



WAGE SECRECY IN NEW YORK: WHY WE NEED A STATE WAGE DISCLOSURE LAW

PREPARED AND WRITTEN BY A BETTER BALANCE: THE WORK AND FAMILY LEGAL CENTER

Wage discrimination often remains undetected due to workplace policies that punish employees for voluntarily sharing wage information with their colleagues. In response to the prevalence of these policies, New York State Senator Liz Krueger has introduced a bill (S05674) that would prohibit retaliation based on wage disclosure. By allowing workers to discuss wage information, this bill would make it easier for workers to detect and report discrimination.

The Gender Wage Gap is Persistent, Pernicious, and Harmful to Families' Wellbeing

Nearly 50 years after the Equal Pay Act became law, American women working full-time are paid just 77 cents to the dollar compared to their male counterparts. A significant wage gap also persists throughout New York.

- In New York City, a female full-time worker in the for-profit sector earns only 71.5 cents for every dollar her male counterpart earns.¹ Although the statewide wage gap of 82.5% is smaller than the national average, workers in non-metropolitan areas still earn 23% less than their counterparts in the city.²
- Due to the wage gap, full-time working women in New York collectively lose more than \$22,340,000,000 each year.³ If the wage gap is closed, working women in New York and their families would have enough money for more than a year's worth of food; 4.4 months of mortgage and utility payments; 9 additional months of rent; 3 extra years of family health insurance premiums; or more than 2,000 gallons of gas.⁴
- Working families in New York are especially harmed by the gender wage gap. Women head more than 1,000,000 households in New York, and more than 63% of working mothers in New York are primary breadwinners or co-breadwinners.⁵
- Eliminating the wage gap would provide crucial income to nearly 280,000 New York families living in poverty. In New York, more than 26% percent of women-headed households live below the poverty level.⁶

Pay Confidentiality Policies Are a Key Contributor to the Wage Gap and Wage Discrimination

Pay confidentiality policies are widespread in the private sector, and the negative impact on women's earnings is significant. If a woman does not know how much her male colleagues earn, it is difficult to determine whether she is a victim of pay discrimination. Such pay secrecy policies enable employers to discriminate against women employees without their knowledge.

- According to a 2010 study, 61% of private sector employees reported that they are discouraged or prohibited from discussing wage and salary information.⁷
- The Supreme Court of the United States has recognized that "[f]ear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination."⁸
- After nearly two decades of employment, it took an anonymous note for Lilly Ledbetter to find out that she was earning significantly less than male colleagues performing the same job.⁹ Had an anti-retaliation bill been in effect, Ledbetter might have discovered the wage discrimination far earlier, and she could have sought a remedy without fear of recrimination.
- Pay transparency can help to narrow the wage gap. For example, the gender wage gap in the federal government, where wages are more transparent, is only 11%, as compared to 23% for the economy as a whole.¹⁰

[The Proposed New York Anti-Retaliation Bill Would Help to Combat Unfair Pay Practices](#)

The New York Legislature has an opportunity to encourage pay transparency and discourage discrimination by prohibiting retaliation based on wage disclosure. The proposed anti-retaliation bill (S05674) would make it an unlawful labor practice for employers to retaliate against workers for disclosing or discussing their wages.

- The proposed bill would make it illegal for employers to discharge or discriminate against, coerce, intimidate, threaten, or interfere with any employees or other persons because they inquire about, disclose, compare, or otherwise discuss wages.
- The bill would also empower the New York State Department of Labor (DOL) to receive, investigate, and attempt to resolve complaints of retaliation based on wage disclosure.
- In addition to seeking a resolution through DOL, the wage disclosure bill would allow employees to seek a range of remedies in court. The bill would enable courts to award backpay and other compensatory damages, punitive damages, reasonable attorney's fees, and reasonable expert witness fees to victims.
- Under the bill, courts could also enjoin employers from continuing to discriminate against employees and could order measures including, but not limited to, reinstatement and reclassification of affected workers.

Guaranteeing workers the right to share wage and salary information without penalty will greatly improve pay transparency and make it easier for workers to detect instances of wage discrimination. To learn more or to get involved, contact Dina Bakst, Co-Founder & Co-President of A Better Balance, at (212) 430-5982 or dbakst@abetterbalance.org.

¹ John Choe, *Gender Equity in the New York City Municipal Workforce*, New York City Comptroller's Office, April 2011, p. 11, available at: http://comptroller.nyc.gov/bureaus/opm/gender-equity/NYC_GenderEquityReport_LowFromHi.pdf.

² American Community Survey, *Men's and Women's Earnings for States and Metropolitan Statistical Areas: 2009*, p. 4, available at: www.census.gov/prod/2010pubs/acsbr09-3.pdf (last visited June 8, 2011).

³ National Partnership for Women & Families and AAUW, *New York: Working Women and the State's Wage Gap*, April 2011, available at: www.nationalpartnership.org/site/DocServer/wf.epd.factsheet.NY.pdf.

⁴ *Id.* (statistics gathered by the National Partnership for Women & Families and AAUW).

⁵ *Id.* (stating that [m]ore than 63% of working mothers in New York bring in more than a quarter of their families' income. . . .").

⁶ *Id.*

⁷ Institute for Women's Policy Research, *Pay Secrecy and Paycheck Fairness: New Data Shows Pay Transparency Needed*, Nov. 2010, available at: www.iwpr.org/press-room/press-releases/pay-secrecy-and-paycheck-fairness-new-data-shows-pay-transparency-needed.

⁸ See National Women's Law Center, *Combating Punitive Pay Secrecy Policies*, April 2011 (quoting *Crawford v. Metro. Gov't of Nashville & Davidson County*, 555 U.S. 271, 129 S. Ct. 846, 852 (2009)).

⁹ See *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

¹⁰ United States Government Accountability Office (GAO). *Women's Pay: Gender Pay Gap in the Federal Workforce Narrows as Differences in Occupation, Education, and Experience Diminish*, Report to Congressional Requesters GAO-09-279, 2009, available at: www.gao.gov/new.items/d09279.pdf.