



the work and family legal center

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FACT SHEET:

Equal Pay in New York--A6075 (Titus)/S001 (Savino)

Fifty years after the federal Equal Pay Act became law, New York women working full-time still earn, on average, only 85 cents for every dollar earned by their male counterparts. The percentage is even worse for women of color.¹ An important equal pay bill would strengthen wage discrimination laws in New York and improve enforcement to promote fundamental fairness and equality for the women and mothers of our state.

What The Equal Pay Bill Would Do

- While New York labor law currently bans discrimination in wages based on sex, it has proven insufficient to combat the gender wage gap. Pending equal pay legislation (A6075)² would strengthen existing law in three ways:
 - The bill would prohibit employers from terminating or retaliating against employees who share wage information in order to allow women to uncover discrimination.
 - It would tighten exceptions in the law, which currently allow employers to cite nearly any factor other than sex—legitimate or otherwise—to justify pay differentials.
 - Finally, it would increase damages available in cases of willful violations of the law, increasing maximum liquidated damages to 300% (or three times) the back pay award.

Why New Yorkers Need A6075

- The 15% gap between male and female workers in New York means the average woman working full-time makes \$8,250 less per year than her male counterpart.³ These women and their families are denied equal pay amounting to over a year of groceries, eight months of rent, or three years of family health insurance.⁴ Many women of color are hardest hit: African American women earn only 64%, and Latinas only 56%, of the amount earned by white men.⁵ Overall, the loss of revenue strips New York's economy of \$23 billion every year.⁶
- In New York City, the wage gap is even larger: a female full-time worker in the for-profit sector earns only 71.5 cents for every dollar her male counterpart earns.⁷
- 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.⁸ In fact, women are the sole or primary breadwinners in 40% of all households nationwide.⁹
- 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.¹⁰

Pay Confidentiality Policies are a Key Contributor to the Wage Gap

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. Pay secrecy policies, which are widespread in the private sector, 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.¹¹

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- 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.”¹²
- 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.¹³ 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 national economy as a whole.¹⁴

The Employer Exception of a “Factor Other Than Sex” Has Swallowed the Rule

Courts have interpreted the catch-all defense of “factors other than sex” so broadly that employers regularly evade liability even where sex has played a role in pay differentials between men and women.

- Under existing law, a defendant employer will *not* be held liable if unequal pay is based on a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or *any other factor other than sex*.¹⁵
- Courts have interpreted the “factor other than sex” exception so broadly that it has eaten away at the protections of the law. One court in New York allowed an employer to pay male employees more than similarly situated female employees based on the higher prior salaries enjoyed by those male workers, without asking *why* those men were paid more in the first place.¹⁶
- A6075 closes the door on this huge exception by ensuring employers justify a pay differential with “a bona fide factor other than sex” that is job-related and consistent with business necessity, but not based on a sex-based wage differential. This reform is necessary to put teeth back into the law and allow it to solve the problem for which it was created.

Increased Liquidated Damages Are Critical for Improving Enforcement of the Law

Damages awards help to repair harm done to women and their families by helping them recover financially.

- Damages awards in litigation serve to make the plaintiff whole for the losses she suffered as a result of discrimination, and to deter illegal conduct from happening in the first place.
- Under existing state law,¹⁷ a successful equal pay plaintiff may recover the lost part of her wages she *should* have been paid during the time she was receiving unequal pay and liquidated damages equal to the full amount of underpaid wages (in addition to attorney fees and prejudgment interest).
- A6075 would triple the amount of liquidated damages available to plaintiffs in cases of willful violations of the law, helping employees achieve justice.

For more information or to get involved contact Dina Bakst at 212-430-5982 or dbakst@abetterbalance.org or visit our website at www.abetterbalance.org.



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¹ National Partnership for Women, *New York Women and the Wage Gap* (Oct. 2014), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/10-2014-ny-wage-gap.pdf> (citing U.S. Census Bureau, *American Community Survey 1-Year Estimates 2013*, Table B20017 (2014), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_B20017&prodType=table).

² Bill text available at: <http://open.nysenate.gov/legislation/bill/A6075-2015>.

³ National Partnership for Women, *New York Women and the Wage Gap* (Oct. 2014), *supra* note 1.

⁴ National Partnership for Women & Families and AAUW, *New York: Working Women and the State's Wage Gap*, April 2013, available at: <http://www.aauw.org/files/2013/09/New-York-Pay-Gap-2013.pdf> and http://go.nationalpartnership.org/site/DocServer/Wage_Gap_ny.pdf

⁵ National Partnership for Women, *New York Women and the Wage Gap* (Oct. 2014), *supra* note 1. According to the League of Women Voters of New York State, African-American and Hispanic women in New York earn just 79% and 64% of that earned by non-Hispanic men in New York, respectively.

⁶ National Partnership for Women & Families and AAUW, *New York: Working Women and the State's Wage Gap*, April 2013, *supra* note 4.

⁷ John Choe, *Gender Equity in the New York City Municipal Workforce*, New York City Comptroller's Office, April 2011, p. 11, available at: <http://issuu.com/johnxchoe3/docs/genderequitysnapshot-2011>.

⁸ *Id.* (stating that [m]ore than 63% of working mothers in New York bring in more than a quarter of their families' income. . . .").

⁹ Wendy Wang, Kim Parker, & Paul Taylor, *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted about the Growing Trend*, (May 29, 2013), <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>.

¹⁰ *Id.*

¹¹ 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.

¹² 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)).

¹³ See *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

¹⁴ 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.

¹⁵ N.Y. Lab. Law § 194.

¹⁶ *Sparrock v. NYP Holdings, Inc.*, No. 06 Civ. 1776, 2008 WL 744733, at *16 (S.D.N.Y. Mar. 4, 2008).

¹⁷ N.Y. Lab. Law § 194.