

PRO-CON

Is the Paycheck Fairness Act a boon for American women?



AP Photo/J. Scott Applewhite

U.S. Rep. Rosa DeLauro, D-Conn., sponsor of the Paycheck Fairness Act, speaks at an event to advocate for the bill.

PRO: It's time to close the pay gap between men and women

SILVER SPRING, Md. — Equal Pay Day, held annually in April, symbolizes the additional time women work for the same pay the average male worker earned last year.

The average pay gap between female and male employees is now 80 percent, stubbornly refusing to budge. It's even worse for women of color. Compared to white, non-Hispanic men, Latinas earn 53 percent, Native American women 58 percent, and black women 61 percent.

Since 2001, the gap has hovered around 75-80 percent and will not fully narrow until 2106, given current progress.

The 1963 Equal Pay Act (EPA) has made pay discrimination by gender illegal since the Kennedy administration. But this law clearly isn't enough, if we're still talking about significant pay disparities more than a half century later.

The Paycheck Fairness Act (PFA), authored by Rep. Rosa DeLauro (D-Conn.) is designed to bring the Equal Pay Act into the 21st century. For only the second time since 1997, the House of Representatives recently passed the PFA.

The PFA attacks pay inequity in four key ways:

- It bans employers from asking job applicants how much they made in previous jobs.

Even a relatively small pay gap in an entry-level job can have lifelong consequences. When salary increases are a percentage of current salary, an underpaid female employee continually loses ground to male counterparts. But fixing it isn't as simple as finding a new job.

Many employers require applicants to provide current salary information and then can use that information to lowball lower-paid applicants — typically women and people of color. Or even more insidiously, they may justify paying a male employee more, if his previous salary was higher. Banning salary history questions forces employers to determine what the job is worth, not the person.

- It prevents employers from banning salary conversations with coworkers.

Pay discrimination can flourish in workplaces where salaries are a highly confidential secret and known only to a handful of people.

Without transparent salary infor-

mation, you may have no idea about salary differences among people doing the same job. Some companies even threaten to punish employees who discuss this information. While having an explicit policy can violate federal labor laws, employers now count on workers being too intimidated to risk discipline or termination. It's hard to fight unequal pay without knowing what others are making, so the PFA clarifies that companies can't ban these conversations or punish employees who have them.



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- It fixes current problems with how the Equal Pay Act has been interpreted in court.

One EPA provision allows employers to defend pay disparities that are due to a "factor other than sex." Judges have interpreted this language so broadly that it's difficult to enforce the law. The PFA would limit this exception to "business necessity" and require an employer to consider alternative solutions without a pay differential.

- It requires employers to be more transparent about pay and to share that information with the Department of Labor and the Equal Employment Opportunity Commission.

The PFA equips these agencies to detect more violations and improve enforcement, by collecting and providing public access to employment-related data and conducting research, education, and outreach. Even with the different career choices men and women make, research already shows that discrimination explains approximately one-third of pay differences. With the right data, this problem is solvable.

We're finally paying more attention to the inequities women in the workplace experience these days, between the #MeToo movement and Hollywood actresses going public about huge salary disparities with their male co-stars. Equal pay can and should be a bipartisan issue.

Yet only seven Republicans voted for the PFA, with Senate prospects uncertain. Let's set aside partisan conflict and pass the Paycheck Fairness Act. Otherwise, at the rate we're going now, we'll still be talking about pay inequity in the 22nd century.

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CON: Paycheck Fairness Act makes workplaces less flexible and fair

DENVER — Imagine a world where any difference in pay could be grounds for a lawsuit, even if the pay disparity was warranted by different work arrangements.

Employers would say no to requests for greater flexibility, like the ability to work from home or set one's own hours, out of fear that this and the reduced pay that comes with it might seem like discrimination and would invite a lawsuit.

Employers would likely create pay schedules like those used by governments to standardize pay and jobs for everyone. Negotiation would be a thing of the past and employers might well hire and promote fewer women — opting instead to advance male workers to reduce their legal exposure.

This is the world offered by the badly named Paycheck Fairness Act (PFA).

Many women and men support this legislation because they presume it would outlaw sex-based discrimination in wages, although that was already accomplished by the 1964 Equal Pay Act.

Instead, the Payment Fairness Act would force employers to essentially prove their innocence when it comes to pay equity.

Employers would have to demonstrate a "business necessity" for all pay disparities, even if employees are happy with their existing compensation.

The bill would also expand the damages employers could face in discrimination lawsuits and require workers to opt out of class-action suits.

All of this increased legal exposure for employers will not boost women's paychecks, but only increase the paychecks of trial lawyers.

For women in particular, this legislation will backfire. Women — especially mothers — value flexible workplaces more than men.

According to Werk, a technology company that helps firms offer more flexibility, 70 percent of women who left the workforce say they would have stayed had they been offered greater flexibility.

By making workplaces less flexible, the PFA will only worsen the gender gaps in workforce participa-

tion, workplace leadership and ironically, pay.

The PFA also takes aim at "pay secrecy" policies in the workplace that ban employees from discussing pay. Like pay discrimination, this practice is already illegal.

Importantly, greater transparency in pay — no matter how it's achieved — is not likely to help reduce the pay gap.

That's because the premise of the Paycheck Fairness Act is wrong: The gender wage gap that exists today is not a metric of discrimination and closing it should not be a public policy goal.

The raw gender gap by itself doesn't tell us much about the amount or type of discrimination against women in our economy.

Rather, it simply tells us that women, on the whole, earn less money than men. It doesn't tell us why. It's just a comparison of averages, not a comparison of women and men in the same jobs with the same experience, education, hours and labor-market conditions.

Often, these factors — education, hours worked, etc. — are the result of personal choices that workers have made and they often break down along gender lines.

Men are simply more likely to value higher pay, while women — particularly mothers — are more willing to trade high pay for other benefits, like flexibility.

A recent Harvard Business School survey shows that 64 percent of highly qualified women value flexibility as extremely or very important compared to 42 percent who value its role in "earning a lot of money."

If lawmakers really want to further combat pay discrimination, they should look for ways to do so that don't unnecessarily burden employers — many of whom are women — by removing disincentives to the flexible careers that women workers want.

Truly supporting fairness for women in the workplace means allowing individual workers to work together with their employers to customize their compensation.

The Paycheck Fairness Act, despite its name, runs counter to this goal.

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