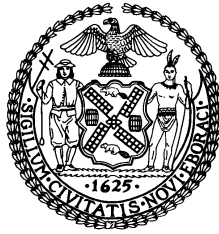


Committee on Women's Issues:
Rachel Cordero, Counsel
Joan Povolny, Policy Analyst
Pakhi Sengupta, Finance Analyst



THE COUNCIL

Briefing Paper of the Human Services Division

Robert Newman, Legislative Director

COMMITTEE ON WOMEN'S ISSUES

Hon. Julissa Ferreras, Chair

Wednesday, June 16, 2010

Oversight: Closing the Gender Wage Gap

Introduction

On Wednesday, June 16, 2010, the Committee on Women's Issues, chaired by Council Member Julissa Ferreras, will hold an oversight hearing entitled, *Closing the Gender Wage Gap*. The Committee expects to hear from members of the Equal Pay Coalition, the New York Women's Agenda and other parties interested in the issue of pay equity.

Background

In past decades, female employees have thrived in various workplace settings and millions of American workers have a female boss.¹ Nevertheless, women are paid twenty-three cents less than men for every dollar earned.² According to the latest census statistics, women earned seventy-seven cents based on the male dollar earnings in 2008.³ These earnings drop to 68.9 percent of the male dollar for African American women and to 60.2 percent of the male dollar for Latinas.⁴ These statistics reflect full time annual workers.⁵ Advocates estimate that in a lifetime female high school graduates earn 700,000 dollars less than male high school graduates, female college graduates earn 1.2 million dollars less, and female professional school graduates earn up to two million dollars less than their male counterparts.⁶ According to the Institute for Women's Policy Research, success in closing the gender wage gap has slowed since 1990.⁷ The cents women earned on the male dollar increased by 11.4 percent during the period of 1980 to 1990, while it grew by only 5.5 percent during the next eighteen years.⁸

The existing gap in working wages for men and women affects more American women and families than ever before because women are more likely to work outside the home and contribute monetarily to family earnings than at any time in our nation's history.⁹ Increasingly, women are sharing the role of breadwinner with their male

¹ Maria Shriver and the Ctr. for Am. Progress. *The Shriver Report: The New Breadwinners*, 2009 at <http://pffamilylaw.com/> (last visited June 14, 2010).

² Laura Fitzpatrick, TIME/CNN, *Why do Women Still Earn Less Than Men?*, Apr. 20, 2010.

³ Inst. for Women's Policy Research, *Fact Sheet: The Gender Wage Gap—2009*, at <http://www.iwpr.org/pdf/C350.pdf> (updated March 2010).

⁴ *Id.*

⁵ *Supra* note 3.

⁶ The WAGE Project, at <http://www.wageproject.org/index.php>.

⁷ *Supra* note 3.

⁸ *Id.*

⁹ *Supra* note 1.

counterparts (while maintaining the primary role of caregiver).¹⁰ Further, approximately four out of every ten American mothers earn the majority of their family's income and close to two out of three mothers are co-breadwinners, responsible for at least one quarter of their family's income.¹¹ According to the United States Congress Joint Economic Committee (hereinafter "Joint Economic Committee"), only families with a working wife have seen real increases in family income during the past three decades.¹²

Why do Women Earn Less than Men?

Classic Gender Discrimination

Politically conservative advocates argue that women make less money because they take time off to raise children and anticipate the need for flexibility in choosing their education and career paths. More liberal and progressive advocates blame classic sex discrimination for the gap in earnings. Researchers point to "taste discrimination," initially identified in the context of race discrimination, and involves employers preferring to hire workers with characteristics unrelated to worker productivity.¹³ Along with taste discrimination, researchers blame "homosocial reproduction," the practice of hiring employees who mirror the employer's identity and characteristics.¹⁴ Thus, if white men are more likely to be in control of the hiring process, than more white male employees will be hired and paid well. Research has also found that employers have preconceived notions of which gender characteristics are necessary to do a particular job.

¹⁰ *Supra* note 2.

¹¹ *Id.*

¹² U.S. Congress Joint Economic Comm., *Equality in Job Loss: Women are Increasingly Vulnerable to Layoffs During Recessions*, Jul. 22, 2009.

¹³ Kristen Schilt and Matthew Wiswall, *Before and After: Gender Transitions, Human Capital, and Workplace Experiences*, *The B.E. Journal of Econ. Analysis and Policy* (2008), at <http://www.bepress.com/bejeap/vol8/iss1/art39>.

¹⁴ *Id.*

Characteristics considered “feminine,” such as caring and sympathy might be preferred for jobs requiring customer service interaction, while characteristics considered “masculine,” such as competitiveness might be preferred for management positions.¹⁵

In 2008, the Journal of Economic Analysis and Policy published a study seeking to determine whether women’s choices or men’s discrimination has a higher impact on the wage gap. The study focused on individuals pre- and post gender transitions and their workplace experiences.¹⁶ The study found that men who became women experienced a significant loss in hourly wages and women who became men experienced no change in their earnings or increased earnings.¹⁷

Field of Employment

The type of occupation and industry, along with union affiliation, has an impact on wages, as women tend to work in lower paying fields.¹⁸ Advocates attribute the gender differences in pay to “not only the gender wage gap but to the clustering of four-fifths of women workers in only a handful of occupations, particularly the lower paying service and clerical categories.”¹⁹ Women employed full time tend to have slightly higher educations than men, but are more likely to work in clerical and service jobs than men.²⁰ Many educated women, for example, become teachers and nurses, while men with comparable education become doctors, lawyers and business executives.²¹

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Supra* note 2.

¹⁹ Wider Opportunities for Women, at www.wowonline.org.

²⁰ John Cloud, TIME/CNN, *If Women Were More Like Men: Why Females Earn Less*, Oct. 3, 2008.

²¹ *Supra* note 2.

The United States Department of Labor defines a non-traditional occupation for women as one in which women comprise twenty-five percent or less of total employment.²² Non-traditional jobs pay twenty to thirty percent more on average than traditionally female occupations.²³ In addition to better pay, such occupations frequently are growing fields and have career paths that involve promotions.²⁴ By 2008, it was still the case that the most common occupations for women were secretaries, administrative assistants, nurses and school teachers.²⁵ Included in the top twenty most common occupations for women in 2008, only two—nurses and schoolteachers—require advance degrees.²⁶ Fortunately, it is projected that over the next decade, service jobs will have the most growth and largest number of available jobs.²⁷ Service professions tend to employ mostly women (registered nurses, retail salespersons and customer services representatives) and there is a hope that traditionally female occupations will provide more lucrative opportunities.

Unfortunately, there is a shortage of female role models in traditionally male careers, and little encouragement or support from family, friends and classmates for women choosing to pursue such jobs. Moreover, when a woman does choose to enter one of these fields, she may find resistance or hostility in her work environment. Some male co-workers might harass, disrespect, or ostracize her.²⁸

Nevertheless, notwithstanding non-traditional employment opportunities, women earned less than men in all twenty industries and in the twenty-five occupational groups

²² U.S. Dep't of Labor, *Quick Facts on Nontraditional Occupations for Women*, at www.dol.gov/wb/factsheets/QF-nontra.htm.

²³ *Id.*

²⁴ The National Network for Women's Employment, *available at* www.womenwork.org.

²⁵ *Supra* note 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* (88 percent of women in construction experienced sexual harassment on the job).

surveyed by the Census Bureau in 2007.²⁹ This was true even for occupations with more female employees, like female secretaries who earn 83.4 percent of what male secretaries earn.³⁰ Women who enter non-traditional employment still earn less than their male counterparts. For instance, TIME magazine reported that female truck drivers earn just 76.5 percent of their male counterparts' weekly pay.³¹

Working Part Time, Pregnancy and Child Care

Women often need flexible working hours and locations to meet competing family demands. Since women are typically responsible for child and elder care, they account for the majority of the part-time workforce.³² Those seeking such flexibility often do not receive comparable treatment to their full-time colleagues. Part-time workers miss out on developmental and training opportunities, health care, sick days, paid vacation, health and safety protections, access to pensions, social security benefits, and access to unemployment insurance.³³ The National Study of Employers, which surveyed workplaces with 50 or more employees, found that only 33 percent of companies offer full or pro-rated benefits to part-time workers.³⁴

New research suggests that motherhood accounts for some if not all aspects of the pay gap that have not been explained. One study of professional women who left the labor force shows the women were pushed out of their jobs due to motherhood, in which

²⁹ *Supra* note 2.

³⁰ *Id.*

³¹ *Id.*

³² Wider Opportunities for Women, *Why Part Time Work is Important to Working Families?*, at http://www.wowonline.org/documents/Whyparttimeworkisimportanttoworkingfamilies_FINAL.pdf (last visited June 14, 2010).

³³ *Id.*

³⁴ The Ctr. on Aging and Work at Boston College, *Workplace Flexibility*, Jul. 2007, at http://agingandwork.bc.edu/documents/FS10_Part-timeWork.pdf.

eighty-six percent of the women claimed the lack of workplace flexibility was a pivotal reason they left their job.³⁵ Research has found that working mothers are met with stereotypes of being less competent, less promotable, less likely to be recommended for management, and are given lower starting salaries. Interestingly, fathers applying for jobs are typically not penalized in the same manner and are often considered more hireable than men and women without children.³⁶

Effects of the Recession on Pay Equity

Unlike previous recessions, the current economic downturn has a more detrimental effect on women's job loss and families' economic stability. Historically, women who did not work outside the home or worked only part-time would take on full-time work during difficult economic times, thus boosting their family's income and buffering the short-fall.³⁷ Presently, most women work and make necessary and substantial contributions to the family income even during a sound economic climate. Therefore, when women lose their jobs, families lose a large portion of their income. Single-mother households are especially vulnerable to female job loss.

According to the Joint Economic Committee, the recession in 2001 affected jobs held by women particularly hard.³⁸ Unlike the recessions in the 1980's and 1990's, the percent of jobs lost by women were higher than that of men in 2001. More importantly, women found it harder to gain their employment back during a less than stellar economic recovery during the 2000's. In June of 2009, the unemployment rate was at 9.4 percent.³⁹

³⁵ *Supra* note 1.

³⁶ *Id.*

³⁷ *Supra* note 12.

³⁸ *Id.*

³⁹ David Madland, Ctr. for Am. Progress, *The Outlook is Still Bleak* (2009), at http://www.americanprogress.org/issues/2009/06/employment_numbers.html.

In January of 2010, the Economic Policy Institute projected that the unemployment rate for men would rise to 11.7 percent by the third quarter of 2010 and the rate for women would reach 9.7 percent.⁴⁰ Further, the current recession has increased family instability with increased involuntary part-time work, as Americans cannot find full-time positions providing the benefits families need. Recognizing the new family structure and how families will fair during the current recession, the Joint Economic Committee recommended creating more workplace family-friendly policies.⁴¹ The Committee has suggested paid sick leave, family leave insurance programs and more flexibility in the workplace to ease the blow of the recession on families.⁴²

Pay Equity Legislation

New York City Council Resolutions

In June of 2008, the City Council unanimously passed two resolutions in support of federal and state pay equity legislation. Res. No. 1152 called on the United States Congress to pass and the President to sign into law the Paycheck Fairness Act. Res. No. 896-A called on the New York State Legislature to pass, and the Governor to sign, the Pay Equity Legislative Package.

Federal Legislation

In January of 2009, the Lilly Ledbetter Fair Pay Act was signed into law by President Obama. This legislation restored protections against pay discrimination that were stripped away by the 2007 Supreme Court ruling in Ledbetter v. Goodyear Tire &

⁴⁰ Kai Filion, Economic Policy Institute, *Downcast Unemployment Forecast Targeted Job Creation Policies Necessary to Offset Grim 2010 Projections*, January 14, 2010.

⁴¹ *Supra* note 12.

⁴² *Id.*

Rubber Company.⁴³ The Act which became Public Law No. 111-2, amends the Civil Rights Act of 1964 to declare that an unlawful employment practice occurs when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid. It also allows liability to accrue, and allows an aggrieved person to obtain relief, including recovery of back pay, for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to practices that occurred outside the time for filing a charge. In addition it applies the preceding provisions to claims of compensation discrimination under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

The Paycheck Fairness Act, H.R. 12/S.182 (DeLauro/Clinton), was introduced by both the House and the Senate but only passed the House in January 2009. This comprehensive legislation would strengthen the Equal Pay Act (EPA) by taking meaningful steps to create incentives for employers to follow the law, help women to negotiate for equal pay, and strengthen federal outreach and enforcement efforts.⁴⁴

According to the National Women's Law Center, some examples of specific ways this bill would strengthen the EPA include:

Improving Equal Pay Act Remedies: The Act would toughen the remedy provisions of the EPA by allowing prevailing plaintiffs to recover compensatory and punitive damages. This change would put gender-based wage discrimination on equal footing with discrimination based on ethnicity or race.⁴⁵

Prohibiting Employer Retaliation: The Act would generally prohibit employers from punishing employees for sharing salary information with their co-workers which

⁴³ See, National Women's Law Center, www.nwlc.org/fairpay/ledbetterfairpayact.html.

⁴⁴ National Org. for Women (NOW), *The Paycheck Fairness Act: The Next Step in the Fight for Fair Pay*, at www.now.org/issues/economic/022709pfa.html.

⁴⁵ National Women's Law Center, *How the Paycheck Fairness Act Will Strengthen the Equal Pay Act*.

will greatly enhance employees' ability to evaluate whether they are experiencing wage discrimination.⁴⁶

Improving Collection of Pay Information by the EEOC: The Act would require the EEOC to survey pay data already available and issue regulations within 18 months that require employers to submit any needed pay data identified by the race, sex, and national origin of employees. These data could enhance the EEOC's ability to detect violations of law and improve enforcement.⁴⁷

Reinstating Pay Equity Programs and Enforcement at the Department of Labor: The Act would reinstate the collection of gender-based data in the Current Employment Statistics Survey. It would set standards for conducting systematic wage discrimination analyses by the agency that oversees the nondiscrimination and affirmative action obligations of federal contractors and direct implementation of the Equal Opportunity Survey.

Facilitating Class Action Equal Pay Act Claims: The Act would allow an EPA lawsuit to proceed as a class action in conformity with the Federal Rules of Civil Procedure (FRCP).

State Legislation

New York State has failed to enact new pay equity legislation despite years of efforts by advocates and some lawmakers. Since 2002, the New York State Assembly has passed the New York State Fair Pay Act but it never made it through the Senate. However, in 2009 the bill did receive support from the Senate Labor Committee.

A.3911/S.955 (John/Johnson), also known as the New York State Fair Pay Act, would make it an unlawful employment practice for an employer to discriminate between employees on the basis of sex, race and/or national origin by paying different wages. This legislation would call for private and public entities to evaluate jobs that have gender predominance and remedy such inequities. The legislation would also help protect workers from retaliation when seeking salary information in the workplace.

⁴⁶ *Id.*

⁴⁷ *Id.*

A.1119/S.5480 (Destitio/Savino) would provides that all who work in the public sector in New York State will receive equal pay for job titles evaluated to be of comparable worth.

A.6712/S.5271 (Roesnethal/Montgomery) would provide that people who work for New York State in job titles where women and people of color predominate receive equal pay for job titles of equal value.

Conclusion

The Committee seeks to gauge the progress in the struggle for pay equity and explore both historical and modern barriers to equal pay. The Committee expects to hear from advocates that have developed strategies for bridging the pay gap and will explore what the city can do.