

The gender pay gap: Are you contributing to it?

Equal pay for women has been the law of the land for 56 years. Congress passed the federal Equal Pay Act in 1963. So why do we have a gender wage gap? The answer is not simple. Few employers consciously decide to pay women less, but economic realities allow them to. In many cases, employers pay women less simply because they can. But the legal conditions that allow them to do that are changing.

The past is never dead...

Many women work for less pay than men because they started at a lower rung of the pay scale. Even if they move up in lockstep with their male counterparts, they are still toiling for less.

This scenario played out for Lilly Ledbetter, a manager at a Goodyear Tire plant in Alabama. Most of the positions comparable to hers were held by men. At first, her pay was in line with most of her cohort. At one point an evaluation that placed her well below her male counterparts set her on a lower pay path. As time went on, she lagged farther and farther behind the male managers. She did not know her pay was less until she received an anonymous note spilling the beans.

She filed suit against her employer. Goodyear payroll records revealed that she was earning 87 cents for every dollar that the lowest male in her position earned. Compared to the highest male in the position, the figure fell to just over 71 cents.

Her suit ultimately went to the Supreme Court. There, the majority ruled Ledbetter lost her right to sue by waiting too long. That was because the discriminatory act, the biased evaluation, occurred more than 180 days before the suit was filed. Congress later passed the Lilly Ledbetter Fair Pay Act of 2009. The law made each bias-tainted paycheck a new violation, restarting the 180-day clock. Employers now face lawsuits over pay decisions made decades ago, though back pay is limited to two years of underpayments.

...It's not even past

The Ledbetter suit highlighted the predicament many women find. They don't know they are being paid less. If they discover it at all it's years after their male counterparts began out-earning them. The cumulative effect on earnings and retirement benefits is tremendous.

The common practice of asking applicants for a salary history often reinforces women's place on the lower salary rungs. So, women who were poorly paid at a previous employer will be at their new job as well.

In response, [18 states](#) have passed bans on asking for a salary history. Cities and municipalities have also joined the trend. In reaction, two states, Michigan and Wisconsin, have banned the ban. In those states, no local government may pass a salary history ban. In other words, those legislatures don't want employers subject to multiple local rules on salary history.

Salary history ban advocates argue bans help even the playing field. By not asking about past pay, applicants can negotiate better pay based on their skills. Past discrimination based on sex then doesn't determine starting pay in a new job.

Is there really a wage gap?

Some have argued that the wage gap is a myth. These wage gap myth proponents argue men simply have jobs that pay more. They point out that when men and women in the same job are compared, the wage gap narrows considerably.

For example, a study conducted by [payscale.com](https://www.payscale.com) showed that on the same job women earn 98 cents for every dollar men earn. The same study showed a general wage gap, comparing median salaries of men and women, at 79 cents to the dollar.

How can these be reconciled? In most high paying professions, men outnumber women considerably. In other words, women do not get promoted in the same numbers men do.

Further, the wage gap is much higher in those high paying professions. For example, female attorneys earn 62 cents for every dollar male attorneys earn, despite the profession being 52% female. Female doctors earn just over 80 cents for each dollar male doctors earn. The figure for specialists sits just over 75 cents.

Studies also show that women do not ascend to management positions in equal numbers to men. In fact, the gender wage gap increases with workers' age. The change relates to the positions employees hold at those ages. Most workers start out in non-supervisory positions and the differences between men and women are minimal. Changes begin when workers advance to supervisory positions. Among workers 30-44, 47% of men move into management compared to 40% for women. After age 45, the numbers shift to a 57-41 male advantage. At the very top, 8% of males become executives compared to only 3% of women.

Minimum wage and low wage positions

Ideally, minimum wage should be an equalizing factor, a floor below which no worker sinks. In fact, the gender wage gap is highest in low-paying jobs. One huge contributing factor is race. Women of color face the largest wage gap of any. African-American, Native American and Hispanic women earned 74 cents on the male dollar in the [payscale.com](https://www.payscale.com) study. Only Asian women earned more than men at \$1.02 per male dollar.

Equal opportunity remains elusive for most women. Women are more likely to leave the workforce for short periods for childbirth or caring for a family member. Having an advanced degree offers little advantage to women also. For example, a woman holding a Masters of Business Administration (MBA) faces a gender wage gap of 80 cents.

New trends

In addition to salary history laws, states are revisiting their pay equity legislation. For example, Alabama never had a pay equity law until this year. Governor Kay Ivey signed the Clark-Figures Equal Pay Act into law on June 11. Colorado put teeth into their equal pay law by removing enforcement authority from its Division of Labor Standards and Statistics. Now, employees have the right to file equal pay lawsuits in state court.

States are not the only governments getting into the action. Sixteen cities and municipalities across the country now have salary history bans as well.

Employer responses

Even small employers can take steps to address the gender wage gap. At the same time the employer is protecting itself from possible legal liability. A quick examination of wages for each position should reveal any glaring inconsistencies. Employers should establish pay ranges for each position and determine what factors raise or lower the employee's wage within that range. Factors such as performance, education, and time on the job are acceptable. Factors such as gender, national origin, or race are illegal and should not be used. The more objective the measure the better.

The salary range approach dispenses with the salary history question and most negotiations. The employee will be paid according to her relevant qualifications relative to others performing the same work.

Employers with greater resources who suspect a gender pay equity issue should contact counsel. A firm with experience in employment law will be able to conduct a pay equity audit. This audit will apply statistical measures to pay practices and develop remedies for disparities. Because the law firm is retained, the results are covered by attorney-client privilege.

These proactive approaches allow employers to fix gender equity pay issues before they become legal headaches.