

## A Legislative Guide to Closing the Gender Wage Gap

In the United States today, women on average earn 78 cents for every dollar their male counterparts make. The disparity is even greater for women of color: African American women make on average 64 cents on the dollar, and for Latina women, it is 54 cents.<sup>1</sup> In Canada, there is a similar problem: on average, women earn about 81% of what their male counterparts make.<sup>2</sup>

### The Jewish call for pay equity

Jewish tradition has long recognized the importance of paying fair wages. Leviticus 19:13 commands that, “You shall not defraud your fellow Israelite. You shall not commit robbery. The wages of a laborer shall not remain with you until morning.” Judaism also teaches that all human beings should be treated equally because they are created *b'tzelem Elohim*, in the image of God. “And God created humans in God’s own image, in the image of God, God created them; male and female, God created them” (Genesis 1:27).

### Existing legislation

In both the U.S. and Canada there is legislation that aims to close the wage gap.

United States: In 1963, the Equal Pay Act was passed so that employers no longer could legally pay men and women different salaries for performing equal work. When the Equal Pay Act was enacted, women earned on average only 59 cents on the dollar. With this legislation and other important civil rights protections, the wage gap has narrowed, but is nowhere near closed.

The Lilly Ledbetter Fair Pay Act of 2009 was the very first bill President Barack Obama signed into law. The Act was passed in response to a Supreme Court ruling in *Ledbetter v. Goodyear Tire & Rubber Co.* (2007), in which the Court held that because Lilly did not file her suit within 180 days of her first discriminatory paycheck, she did not have standing. Lilly could not have filed her suit at that time because she did not discover she was being paid less than her male counterparts for many years.

The Act passed in 2009 ensures that individuals subjected to unlawful pay discrimination are able to effectively assert their rights under the federal anti-discrimination laws. Under this law, each discriminatory paycheck (rather than simply the original decision to discriminate) resets the 180-day limit to file a claim. The Ledbetter Act is a critical tool for women and all targets of wage discrimination to correct their losses.

Canada: In Canada, the federal mandate for work of equal value is found in three areas of law: the [Canadian Human Rights Act](#) (CHRA), [Equal Wages Guidelines](#) (1986), and the [Canada Labour Code](#) (CLC). In addition, the different provinces have commissions or initiatives dedicated to pay equity.<sup>3</sup> The CHRA makes it illegal to pay men and women differently when employed in the same organization and doing substantively equal work. The 1986 Equal Wages

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<sup>1</sup> <http://www.nwlc.org/our-issues/employment/equal-pay-and-the-wage-gap>  
<http://www.nwlc.org/resource/paycheck-fairness-act-why-women-need-stronger-protections-against-pay-discrimination>

<sup>2</sup> <http://www.cbc.ca/strombo/news/equal-pay-for-equal-work-a-look-at-the-wage-gap-between-men-and-women-in-va>

<sup>3</sup> [http://www.labour.gc.ca/eng/standards\\_equity/eq/pay/intro.shtml](http://www.labour.gc.ca/eng/standards_equity/eq/pay/intro.shtml)

Guidelines clarify the four factors used to evaluate the value of work: effort, responsibility, skill, and working conditions, and elaborate on additional assessment criteria. The CLC gives Labour Program inspectors the authority to look into an organization's records to collect data relevant to pay equity. If an inspector believes there is discrimination in wages on the basis of gender, he or she can call on the Canadian Human Rights Commission, which can start an investigation.<sup>4</sup>

### **Legislative Update**

Although there exists specific legislation to combat wage discrimination, the persistent gap between men's and women's salaries indicates that action is still needed.

United States: The Paycheck Fairness Act (S. 862/H.R. 1619) would take steps to correct pay discrimination by closing loopholes in the Equal Pay Act, and would bar retaliation against workers who disclose their wages. This bill would strengthen the Equal Pay Act to ensure that it provides effective protection against sex-based pay discrimination, allowing women to receive the same remedies in court for pay discrimination as those subjected to discrimination based on race or national origin.

On April 9, 2014, just one day after Equal Pay Day, the Senate held a vote on the Paycheck Fairness Act. It was filibustered by a 53-44 vote. The Paycheck Fairness Act came up again on September 10, when 73 Senators from both parties voted to approve the first of a series of procedural motions needed to advance the bill.<sup>5</sup> Just days later, however, this vote was followed by a disappointing 52-40 vote not to advance the bill any further.<sup>6</sup> Supporters of the bill criticized the Senate for using the Paycheck Fairness Act votes as procedural maneuvers to fill up the agenda in the last days of that session.

Outside Congressional action, President Obama took two executive actions to fight gender-based wage discrimination on April 8, 2014. The first, an executive order, bans retaliation for disclosure of compensation information for all federal contractors.<sup>7</sup> The second is a presidential memorandum calling on the Department of Labor to issue "a rule that would require Federal contractors and subcontractors to submit to DOL summary data on the compensation paid their employees, including data by sex and race."<sup>8</sup> Both are important steps forward to ensuring pay equity for all people working under a federal contract, which covers about 1 in 5 workers in the United States.

In terms of state laws: each state has different laws and commissions that are relevant to fighting wage discrimination. Some states do not have any laws at all (Mississippi, Alabama), whereas some states have strong protections against a gender-based wage gap (New York, West

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<sup>4</sup> *Ibid.*

<sup>5</sup> [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=113&session=2&vote=00260](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=2&vote=00260)

<sup>6</sup> [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=113&session=2&vote=00262](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=2&vote=00262)

<sup>7</sup> <http://www.whitehouse.gov/the-press-office/2014/04/08/executive-order-non-retaliation-disclosure-compensation-information>

<sup>8</sup> <http://www.whitehouse.gov/the-press-office/2014/04/08/presidential-memorandum-advancing-pay-equality-through-compensation-data>

Virginia).<sup>9</sup> Some states draw distinctions between public and private employees, so it is important to know what kinds of laws are in each state.

Canada: The Pay Equity Task Force Recommendations Act (C-389) would require the Canadian government to implement the recommendations of the task force in their report “[Pay Equity: A New Approach to a Fundamental Right](#),” which was issued in May 2004.

Recommendations include: creation of a new Canadian Pay Equity Commission, a Canadian Pay Equity Hearings Tribunal, a pay equity adjudication system, advocacy services, and a deeper commitment to research.

Of the ten provinces, six have pay equity laws: Ontario, Quebec, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island. Each law is slightly different and applies to different people. For example, Manitoba’s law applies only to public employees, as does New Brunswick’s law and Prince Edward Island’s. Quebec’s law covers public employees and private, and Nova Scotia’s covers all public and some workers employed by corporations.<sup>10</sup>

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<sup>9</sup> <http://www.ncsl.org/research/labor-and-employment/equal-pay-laws.aspx>

<sup>10</sup> [http://www.payequity.gov.on.ca/en/about/pubs/genderwage/pe\\_survey.php](http://www.payequity.gov.on.ca/en/about/pubs/genderwage/pe_survey.php)