



March 31, 2014

Senator Tom Harkin, Chairman
Senator Lamar Alexander, Ranking Member
Committee on Health, Education, Labor and Pensions United States Senate
Washington, DC 20510

Statement of ACLU in Support of The Paycheck Fairness Act, S. 84

Dear Chairman Harkin and Ranking Member Alexander:

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On behalf of the American Civil Liberties Union (ACLU), its over half a million members, fifty-three affiliates nationwide, and countless additional supporters and activists, we commend the Senate HELP Committee for its April 1, 2014 hearing: “Access to Justice: Ensuring Equal Pay with the Paycheck Fairness Act.” One important solution to the ongoing problems of wage disparities between working men and women is the Paycheck Fairness Act, S. 84. We applaud your examination of this important bill and we urge the Committee to support and seek its swift floor movement. American families cannot wait any longer to bring home fair pay.

In 2009, the House of Representatives overwhelmingly passed the Paycheck Fairness Act with bipartisan support. Since then, the bill has failed to move forward on procedural votes in the Senate, even though a majority of Senators have supported the bill. Momentum continues to build for this bill, now with 52 cosponsors in the Senate. We hope that all Members of the Committee will add their support to S. 84 and send the message to your constituents that wage gaps unfairly based on gender are no longer tolerable.

The Paycheck Fairness Act provides a much needed update to the Equal Pay Act of 1963 – a law that has not been able to achieve its promise of closing the wage gap because of limited enforcement tools and inadequate remedies. As the Equal Pay Act celebrated its 50th Anniversary last year, there should be little doubt that additional improvements are still necessary. Even fifty years after its passage, according to the U.S. Census Bureau, women who work full time still earn, on average, only 77 cents for every dollar men earn.¹ The statistics are even worse for women of color with African American women being paid only 64 cents, and the gap for Latinas expanding over the last few years to, only 54 cents, as compared to white men.²

¹ See NWLC, Fact Sheet: The Wage Gap is Stagnant in Last Decade (Sept. 2012), *available at* http://www.nwlc.org/sites/default/files/pdfs/poverty_day_wage_gap_sheet.pdf (last visited Mar. 31, 2014).

² NWLC, Fact Sheet: Closing the Wage Gap is Crucial for Women of Color and Their Families (November 2013), *available at*

Specifically, the Paycheck Fairness Act would update the Equal Pay Act by taking several important steps toward remedying pay discrimination, including:

- requiring employers to demonstrate that wage differences between men and women doing the same work have a business justification and stem from factors other than sex;
- prohibiting retaliation against workers who inquire about their employers' wage practices or disclose their own wages, while also protecting certain confidential wage information;³
- leveling the playing field by ensuring that women can obtain the same remedies as those subject to discrimination on the basis of race or national origin; and
- authorizing additional training for EEOC staff to better identify and handle wage disputes and requiring the U.S. Department of Labor to provide technical assistance to employers and reinstate the collection of certain wage-related data.
- providing important business-related provisions, including:
 - an exemption for small businesses;
 - a six months waiting period from the time of enactment that allows businesses covered under the Act sufficient time to comply with its requirements;
 - a requirement that the Department of Labor help educate small businesses about what is required under the law and assist them with compliance;
 - recognition for employers' excellence in their pay practices; and
 - federal outreach and assistance to all businesses to help improve equal pay practices and training assistance to empower women to negotiate for fair pay.

In this tough economic climate, there is no better time than now to support fair pay legislation. Families need to bring home every dollar they rightfully earn – making pay equity even more necessary, not only to families' economic security, but also to the nation's economic recovery. Recent data from The Shriver Report indicates that if women received pay equal to their male counterparts, the U.S. economy would produce \$447.6 billion in additional income.⁴ Not only is correcting discrimination a matter of fundamental fairness, but doing so, would help to contribute to economic prosperity nationwide.

http://www.nwlc.org/sites/default/files/pdfs/2013.11.13_closing_the_wage_gap_is_crucial_for_woc_and_their_families.pdf (last visited Mar. 31, 2014).

³ A few states have passed state laws banning retaliation against workers who inquire about their salaries. Last year, New Jersey joined Vermont, Colorado, Michigan, Illinois, Maine, and California, when Governor Chris Christie signed the state bill into law. *See e.g.*, Allison Brito, *Chris Christie Signs Equal Pay Bill Into Law*, (Sept. 2, 2013), *available at* <http://www.nationalmemo.com/chris-christie-signs-equal-pay-bill-into-law/>; *see also* CAL. LAB. CODE § 232 (2012); 820 ILL. COMP. STAT. 112/10(b) (2012); MICH. COMP. LAWS ANN. § 408.483a (2012); ME. REV. STATE. ANN. tit. 26, § 628; COLO. REV. STAT. ANN. § 24-34-402 (2012); VT. STAT. ANN. tit. 21, § 495(a)(7)(B)(i-ii) (2012); N.J.S.A. 10:5-12(r) (2012). Federal action, like the Paycheck Fairness Act is needed, however, to ensure that women nationwide receive these same protections. In the meantime, the President could also sign an executive order banning this type of retaliation in federal contracting. ACLU, *Fact Sheet: Why an Executive Order Banning Retaliation Against Workers Who Discuss Their Wages Is Needed* (Jan. 2013), *available at* <https://www.aclu.org/womens-rights/aclu-factsheet-anti-retaliation-executive-order-january-2013>.

⁴ The Shriver Report, *A Woman's Nation Pushes Back from the Brink* (Jan. 2014), *available at* <http://shriverreport.org/5-barriers-women-face-when-negotiating-compensation/>.

Pay equity affects all employees from entry level to executive, and employment practices that allow gender-based wage disparities or permit retaliation against workers for trying to determine if they are paid fairly create a perpetual cycle of continued pay discrimination. Companies across the country are leading the way to support their employees receiving equal pay for equal work by removing barriers that result in pay discrimination.

IBM conducts annual audits on the base pay of women and minorities and if a difference among similarly situated employees is found, the manager must provide a raise or a written explanation as to why the raise not be given.⁵ This policy reflects provisions in the Paycheck Fairness Act that would require employers to demonstrate that wage differences between men and women doing the same work have a business justification and stem from factors other than sex.

Whole Foods, for example, has eliminated the problem of workers facing retaliation when they inquire about wage practices or disclose their own wages by sharing pay data with its employees at every store. While the Paycheck Fairness Act would merely ban retaliation for wage disclosure, not require open pay policies, at Whole Foods any employee who wants to know how his or her “pay relates to that of others can simply open the binder that exists in every store and see who got paid what in the previous year, from [CEO] John Mackey on down”.⁶ These practices have also led Whole Foods employees to choose the company as one of Fortune magazine’s best companies to work for over a decade.

When businesses do not play by the rules, they make it harder on those companies trying to pay employees fairly. That is why the Paycheck Fairness Act has been supported by business groups like the U.S. Women’s Chamber of Commerce.

Moreover, according to a nationwide poll, support at home for the Paycheck Fairness Act and provisions that these companies are instituting, is overwhelming. In the poll of registered voters, 84% said they support a new law that would provide women more tools to get fair pay in the workplace. High levels of support for this bill held true regardless of political party, gender, race, ethnicity, or regions of the country.⁷ For example, 77% of Republicans support it, along with 91% of Democrats and 87% of Independents. Large majorities of both men and women support the law as well – 81% and 87% respectively. In another poll, support is equally high along racial lines with 66% of Latino voters and 78% of African American voters supporting the bill.⁸

This bill is a measure that the American public – across the country and across parties – overwhelmingly supports. Perhaps this is because in a record 40% of households with children under the age of 18, mothers are the sole or primary source of income. That figure jumps to 65% of families, when including women who are the primary or co-breadwinners.⁹ Nearly two

⁵ Deborah Thompson Eisenberg, *Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 *Ariz. St. L.J.* 951, 1013-14 (2011) (*citing* Lisa A. Mainiero & Sherry E. Sullivan, *The Opt-Out Revolt: Why People Are Leaving Companies to Create Kaleidoscope Careers* 286 (2006)).

⁶ *Id.* at 1010-11 (*citing* Diane Durkin, *How to Gain the “Loyalty Advantage,”* Enterprise Engagement Alliance, *available at* <http://www.enterpriseengagement.org/articles/content/500200/how-to-gain-the-loyalty-advantage> (last visited Sept. 21, 2011)).

⁷ For more poll results, *see* Paycheck Fairness Act Coalition 2010 Polling Data, *available at* <https://www.aclu.org/womens-rights/paycheck-fairness-act-coalition-polling-data-graphs-2012>.

⁸ For more poll results, *see* Voters Support Economic Justice Policies (Feb. 2014), *available at* <http://www.americanwomen.org/research>.

⁹ PEW RESEARCH CENTER, *BREADWINNER MOMS* (May, 2013), *available at* <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/5/#appendix-1-additional-charts>.

thirds of American families are affected by the fact that women are not bringing home the wages they have already earned.¹⁰

S. 84 brings the Equal Pay Act's principles and practices in line with the nation's other civil rights laws and is an important and reasonable approach in the effort to finally close the wage gap in the workplace. This Congress has the historic opportunity to change the lives of women and families all across America.

Once again, we applaud the Committee for holding this hearing and urge Members to support and seek the swift passage of S. 84. If you have questions or need additional information, please contact, Senior Legislative Counsel, Deborah J. Vagins at (202) 675-2335 or dvagins@aclu.org.

Sincerely,



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¹⁰ *Id.*