

⁵ African American males gained their legal emancipation through the 13th, 14th, and 15th Amendments to the U.S. Constitution. The 13th Amendment, ratified in 1865, abolished slavery. The 14th Amendment, ratified in 1868, granted all former male slaves full citizenship and all rights and privileges as citizens, including the right to vote. The 15th Amendment, ratified in 1870, prohibited voting denial to former slaves "on account of race, color or previous condition of servitude." U.S. CONST. amend. XIII, XIV, XV.

⁶ "Biographies of Current Governors," *National Governors Association*, (February, 26, 2010).

<http://www.nga.org/portal/site/nga/menuitem.42b929b1a5b9e4eac3363d10501010a0/?vgnnextoid=d54c8aaa2ebbf00VgnVCM1000001a01010aRCRD&vgnnextfmt=curgov>.

Christina Wobrecht, *Political Women and American Democracy*, (New York: Vintage, 2008), 2.

<http://www.cup.com/ac.uk/us/catalogue/catalogue.asp?isbn=9780511380617&=exc>

⁷ Wobrecht, *Political Women*, 5.

⁸ U.S. CONST. art. I, §2, cl. 5; U.S. CONST. art. II, §1, cl. 6, and amend. XXV

⁹ Hillary Clinton received more than 17 million votes in the 2008 Presidential election primaries and was narrowly defeated to become first woman major party nominee.

CNN, "Clinton's new job: Persuading diehard fans to back Obama," CNN Politics.com (June 8, 2008).

<http://www.cnn.com/2008/politics/06/08/clinton.voters/index.html>.

¹⁰ Martha Burk and Eleanor Smeal, "U.S. Needs a Women's Equality Amendment," *Star Tribune*, May 1, 2007.

Available on <http://www.commondreams.org/archive/2007/05/01/893>.

In addition to two female justices currently serving on the U.S. Supreme Court, "women constitute only 23% of the federal district court and circuit court judges." One woman has served as U.S. Attorney General.

Alison I. Stein, "Women Lawyers Blog for Workplace Equality: Blogging as a Feminist Legal Method," *Yale Journal of Law and Feminism* 20 (2009): 364. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

¹¹ 100 U.S. 303, 309-310 (1879). In *Strauder*, the Supreme Court specifically held that the Equal Protection Clause of the 14th Amendment forbids states from barring men from juries based on race/color. It did not extend that right

Court continued to allow states to deny Equal Protection to women seeking jury service. Finally, in *J.E.B. v. Alabama*, the Court struck down the gender discrimination against potential jurors who affirmed their Equal Protection rights to serve on juries.¹⁴

Refutation until 1920 of full citizenship in the Constitution and Court denial for 100 years of the Fourteenth Amendment's Equal Protection to women who served on juries helped to perpetuate and affirm gender discrimination practices. In *Reed v. Reed*,¹⁵ the U.S. Supreme Court broke with the century long precedent against Equal Protection for gender discrimination, enabling two other important cases to advance this protection: *Fronterio v. Richardson*¹⁶ providing equal treatment of male and female military personnel in determining dependent benefits; *Craig v. Boren*¹⁷ establishing the Court's application of "heightened or intermediate" standard of scrutiny for gender discrimination cases. However, the late Supreme Court Chief Justice William Rehnquist, in dissenting opinion in *Craig v. Boren*, helped to diminish the strength of these precedents. The Chief Justice argued that the guarantee of Equal Protection in the Fourteenth Amendment was written to provide more critical equal protection scrutiny against racial discrimination; it was not written, in his view, to provide a more "heightened" equal protection scrutiny against gender discrimination.¹⁸

to women to serve on juries. "The very idea of a jury is a body of men composed of the peers or equals...having the same legal status as that which he holds."

¹² 329 U.S. 187, 192 (1946). In *Ballard*, the Court held that "juries in the federal courts sitting in such states...[where] women are eligible for jury service under local law...would be representative of both sexes." It left undisturbed state processes to qualify jury pools, in effect reaffirming states' rights to deny women participation in their jury pools.

¹³ 368 U.S. 57, 61-62 and 65 (1961). In *Hoyt*, the Court reaffirmed *Ballard*, holding that Florida state law, which gives "women an absolute exemption from jury duty based solely on their sex," was valid to accommodate women's special responsibilities "as the center of home and family." The Court dismissed women's equal protection claims when tried before resulting all male jurors.

¹⁴ 511 U.S.127, 143-146 (1994). The Court stated, "when persons...[are] excluded from participation in our democratic process solely because of race or gender...this promise of equality [under the law] dims..." Essentially, the Court extended to gender cases the scope of *Batson v. Kentucky*, 476 U.S. 70, 90 (1986), which outlawed preemptive strikes solely on the basis of race.

¹⁵ 404 U.S. 71, 77 (1971). In *Reed*, the Court held that Idaho state statute giving mandatory preference to one gender over another, providing "dissimilar treatment for men and women who are...similarly situated," violates the 14th Amendment's Equal Protection Clause.

Roberta W. Francis, "Reconstituting the Equal Rights Amendment: Policy Implications for Sex Discrimination," Paper presented at the American Political Science Association Annual Conference, San Francisco, CA, August 30-September 2, 2001, 5, 11n10.

¹⁶ 411 U.S. 677, 689 (1973); In *Fronterio v. Richardson*, the Supreme Court struck down federal statutes 37 U.S.C.S. §§ 401, 403, and 10 U.S.C.S. §§ 1072, 1076 as unconstitutional, requiring "differential treatment" of men and women.

¹⁷ 429 U.S. 190, 197 and 210 (1976); In *Craig v. Boren*, the Court held that gender classification "must serve important governmental objectives and must be substantially related to achievement of those objectives" in order to meet the constitutional requirement of the 14th Amendment Equal Protection Clause. Justice Powell, in a concurring opinion, pointed out that "gender-based classifications make clear that the Court subjects such classifications to a more critical examination than is normally applied when 'fundamental' constitutional rights and 'suspect classes' are not present."

¹⁸ Francis, "Reconstituting the Equal Rights Amendment," 11n10. 429 U.S. 190, 217-218 (1976); In Justice Rehnquist's dissent, he rejected the new test of "intermediate scrutiny" for gender based classifications in favor of the lower "rational basis." Both levels of scrutiny fall below the "strict scrutiny" test established for race.

Yes, Chief Justice Rogers, There is a Gender Pay Gap

Persistent gender political inequality in conjunction with legal ambivalence to equal protection against gender discrimination fosters further gender inequalities. Particularly, the law tolerates real gender barriers to equal pay for equal work. For example, Current Chief Justice John Rogers has publically stated that there is merely a “perceived” gender pay gap.¹⁹ However, the Economic Policy Institute and the U.S. Labor Department’s Current Population Survey confirm a real gender pay gap of 20% in raw 2008 figures.²⁰ This means women earn only 80% of what men earn (in full time, year round, wage and salary jobs), which translates into median weekly earnings of \$638 compared to men’s median weekly earnings of \$798, or a yearly salary of \$32,515 compared to \$42,262 for men.²¹ While the actual extent of gender economic inequality varies (i.e. the smallest - 98% in Washington, DC, and the largest - 66% in Louisiana), it clearly appears in every state.²²

To further confirm the existence of a persistent gender wage gap, academic studies use regression analysis to account additionally for differences in education, job title and responsibility, regional labor markets, work experience, occupation and time in the workplace that may legitimately affect wages.²³ One study concluded that the wage earnings of women to men increased to 95.1% after evaluating demographics, education, work experience, test scores, workplace and occupational characteristics, and child related factors.²⁴ Another study found that specific fields of academic study impacted pay. For example, “college graduates who major in the humanities rather than the sciences have lower incomes,” and since more women than men major in humanities, women subsequently earn less.²⁵ Likewise, time in the workforce affects pay. If employers pay less to workers who take time out of work than they pay those with longer time on the job, women who take time out for child rearing consequently earn less.²⁶

While no definitive consensus exists on the size or reasons for the persistent pay gap, one can estimate the influence of gender by removing the effect of other factors.²⁷ Perhaps ½ of that 20% gender pay gap is justified by productivity differences based on education, skill, and work experience.²⁸ Examination of additional individual variables including age, occupational segregation by industry, occupation place of work, and the jobs held within that place of work,

¹⁹ Heidi Hartmann, Barbara Gault, and Erica Williams, “Memo to John Roberts: The Gender Wage Gap is Real,” *Institute for Women’s Policy Research*, September 2005, 1-2. <http://www.iwpr.org/pdf/c362.pdf>.

²⁰ U.S. Department of Labor, U.S. Bureau of Labor Statistics, *Women in the Labor Force: A Databook*, 2009 ed. Washington, DC: September 2009, 1. <http://www.bls.gov/cps/wlf-databook2009.htm>

²¹ U.S. Dept of Labor, *Women in the Labor Force*, 2, Table 16, 52.

“Congress Must Act to close the Wage Gap for Women,” *National Women’s Law Center*, April (2008), 1n7. <http://www.nwlc.org/>.

²² “Congress Must Act,” *National Women’s Law Center*, 2n24-25.

²³ Regression analysis is an economic technique that measures all possible variables contributing to a wage gap; the remaining portion that is unexplained by these measurable variables is attributed to gender discrimination.

Diana Furchtgott-Roth, “Testimony on Paycheck Fairness Act,” Testimony before the House Committee on Education and Labor, April 24, 2007, 5.

²⁴ *Ibid.*, 7.

²⁵ *Ibid.*, 8, 10.

²⁶ *Ibid.*, 8, 10.

²⁷ “One of the main reasons for the persistent pay gap is the fact that ‘women are vastly overrepresented in traditionally female jobs with low pay, low status, and high turnover.’”

Nancy Levit & Robert R.M. Verchick, *Feminist Legal Theory* 45 (2006): 73 as quoted in Stein, “Women Lawyers Blog,” 374n95.

²⁸ Furchtgott-Roth, “Testimony on Paycheck,” 7.

may account for another 25%.²⁹ However, examination of all independent variables - including women and men making the same career choices, and working the same hours at the same job - demonstrates a significant, unexplained gap of 5 to 10% of the total 20% gap in men and women's earnings.³⁰ This unexplained portion of the difference in pay defines the gender discrimination gap, correlating solely to one's gender.³¹

Women's participation in the United States work force is impressive, reaching new historic levels of substantial employment, as more women are working, more are working full time and year round than ever before, and more mothers are working. For example, labor force participation in 2008 by mothers with children under age 18 was 71%.³² Additionally, the 2008 educational attainment of working women aged 25—64 shows 35.6% held college degrees and only 6.9% of women were high school dropouts.³³ Finally, women, recently attaining higher career positions, accounted for 51% of all persons employed in management, professional and related occupations in 2008, even higher than their 47% share of total employment in that year.³⁴

Increased women's share of the labor force is "one of the most important and desirable social and economic transformations of our lifetimes."³⁵ As the United States approaches a milestone in its history marked by a majority of women in the workforce, it is important to recognize that the gender pay gap in raw numbers has changed over time.³⁶ Women's earnings in raw figures have improved—from 59% of men's earnings (a 41% gap) in 1963 when the Equal Pay Act was enacted to 80% of men's earnings (a 20% gap) in 2008—for those working full time and year round.³⁷ However, it is equally important to affirm that a gender pay gap remains and continues to hinder equality in the work place.

²⁹ Ibid., 7

³⁰ U. S. General Accounting Office, "Women's Earnings – Work Patterns Partially Explain Difference between Men's and Women's Earnings," *U. S. General Accounting Office: Report to Congressional Requesters, October 2003*, Washington, DC: GAO, 2003, 22.

"Congress Must Act to close the Wage Gap for Women," *National Women's Law Center* April (2008), 8n32. <http://www.nwlc.org/>.

Linda Levine, "The Gender Wage Gap and Pay Equity: Is Comparable Worth the Next Step?," *CRS Report for Congress, December 20, 2004*, 9. Available on <http://wikileaks.org/wiki/CRS-98-278>.

³¹ U. S. General Accounting Office, "Women's Earnings", 22.

"Congress Must Act," *National Women's Law Center*, 8n33.

Francine D. Blau and Lawrence M. Kahn, "Gender Differences in Pay," *Journal of Economic Perspectives*, 14 (Fall 2000): 75-99 as cited in Michael Selmi, "Care, Work, and the Road to Equality: A Commentary on Fineman and Williams," *Chicago-Kent Law Review* 76 (2001): 1559n11. <http://0-www.lexisnexis.com.library.law.suffolk.edu> and in Joseph Price, "Gender Differences in the Response to Competition," *Industrial and Labor Relations Review* 61, no. 3 (April 2008): 320n1. <http://0-web.ebscohost.com.library.law.suffolk.edu>.

³² U.S Dept of Labor, *Women in the Labor Force*, Table 7, 18.

³³ Ibid., Table 9, 23.

³⁴ Ibid., Table 11, 28.

³⁵ Casey B. Mulligan, "A Milestone for Working Women?," *Economix Blog, NYTimes.com* (January 14, 2009): 1. <http://economix.blogs.nytimes.com/2009/01/14/a-milestone-for-women-workers/>.

³⁶ Ibid.

³⁷ "Congress Must Act to close the Wage Gap for Women," *National Women's Law Center* April (2008), 1n2. <http://www.nwlc.org/>.

U.S Dept of Labor, *Women in the Labor Force*, 1.

Laws and Recent Court Decisions

While the U.S. has achieved several important laws to support a national commitment to gender pay equality, these laws do not fulfill that promise because they are limited in applicability, enforceability, and remedies.

The 1963 EQUAL PAY ACT (EPA), the first federal law to prohibit gender wage discrimination, amends the Fair Labor Standards Act of 1938 (FLSA) to require equal pay for women and men doing substantially equal work.³⁸ The law states, “No employer shall discriminate ...between employees on the basis of sex by paying wages to employees...at a rate less than the rate at which he pays wages to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are preformed under similar working conditions...”³⁹

Today, the EPA covers virtually all public and private employers who are covered by the FLSA.⁴⁰ An alleged victim has two years to file a complaint and three years to file for a “willful violation,” which is “when an employer knew or showed reckless disregard” of whether its conduct was prohibited by the EPA.⁴¹ Victims recover back pay for any violation, but also recover fixed and limited damages for a “willful violation.”⁴² Most significantly, the Act anticipates and prohibits employers from reducing the wages of one gender to equalize the gender wage, and instead it requires the employer to increase the wages of the underpaid gender.⁴³

Men and women are equally protected by the EPA, although female plaintiffs file the majority of legal cases alleging EPA gender pay discrimination.⁴⁴ However, significant barriers exist to obtain that protection. A plaintiff must establish a *prima facie* case of EPA discrimination to succeed in the claim of gender pay discrimination, and the burden of proof is substantial.⁴⁵ First, the plaintiff must demonstrate that he/she receives less pay than an employee of the opposite sex and “that the compared male employee’s educational experience...relative seniority, and job duties are as similar as possible to those of the Plaintiff.”⁴⁶ Second, the plaintiff must show that both male and female employees perform equal work on jobs that require substantially “equal skill, effort, and responsibility.”⁴⁷ Third, the plaintiff must manifest that the jobs “are performed under similar working conditions.”⁴⁸ Additionally, the plaintiff may

³⁸ 29 U.S.C. §201 and §206 (2010).

³⁹ 29 U.S.C. §206(d) (1) (2010).

⁴⁰ Sandra J. Perry, “Equal Pay Act Cases in Higher Education,” *Journal of Individual Employment Rights* 12, no. 1 (2005-2006): 38n6. <http://0-web.ebscohost.com.library.law.suffolk.edu>.

452 U.S. 161, 165 n3 (1981); In *County of Washington v. Gunther* (1981), the Court pointed out that “the Equal Pay Act did not apply to municipal employees until passage of the Fair Labor Standards Amendments of 1974.”

⁴¹ 29 U.S.C §255(a) (2010).

Perry, “Equal Pay Act Cases,” 33, 38n9, 40n49.

⁴² 29 U.S.C §216 (b) (2010).

⁴³ 29 U.S.C §206 (d)(1)(2010).

⁴⁴ Perry, “Equal Pay Act Cases,” 38n8

⁴⁵ Black’s Law Dictionary defines a *prima facie* as (adv.) Latin for “At first sight; on first appearance but subject to further evidence or information” and (adj.) “sufficient to establish a fact or raise a presumption unless disproved or rebutted.” A *prima facie* case requires the establishment of “...enough evidence to allow the fact-trier to infer the fact at issue and rule in the party’s favor.”

Bryan A. Garner, Ed. in Chief, “Prima Facie (adv. & adj.)” and “Prima Facie Case,” *Black’s Law Dictionary*, 9th ed., 2009: St. Paul, MN, 1310.

⁴⁶ 29 U.S.C §206 (d)(1) as cited in Perry, “Equal Pay Act Cases,” 23.

⁴⁷ *Ibid.*, 22.

⁴⁸ *Ibid.*

use supportive “statistical evidence of pay disparity between the sexes in substantially the same positions” to establish the *prima facie* case of discrimination.⁴⁹ However, claims of mere employer “intent to discriminate” provide insufficient evidence to establish a *prima facie* case.⁵⁰

The EPA provides four exceptions for a wage differential, giving an employer the right to exercise these affirmative defenses to prove it did not engage in gender discrimination.⁵¹ The employer meets this burden through the legal standard of “preponderance of evidence” that the wage differential is justified. The four defenses are: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) any other factor other than sex.⁵² To overcome the hurdle, the plaintiff must be able to show that any one of these defenses evidenced by the employer is simply a “pretext for unlawful discrimination.”⁵³

The higher education profession illustrates the unique challenges female plaintiffs face in proving a *prima facie* EPA case.⁵⁴ First, a plaintiff must demonstrate gender pay inequality using a reasonable opposite-gender comparison or appropriate statistical evidence.⁵⁵ The male competitor does not have to be in the same department; however, a plaintiff must show that the “teachers compared are in the same discipline” and that they both “teach classes to students in that discipline.”⁵⁶ Second, plaintiff faces a much greater challenge to prove comparable education, skills, responsibilities, and employment conditions if comparator is not from same department or discipline.⁵⁷ Third, the plaintiff has the greatest burden to prove a teaching position in a female-dominated discipline is substantially equal to a teaching position in a male-dominated discipline.⁵⁸ For example, in *Spaulding v. University of Washington* (1985), male faculty in the predominately female discipline of nursing alleged EPA gender pay discrimination because they were paid less for their work than male faculty in other schools of the university such as architecture, urban planning, health services, and pharmacy practice.⁵⁹ The Court found no EPA violation viewing the issue as “lower pay for [teaching in] nursing as a

⁴⁹ Perry, “Equal Pay Act Cases,” 22.

⁵⁰ *Ibid.*, 22, 38n9.

⁵¹ 29 U.S.C. §206 (d)(1) as cited in Perry, “Equal Pay Act Cases,” 23.

⁵² *Ibid.*

⁵³ Perry, “Equal Pay Act Cases,” 23n2.

⁵⁴ A gender gap prevails in the profession. Female faculty earn about 80% of what male faculty earn for two reasons: (1) “female faculty are more likely to be employed in lower paid non tenure positions”; (2) “they are more likely to teach at associate and baccalaureate colleges where salaries are lower than at institutions conferring graduate degrees.” Additionally, a female faculty member earns less pay than a comparable male faculty member of same rank who works in the same department in same institution.

Perry, “Equal Pay Act Cases,” 21n3.

⁵⁵ *Ibid.*, 23-24.

740 F.2d 686, 698 and 703-704 (9th Cir. 1985); For example, in *Spaulding v. University of Washington*, the court found that the statistical evidence submitted by the plaintiffs was deficient and the plaintiffs failed to establish that they performed work substantially equal to work performed by male faculty members in other disciplines.

⁵⁶ Perry, “Equal Pay Act Cases,” 39n17.

765 F.2d 1026, 1033, 1036 and 1039 (11th Cir. 1985); In *Brock v. Georgia Southwestern College*, the court found the state college willfully violated the EPA with regard to four of the six female plaintiffs, and remanded to the District Court to determine the appropriateness of male comparators to the two female claimants who were no longer teachers. The jobs of the four plaintiffs and their male comparators were substantially equal even though they taught different courses.

⁵⁷ Perry, “Equal Pay Act Cases,” 24.

⁵⁸ *Ibid.*, 25.

⁵⁹ 740 F.2d 686, 698 (9th Cir. 1985); The court stated that “the difference in pay between jobs which women primarily hold and jobs which men primarily hold does not state a *prima facie* Equal Pay Act case if the jobs are not substantially equal.”

discipline...rather than lower pay for female faculty members performing substantially the same job as male faculty members”.⁶⁰

TITLE VII OF THE 1964 CIVIL RIGHTS ACT (Title VII) is the broadest anti discrimination statute regarding employment. It guarantees equal opportunity, making it “...unlawful employment practices for an employer to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment...” on account of gender.⁶¹ First, it covers all public and private employers with fifteen or more employees.⁶² Second, it allows employer the same exemptions for the pay differential as the EPA. Employers may use these exemptions based on merit, seniority, superior skills or abilities as affirmative defenses to demonstrate that the pay differential is not gender discriminatory.⁶³

Title VII provides an additional exemption against gender discrimination for a bona fide occupational qualification “reasonably necessary” to the safe and efficient operation of a particular business.⁶⁴ The Equal Employment Opportunity Commission (EEOC) administers and enforces workplace equality with power to intervene on behalf of a victim of gender employment discrimination.⁶⁵ An employee challenging a discriminatory employment practice must first file with EEOC within 180 days “after the alleged unlawful employment practice occurred.”⁶⁶ Finally, the EEOC investigates the charges, holds an administrative adjudicatory hearing, and upon a finding of employment discrimination, orders a number of “appropriate remedies,” including hiring, reinstatement and back pay, promotion, and damages.⁶⁷

Ambiguity over the breadth of appropriate remedies under Title VII led to legal change and court challenges. The 1991 Compensatory Damage Act amended Title VII to explicitly include recovery of compensatory damages as an appropriate remedy in cases of intentional Title VII violations.⁶⁸ With this Congressional change, the law carried broader statutory remedial intent and purpose. However, *West, Jr. v. Gibson* challenged, in part, the EEOC’s legal scope of authority to require federal agencies to pay compensatory damages as an appropriate remedy for

⁶⁰ Perry, “Equal Pay Act Cases,” 25.

740 F.2d 686, 693 and 700 (9th Cir. 1985); In *Spaulding v. University of Washington*, the court held that the standard of evidence for the EPA is different from the standard of Title VII. While the EPA only requires a demonstration of unequal pay for the same work, Title VII requires a showing of intentional discrimination as well.

⁶¹ 42 U.S.C 21 §2000e-2(a) (1) (2010).

⁶² 42 U.S.C 21 §2000e-(b) (f) (2010).

County of Washington v. Gunther, 452 U.S. 161, 165 n3 (1981); Municipal employees were added with the passage of the Equal Employment Opportunity Act of 1972.

⁶³ 42 U.S.C 21 §2000e-2(h) (2010).

452 U.S. 161, 181 (1981); In *County of Washington v. Gunther*, the Court reaffirmed consistent interpretation of affirmative defenses in both EPA and Title VII statutes.

29 U.S.C §206 (d)(1) (2010).

⁶⁴ 42 U.S.C 21 §2000e-2(e) (2010).

⁶⁵ 42 U.S.C §2000e-4(g)(6) (2010).

⁶⁶ 42 U.S.C §2000e-5(e)(1) (2010).

The EEOC interpreted Title VII broadly to allow plaintiffs to file claims of pay discrimination “as long as the unequal pay continued.”

Stein, “Women Lawyers Blog,” 374.

⁶⁷ 42 U.S.C §2000e-16 (2010)

⁶⁸ 42 U.S.C §1981 a (a)(1) (2010).

Black’s Law Dictionary defines “Compensatory Damages” as “Damages sufficient in amount to indemnify the injured person for the loss suffered.”

Bryan A. Garner, Ed. in Chief, “Compensatory Damages,” *Black’s Law Dictionary*, 9th ed., 2009: St. Paul, MN, 445.

employment discrimination in violation of Title VII.⁶⁹ In its decision, the Supreme Court upheld the EEOC's authority to provide compensatory damages against federal agencies "when they discriminate in employment in violation of the Civil Rights Act of 1964."⁷⁰

Despite these difficulties, the EEOC has won substantial settlements for plaintiffs against major businesses practicing past and continuous gender pay discrimination. For example, in *U.S. EEOC v. Morgan Stanley Co.*, the investment firm agreed to a \$54 million payment to plaintiffs in a sex discrimination class action consent decree settlement.⁷¹ The EEOC charged, in part, that the investment firm paid women in mid to upper level jobs in its Equity Division less than men and passed over women for promotion.⁷² While Morgan Stanley denied these allegations, it committed to take several actions to prevent future discrimination, such as 1) implement a program promoting diversity management training, 2) perform promotion and compensation analysis, and finally, 3) implement policies to enhance promotion and retention of women.⁷³ In another example, in *Bell v. Woodward Governor Company*⁷⁴ and *EEOC v. Woodward Governor Company*, a federal judge approved a \$2.6 million settlement for gender discrimination in pay, promotion, and training.⁷⁵ The EEOC on behalf of female employees working at two of the company's plants brought suit against this global engine system and parts company for paying women less than men for similar work.⁷⁶ In the agreement, Woodward committed to 1) implement written job descriptions for positions, performance appraisals, and compensation, and 2) develop a procedure for investigating employee complaints of discrimination with EEOC oversight.⁷⁷ Such cases demonstrate effective and robust government enforcement by the EEOC, financially penalizing large business firms engaged in past gender employment discrimination. Consequently, proactive settlement agreements requiring prospective adoption of internal business processes increase transparency and accountability to prevent future gender discrimination.

These particular settlements did result in financial gains for women victimized by past gender pay discrimination. However, the Supreme Court undermined the advancement of gender pay equality with its decision, *Ledbetter v. Goodyear Tire*.⁷⁸ Lilly Ledbetter, a supervisor at Goodyear Tire for nineteen years, earned substantially less than her fifteen male counterparts performing the same work under the same conditions. She claimed cumulative discriminatory

⁶⁹ 527 U.S. 212, 214 (1999).

⁷⁰ *Id.*, 214, 217 and 223; Supreme Court remanded to the Seventh Circuit Court of Appeals to determine whether or not Gibson had exhausted EEOC administrative remedies before bringing the case to court.

42 U.S.C. § 2000e et seq. (2010).

⁷¹ S.D.N.Y. No. 01-CIV-8421

U.S. Equal Employment Opportunity Commission, "EEOC and Morgan Stanley Announce Settlement of Sex Discrimination Lawsuit," *U.S. Equal Employment Opportunity Commission: Press Release, July 12, 2004*, 1. <http://www.eeoc.gov/eeoc/newsroom/release/archive/7-12-04.html>.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ N.D. Ill. No. 0350190.

⁷⁵ N.D. Ill. No. 06C50178.

⁷⁶ The two suits were consolidated: The first one was brought by employees as a racial employment discrimination case; the second one, brought by EEOC, affirmed the racial discrimination allegations and added the gender discrimination charge.

U.S. Equal Employment Opportunity Commission, "Judge Approves \$5 Million Settlement of Job Bias Lawsuits Against Woodward Governor," *U.S. Equal Employment Opportunity Commission: Press Release, February 20, 2007*, 1. <http://www.eeoc.gov/eeoc/newsroom/release/archive/2-20-07.html>.

⁷⁷ "Congress Must Act," *National Women's Law Center*, 4n36.

⁷⁸ 550 U.S. 618, 621-622 (2007).

pay decisions over nineteen years, rather than a one-time discriminatory pay act, which resulted in a lower salary of \$3,727/month compared to the lowest salary of \$4,286/month earned by a male supervisor.⁷⁹ The Court acknowledged that Ledbetter appeared to have a meritorious claim of gender pay discrimination; however, it struck down her claim on a procedural technicality because she failed to file the charge with the EEOC within the 180 day period prescribed by statute after the alleged discriminatory pay decision occurred.⁸⁰ Furthermore, it rejected the EEOC conclusion that the back pay provisions of Title VII allowed challenges to pay discrimination commencing before and continuing through into the 180 day filing period.⁸¹

The *Ledbetter* case demonstrates an “insidious discrimination” practice undervaluing Ledbetter’s work by repeated pay decisions causing her salary to fall “slowly but steadily” over time, “15 to 40 percent behind her male counterparts.”⁸² Furthermore, Ledbetter as a “member of a protected class...performed work substantially equal to the work of the dominant male class (men); she was compensated less for that work” because of her gender.⁸³ Justice Ginsberg’s dissenting opinion points out that the majority opinion in *Ledbetter* reflects a narrow interpretation of Title VII, “incompatible with the statute’s broad remedial purpose.”⁸⁴ Consequently, it fails to remedy the persistent wage disparities between men and women performing equal work under the same workplace conditions.

The 2009 LILLY LEDBETTER FAIR PAY RESTORATION ACT (Lilly Ledbetter Act) reverses the negative impact of the Supreme Court decision in *Ledbetter v. Goodyear Tire* (2007).⁸⁵ The law amends Title VII to impose a “paycheck accrual rule” specifying that discriminatory pay decisions start the 180 day EEOC filing period “each time an employee receives a paycheck, in whole or in part, resulting from a discriminatory practice” whether it occurred during the filing charge period or “outside the time for filing a charge.”⁸⁶ Additionally, the law provides remedies of two years of back pay preceding the filing of the charge and compensatory damages.⁸⁷ Filing period extends to 300 days in states with a fair employment

⁷⁹ Id. at 643.

⁸⁰ Stein, “Women Lawyers Blog,” 375; “Ledbetter had in fact been a victim of pay discrimination based on gender.” 550 U.S. 618, 623-629 (2007).

⁸¹ 550 U.S. 618, 637 (2007).

Perhaps an EPA claim, which Ledbetter initially filed but later abandoned, would have had a different outcome. For example, EPA, an amendment to the FLSA, is subject to different time prescriptions. However, under EPA, she would not be entitled to compensatory damages.

29 U.S.C. § 216, 255 (a), 256 (2010).

⁸² 550 U.S. 618, 649 (2007).

Goodyear had a policy prohibiting employees from sharing their pay information, thus Ledbetter had no proof of gender pay discrimination “until one day she received an anonymous note revealing the salaries of three male supervisors.”

Stein, “Women Lawyers Blog,” 375.

⁸³ 550 U.S. 618, 659 (2007).

Protected classes are covered by federal laws on Equal Employment Opportunities, including EPA and Title VII. Included among protected classes are racial minorities, women and older Americans.

⁸⁴ Id. at 660.

⁸⁵ President Obama, a co-sponsor of the Senate version of the act, signed the Lilly Ledbetter Bill into law on January 27, 2009, the first law he signed as President.

Washington Post. “Obama Signs Lilly Ledbetter Act.” *WashingtonPost.com* (January 29, 2009).

http://voices.washingtonpost.com/44/2009/01/29/obama_signs_lilly_ledbetter_ac.html.

⁸⁶ 42 U.S.C. §2000e-5e (3) (A) & (B) (2010).

⁸⁷ 42 U.S.C. §2000e-5e (3) (B) (2010).

agency and the effective date is retroactive to the Supreme Court decision.⁸⁸ This new act makes clear that Congress intended “a robust application of the law” to further “statutory protections against discrimination in compensation” as a bedrock principle of U. S. law for decades.⁸⁹

Yet, barriers to gender pay discrimination remain because these laws fail to provide effective protection against gender pay inequality in their applications, remedies, and enforcement. The *Ledbetter* case, which exposed an interpretive loophole in Title VII, illustrates the difficulties plaintiffs face in proving gender pay discrimination claims. Prevention of gender wage inequality requires improvements and modifications to these laws; and it requires more proactive federal government response.

The PAYCHECK FAIRNESS ACT (PFA), proposed legislation in the current 111th Congress, is an important effort to improve the effectiveness of the EPA and Title VII and to correct their obvious deficiencies. First, it would strengthen the EPA remedies to include provisions mandating compensatory and punitive damages for employer EPA violations.⁹⁰ The current EPA remedies are weak: successful victims can recover merely fixed and limited damages and back pay - awards “which tend to be insubstantial.”⁹¹ The EPA remedies must, at a minimum, be equal to those of Title VII and the Lilly Ledbetter Act.

A second PFA legal change would allow Title VII suits to proceed automatically as class actions, granting relief to all who are injured by the employer’s unlawful practice.⁹² This legal change would eliminate a major problem plaintiffs have faced in the case, *Dukes v. Wal-Mart*, where six plaintiffs, “on behalf of more than 1.5 million current and former female employees who worked in 3,400 stores in 41 regions,” brought a class action suit under Title VII against Wal-Mart for gender pay discrimination.⁹³ The court must first decide to allow the case to move forward procedurally as a class action suit before it can examine the case on its merits. A three judge panel of the Ninth Circuit Appellate Court in 2007 reaffirmed the Federal District Court certification as a class action—the largest class action gender pay employment discrimination case in U.S. history.⁹⁴ Wal-Mart appealed the decision to the full judge panel of the Ninth Circuit Appellate Court.⁹⁵

A third PFA provision would improve EEOC’s collection of data and pay information essential to the EEOC’s ability to detect violations.⁹⁶ Enhanced detection capability and strong, uniform, punitive remedies in all gender discrimination laws would send a clear message of zero toleration of gender pay discrimination, putting greater teeth into enforcement against employers who practice gender pay discrimination.⁹⁷ Additionally, it would strengthen EEOC enforcement

⁸⁸ 42 U.S.C. §2000e-5e (2010).

P.L. 111-2, §6 (2010).

⁸⁹ P.L. 111-2, §2 (2010).

⁹⁰ H.R. 12 § 3(c), 111th Cong., 2010, amending 29 U.S.C. 216 (b)(1).

⁹¹ “Congress Must Act,” *National Women’s Law Center*, 5.

⁹² In general, the court “authorizes a single person or a small group of people to represent the interest of the larger group.” Federal procedure maintains a class action under several prerequisites in which “the class must be so large that individual suits would be impractical.”

Bryan A. Garner, Ed. in Chief, “Class Action,” *Black’s Law Dictionary*, 9th ed., 2009: St. Paul, MN, 284.

⁹³ 474 F.3d 1214, 1222 (9th Cir. 2007).

⁹⁴ Id. at 1244.

⁹⁵ 556 F.3d 919 (9th Cir. 2009) per En Banc Report dated April 20, 2010 of U.S. Court of Appeals for the Ninth Circuit, <http://www.ca9.uscourts.gov/enbanc/>; The full panel heard the oral arguments of the appeal on March 24, 2009) and reaffirmed the certification as a class action. Wal-Mart can appeal this decision to the Supreme Court.

⁹⁶ H.R. 12 § 8, 111th Cong. (2010), amending 42 U.S.C. §2000e -8 (2010).

⁹⁷ “Congress Must Act,” *National Women’s Law Center*, 5.

prohibitions against employer retaliation by further preventing employers from punishing employees who share salary information with their coworkers.⁹⁸ Furthermore, increased employee knowledge about wage disparities in their workplace would be useful information to evaluate individual experiences of gender wage discrimination, a significant problem for Lilly Ledbetter.⁹⁹ Pay privacy prevents transparency regarding employee wages. It hinders the EEOC's enforcement capabilities, allowing employers to perpetuate gender wage discrimination practices.

Perhaps the most important PFA change would amend the very broad fourth affirmative defense language of the EPA and Title VII permitting employers to pay a differential based on "any other factor other than sex."¹⁰⁰ The amendment would require a specific, stronger "bona fide factor such as education, training or experience."¹⁰¹ Furthermore, it would require evidence that the pay differential, based on the bona fide factor, is also directly related to job performance and "consistent with business necessity."¹⁰² However, if an employee "demonstrates that an alternative employment practice exists that would serve the same business purpose and the employer has refused to adopt such alternative practice," the defense is eliminated.¹⁰³

THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA) builds upon the 1978 Pregnancy Discrimination Act to prohibit gender pay discrimination resulting from work and family responsibilities.¹⁰⁴ A milestone in the legal support of family, it recognizes explicitly that family needs impact women in the workplace: "Due to nature of roles of men and women...primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men..."¹⁰⁵

Furthermore, the FMLA requires the workplace to provide employment policies accommodating the needs of the growing number of working women with children.¹⁰⁶ Its purpose is to balance work and family; "promote the stability and economic security of families;" and, "preserving family integrity" as a national interest in furthering the "goal of equal employment opportunity for men and women."¹⁰⁷ The law entitles an employee to take "reasonable medical leave", including maternity related disability "for birth or adoption of a child, and for the care of child spouse or parent who has a serious health condition."¹⁰⁸

FMLA covers all private employers engaged in commerce or affecting commerce who employ fifty or more employees. Yet, it denies coverage for any with less than fifty employees, precluding leave availability to many employees working in small businesses.¹⁰⁹ To be eligible

⁹⁸ H.R. 12 § 3 (b)(1)(B), 111th Cong. (2010), amending 29 U.S.C. 215 (a)(3).

⁹⁹ See footnote 82, *supra*.

¹⁰⁰ H.R. 12 § 3 (a)(2), 111th Cong. (2010), amending 29 U.S.C. 206 (d)(1).

¹⁰¹ *Id.*

¹⁰² H.R. 12 § 3 (a)(B), 111th Cong. (2010).

¹⁰³ *Id.*

¹⁰⁴ 42 U.S.C. §2000e-k (2010).

29 U.S.C. §2601-2654 (2010).

¹⁰⁵ 29 U.S.C. §2601 (2010).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ 29 U.S.C. §2612 (2010).

¹⁰⁹ 29 U.S.C. §2611(2010).

According to the U.S. Small Business Administration in 2006, 96% of small businesses (measured by employment) have less than fifty employees, which make these employees ineligible for FMLA coverage.

for the leave, employees must be (1) employed consecutively for at least twelve months and for at least 1250 hours in a calendar year (2) they must provide the employer thirty days notice of leave intent and (3) it may be taken on an intermittent basis, if sanctioned by the employer.¹¹⁰ Additionally, the Act limits leave to an aggregate number of twelve work weeks total if both spouses work for the same employer.¹¹¹ Furthermore, the leave is gender neutral, consistent with the Equal Protection Clause of the Fourteenth Amendment to minimize potential harm against employment discrimination based on gender. Employer violation of the FMLA entitles an employee to recoup any wages, salary, benefits or other monetary losses directly resulting from the violation and liquidated damages.¹¹² This law provides an employee two years to bring a law suit commencing from the date of the last event constituting the alleged violation for the cause of action.¹¹³

Under the law, employees cannot be immediately penalized upon return to work; they return to the “same or equivalent” position of employment held at time when the leave commenced.¹¹⁴ The law prohibits an employer from reducing, any loss of employment status, pay or benefits earned prior to leave upon return to work.¹¹⁵ However, an employee loses seniority or any additional right of benefit or position earned during the period of leave. Lastly, the law requires the employer to maintain employee health benefits during the leave.¹¹⁶

Restrictions under the law limit its short-term effectiveness in meeting the needs of family and work. First, leave eligibility is available only for serious medical conditions, or illness of dependents, remaining unresponsive to the more common need to care for children who are moderately ill, but perhaps too ill to attend school or day care.¹¹⁷ Second, it is unpaid.¹¹⁸ Consequently, employees who can afford to accept the pay loss for the twelve weeks benefit; lower income employees who cannot afford a twelve week compensation loss fail to benefit. Third, the leave carries employment risk. The workplace norm consists of “unbroken career progression.”¹¹⁹ Employees experience a long term wage penalty in terms of advancement and seniority resulting from the leave. Moreover, employers may consider the leave as broken career service.

Legal Effectiveness

The above laws, explicitly prohibiting gender pay discrimination, fail in a number of ways to achieve gender pay equality. First, as previously discussed, they have not eliminated the pay gap that is based solely on gender.¹²⁰ In addition, as demonstrated in the outlined cases, application

U.S. Executive Office of the President, Council of Economic Advisers, “The Economic Effects of Health Care Reform on Small Businesses and Their Employees,” Washington, DC (July 25, 2009): 1-2.

<http://www.whitehouse.gov/assets/documents/CEA-smallbusiness-july24.pdf>.

¹¹⁰ 29 U.S.C. §2611, 2612 (2010).

¹¹¹ 29 U.S.C. §2612 (2010).

¹¹² 29 U.S.C. §2617 (2010).

¹¹³ *Id.*

¹¹⁴ 29 U.S.C. §2614 (2010).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Belinda M. Smith, “Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change,” *Columbia Journal for Gender and Law* 11 (2002): 280-281n44-48. <https://www.lexisnexis.com>.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, 281.

¹²⁰ The wage gap attributable to pay differences between men and women in the same jobs may violate the Equal Pay Act.

of these laws creates a substantial burden of proof, requires different time prescriptions for filing claims, and provides varying remedies, contributing to insubstantial or ineffective results.

Second, Title VII specifically prohibits overt discrimination—use of gender as criterion for all employment decisions, including other conditions of employment such as employee segregation to deny women employment opportunities.¹²¹ Yet Title VII has not prohibited employers from limiting women to occupationally segregated jobs that create female dominated occupations promoting less pay, less prestige, and less opportunity for advancement than male dominated jobs.¹²² Overt discrimination directly affects women’s earnings. It is a salient feature of the workforce contributing to wage inequality between men and women. Furthermore, these gender dominated occupations create unequal pay between men and women within the female dominated occupation where more than 70% of workers in the occupation are women.¹²³

Overt discrimination fosters gender devaluation or gender subordination by allowing workplace practices that impede women’s participation, advancement, and pay. The practice begins by “defining men and women differently” and then evaluating the difference as gender deficient, thus rendering women’s capacity to grow and contribute as deficient.¹²⁴ Consequently, this so-called gender deficiency perpetuates gender pay inequality. Devaluation further diminishes women’s human capital worth, implying that the “true market value of a woman can actually be less than that of men.”¹²⁵ It justifies paying women less than men. Additionally, subordination negates the fundamental meaning of human equality, disproportionately concentrating women at low end paying jobs and men at the high end of the wage paying jobs—perhaps an attribution to a societal gender bias “favoring men as leaders and women as followers.”¹²⁶ For example, the assumption remains that women are less skilled than men in the leadership requirement of problem solving.¹²⁷ This assumption creates a major barrier to the advancement of women in top executive corporate leadership. In Fortune 500 companies women hold an impressive 50.3% of managerial and professional positions; however, among the top earners, women represent merely 7.9%, and among CEO’s, less than 1.4% are women.¹²⁸ Subordination perpetuates a salary glass ceiling.¹²⁹

The profession of human resources illustrates the persistence of a salary glass ceiling. Identified as one of the ten top paying female professions, it has failed to eliminate gender pay disparities in senior executive positions: men still dominate the high paying human resources

Kimberly Bayard Et Al., “New Evidence on Sex Segregation and Sex Differences in Wages from Matched Employee-Employer Data,” 40-41 as cited in Vicki Schultz, “Life’s Work,” *Columbia Law Review* 100 (2000): 1894-5n41. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

¹²¹ 42 U.S.C 21 §2000e-2(a) (2) (2010).

¹²² Bell, “Discrimination, Harassment,” 66.

¹²³ *Ibid.*

¹²⁴ J.B. Miller, *Toward a New Psychology of Women*, Boston, MA Beacon Press: 1986 as cited in Lindsay J.

Thompson, “Gender equity and corporate social responsibility in a post-feminist era,” *Business Ethics: A European Review* 17, no. 1 (January 2008): 91. <http://0-web.ebscohost.com.library.law.suffolk.edu>.

¹²⁵ *Ibid.*, 92.

¹²⁶ *Ibid.*

¹²⁷ S. Nierenberg and C. Marvin, *Women ‘Take care,’ Men ‘Take Charge’: Stereotyping of US Business Leaders Exposed*, NY: Catalyst, 2006 as cited in Thompson, “Gender equity and corporate,” 98.

¹²⁸ *Ibid.*, 97-98.

¹²⁹ “The term ‘the glass ceiling’ refers to invisible or artificial barriers that prevent women (and people of color) from advancing past a certain level.”

Federal Glass Ceiling Commission, “The Glass Ceiling,” 1997, in D. Dunn (ed.), *Workplace/Women’s Place: an Anthology*, Roxbury Publishing, Los Angeles, CA, 226-233 as cited in Bell, “Discrimination, Harrassment,” 68.

executive positions with significantly higher pay.¹³⁰ For example, among the current top fifty highest paid human resources executives, just fourteen are women; and among the top fifteen, only three are women.¹³¹

Furthermore, these laws fail to prevent glass ceiling practices perpetuating gender pay inequality. Prevention requires implementation of organizational systems that embrace inter-organizational networks involving collaborative experience and placing teamwork as the basic organizational structure. For example, organizations with extensive bureaucratic rules and levels of hierarchy continue “hidden modes of operation including gender stereotyping and discrimination,” subtle barriers to prevent women’s advancement.¹³²

The Life Science biotech profession illustrates an effective way to prevent glass ceiling practices. Employment in a biotech firm opens career advancements for female PhD’s. For example, female PhD’s are nearly eight times more likely to be in leadership positions in biotech firms—largely network forums—than are female PhD’s in more hierarchical organizations of other sciences.¹³³ Women, traditionally disadvantaged in other areas of scientific academic research, perceive upwardly mobile career opportunities in the biotech profession because these firms are open to talent, skills, and motivation.¹³⁴ They foster a gender equal environment with more varied or flexible networking opportunities for all scientists, men and women, to take on positions of responsibility. “Biotech firms present the carrot of opportunity to do basic science to highly trained women with more flexibility in terms of hours whereas it is more difficult to accommodate a family in academia, especially with the tenure clock.”¹³⁵

Third, these laws specifically fail to challenge the standard of the “ideal worker”, whose value is mainly measured by time in the workplace. This standard is a major contributing factor to gender pay inequality, consistent with devaluation of women’s worth. The ideal worker is determined by time in the workplace, number of hours worked (usually 40 or more hours per week), and when those hours are worked.¹³⁶ The ideal worker has the flexibility to change shifts

¹³⁰ # 9 in Forbes comparative rankings.

“‘There’s no question there are more women than men in the HR profession, but this only holds true with entry- and mid-level HR professionals,’ says former HR executive Johnny C. Taylor, Jr., author of *The Trouble with HR: An Insider’s Guide to Finding and Keeping the Best People*. ‘A closer look at senior HR professional level positions, however, reveals a far different picture.’”

Both as cited in Tom Starner, “HR’s Pay Disparity,” *Human Resources Executive Online*, (July 27, 2009): 1. <http://www.hreonline.com/HRE/story.jsp?storyId=233590394>

¹³¹ Starner, “HR’s Pay Disparity,” 3.

¹³² Barbara f. Reskin, Paula M. Rayman, and Debra Branch McBrier, “Why Not Ascipation? Organizations’ Employment of Male and Female Managers,” *American Sociological Review* 65 (2000): 707-709 as cited in Laurel Smith-Doerr, “Flexibility and Fairness: Effects of the Network Form of Organization on Gender Equity in Life Science Careers.” *Sociological Perspectives* 47, no. 1 (Spring 2004): 28. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

¹³³ Smith-Doerr, “Flexibility and Fairness,” 39.

¹³⁴ *Ibid.*, 41.

¹³⁵ *Ibid.*, 43.

¹³⁶ Smith, “Time Norms,” 275.

Professor Joan Williams, noted scholar on gender, family and work, believes that the U.S. economy centers around the concept of ideal worker. Professor Jamie Boyle explains that in her book, *Unbending Gender: Why Family and Work Conflict and What to Do About It* (2000), Professor Williams argues that “we need to eliminate the ideal worker norm in the market, in family entitlements, and that we need to change the way we talk about gender.”

“Symposium Unbending Gender: Why Family and Work conflict and What to Do About It, Washington, D.C. (November 19, 1999), Panel Three: New Directions in Feminist Legal Theory,” *American University Law Review* 49, (2000): 945 and 945n1. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

when required, but for mothers with child care, a shift change may pose real problems.¹³⁷ The ideal worker works all year round with limited number of breaks in employment.¹³⁸ The notion that “time spent with one’s child is time wasted” implies that child rearing creates an adverse impact on work qualifications and permits a pay penalty for women who exit the labor force to have or rear a child.¹³⁹ For example, women who stay continuously in the work force for twelve or more years experience greater wage parity with men, suggesting “employers expect women to take significant timeout from the labor force to have and care for children” and then reward them with less pay.¹⁴⁰

Employees who fail to meet these standards are considered less valuable, suggesting certain stereotypes: “women have little ambition or are unprepared to work long hours; they will be content with a position of limited potential; and women will leave the profession to have a family.”¹⁴¹ In other words, women choose to stay at home. Employers who push long hours need to adapt a program of workplace flexibility to retain female talent, to enable women to leave to have families, and to come back to the same organization without any long term penalty for broken career service.

All three of these causes of gender pay inequality are especially evident in the mainly segregated medical and healthcare professions. For example, male nurses “will earn \$4, 825 [per year] more than females” when both have the same productive characteristics, education, skills, and working conditions, demonstrating a pay discrimination based mainly on gender.¹⁴² Second, the male-dominated profession of physician (84% male) has more prestige than the female dominated profession of nursing (97% female), manifesting traditional occupational discrimination.¹⁴³ Third, female physicians seem to experience a negative impact from decreased time in the workplace resulting from family responsibilities. In general, female physicians earn less than male physicians where “median weekly earnings by women physicians in 2006 were just 72% of median weekly earnings of male physicians.”¹⁴⁴ However, evidence suggests that female physicians with no children earn salaries more closely aligned with male physicians because they garner hours on the job more comparable to hours worked by male

¹³⁷ Kathleen Kunkle Gilbert, “Northwestern University School of Law’s Two Year Work Requirement and Its Possible Effects on Women: Another Tile in the Glass Ceiling?,” *American University Journal of Gender, Social Policy & the Law* 12, no. 1 (2004): 87. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

¹³⁸ Thompson, “Gender equity and corporate,” 97.

¹³⁹ Anne Crittenden, *The Price of Motherhood: Why the Most Important Job in the World is Still the Least Valued*, 4 (2001) as cited in Williams, “Women, Equality,” 21n55.

¹⁴⁰ Selmi, “Care, Work,” 1560-1561.

¹⁴¹ *Ibid.*

Angela Priestley, “Gender pay gap: is it really a matter of time?,” *Lawyers Weekly* (May 23, 2008): 20. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

Professor Joan Williams, further points out women do not choose to leave work to raise children; rather they are being pushed out by other factors such as job inflexibility, lack of good affordable daycare, and lack of paid leave. See footnote 136, *supra*.

Joan C. Williams, Jessalyn Manvell and Stephanie Bornstein, Center for Worklife Law, University of California Hastings College of Law, “Opt Out” or Pushed out?: How the Press Covers Work/Family Conflict 2-3, 5, 23 (2006) as cited in Stein, “Women Lawyers Blog,” 366n48 and 367n51-53.

¹⁴² David E. Kalist, “The Gender Earnings Gap in the RN Labor Market,” *20 Nursing Economics* 155, 162 (2002) as cited in Williams, “Women, Equality,” 24n79.

¹⁴³ Linda L. Carli and Alice H. Eagly, Gender, Hierarchy, and Leadership: an Introduction, *Journal of Social Issues* 57, 629 (2001): 630-631 as cited in Camille S. Williams, “Women, Equality, and the Federal Marriage Amendment,” *Brigham Young University Journal of Public Law* 20 (2006): 23n64. <https://www.lexisnexis.com>.

¹⁴⁴ “Congress Must Act,” *National Women’s Law Center*, 2n13.

physicians.¹⁴⁵ Additionally, female physicians with children, further disadvantaged by reduced time in the workplace, subsequently fall behind their male counterparts by large numbers.¹⁴⁶ For example, female physicians with one child earn 14% less, and female physicians with more than one child earn 22% less than their male physician counterparts with one or more children, respectively.¹⁴⁷ Finally, female physicians with children are increasingly falling behind in earnings from female physicians with no children.¹⁴⁸

Conclusion

Gender pay equality is an attainable goal in the United States workforce. The law, through Congressional statutes and Supreme Court decisions, has advanced gender equality in both political and economic spheres, and particular progress manifests in the workforce. However, Supreme Court decisions, such as *Ledbetter*, focus attention on the legal failure to provide the appropriate remedial process to address gender pay inequality cases. Additionally, Federal statutes such as EPA and Title VII, enacted to advance gender pay equality in the workforce, still fail to prevent court interpretations that allow employers to continue gender pay discriminatory practices. Title VII, a noteworthy effort, still fails to prevent workplace practices that promote occupational segregation and perpetuate salary glass ceilings. Furthermore, the FMLA, a flawed attempt to balance family and work needs, still fails to change the long term effect on women's pay based on antiquated measurements of employee value.

As detailed in previous pages, these important laws explicitly prohibit gender pay discrimination; yet they fail to achieve gender pay equality. Uniform application, less ambiguity to invite interpretation, stricter enforcement, and stronger remedies must be adopted to correct past discriminatory practices as well as prevent recurrences in the future. Moreover, these laws are only as effective as the next President, the next Congress and the next EEOC Commissioner. Interpretation of these laws requires stronger legal and political support, such as the unwavering and compelling national intolerance of racial discrimination. A simple majority in Congress can repeal or further weaken these narrowly crafted laws which currently fail to reach many root causes where gender employment discrimination prevails. The Supreme Court can preclude purposeful equal pay for equal work gender protections based on timeliness of filing complaints; and the Court continues to deny the highest degree of protection against gender based pay discrimination than it has affirmed against race based employment discrimination.

A major step would require President Obama and Congress to renew the effort to adopt a Constitutional amendment guaranteeing full gender equality: "Equality of rights...shall not be denied or abridged on account of sex," is the language of the proposed Equal Rights Amendment (ERA) to the U.S. Constitution.¹⁴⁹ "90% of Americans believe that the Constitution should make it clear that women and men have equal rights."¹⁵⁰

¹⁴⁵ Jerry A. Jacobs and Janice Fanning Madden, ed., "Mommies and Daddies on the Fast Track: Success of Parents in Demanding Professions," *Annals of the American Academy of Political and Social Science* 596 (November 2004): 261. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

¹⁴⁶ *Ibid.*, 261.

¹⁴⁷ Alicia Sasser, "Gender Difference in Physician pay: Tradeoffs between Career and Family", *Journal of Human Resources* 40: 477 as cited in Williams, "Women, Equality," 24n78.

¹⁴⁸ Jacobs, "Mommies and Daddies," 261.

¹⁴⁹ Francis, "Reconstituting the Equal," 1.

¹⁵⁰ Burk, "U.S. Needs."

Perhaps the most compelling argument for ERA adoption is the change it would bring to the classification of women as a suspect class for discrimination. First, it would raise the current level from “intermediate scrutiny” to the optimal level of “strict scrutiny,” the same level as race.¹⁵¹ Such increased scrutiny would hugely impact Supreme Court decisions on gender discrimination cases including those affecting gender pay equality. Adoption would require the courts to exercise, at a minimum, an enhanced level of “skeptical scrutiny” defined by Justice Ruth Bader Ginsburg in *United States v. Virginia* as requiring “exceedingly persuasive justification of differential treatment on the basis of sex.”¹⁵² Gender based classification on “generalized assumptions about ‘the way men or women are’ will not stand up to even skeptical, [heightened] let alone strict scrutiny.”¹⁵³ Second, adoption of ERA would provide a Constitutional guarantee of equality between men and women, further strengthening current statutes, such as EPA, Title VII and Ledbetter Act, and it would unambiguously compel gender pay equality. Third, the adoption of ERA would make it extremely difficult for future conservative Supreme Courts, or changes in Congressional party leadership and political philosophy to undermine equal protection precedents.¹⁵⁴

The political enticements of stronger, more effective laws through additional legislation still will not address the social attitudes that are at the root of the workplace discrimination. Any political national commitment to gender pay equality is meaningless unless it embraces attitude change in the workplace. Neither one alone will eliminate the societal norms that perpetuate assumptions and lack of understanding of a gender neutral workplace.

First, the national mindset must reshape gender behavior in and out of workplace, starting with a new concept of the ideal worker. The current measure of workplace value is based on outdated social norms. It predetermines women’s opportunities, personal choices, and advancement, creating a glass ceiling and a gender pay gap. It presumes that women who spend fewer years in the workplace are investing less in developing their professional skills, thus creating lower professional worth. However, women are refuting this presumption and showing clear motivation by gaining more education and earning more college and advance professional degrees than men.¹⁵⁵ Women’s continued investment in their personal skill development through education will provide change in their occupational choices commensurate with their enhanced education. Many educated women, with or without children, are selecting full time, life time highly skilled professions like biotech; and their salaries will continue to rise reaching salaries equal

In 1972 Congress passed the ERA, sent it to states for ratification with a 7 year deadline, and extended it until 1982. Ratification fell short by three states. It has been filed in every subsequent Congress, yet never reported from committee.

Roberta W. Francis, “Reconstituting the Equal Rights Amendment: Policy Implications for Sex Discrimination,” Paper presented at the American Political Science Association Annual Conference, San Francisco, CA, August 30-September 2, 2001, 4.

¹⁵¹ *Craig v. Boren*, 429 U.S. 190, 210 and 212 (1976).

¹⁵² 518 U.S. 515, 531 and 533 (1996).

¹⁵³ Claire Cushman, ed., *Supreme Court Decision and Women’s Rights: Milestones to Equality*, Washington, DC: CQ Press (2001): 259 as cited in Francis, “Reconstituting the Equal Rights Amendment,” 10n8.

¹⁵⁴ Too many obstacles remain for adaption of ERA in the near future. First, Congress must determine the appropriate amendment procedure required under the Constitution: it must pass with new drive for ratification by 38 states; or it must require simply three more states to ratify the amendment in addition to the 35 states which previously voted for ratification before 1982.

Francis, “Reconstituting the Equal Rights Amendment,” 18.

¹⁵⁵ Levine, “The Gender Wage Gap,” 11-12n31.

To those earned by men. This change, perhaps more significantly than any new laws, will further narrow the gender pay gap.

Second, part time work, flexible schedules, and alternative work arrangements must gain wider acceptance. Organizations must recognize that women are as motivated as men by economic interest but the nature of their job choices may be more restricted. Expanded opportunities to balance work and childrearing, initiated by the FMLA, are reasonable and necessary to permit women to have equal opportunities to men and to enable employers to take advantage of the full productive potential of the female workforce.

Workplace change is already occurring because women themselves, not legislation, are creating and forcing change. For example, female faculty at MIT initiated a widely acclaimed internal gender equality salary study that evidenced not only gender pay discrimination, but also discrimination in limited and unequal distribution of laboratory space and resources between male and female faculty.¹⁵⁶ To correct these documented discriminatory practices, MIT raised female faculty salaries commensurate to male faculty salaries and provided more discretionary research and laboratory space.¹⁵⁷ In a more recent example, female lawyers are using the platform of blogging to bring about change in their law firms. They blog (1) to share resources, ideas, and strategies to challenge their male-dominated workplace and to strengthen and effectuate their own bargaining power; (2) to compensate for the “law’s limited ability to affect social change” and its failure to make the Equal Rights Amendment part of the U.S. Constitution; and finally, (3) to force partners in law firms to “revisit ingrained institutional mindsets and practices” in order to attract and retain female lawyers—nearly one half of the legal talent pool of law school graduates.¹⁵⁸

The increasing majority of women in the workforce inspires renewed efforts by employees and provides further incentive to employers to overcome workplace discrimination, especially gender pay inequality. The Obama Administration reflects this desire for widespread societal change, drawing on the nation’s founding ideals of equality under the law. In his first State of the Union address, President Obama committed to “crack down on violations of the equal pay laws...so that women get equal pay for an equal day’s work.”¹⁵⁹ Rhetoric alone will not motivate necessary workplace changes—It is action that will realize the goal of gender pay equality.

References

Ballard v. United States, 329 U.S. 187 (1946)

Bell, Myrtle P., Mary E. McLaughlin, and Jennifer M. Sequeira. “Discrimination, Harassment, and the Glass Ceiling: Women Executives as Change Agents.” *Journal of Business Ethics* 37 (2002): 65-76. <http://0-web.ebscohost.com.library.law.suffolk.edu>.

“Biographies of Current Governors,” *National Governors Association*, (February, 26, 2010).

<http://www.nga.org/portal/site/nga/menuitem.42b929b1a5b9e4eac3363d10501010a0/?vgnextoid=d54c8aaa2ebbf00VgnVCM1000001a01010aRCRD&vgnextfmt=curgov>.

Brock v. Georgia Southwestern College, 765 F.2d 1026 (11th Cir. 1985).

¹⁵⁶ Perry, “Equal Pay Act,” 36n20, 22.

¹⁵⁷ *Ibid.*, 36n70, 72.

¹⁵⁸ Stein, “Women Lawyers Blog,” 360n7 and 407.

¹⁵⁹ “State of the Union: President Obama’s Speech,” *abc News* (January 27, 2010): 11. <http://abcnews.go.com/print?id=9678572>.

- Burk, Martha, and Eleanor Smeal. "U.S. Needs a Women's Equality Amendment." *Star Tribune*, May 1, 2007. Available on <http://www.commondreams.org/archive/2007/05/01/893>.
- CNN. "Clinton's new job: Persuading diehard fans to back Obama." *CNN Politics.com* (June 8, 2008). <http://www.cnn.com/2008/politics/06/08/clinton.voters/index.html>.
- "Congress Must Act to close the Wage Gap for Women." *National Women's Law Center* April (2008). <http://www.nwlc.org/>.
- County of Washington v. Gunther*, 452 U.S. 161 (1981).
- Craig et al. v. Boren*, 429 U.S. 190 (1976).
- DECLARATION OF INDEPENDENCE (U.S. 1776).
- Dukes v. Walmart*, 474 F.3d 1214 (9th Cir. 2007).
- Dukes v. Walmart*, 509 F.3d 1168 (9th Cir. 2007).
- Dukes v. Walmart*, 556 F.3d 919 (9th Cir. 2009).
- Francis, Roberta W. "Reconstituting the Equal Rights Amendment: Policy Implications for Sex Discrimination." Paper presented at the American Political Science Association Annual Conference, San Francisco, CA, August 30-September 2, 2001.
- Fronterio v. Richardson*, 411 U.S. 677 (1973).
- Furchtgott-Roth, Diana. "Testimony on Paycheck Fairness Act." Testimony before the House Committee on Education and Labor, April 24, 2007.
- Garner, Bryan A., Ed. in Chief. "Class Action." *Black's Law Dictionary*, 9th ed., 2009: St. Paul, MN, 284.
- Garner, Bryan A., Ed. in Chief. "Compensatory Damages." *Black's Law Dictionary*, 9th ed., 2009: St. Paul, MN, 445.
- Garner, Bryan A., Ed. in Chief. "Prima Facie (adv. & adj.)" and "Prima Facie Case." *Black's Law Dictionary*, 9th ed., 2009: St. Paul, MN, 1310.
- Gilbert, Kathleen Kunkle. "Northwestern University School of Law's Two Year Work Requirement and Its Possible Effects on Women: Another Tile in the Glass Ceiling?" *American University Journal of Gender, Social Policy & the Law* 12, no. 1 (2004): 69-136. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.
- Hartmann, Heidi, Barbara Gault, and Erica Williams. "Memo to John Roberts: The Gender Wage Gap is Real." *Institute for Women's Policy Research*. September 2005. <http://www.iwpr.org/pdf/c362.pdf>.
- Hoyt v. Florida*, 368 U.S. 57 (1961).
- H.R. 12 § 3, 111th Cong. (2010).
- H.R. 12 § 8, 111th Cong. (2010).
- Jacobs, Jerry A. and Janice Fanning Madden, ed. "Mommies and Daddies on the Fast Track: Success of Parents in Demanding Professions." *Annals of the American Academy of Political and Social Science* 596 (November 2004): 246-264. <http://0-web.ebscohost.com.library.law.suffolk.edu>.
- J.E.B. v. Alabama*, 511 U.S. 127 (1994).
- Ledbetter v. Goodyear Tire*, 550 U.S. 618 (2007).
- Levine, Linda. "The Gender Wage Gap and Pay Equity: Is Comparable Worth the Next Step?" *CRS Report for Congress, December 20, 2004*. Available on <http://wikileaks.org/wiki/CRS-98-278>.
- Mulligan, Casey B. "A Milestone for Working Women?" *Economix Blog, NYTimes.com* (January 14, 2009). <http://economix.blogs.nytimes.com/2009/01/14/a-milestone-for-women-workers/>.
- P.L. 111-2 § 2 (2010)
- P.L. 111-2 § 6 (2010)
- Perry, Sandra J. "Equal Pay Act Cases in Higher Education." *Journal of Individual Employment Rights* 12, no. 1 (2005-2006): 21-43. <http://0-web.ebscohost.com.library.law.suffolk.edu>.
- Price, Joseph. "Gender Differences in the Response to Competition." *Industrial and Labor Relations Review* 61, no. 3 (April 2008): 320-333. <http://0-web.ebscohost.com.library.law.suffolk.edu>.
- Priestley, Angela. "Gender pay gap: is it really a matter of time?" *Lawyers Weekly* (May 23, 2008): 20. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.
- Reed v. Reed*, 404 U.S. 71 (1971).
- Schultz, Vicki. "Life's Work." *Columbia Law Review* 100 (2000): 1881-1964. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.
- Selmi, Michael. "Care, Work, and the Road to Equality: A Commentary on Fineman and Williams." *Chicago-Kent Law Review* 76 (2001): 1557-1568. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.
- Smith, Belinda M. "Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change." *Columbia Journal for Gender and Law* 11 (2002): 271-360. <http://0-www.lexisnexis.com.library.law.suffolk.edu>.

- Smith-Doerr, Laurel. "Flexibility and Fairness: Effects of the Network Form of Organization on Gender Equity in Life Science Careers." *Sociological Perspectives* 47, no. 1 (Spring 2004): 25-54. <http://www.lexisnexis.com.library.law.suffolk.edu>.
- Spaulding v. University of Washington*, 740 F.2d 686 (9th Cir. 1985)
- Starner, Tom. "HR's Pay Disparity." *Human Resources Executive Online* (July 27, 2009): 1-4. <http://www.hreonline.com/HRE/story.jsp?storyId=233590394>.
- "State of the Union: President Obama's Speech." *ABC News* (January 27, 2010): 1-12. <http://abcnews.go.com/print?id=9678572>.
- Stein, Alison I. "Women Lawyers Blog for Workplace Equality: Blogging as a Feminist Legal Method." *Yale Journal of Law and Feminism* 20 (2009): 359-408. <http://www.lexisnexis.com.library.law.suffolk.edu>.
- Strauder v. West Virginia*, 100 U.S. 303 (1879)
- "Symposium Unbending Gender: Why Family and Work conflict and What to Do About It, Washington, D.C. (November 19, 1999), Panel Three: New Directions in Feminist Legal Theory." *American University Law Review* 49, (2000): 943-985. <http://www.lexisnexis.com.library.law.suffolk.edu>.
- Thompson, Lindsay J. "Gender equity and corporate social responsibility in a post-feminist era." *Business Ethics: A European Review* 17, no. 1 (January 2008): 87-106. <http://www.ebscohost.com.library.law.suffolk.edu>.
- United States v. Virginia et al.*, 518 U.S. 515 (1996).
- U.S. CONST., art.1, amend. XIII, XIV, XV, XIX, and XXV.
- U.S. Department of Labor, U.S. Bureau of Labor Statistics. *Women in the Labor Force: A Databook*. 2009 ed. Washington, DC: September 2009. <http://www.bls.gov/cps/wlf-databook2009.htm>
- U.S. Executive Office of the President, Council of Economic Advisers. "The Economic Effects of Health Care Reform on Small Businesses and Their Employees." Washington, DC (July 25, 2009): 1-2. <http://www.whitehouse.gov/assets/documents/CEA-smallbusiness-july24.pdf>.
- U.S. Equal Employment Opportunity Commission. "Judge Approves \$5 Million Settlement of Job Bias Lawsuits Against Woodward Governor." *U.S. Equal Employment Opportunity Commission: Press Release, February 20, 2007*. <http://www.eeoc.gov/eeoc/newsroom/release/archive/2-20-07.html>.
- U.S. Equal Employment Opportunity Commission. "EEOC and Morgan Stanley Announce Settlement of Sex Discrimination Lawsuit." *U.S. Equal Employment Opportunity Commission: Press Release, July 12, 2004*. <http://www.eeoc.gov/eeoc/newsroom/release/archive/7-12-04.html>.
- U.S. Equal Employment Opportunity Commission. *The Pregnancy Discrimination Act of 1978*. October 31, 1978. <http://www1.eeoc.gov/laws/statutes/pregnancy.cfm?renderforprint=1>.
- U. S. General Accounting Office. "Women's Earnings—Work Patterns Partially Explain Difference between Men's and Women's Earnings." *U. S. General Accounting Office: Report to Congressional Requesters, October 2003*. Washington, DC: GAO, 2003.
- Washington Post. "Obama Signs Lilly Ledbetter Act." *WashingtonPost.com* (January 29, 2009). http://voices.washingtonpost.com/44/2009/01/29/obama_signs_lilly_ledbetter_ac.html.
- West, Jr. v. Gibson*, 527 U.S. 212 (1999)
- Williams, Camille S. "Women, Equality, and the Federal Marriage Amendment." *Brigham Young University Journal of Public Law* 20 (2006): 487-525. <http://www.lexisnexis.com.library.law.suffolk.edu>.
- Wobrecht, Christina. *Political Women and American Democracy*. New York: Vintage, 2008. <http://www.cup.com/ac.uk/us/catalogue/catalogue.asp?isbn=9780511380617&=exc>
- "Women Open Campaign for Equal Rights," *Equal Rights*, Official Weekly of the National Woman's Party, July 28, 1923.
- 42 U.S.C §1981 (2010).
- 42 U.S.C 21 §2000 (2010).
- 42 U.S.C. §21 (1964). Available on [http://finduslaw.com/civil rights act of 1964 cra title vii equal employment opportunities](http://finduslaw.com/civil%20rights%20act%20of%201964%20cra%20title%20vii%20equal%20employment%20opportunities).
- 42 U.S.C. §2000e et seq. (2010)
- 29 U.S.C. §201 (2010).
- 29 U.S.C. §206 (d) (2010).
- 29 U.S.C. §216 (b) (2010).
- 29 U.S.C. §255 (a) (2010).
- 29 U.S.C. §256 (2010).
- 29 U.S.C. §2601 (2010).
- 29 U.S.C. §2601-2654 (2010)
- 29 U.S.C. §2611 (2010).

29 U.S.C. §2612 (2010).

29 U.S.C. § 2614 (2010).

29 U.S.C. § 2617 (2010).

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