



## **The Paycheck Fairness Act:** *The Next Step in the Fight for Pay Equity*

AAUW applauds Congress and the Obama Administration for moving quickly to pass the Lilly Ledbetter Fair Pay Act. It is a critical new law to preserve the rights of victims of pay discrimination to seek vindication. However, the Ledbetter bill is only a down payment on making real progress in closing the wage gap. The next critical step is for the Senate to pass **the Paycheck Fairness Act (S. 182/H.R. 12)**; the House already passed the measure in January 2009 by an even stronger bipartisan vote (256-163) than the Ledbetter bill (247-171).

Passing both bills is critical to the overall goal of achieving pay equity for all. The Lilly Ledbetter Fair Pay Act amended Title VII of the Civil Rights Act of 1964 and righted the wrongs done by the Supreme Court, regaining ground we'd lost. Ledbetter was a narrow fix that will simply returned legal practices and EEOC policies to what they were the day before the *Ledbetter* decision was issued in 2007 – nothing more, nothing less. The Paycheck Fairness Act is a much needed update of the 45-year-old Equal Pay Act, closing longstanding loopholes and strengthening incentives to prevent pay discrimination. *Together, these bills can help to create a climate where wage discrimination is not tolerated, and give the administration the enforcement tools it needs to make real progress on pay equity.*

New legislation strengthening pay equity laws is needed now more than ever, since women tend to be hurt first and worst during economic downturns and would benefit from an immediate “equity” economic stimulus. Further, due to rising unemployment rates, an unprecedented number of women are now the family breadwinners – making pay equity even more critical not simply to family economic security but also to the nation's economic recovery.

**Background on the Equal Pay Act of 1963:** This law requires that men and women be given equal pay for equal work in the same place of business or establishment. The jobs do not have to be identical, but they must be substantially equal. It is job content – *not* job titles -- that determines whether jobs are substantially equal. Pay differentials are permitted only when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. It is important to note that when correcting a pay differential, no employee's pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased. While laudable in its goals, the Equal Pay Act of 1963 has never lived up to its promise to provide “equal pay for equal work.”

**What Will the Paycheck Fairness Act Do:** The Paycheck Fairness Act is a comprehensive bill that strengthens the Equal Pay Act by taking meaningful steps to create incentives for employers to follow the law, empower women to negotiate for equal pay, and strengthen federal outreach and enforcement efforts. The bill would also deter wage discrimination by strengthening penalties for equal pay violations, and by prohibiting retaliation against workers who inquire about employers' wage practices or disclose their own wages. The Paycheck Fairness Act would:

- **Close a loophole in affirmative defenses for employers:** The legislation clarifies acceptable reasons for differences in pay by requiring employers to demonstrate that wage gaps between men and women doing the same work have a business justification and are truly a result of factors other than sex.
- **Fix the “Establishment” Requirement:** The bill would clarify the establishment provision under the Equal Pay Act, which would allow for reasonable comparisons between employees within clearly defined geographical areas to determine fair wages. This provision is based on a similar plan successfully used in the state of Illinois.

- **Prohibit Employer Retaliation:** The legislation would deter wage discrimination by prohibiting retaliation against workers who inquire about employers' wage practices or disclose their own wages (NOTE: employees with access to colleagues' wage information in the course of their work, such as human resources employees, may still be prohibited from sharing that information.) This non-retaliation provision would have been particularly helpful to Lilly Ledbetter, because Goodyear prohibited employees from discussing or sharing their wages. This policy delayed her discovery of the discrimination against her by more than a decade.
- **Improve Equal Pay Remedies:** The bill would deter wage discrimination by strengthening penalties for equal pay violations by providing women with a fair option to proceed in an opt-out class action suit under the Equal Pay Act, and allowing women to receive punitive and compensatory damages for pay discrimination. The bill's measured approach levels 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. For this reason, AAUW would strongly oppose any efforts to cap damages.
- **Increase Training, Research and Education:** The legislation would authorize additional training for Equal Employment Opportunity Commission staff to better identify and handle wage disputes. It would also aid in the efficient and effective enforcement of federal anti-pay discrimination laws by requiring the EEOC to develop regulations directing employers to collect wage data, reported by the race, sex, and national origin of employees. The bill would also require the U.S. Department of Labor to reinstate activities that promote equal pay, such as: directing educational programs, providing technical assistance to employers, recognizing businesses that address the wage gap, and conducting and promoting research about pay disparities between men and women.
- **Establish Salary Negotiation Skills Training:** The bill would create a competitive grant program to develop salary negotiation training for women and girls.
- **Improve Collection of Pay Information:** The bill would also reinstate the Equal Opportunity Survey, to enable targeting of the Labor Department's enforcement efforts by requiring all federal contractors to submit data on employment practices such as hiring, promotions, terminations and pay. This survey was developed over two decades and three presidential administrations, was first used in 2000, but was rescinded by the Department of Labor in 2006.