

Fact Sheet

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The Wage Gap Should Not Be Used To Justify The Paycheck Fairness Act

*Observable Differences Between Men and Women Account for Most of the Wage Gap
Members of Congress Are No More Discriminating Than Any Other Employer*

By D. Mark Wilson

Recent reports on the "raw" wage gap that exists at the White House and many Senate offices, including three of the five female Senators who support the Paycheck Fairness Act, vividly illustrates the fallacy of using the raw wage gap to enact such legislation.¹ The compensation that women and men earn can vary significantly for a wide variety of reasons that have nothing to do with discrimination. The fact that the raw wage gap in Senator Patty Murray's office, Senator Dianne Feinstein's office, and the White House is 35.2 percent, 41.0 percent, and 18.3 percent respectively is probably due to differences in education, experience, ability, and a multitude of other factors that go into every employer's compensation decisions.² They are no more discriminating than any other employer, yet the legislation they are promoting, the Paycheck Fairness Act, would open up employers to unlimited compensatory and punitive damages for many legitimate pay practices even where there is no evidence of intentional discrimination.

The legislation which has been described by the *Washington Post* as a bill that would "remove, rather than restore, a sense of balance to the law [against pay discrimination]"³ would also ease restrictions on commencing equal pay class action lawsuits, limit defenses an employer could raise to justify wage differentials in equal pay claims, including the use of "market rates" in making compensation decisions, and permit plaintiffs to bring equal pay claims based on wage differentials with employees located in different geographic locations.

Yet according to a 2009 Department of Labor study, "despite [the gains women have made over the past 30 years] the raw wage gap continues to be used in misleading ways to advance public policy agendas without fully explaining the reasons behind the gap."⁴ The report found that "observable differences in the attributes of men and women ... account for most of the wage gap" and that "the raw wage gap should not be used as the basis to justify corrective action. Indeed, there may be nothing to correct."⁵

Moreover, there are very strong laws involving gender pay discrimination already in place. Any debate about changing these laws should, at the very least, recognize the significant protections already guaranteed:

- Since 1963, the Equal Pay Act has prohibited paying women less for performing the same job with the same level of qualifications and experience, and victims of pay discrimination can recover lost wages, liquidated damages (i.e., double the amount of lost wages) and attorney's fees for a violation of the Act.
- Any person who believes they have been subject to pay discrimination can either bring suit on their own or file a complaint with the Equal Employment Opportunity Commission, which can then prosecute the employer; and
- Under Executive Order 11246, the Department of Labor's Office of Federal Contract Compliance Programs proactively audits federal contractors' pay practices for pay discrimination without any employee having to file a complaint.

During the past three decades, women have made important gains in the workplace and in pay equity, including increased labor force participation, substantial gains in educational attainment, employment growth in higher paying occupations, and significant gains in real earnings relative to men.⁶ In 2010, women accounted for 55.4 percent of all undergraduate college students and 56.5 percent of graduate students.⁷ After reviewing the economic research on the wage gap, the Department of Labor reached "the unambiguous conclusion that the differences in the compensation of men and women are the result of a multitude of factors and that the raw wage gap should not be used as the basis to justify corrective action." Rather than pass additional legislation that is unlikely to reduce the wage gap, policymakers should focus on policies that generate faster economic growth, which would generate rising wages and more opportunities for all workers.

¹ The "raw" wage gap simple compares the median earnings of men and women without accounting for legitimate differences. See: Andrew Stiles, "Senate Dems Betray Lilly, Senate Democrats Pay Female Staffers Less Than Male Staffers," *The Washington Free Beacon*, May 24, 2012, available at: <http://freebeacon.com/senate-dems-betray-lilly/>. See also: Andrew Stiles, "Hostile Workplace, Obama White House Pays Women Less Than Men, Records Show," *Washington Free Beacon*, April 11, 2012, available at: <http://freebeacon.com/hostile-workplace/>.

² *Id.*

³ Two Sides of Fair Pay, *The Washington Post*, Editorial, January 15, 2009, A-18.

⁴ CONSAD Research Corporation, "An Analysis of Reasons for the Disparity in Wages Between Men and Women," Department of Labor Contract Number GS-23F-02598, Task Order 2, Subtask 2B, January 12, 2009, available at: <http://www.consad.com/content/reports/Gender%20Wage%20Gap%20Final%20Report.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ Bureau of Census, School Enrollment, 2010, Table 5, available at: <http://www.census.gov/hhes/school/data/cps/2010/tables.html>.