Gender Pay Equity: Are We There Yet?

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Is There Still a Gender Gap in Pay?

“It’s 2016, and women still make less for doing the same work as men.”
3/8/16

2/10/16

“Don't Buy Into The Gender Pay Gap Myth.”
4/12/16

“States struggle to close their own gender pay gaps.”
2/19/17
Yes, but more so in some states than others.

Women's earnings as a percentage of men's earnings, by state 2007.

Source: Data from the Income, Earnings, and Poverty Data From the 2007 American Community Survey.
Yes, and more so in high-paying professions!

Gender Gap in Annual Earnings for College and Professional Groups

We’ve come a long way, but progress has stalled...

Education now explains little of the remaining gender wage gap.

What factors explain the remaining gender gap?

Percent of the Gender Gap Explained = 62%

- Gender differences in occupations (33%)
- Gender difference in industries (18%)
- Gender differences in work experience (time out of labor force) (14%)
- Gender differences in education (-5.9%)

Percent of the Gender Gap Unexplained = 38%

- Perceived psychological attributes or noncognitive skills
- Differences in gender roles and the gender division of labor
- Discrimination

Constrained choices that women make?
Gender gap increases as women reach childbearing age

Especially in jobs that pay a premium for working long hours.

Are Additional Public Policies Needed?

If the remaining gender gap in pay stems more from societal norms than overt discrimination, don’t we need a social revolution rather than legislation?

• The remaining forces accounting for the gender gap are more subtle than overt → more difficult for individual firms to recognize or eliminate without oversight or some commitment for self-evaluation.

• Large firms have the time and resources to address pay equity issues, but smaller firms do not → pay equity policies can “nudge” all employers in the right direction by legislating “best practices.”

• The pace of societal change is glacial and pay disparities are inefficient → waiting for pay equality to evolve on its own is costly to women, their families, and the economy.

➢ In the absence of legislation by the U.S. Congress, bills to address the gender pay gap have been introduced this year in at least 18 states and a handful of cities (Alexandria VA, New Orleans LA and Sacramento CA).
## Don’t We Already Have Pay Equity Laws?

<table>
<thead>
<tr>
<th>Laws</th>
<th>Protected Classes</th>
<th>Comparison Group</th>
<th>Same Location</th>
<th>Proof</th>
<th>Remediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Equal Pay Act</td>
<td>Sex Only</td>
<td>Equal work and similar working conditions</td>
<td>Yes</td>
<td>No Intent Required</td>
<td>Must explain entire wage differential</td>
</tr>
<tr>
<td>Title VII</td>
<td>Sex, Race/Ethnicity, Color, Religion, National Origin</td>
<td>Similarly Situated Employees</td>
<td>No</td>
<td>Discriminatory Intent or Impact</td>
<td>Typically only in statistically significant groups</td>
</tr>
<tr>
<td>E.O. 11246</td>
<td>All from Title VII + Sexual Orientation and Gender Identity</td>
<td>Similarly Situated Employees</td>
<td>Yes</td>
<td>Discriminatory Intent or Impact</td>
<td>Typically only in statistically significant groups</td>
</tr>
<tr>
<td>CA Fair Pay Act</td>
<td>Sex Only</td>
<td>Substantially similar work and working conditions</td>
<td>No</td>
<td>No Intent Required</td>
<td>Must explain entire wage differential</td>
</tr>
<tr>
<td>NY Achieves Pay Equity</td>
<td>Sex Only</td>
<td>Equal work and similar working conditions</td>
<td>No (but same geographic region)</td>
<td>No Intent Required</td>
<td>Must explain entire wage differential</td>
</tr>
<tr>
<td>Maryland Equal Pay for Equal Work Act</td>
<td>Sex and Gender Identity</td>
<td>Employees who work for the same employer in the same county and who perform work of comparable character, or work in the same operation, in the same business, or of the same type.</td>
<td>No (but same county)</td>
<td>Not Stated</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Massachusetts Equal Pay Act</td>
<td>Gender</td>
<td>Substantially similar skill, effort, and responsibility and performed under similar working conditions</td>
<td>Yes (location may be used to explain differentials)</td>
<td>No Intent Required</td>
<td>Not Stated</td>
</tr>
</tbody>
</table>

This is Not Your Mother’s Equal Pay Act….

Pay Equity

• Employee comparisons can no longer be based on the “same” or “substantially equal” jobs but rather on “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.”

• Employee comparison no longer based on having the same location.

• New rules for justifying pay including permitted reasons such as
  • A seniority system
  • A merit system
  • A system that measures earnings by quantity or quality of production
  • A bona fide factor other than sex, including skills, education, training, experience, or shift schedule.
This is Not Your Mother’s Equal Pay Act….

Pay Transparency

Employers may not prohibit employees from:
• Disclosing or discussing their own wages or the wages of others
• Aiding or encouraging other employees to exercise their rights under the law.

Employers may not seek information about an applicant’s compensation history in the hiring process prior to making an offer
• Unless the prospective employee has “voluntarily” disclosed such information.
Enforcement

Additional protections to make it easier for employees to pursue pay equity claims:

• Provide employees the option to file complaints with the state for any violations of the new law.

• Allow employees to file claims if they have been discharged, discriminated, or retaliated against for engaging in any conduct protected by the statute.

• Allow employees to seek reinstatement and reimbursement for lost wages and benefits, interest, and “appropriate equitable relief.”

Some protections for firms who demonstrate an effort to address pay equity concerns:

• Complete a reasonable self-evaluation of pay practices in the past three years

• Show “reasonable progress” toward eliminating pay differentials uncovered by the evaluation.
Can Pay Equity be Legislation Effective?

While no formal studies of the new pay equity laws have been conducted as of yet, evidence from similar policy interventions in the past is suggestive that these types of interventions can be effective:

During the 1980s, about 20 states had implemented programs to boost the pay of lower-paid female government workers.

- A 1994 study by the Institute for Women’s Policy Research and the Urban Institute found that the pay adjustments helped close the gap among state workers.

Typically, equal pay legislation covers both private and public sector employees, yet in Louisiana, the equal pay law protects just public sector employees.

- Women who work in Louisiana’s public sector earn 78 cents for every dollar men earn while women working in the private sector earn only 57 cents for every dollar their male counterparts make.
Thank You!

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