



THE MODERN WAGE GAP

& WHY IT PERSISTS



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Although the Equal Pay Act of 1963 was enacted more than 50 years ago, the wage gap between men and women remains a pervasive issue in the modern American workplace.

While paying employees differently because of their sex is simply against the law, many employers have been able to avoid responsibility because of the broad acceptance of loopholes by the courts. Most often, employers cite the salary negotiations process as justification for paying certain employees less when in the face of a discrimination lawsuit, leaving the affected employees with significantly limited opportunities for legal recourse.



Identifying the Problem

Consider this, Amanda applies for a clerical position at a medium-sized distribution company in Buffalo, New York. She has performed similar office work for ten years in two clerical positions. As part of her application, the hiring manager requests that she provide the names of her previous employers, as well as her most recent rate of pay. After offering the position to Amanda, the hiring manager brings up her salary history and discusses her future pay.

Feeling constrained and eager to secure employment, Amanda agrees to be paid at the same rate she received at her most recent job. Amanda begins working and soon finds out that all of her male co-workers receive an additional \$3.00 per hour for their work in the same position. In fact, her colleagues' rate of pay is typically what most new employees at the company are offered.

Amanda speaks to her supervisor about the pay disparity and is offered no answer, nor any action for over a month. Frustrated, Amanda and files a complaint against the company for pay discrimination.

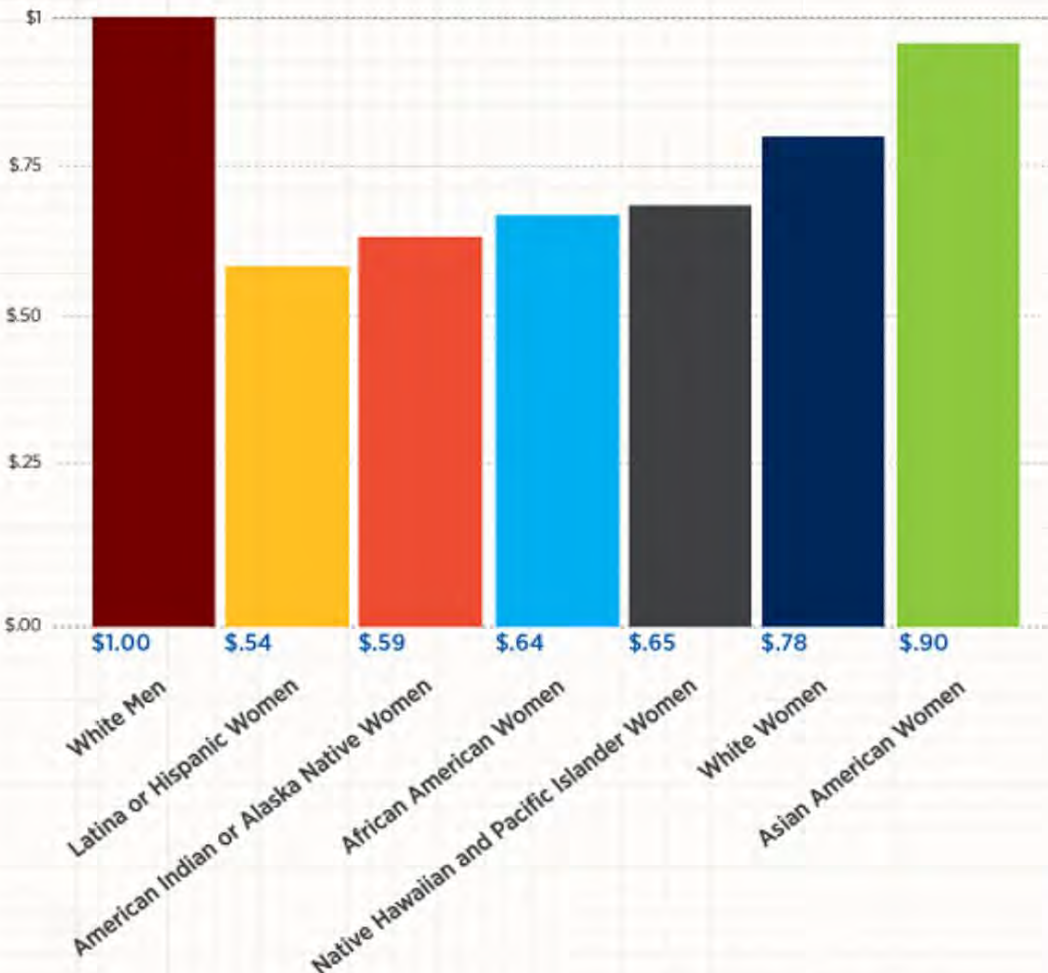


Now, it is unlikely that Amanda will prevail in court if her employer brings a “factor other than sex” affirmative defense to her complaint. As part of this defense, employers do not dispute that the employee receives a different wage than the others, but rather, they cite the employee’s salary negotiations as the reason for the wage disparity.

In other words, employers are able to justify certain employees less simply because they agreed to a certain rate when taking the job.

Impact

The Gender Wage Gap By Race



From fast food jobs for which applications require applicants to list a requested salary to formal salary negotiations for white-collar positions, negotiations have become one of the largest determining factors of an American worker's pay.

The negotiations process affects women so greatly that some employers have eliminated salary negotiations altogether, favoring standardized wages. However, most American employers still prefer to individually negotiate the pay rates of their employees. It is commonly perceived that “women don’t ask” for higher wages, but this is untrue. Many women initiate negotiations, but are often perceived to be “aggressive,” which in turn makes them more unconsciously unlikable. Because of this, these women are less likely to receive future promotions (and the accompanying raises).

Most often, when women choose not to negotiate because they fear the repercussions of doing so. Consider for a moment the language surrounding the perceptions of assertive men and women. Whereas assertive men are often viewed as “commendable,” assertive women are more often perceived to be “bitchy” despite engaging in identical behavior.



Equal Pay Act of 1963

(in a nutshell)

The “factor other than sex” defense is a catchall for employers seeking to escape liability for paying their employees differently.

The Equal Pay Act prohibits employers from discriminating on the basis of sex for jobs requiring equal: (1) skill; (2) effort; and (3) responsibility, under similar working conditions.

Many courts have adopted a “substantially similar” work standard, meaning that the jobs do not need to be wholly identical to bring a claim against an employer.

New York State Laws and Protections

The laws in New York State offer “moderate” protections against wage differentials, but fall behind those of California, Illinois, Washington, and several other states.

However, on July 10th, Governor Andrew Cuomo signed new pay equity legislation into law that stands to prevent the wage gap from expanding and proactively prevents new wage gaps from being created.

The new items passed in the final hours of the State Assembly's legislative session and narrow in on several key issues concerned with eliminating the wage gap between men and women across New York State and in Erie County.

The new laws: (1) prevent employers from requesting prior salary histories from job applicants; (2) guarantee equal pay for substantially similar work performed by both private and public employees; and (3) allow public employees a private right to action for discriminatory pay practices.

This legislation has been declared a major victory for women's rights activists across the state.

The new legislation does not address every issue affecting the pay gap, however. New York State still allows employers to: (1) track their employees based on sex; (2) reduce another employee's pay comply with the Equal Pay Act; and (3) bring a salary negotiations defense against an employee claim.

New York State also fails to: (1) provide state sponsored education and training programs, such as salary negotiation; and (2) utilize any mechanism to guide and enforce pay adjustments.

Governor Andrew M. Cuomo signed the new pay legislation into law at the U.S. Women's National Team Victory Parade in NYC on July 10th



Proposed Solutions

1. Fund initiatives that inform and empower women on the negotiations process and employment advocacy.

We know historically there has been a disparity in the bargaining power between the sexes, however, this does not need to remain a reality. Creating grants for projects that teach women to how properly advocate for themselves will not only empower individuals, but will also contribute to a wider acceptance of assertive women in the workplace. Additionally, assertive and informed women are a critical element of a strong, diverse workforce.

2. Prohibit job tracking on the basis of sex.

While tracking based on demographics may seem harmless on its face, it encourages employers to engage in discriminatory practices by presenting job data in a biased fashion. A more useful and objective approach would track employees based on productivity. Prohibiting job tracking based on sex is an important step to take to eliminate bias against workers of either sex.

3. Prohibit employers from reducing employees' pay in order to comply with the Equal Pay Act.

Reducing an employee's pay for the purpose of compliance with the EPA is inherently unfair and should not be an option for employers.

“There is no difference in the food she buys or the rent she pays; there should be none in her pay envelope.”

- Lewis Schwellenbach, U.S. Secretary of Labor (1947)



To learn more about ECCSW serves the women of Erie County please visit our website at:

<http://www2.erie.gov/csw> or click/scan the accompanying QR code with your smartphone.



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