



The Paycheck Fairness Act: Fact vs. Fiction

The persistent and pernicious gap between the incomes of men and women has been improving at a rate of less than half a cent per year since 1963. Without stronger measures to promote equal pay, the gender wage gap will not close for another 50 years – or until today’s high school students are about ready to begin collecting Social Security. Women working full-time, year-round still are paid only 77 cents for every dollar paid to men.¹ Women of color fare even worse: in 2009, African American women’s median income was only 61% of men’s overall median income, and Latina women’s median income was a mere 52% of the median income of all men.²

The **Paycheck Fairness Act** is a comprehensive bill that would update the Equal Pay Act and help erase gender-based wage disparities. It would strengthen federal outreach, education and enforcement; increase penalties for wage discrimination violations; and prohibit retaliation against workers who share information regarding their employers’ wage practices.

Lobbyists for organized business interests have criticized the Paycheck Fairness Act in ways that are misleading and completely unjustified. **This document separates the fact from the fiction.**

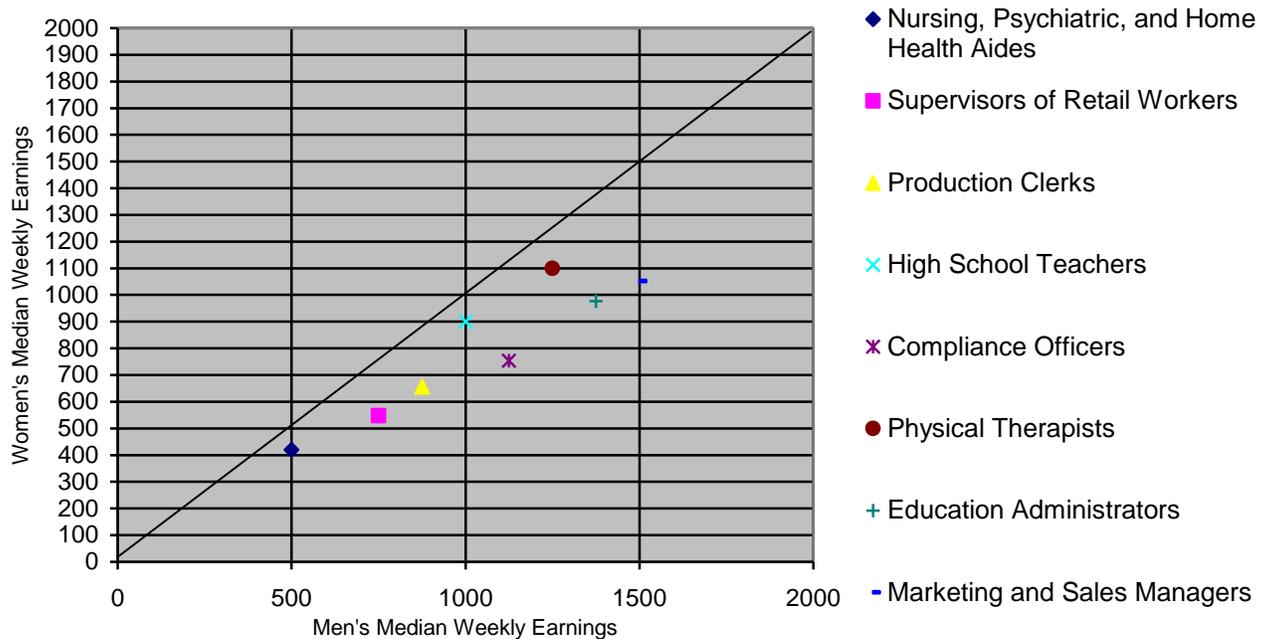
Fiction: *The Equal Pay Act is working as intended, and no changes or updates are needed to protect women from pay discrimination.*

FACT: The Equal Pay Act became law in 1963, before many of our other major civil rights laws were enacted; it has not been updated since then. Congress has found that “loopholes and ineffective sanctions have all but paralyzed” the Equal Pay Act.³ The Paycheck Fairness Act would help make the Equal Pay Act an effective enforcement tool by addressing the weaknesses in that law.

Fiction: *The gender wage gap is not caused by discrimination, so the Paycheck Fairness Act will not help fix it.*

FACT: When researchers control for “human capital” factors like education and years of experience, patterns in occupational choice, and relative working hours, a substantial gender wage gap remains that has no logical explanation other than entrenched discrimination.⁴ The following graph, based on information published by the *New York Times*, demonstrates that within industry after industry, the earnings of women lag behind those of men who are performing the same jobs.⁵ In fact, women’s median earnings were greater than or equal to men’s in the same occupation in just four of 95 occupations investigated by the *Times*.⁶

Women's and Men's Weekly Median Earnings in Various Occupations



Fiction: We should not pass fair pay laws while the economy is weak.

FACT: Economic recovery requires that workers make fair wages. The Paycheck Fairness Act would strengthen but not fundamentally alter the framework of the Equal Pay Act. Thus, the Paycheck Fairness Act will not affect the majority of businesses that already comply with existing fair pay obligations. Data from the current recession show that more families than ever depend on women's incomes. As a result, it is critical that we not let discrimination lower women's wages.

Fiction: The Paycheck Fairness Act creates a windfall for trial lawyers. Under the bill, employers would be compelled to settle cases for fear of big damages awards, even where no discrimination occurred.

FACT: The Equal Pay Act currently provides such paltry damage awards that employers find it cheaper to discriminate than to pay fair wages. The

Paycheck Fairness Act would bring damages for gender-based equal pay violations into line with those available for similar pay discrimination claims based on race or national origin. And, as in every other civil rights context, punitive damages under the Paycheck Fairness Act would be available only where an employer demonstrated willful or reckless indifference to pay discrimination.⁷

Fiction: The Paycheck Fairness Act would prohibit employers from justifying pay disparities on the basis of varying costs of living in different work locations, or on employees' varying work experience and education levels.

FACT: The Equal Pay Act already allows for pay differences based on education, training, and experience—and the Paycheck Fairness Act would not change that. Rather, the Paycheck Fairness Act would clarify the meaning of "factors other than sex," an existing defense in

the Equal Pay Act that employers have exploited to escape liability for discrimination. And the Paycheck Fairness Act recognizes that salaries must be adapted to local costs of living.

Fiction: *The Paycheck Fairness Act would encourage employees to publicize their co-workers' salaries by preventing employers from disciplining those who disclose or discuss the wages of other employees.*

FACT: The Paycheck Fairness Act is carefully designed to balance the interests of both employees and employers. It recognizes that workers very often cannot uncover pay discrimination unless they can share their own salary amount with their coworkers; it would prohibit employer retaliation for such sharing of information. At the same time, the Paycheck Fairness Act would protect employers by making sure that employers can restrict the dissemination of salary data by workers who have access to this information pursuant to their job duties, such as payroll administrators.

Fiction: *The Equal Opportunity Survey, which the Paycheck Fairness Act reinstates, is junk science and highly flawed.*

FACT: The Equal Opportunity Survey gathered compensation information from federal contractors, broken down by gender, race and ethnicity. The data are necessary for enabling federal civil rights enforcement agencies to identify problems with disparate pay and to encourage contractors to conduct self-audits and undertake proactive measures to ensure pay equity.⁸ The Bush Administration severely limited the use of

the survey and eventually suspended it, without justification. In so doing, it distorted the findings of studies evaluating the survey's usefulness.⁹ The government needs this type of data to target its enforcement resources at the most prolific fair pay offenders.

¹ U.S. Census Bureau, Current Population Survey, 2009 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2008—People 15 Years Old and Over by Total Money Earnings in 2008, Age, Race, Hispanic Origin, and Sex, *online at* <http://www.census.gov/hhes/www/cpstables/032009/perinc/toc.htm>.

² *Id.*

³ See H.R. Rep. No. 110-783 at 11 (2008); *Wernsing v. Dept. of Human Services*, 427 F.3d 466, 468 (7th Cir. 2005) (employer's defenses to Equal Pay Act claim do not have to be good reasons or justified by business practices.)

⁴ E.g., Francine D. Blau and Lawrence M. Kahn, Gender Differences in Pay, 14 *The Journal of Economic Perspectives* 75, 82 (Autumn 2000) (finding that in analyzing a representative study, they could account for about 62% of the wage gap by looking at human capital and occupational choice factors; but that the remaining, and largest, percentage of the objectively observed gap was not accounted for by such considerations). See also American Association of University Women, *Behind the Pay Gap* at 18 (2007), *online at*

<http://www.aauw.org/research/upload/behindPayGap.pdf> (concluding that around 25% of wage gap not explained by known human capital and choice factors).

⁵ Hannah Fairfield and Graham Roberts, *Why is her paycheck smaller?*, N.Y. Times, March 1, 2009, *online at* http://www.nytimes.com/interactive/2009/03/01/business/20090301_WageGap.html (using statistics supplied by the Bureau of Labor Statistics and Census Bureau).

⁶ Those four occupations in which women's earnings equaled or were greater than men's were Data Entry Keyers, Ticket Agents and Travel Clerks, Postal Service Clerks, and Special Education Teachers.

⁷ This concept is enshrined in a statute that would remain unchanged by the Paycheck Fairness Act: 42 U.S.C. § 1981 a(b)(1).

⁸ See, e.g., 65 Fed. Reg. 26088, 26090 (May 4, 2000) (Equal Opportunity Survey proposed to "better monitor compliance" and to "further the objective of contractor self-analysis").

⁹ See National Women's Law Center, *Comments on Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Equal Opportunity Survey*, at 3-5, March 28, 2006, *online at* <http://www.nwlc.org/pdf/EOSurveyComments.pdf>.

The National Partnership for Women & Families is a non-profit, non-partisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at www.nationalpartnership.org.