

ABSTRACT

THE GENDER WAGE: A POLICY ANALYSIS OF
THE PAYCHECK FAIRNESS ACT

By

Claudia Gonzalez

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Despite the significant participation of women in the workforce, the gender wage gap has failed to close. The policy analysis examines the Paycheck Fairness Act (PFA), a bill first introduced to Congress in 1963 and defeated on September 15, 2014. The PFA would help secure equal pay for equal work between males and females. The analysis of the PFA is based on a modified version of David Gil's framework. The analysis found that the gender gap persists across race and ethnicity, all levels of educational attainment, and careers. The PFA is the latest legislation addressing pay equity, following a succession of bills such as the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 and the Lilly Ledbetter Act of 2009.

THE GENDER WAGE GAP: A POLICY ANALYSIS OF
THE PAYCHECK FAIRNESS ACT

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Committee Members:

Mimi Kim, Ph.D. (Chair)
Julie O'Donnell, Ph.D.
Steve Wilson, Ph.D.

College Designee:

Nancy Meyer-Adams, Ph.D.

By Claudia Gonzalez

B.A.S.W., 2012, California State University, Long Beach

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CHAPTER 1

INTRODUCTION

Problem Statement

Over the past several decades, women have dramatically reshaped their role in the nation's labor force (U.S. Department of Commerce Economics and Statistics Administration, 2011). Today, women are more likely to seek work outside the home. Women are also employed in various occupations and are more likely to work year-round (U.S. Department of Commerce Economics and Statistics Administration, 2011). Women are 3 times more likely to work in administrative support jobs than men; relatively few women have non-traditional employment opportunities in construction, production, or transportation jobs (U.S. Department of Commerce Economics and Statistics Administration, 2011).

Today, women make up almost half of the American work force, with 61% in 1999 compared to 33% in 1950 (U.S. Department of Commerce Economics and Statistics Administration, 2011). According to Hegewisch and Hartmann (2014b), in 2013 there were 1 million more female full-time year round workers than in 2012. However, women are also more likely than men to work part time, defined as less than 35 hours per week, on a sole or principal job (Kimmel & Amuedo-Dorantes, 2004; U.S. Bureau of Labor Statistics, 2013). In 2009, 24% of employed women (age 20 and older) worked part time,

compared to 11% of men (U.S. Department of Commerce Economics and Statistics Administration, 2011).

Despite women's current role in the job market, a gender gap between female and male wages still exists today. The ratio of women's to men's median annual earnings was 78.3% for full-time/year-round workers in 2013 (Hegewisch & Hartmann, 2014b). When measured annually, women's median annual earnings in 2013 were \$39,157 compared with \$50,033 for men (Hegewisch & Hartmann, 2014b). In the workplace, in 2012, 62% of women compared to 56% of men were paid hourly (U.S. Bureau of Labor Statistics, 2013). Women who were paid hourly rates had median hourly earnings of \$11.99 compared to men at \$13.88 (U.S. Bureau of Labor Statistics, 2013).

Purpose Statement

The purpose of this thesis was to conduct a policy analysis of the Paycheck Fairness Act, most recently reintroduced on September 15, 2014, when it failed to pass. The purpose of the Paycheck Fairness Act is to help secure equal pay for equal work between males and females. The Act would allow for revisions of previous enacted laws.

In this policy analysis the following research questions will be examined:

1. What is the purpose of the Paycheck Fairness Act? What does the Act address that previous pay equity acts did not?
2. What are the supporting and opposing arguments for the Paycheck Fairness Act?
3. What are the expected outcomes from the Paycheck Fairness Act?
4. What are future implications for the Paycheck Fairness Act as it failed to pass?

Definitions

Gender wage gap: The difference between hourly and annual pay to women and men for doing the same or comparable work (Toutkoushian & Hoffman, 2002).

Wage discrimination: Unequal treatment in payment of wages based upon the employee's demographic or social category.

Gender wage discrimination: Occurs when an employer pays a woman less than a man substantially for equal work (Kunze, 2000).

Pay equity: The average pay difference between two groups of workers that would exist after taking into account the difference in their qualifications that should affect pay (Barbezat, 2002).

Comparable worth: Is also known as equal pay for jobs of equal value. It refers to a set of remedies designed to raise the wages of jobs that are undervalued at least partly because of the sex or race of the workers who hold those jobs (Hartmann & Aaronson, 1994).

Retaliation: The law defines retaliation as an employer taking adverse action against an employee opposing an unlawful employment practice or participating in any investigation, proceeding, or hearing related to such a practice (Cortina & Magley, 2003).

Equal Employment Opportunity Commission: The Equal Employment Opportunity Commission (EEOC) is the federal agency charged with assuring that the provisions of Title VII and the Equal Pay Act are enforced (Saltoun, 1983).

Legislation: The preparation and enactment of laws by a legislative body through its lawmaking process (Cornell University Law School, n.d.).

Litigation: The process of resolving disputes by filing or answering a complaint through the public court system (Cornell University Law School, n.d.).

Multicultural Relevance

The gender wage gap significantly affects women of color. Firstly, women of color make less than their male counterparts. According to the Hegewisch and Hartmann (2014b), the earnings for women by race and ethnicity are the following; Whites (77.4%), Asian Americans (75.1%), African Americans (84.1%) and Hispanics (93.5%). As seen from the above statistics the wage gap not only exists among gender, but taking into account race and ethnicity, the gap widens. In addition, women of color in particular take jobs that require lower skills and thus pay less (Tomaskovic-Devey, 1993). Studies have shown the more women and people of color fill an occupation the less it pays (Clark, 2006; Hegewisch & Hartmann, 2014a). This also leads women to take on jobs that are less desirable. Lastly, women of color acquire jobs that are disadvantaged in terms of both their status composition and job power attributes (Tomaskovic-Devey, 1993). By having a better understanding that the wage gap exists across race and ethnicity, more appropriate policies can be developed to minimize the discrimination.

Relevance to Social Work

The National Association of Social Work (NASW) Code of Ethics for the social work profession sets standards and principles. The Paycheck Fairness Act relates to the social justice principle from the NASW Code of Ethics framework. The NASW Code of Ethics states, social workers promote social justice and social change with and on behalf of clients (2008). While working with clients or a group of individuals, a social worker strives to end discrimination, oppression, poverty, and other forms of social injustice

(NASW, 2008). When working with individuals it is important to, enhance the well-being and help meet the basic human needs of all people (NASW, 2008).

The social work profession is a profession committed to ending discrimination. In order to end gender discrimination, the social work profession needs to address gender inequality including pay disparities as a long-term form of injustice. Pay inequity is a form of gender inequality that has not been resolved despite the significance of women in the workforce. The passage of previous legislation aimed to address this issue has not entirely eliminated the gender wage gap.

It is important that social workers become aware of current policies and legislation regarding the gender wage gap to advocate for gender equality. Understanding the benefits and disadvantages of policies are essential when advocating for those in need. By social workers becoming aware of current legislation, they can also keep their clients and the public informed. Lastly, social workers can also be a critical force in lobbying for or against proposed legislation related to ending the gender wage gap.

CHAPTER 2
LITERATURE REVIEW
Gender Wage Gap

History demonstrates that, although earnings between women and men have narrowed over time, the gender wage gap still remains today (U.S. Department of Commerce Economics and Statistics Administration, 2011). These changes were seen in 1950 to 1960 when women earned 59 to 64 cents for every dollar earned by their male counterparts (Kulow, 2013). In 1990, this figure had risen to 72 cents; by 2000, it had moved to 74 cents, a gain of only 2 cents in a decade (Kulow, 2013). In 2013, women continue to earn only about 78.3 cents on the dollar earned by men (Hegewisch & Hartmann, 2014b).

The gender gap persists across race and ethnicity. Factors that contribute to the gender pay gap between racial and ethnic groups include disparities in earning levels, occupations, and educational differences (Kilgour, 2013). Women of all racial and ethnic groups earn less than men of the same group, with the female/male earnings ratios ranging from African Americans (84.1%) and Hispanics (93.5%; Hegewisch & Hartmann, 2014b). When comparing women's weekly median earnings to White men at \$884, Hispanic women have the lowest median earning at \$541 and African American women earn \$606 (Hegewisch & Hudiburg, 2014c).

Furthermore, the occupations performed by women of color affect their income. For instance, African American and Hispanic women are more likely than White men to work in jobs that pay at or below the poverty minimum wage (Elmelech & Lu, 2004; Hartmann, Hayes, & Clark, 2014; National Women's Law Center, 2013a). Also, the median earnings of Hispanic women are lower than the federal poverty level for a family of four in transportation and maintenance occupations (Hegewisch & Hudiburg, 2014c).

In addition, the wage gap may make it more difficult for women of color to advance their social economic status. According to an analysis, 26% of minority women live in families with income considered to be upper-middle-class, defined as income \$58,000 or more (National Women's Law Center, 2013a). Furthermore, women also face the challenges of providing for their families. In a study, 33% of African American women and 31% of Hispanic women reported having problems paying for their rent or mortgage in the past year (National Women's Law Center, 2013a). These all demonstrate the importance of closing the wage gap for women of color.

Women also earn less than men at each level of educational attainment. In 2009, women with a high school diploma earned about \$21,000 a year. This was less than men without a high school diploma or GED, who earned \$22,000 a year (Kulow, 2013). It is reported that women with an advanced degree earned about \$52,000 a year, which was less than the \$58,000 that men earned with a bachelor's degree (Kulow, 2013). When taking education into account, women with higher levels of education earned 74.9% of their male counterparts (Kilgour, 2013). The following illustrates the dramatic loss of earnings a woman can sustain over a working lifetime due to the wage

gap, a high school graduate can lose \$700,000; a college graduate can lose \$1.2 million; and a professional school graduate can lose \$2 million (Lerum, 2013).

The wage gap also exists when comparing women and men at the same level of careers. Male dominated occupations tend to pay more than female-dominated occupations with similar skill levels, particularly in jobs that require higher education (Hegewisch & Hudiburg, 2014c). In 2012, women's median weekly earnings were \$993 compared to men who made \$1,387 working full time in management, business, and financial operation jobs (U.S. Bureau of Labor Statistics, 2013). In an occupation predominantly performed by women, female social workers median weekly earnings were \$818 compared to males who made \$978 (Hegewisch & Hudiburg, 2014c).

According to Hegewisch and Hartmann (2014b), from the Institute for Women's Policy Research, for the gender wage gap to close, women's real wages must rise faster than men's. Just looking at low-skilled female dominated occupations, for a work year of 2,080 hours, women would earn \$6,950 more if they earned the same hourly wage as men in those occupations (Hegewisch & Hartmann, 2014a). However, as addressed by Hegewisch and Hartmann (2014b), if the pace of change in the annual earnings continues at the same rate as it has since 1960, it will take another 45 years, until 2058, for men and women to reach parity.

There is also inequality between jobs and occupations. This gender inequality is due, in part, to a cultural devaluation of work done by women (England, 1992; Huffman, 2004; Tam, 1997). Women also face hiring discrimination that restricts women's access to some jobs and results in occupational crowding that drives down pay in female-dominated jobs (Bergmann, 1974; Huffman, 2004). Many studies document men's

advantages in high-status jobs and occupations, including physicians, attorneys, and professional workers in high technology fields (Huffman, 2004; Hull & Nelson, 2000; Kay & Hagan, 1995; Ranson & Reeves, 1996).

Historical Efforts Addressing the Gender Wage Gap

The gender wage gap dates back to colonial times. Household domestic and caregiving tasks were viewed as unskilled labor that required no particular education or training. Therefore, women's work was deemed worth less than men's work (Mackinnon, 2014). It was also widely believed that women did not need to earn as much as men because they were not supporting a family as were men. Women's wages were seen as supplementary income (Kulow, 2013; Perry & Gundersen, 2011). If women worked, it was during the period between adolescence and marriage. Once a woman married and began a family, she rarely continued to work outside the home on a full time basis (Kulow, 2013).

Prior to World War II, women continued to face discrimination as newspapers published separate job listings for men and women. Employment advertisements sometimes had identical jobs under the male and female listings with unequal pay scales (Perry & Gundersen, 2011). In the workplace, positions with higher paying salaries were also allocated to men (Perry & Gundersen, 2011).

During World War II, America witnessed a dramatic rise in the participation of women in the job market (MacKinnon, 2014; Perry & Gundersen, 2011). During World War II, the National War Labor Board regulated wartime wages by requiring equal pay for equal work (De Lange, 2007; Hartmann & Aaronson, 1994; Lerum, 2013). The wartime focus on pay equity heightened women's awareness of the gender-based wage

gap (De Lange, 2007). By 1950, 28% of adult women worked outside the home, half of whom worked part-time (Kulow, 2013; MacKinnon, 2014). Also, in the workplace, women held jobs and not careers.

The women's movement was vibrant between the 1960s and 1980s. The women's movement was composed of a wide variety of groups of women coming from different backgrounds and experiences. The women's movement focused on a wide range of issues pertaining to employment rights, including the concept of comparable worth or equal pay for work of equal value (De Lange, 2007; Kilgour, 2013). In addition, the women's movement also pushed for the passage of the Equal Rights Amendment (ERA).

Furthermore, the women's rights movement established formal national organizations to pursue economic and legal issues through changes in legislation, the courts and lobbying (De Lange, 2007). The National Organization for Women (NOW) was the first organization to be formed, out of which many splinter groups developed (De Lange, 2007; Kilgour, 2013). In 1961, the organization arose through the establishment of the Presidential Commission on the Status of Women by John F. Kennedy. Kennedy's Commission also helped spawn a variety of governmental agencies, including the Citizens Advisory Council on the Status of Women, the Interdepartmental Committee on the Status of Women, and various state commissions (Kilgour, 2014; De Lange, 2007). These groups began to provide a forum for discussion of women's rights, which advocated for women to voice their opinions across policy arenas.

Federal Legislation and the Gender Wage Gap

The Fair Labor Standards Act of 1938

The constitutional revolution of the New Deal produced the Fair Labor Standards Act (FLSA) of 1938, the first national labor standards law in the United States (Mettler, 1994; Tait, 1945). President Franklin D. Roosevelt signed into law the FLSA on June 25, 1938 (Epstein, 1938; Forsythe, 1939; Mettler, 1994; Tait, 1945). The FLSA established minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State and local governments (Mettler, 1994; Nadasen, 2012). The provisions made to the act were minimum wage rates of 25 cents an hour in 1938 increasing to a maximum of 40 cents an hour by 1945 (Epstein, 1938; Forsythe, 1939; Mettler, 1994; Tait, 1945).

The FLSA was important as women continued to increase their numbers in the work force as they had in the previous decades. Also the female work force desperately needed measures such as minimum wage because most occupations employing women were paid low wages (Mettler, 1994; Nadasen, 2012). During the 1930s, many White women who were married, middle-class and middle-aged obtained jobs when their husbands became unemployed (Mettler, 1994). During this time, women also continued to find employment in a narrow range of occupations that tended to offer the lowest pay and fewest opportunities for advancement as well as long hours and difficult working conditions. Prior to the FLSA, there were several occupational categories where women workers were excluded from coverage. Those occupations included women workers in laundries, hotels, hairdressing, restaurants, and domestic services (Mettler, 1994; Nadasen, 2012).

The Civil Rights Movement and the Women's Movement were politically influential, and helped reconstruct cultural ideas of work, race and gender regarding agricultural and domestic labor (Nadasen, 2012). Also, a coalition of women's organizations such as the Women's Trade Union League and the General Federation of Women's Clubs joined the National Consumers League (NCL) for state-level wage and hourly laws for women (Mettler, 1994).

The Equal Pay Act of 1963

On June 10, 1963, the Equal Pay Act (EPA) was signed into law by President John F. Kennedy (Kilgour, 2013; Kulow, 2013; Perry & Gundersen, 2011; Raisian, Ward, & Welch, 1986; Spizman, 2001). When the EPA was passed, Congress recognized that legislation promoting economic justice for women was long overdue. The EPA was enacted for three significant reasons. First, discriminatory pay rates negatively affected the general purchasing power and living standard of employees (Brenton, 2011; Lerum, 2013). Second, employers who engaged in discriminatory pay had an unfair benefit over those who did pay men and women equally (Lerum, 2013). Lastly, Congress was concerned that low levels of production could result from a lack of morale due to low wages (Brenton, 2011; Lerum, 2013).

The EPA amended the FLSA of 1938, which was the first Act to establish minimum wage, overtime pay, recordkeeping and youth employment standards affecting employees in the private sector and in Federal, State, and local governments (Brenton, 2011; Kilgour, 2013; Raisian et al., 1986). The EPA established that wage discrimination based on sex was a violation of the FLSA (Lerum, 2013). The legislation created an objective standard under which sex-based wage discrimination could be determined. It

prohibited employers from discriminating against employees by paying higher wages to members of the opposite sex who were performing equal work on jobs that require equal skill, effort, and responsibility (Perry & Gundersen, 2011; Porter & Vartanian, 2011; Raisian et al., 1986; Spizman, 2001). Under the Act, an employer could only justify pay disparity based upon one of four permitted factors, seniority, merit, quality or quantity of work, or any factor other than sex (Perry & Gundersen, 2011; Spizman, 2011).

Title VII of the Civil Rights Act of 1964

A year after the passage of the EPA in 1963, another landmark law was passed. In 1964, President Lyndon B. Johnson signed into law Title VII of the Civil Rights Act (Brenton, 2011). Title VII of the Civil Rights Act of 1964 prohibited discrimination with respect to compensation and applied legally recognized categories of discrimination to race, color, religion, national origins, and sex (Brenton, 2001; Kulow, 2013; Suh, 2010). Title VII also created the Equal Employment Opportunity Commission (EEOC) as the chief governmental agency to enforce the provision of Title VII (Brenton, 2011). When the law was introduced, it did not have the gender provision. It was later added under extraordinary conditions. Southern Congressman Howard Smith from Virginia added sex to the wording of the Civil Rights Act, convinced that including women in the proposed Act would kill the bill (Brenton, 2011; De Lange, 2007; Guy & Fenley, 2014). However, the bill was passed in its entirety with gender as a last minute addition.

Title VII of the Civil Rights Act of 1964 also had another significant component related to the gender wage gap, the Bennett Amendment. The Bennett Amendment, sponsored by Utah Republican Wallace F. Bennett, was a provision in Title VII of the United States Civil Rights Act of 1964 incorporating specific terms of the EPA of 1963

(Billiterri et al., 2008). With the passage of the Bennett Amendment, Congress attempted to clarify the relationship between the Equal Pay Act and Title VII. Through the Amendment, the four categories of permissible sex-based wage differentiations authorized by the EPA could be asserted as affirmative defenses to a Title VII claim. This was first successfully applied in the *Washington v. Gunther* case (Saltoun, 1983).

Title VII of the Civil Rights Act also permitted the recovery of compensatory damages. The Act brought a huge limitation for wage claims. Under Title VII, a victim had to bring wage claims within 180 days of suffering, as opposed to being based upon the time that the victim was first aware of wage discrimination (Coluccio, 2010; Guy & Fenley, 2014; Kulow, 2013). This later became a problem because women often did not learn of the discrimination soon after it occurred, thereby making them ineligible to file claims under Title VII.

Lilly Ledbetter Fair Pay Act of 2009

The Lilly Ledbetter Act, the first law signed by President Obama in 2009, amended the 180-day limitation of Title VII. This Act was named after and based upon a court case involving Lilly Ledbetter. In 1979, Lilly Ledbetter began working as an overnight supervisor at the Goodyear tire production plant in Gadsden, Alabama (Coluccio, 2010; Gonnello, 2009; Kulow, 2013; Sorock, 2010; Zisk, 2009). During the course of Ledbetter's employment at Goodyear, approximately 80 people held the same position, but only a handful were women (Coluccio, 2010; Sorock, 2010). Ledbetter had complained to the company about how she was treated by her male supervisors, and filed a complaint with the EEOC. For years, Ledbetter was paid less than male employees working at the same level. In 1997, Ledbetter was the only female manager at the plant,

but was earning less than the lowest-paid male employee in the department (Coluccio, 2010; Sorock, 2010; Zisk, 2009).

When Ledbetter started working with Goodyear, all the managers were paid the same amount regardless of gender so she knew she was making the same amount as the male managers. When the company moved to a new performance-based system, things changed. For the first time, the new pay system allowed people doing the same jobs to get paid differently, and the company kept all compensation information confidential (Coluccio, 2010). Over the next several years, Ledbetter's pay rate changed. However, she was under the impression that she was not earning as much as the male employees. Eventually, Ledbetter obtained the proof she needed when someone anonymously left a note showing what she got paid compared to three other male managers. Viewed annually, Ledbetter earned anywhere from 15-40% less than her male counterparts (Coluccio, 2010).

In 1998, Ledbetter filed another complaint of discrimination with the EEOC. Ledbetter was nearly 70 years of age when she filed the complaint, when they transferred her from her management job to a job requiring her to lift 80-pound tires for an entire shift (Coluccio, 2010). Filing a claim in federal court, Ledbetter won a jury award of over 3 million dollars in back pay and compensatory damages, but later the trial judge reduced the amount to \$300,000 statutory cap under Title VII (Coluccio, 2010). In a five to four decision authored by Justice Alito, the Supreme Court held that Ledbetter's claim was untimely because it relied on intentional discriminatory pay decisions that occurred outside of the 180-day charging period under Title VII (Coluccio, 2010; Gonnello, 2009; Kulow, 2013; Zisk, 2009). Democrats immediately took up

legislation based upon the Court's decision. This led to the first version of the Lilly Ledbetter Pay Act, the Fair Pay Restoration Act that was cosponsored by then Senator Obama in January 2008 (Coluccio, 2010). The bill eventually passed the House but died in the Senate, where Republicans, such as Senator John McCain publicly opposed the bill as anti-business (Coluccio, 2010).

In 2009, after President Obama's election, the first bill he signed into law was the Lilly Ledbetter Fair Pay Act (Coluccio, 2010; Sorock, 2010; Zisk, 2009). The Act directly answered the employment discrimination case of Ledbetter v. Goodyear Tire & Rubber Co. The Lily Ledbetter Act was enacted to amend Title VII in a narrow fashion by addressing the 180-day time constraint that limited the ability of employees to file claims (Coluccio, 2010; Gonnello, 2009). Under the new law, employees have the right to file and claim under Title VII within 180 days of their most recent illegal paycheck, considering each paycheck as a new unlawful discriminatory act (Coluccio, 2010; Gonnello, 2009; Kulow, 2013; Zisk, 2009). As a result, if an employee is paid less than a co-worker due to gender discrimination, he or she may legitimately file a claim within 300 days of any paycheck (Sorock, 2010).

The Paycheck Fairness Act

The most recent legislation introduced to bring closure to the gender wage gap is the Paycheck Fairness Act (PFA). In 1997, Representative Rosa DeLauro first introduced the legislation to Congress. The PFA sought to be a "common-sense solution to the lingering problem of pay inequity" (Lerum, 2013, p. 223). The legislation was passed in the House of Representatives by the first vote taken in the 111th Congress, but it failed to pass the Senate on a 58-41 vote in November 1997 (Lerum, 2013).

In 2005, both Representatives Rosa DeLauro and Senator Hilary Clinton re-introduced the PFA (“Women’s Pay Equity,” 2014). The PFA was introduced to increase the penalties for equal pay violations. In 2009, the bill passed in the House of Representatives, but in November 2010, the Senate failed to ratify the bill (Lerum, 2013). Since that time, the Act has repeatedly failed passage with the latest defeat occurring on the floor of the Senate in September, 2014.

The PFA would allow for revisions of the Equal Pay Act of 1963. One of the revisions strengthens already existing legal sanctions against wage discrimination by imposing consequential penalties (Lerum, 2013). It would make employers who violate sex discrimination prohibitions liable in a civil action for either compensatory or (except for federal government) punitive damages (S. 84, 2013-2014). In addition, a no retaliation clause in the legislation protects employees in the event they share wage and salary information with other employees (Lerum, 2013). Lastly, the bill would discourage employers from using numerous reasons to justify a difference in pay between a male and female employee (Lerum, 2013). The PFA would take an important step to further end salary secrecy, empowering women to better root out unequal pay (Institute for Women’s Policy Research, 2013).

Litigation Relevant to the Gender Wage Gap

Since the passage of the EPA of 1963, legal advocates have used litigation to uphold and expand gender pay legislation. In the 1970s, several key lawsuits tested the strength of new legislation. In 1970, the case *Schultz v. Wheaton Glass Co.* held that male selector-packers received a pay rate of 10% higher than female selector-packers although both performed identical work (Perry & Gundersen, 2011; *Schultz v. Wheaton*

Glass Co., 1970). This ruled that jobs needed to be substantially equal, but not identical to fall under the EPA (Perry & Gundersen, 2011; Raisian et al., 1986; *Schultz v. Wheaton Glass Co.*, 1970). Additionally, in 1972, in *Hodgson v. Miller Brewing Co.*, the Circuit Court found Miller Brewing Company to be in violation of the EPA by paying lower wages to female employees working in one laboratory as opposed to male employees working in another laboratory (Savage, 1982).

In 1974, *Corning Glass Work v. Brennan* held that the employer violated the EPA by paying male night inspection workers at higher base wages than female inspection employees (*Corning Glass Work v. Brennan*, 1974; Perry & Gundersen, 2011; Porter & Vartanian, 2011; Raisian et al., 1986). It was ruled that employers cannot justify paying women lower wages based upon what women would traditionally receive under the going market rate (*Corning Glass Work v. Brennan*, 1974; Perry & Gundersen, 2011; Porter & Vartanian, 2011). In the Court's view, Corning did not intend to compensate male night-shift inspectors for the additional burdens of night work as the company had claimed (Porter & Vartanian, 2011).

Cases that occurred a few years later were the *County of Washington v. Gunther* in 1981 and *Wal-Mart Stores, Inc. v. Dukes* in 2011. In *County of Washington v. Gunther*, prohibited the County of Washington, Oregon from paying female guards in the female section of the county jail lower wages than it paid the male guards in the male section (De Lange, 2007; Saltoun, 1983; Valdez, 2014). In a five to four decision, the Supreme Court held that despite the provisions of the Bennett Amendment to the Title VII, such claims may be brought under the Title VII absent compliance with the Equal Pay Act's requirement of equal work (De Lange, 2007; Saltoun, 1983). This case was

another victory for advocates of gender pay equity. With this decision, the Supreme Court recognized the broad remedial scope of Title VII and extended it beyond the narrow confines of the Equal Pay Act (Saltoun, 1983).

Wal-Mart Stores, Inc. v. Dukes occurred half a century after the passage of the Civil Rights Acts of 1964 (Lerum, 2013; Valdez, 2014). In this case, Dukes and five other female Wal-Mart employees alleged discrimination on the basis of gender and filed a lawsuit against Wal-Mart stores. Most recently in December 2013, a three-judge panel of the U.S. 9th Circuit Court of Appeals reaffirmed its certification as a class-action lawsuit, but left the door open for Wal-Mart to ask for a rehearing (Billiterri et al., 2008; Lerum, 2013).

These cases represent some of the landmark cases in the history of the struggle for gender pay equity. The significant impact of these lawsuits demonstrates the important role litigation plays in upholding legislation. Cases such as Lilly Ledbetter also illustrate how litigation can shape new legislation and how political proponents and opponents can seize upon losses and victories in the courtroom to inform legislation in Congress.

Conclusions

The review of the literature provided the significance of the gender wage gap on women of color, educational attainment and occupations. It also included an overview of the historical efforts addressing the gender wage gap. In addition, to legislation that has significantly influenced women in the workforce. Lastly, a review of litigation that demonstrates the battle women have faced towards gender pay equity.

CHAPTER 3

METHODS

Study Design

The purpose of the study was to provide an in-depth analysis of the proposed legislation Paycheck Fairness Act (PFA). The study utilized primary and secondary documents related to the issue of pay equity and relevant federal legislation. The analysis is based upon a theoretical framework developed by Professor David Gil from Brandeis University adapted by Jimenez, Pasztor, Chambers, and Fujii (2015). The analysis included the following framework that provided a thorough evaluation of the problem, the objectives, values, expectations, target populations, effects and limitations on the policy.

Policy Analysis Framework

The following is the framework utilized in the analysis of the Paycheck Fairness Act:

Part I. The Social Problems Addressed by the Policy.

1. The problem(s) addressed by the policy.
2. The history of the problem(s) in the United States.

Part II. The Policy Objectives, Value Premises, and Target Populations.

1. The Policy Objectives.
2. The values underlying the policy objectives.

3. Target segments of the population at whom policy is aimed. The direct target of the policy in terms of size and other demographic characteristics. The indirect targets of the policy.

Part III. Expected Effects of the Policy.

1. The intended effects by lawmakers.

Part IV. Arguments Against the Paycheck Fairness Act.

1. The arguments made against the legislation.

Part V. Alternatives Policies.

1. An Alternative policy that would address the social problem discussed in the policy analysis more effectively while advancing social justice.

Sampling and Data Collection

The data utilized in this analysis was from both primary and secondary sources using literature related to the PFA. The primary sources included legislative documents and texts, federal hearings, policies, and government studies on the gender wage gap. The secondary sources included books, scholarly journal articles, law review articles, professional research reports and newspaper articles. Since this Act has not been legislated, academic sources were limited. The primary and secondary sources related to previous equal pay legislation including the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, the Title VII of the Civil Rights Act of 1964 and the Lilly Ledbetter Act of 2009 served as background information.

CHAPTER 4

POLICY ANALYSIS

This chapter is organized into the following sections. The first section is the social problem addressed by the Paycheck Fairness Act (PFA). The second section includes the policy objectives, value premises, and target populations. The third section is the expected effects of the policy. The fourth section expands upon policy arguments. Lastly, the chapter concludes with the alternative policies.

Part I. The Social Problems Addressed by the Policy

Problem Addressed

Women have entered the workforce in record numbers over the last 50 years. Despite the enactment of the Equal Pay Act of 1963, many women continue to earn significantly lower pay than men for equal work with current figures estimated to be 78.3 cents to the male dollar (Hegewisch & Hartmann, 2014b). Gender pay disparities are seen in both private and governmental sectors. Pay disparities continue to exist due to the lingering effects of past discrimination and failures of private sector and governmental policies to fully mitigate ongoing structural and cultural factors contributing to ongoing pay discrimination (Institute for Women's Policy Research, 2010).

The PFA, the policy being analyzed, addresses the social problem of persisting gender pay inequities in the workplace. Federal legislation would be aimed at bringing women's wages more closely in line with those of men by addressing gaps and

limitations in previous labor legislation including the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, the Title VII of the Civil Rights Act of 1964 and the Lilly Ledbetter Act of 2009.

History of the Policy

The Fair Labor Standards Act (FLSA) of 1938 was passed to regulate labor laws in the workforce. The FLSA established minimum wage, overtime, hours worked, record keeping and child labor (Mettler, 1994; Nadasen, 2012). The FLSA played a significant role during the time that women first entered the work force in large numbers. While the FLSA did not specifically address the gender wage gap, those advocating for passage of the FLSA recognized the benefits of minimum wage laws for women who were among the lowest paid workers (Mettler, 1994; Nadasen, 2012).

Four decades later, the Equal Pay Act (EPA) of 1963 was passed to amend the FLSA of 1938. The EPA was brought forth to give women more rights in the workforce. Unlike the FLSA, the EPA specifically addressed the wage gap disparity among men and women.

Soon after the passage of the EPA in 1963, the government passed Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act protects individuals against employment discrimination based on race, color, gender, religion and national origin (Billitteri et al., 2008; Kulow, 2013; Suh, 2010). Title VII of the Civil Rights Act also permitted the recovery of compensatory damages that led to a huge limitation for wage claims in the workforce. Under Title VII, a victim had to bring wage claims within 180 days of the wage discrimination, as opposed to the victim first becoming aware of the discrimination (Coluccio, 2010; Guy & Fenley, 2014; Kulow, 2013). Later, this was

recognized as a problem as women often did not learn of the wage discrimination soon after it occurred, making them ineligible to file a claim.

In 2009, President Barack Obama signed into law the Lilly Ledbetter Fair Pay Act (Sorock, 2010). The law was enacted in response to the employment discrimination case of Ledbetter v. Goodyear Tire & Rubber Co. The Lilly Ledbetter Act was enacted to amend Title VII by addressing the 180-day time constraint that limited the ability of employees to file claims (Coluccio, 2010; Gonnell, 2009).

In 1997, the PFA was first introduced in Congress by Representative Rosa DeLauro (Lerum, 2013). The purpose of the PFA has continued to be to strengthen the EPA of 1963 by amending policies addressed by previous legislation that would further promote fair pay for women. As detailed in Section II below, the PFA would enhance the remedies available for victims of gender-based discrimination and require employers to show that wage differences are job related, not sex-based, and are not driven by bias, but by business necessity.

In 2005, the bill was introduced by Representative Rosa DeLauro and Senator Hillary Clinton. The bill was reintroduced every year, finally passing in the House of Representatives on January 2009, but the Senate failed to ratify the bill in November 2010 (“Women’s Pay Equity,” 2014). In June 2012, the bill was introduced in the 113th Congress by Senator Barbara Mikulski. That same year the PFA once again was unsuccessful in the Senate by a 52 to 47 vote (“Women’s Pay Equity,” 2014). Later, an identical bill was introduced on January 2013, but failed to pass the Senate twice in April 2014 and September 2014.

Part II. The Policy Objectives, Value Premises and Target Populations

Policy Objectives

The PFA would amend the portion of the FLSA of 1938 known as the EPA. The PFA would provide more effective remedies to victims of discrimination in the payment of wages based on the provisions detailed in Section II below.

First, the PFA revises the exception to the prohibition for a wage rate differential on any other factor other than gender. This limits such factors to bona fide factors such as education, training, or experience. The PFA would define more narrowly the bona fide factor that allows for different pay in the same job. Under the new regulation, showing that differences in pay are caused by the factors other than sex is no longer sufficient. The Act would narrow the application of allowable wage differentials to only those proving a business necessity for which there is no alternative employment practice.

Second, the PFA revises the prohibition against employer retaliation for employee complaints or sharing of information. It prohibits retaliation for inquiring, discussing or disclosing the wages of the employee or another employee in response to a complaint, sex discrimination investigation, proceeding, hearing, action or an investigation by the employer (S. 84, 2013-2014). The PFA would enhance the employee's ability to learn about wage disparities and to assess whether they are experiencing wage discrimination (National Women's Law Center, 2013b). For instance, it took Lilly Ledbetter a decade to find out she was being paid less than a man. If she had the ability to ask other employees their pay she would of known of the discrimination earlier, and could of sought remedy without the fear of retaliation (Institute for Women's Policy Research, 2010). The fear of

retaliation leads many victims of pay and other discrimination to remain silent (National Women's Law Center, 2012).

The extent of pay secrecy in the workplace is on a national level. A survey from the Institute for Women's Policy research asked workers if there are policies at their workplace that discourage or prohibit sharing information about pay. About half of all workers, 51% of women reported that the discussion of salary information is either discouraged or prohibited and could lead to punishment (Institute for Women's Policy Research, 2014). On the contrary, most government agencies have step systems that make salary information public. On the public sector, 18% of women reported discouragement of salary discussions (Institute for Women's Policy Research, 2014). In the private sector, employers are more likely to control salary information; 62% of women reported that salary information in the private sector is secret (Institute for Women's Policy Research, 2014). Furthermore, employers who violate sex discrimination prohibitions can be liable in a civil action for compensatory and punitive damages. The cap on punitive and compensatory damages would also be lifted to what the courts deem appropriate.

Third, the PFA would facilitate class-action lawsuits. The current EPA states that only those women who affirmatively decide to join the class-action lawsuit shall be included in it. The PFA would include all female workers within an establishment in class-action lawsuits without their written consent (National Women's Law Center, 2013b). If female workers decide not to be a part of the class action, they would have to opt out. Due to this change class action lawsuits will likely be larger under the new provisions.

Other PFA provisions are related to training, research and data collection. Subject to the availability of funds, the Equal Employment Opportunity Commission (EEOC) and office of Federal Contract Compliance programs will be mandated to provide trainings to EEOC employees and affected individuals on matters involving wage discrimination (S. 84, 2013-2014). The Act also authorizes the Secretary of Labor and Education to make grants for negotiation skills training programs for girls and women. The Secretary of Labor and Education will also be required to issue regulations or policy guidance to integrate such training into certain programs under their departments.

The PFA authorizes the Secretary of Labor to conduct studies, and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women (National Women's Law Center, 2013b). The Secretary of Labor would do this by sponsoring and assisting State and community informational and educational programs. It would also meet this requirement by recognizing and promoting the achievements, labor organizations, and professional associations that have worked to eliminate the pay disparities (National Women's Law Center, 2013b).

The PFA would have the Secretary of Labor award an employer the Labor's National Award for Pay Equity (S. 84, 2013-2014). The Secretary of Labor would need to establish procedures for the application and presentation of the award. The award would encourage proactive efforts to help eliminate pay inequities. The award would be given to an employer who has made a substantial effort to eliminate pay disparities between men and women.

The PFA would redefine an establishment, which would be subject to the law more broadly so that any entity owned by the same firm within the same county is considered part of the same establishment (Boccia, 2010). The new definition would end pay differentials that arise to compensate employees for working under different conditions. This can be seen in a fast food establishment that owns several stores within a county. For example employees performing the same work may currently earn different wages because the particular location of the stores warrants differential pay to attract employees to work in higher cost or less pleasant areas of the county (Boccia, 2010).

Regarding data collection, the PFA amends the Civil Rights Act of 1964. The Act would authorize subsequent regulations that require employers to collect and report pay information data in their employee's sex race and national origin (S. 84, 2013-2014). The information will be utilized for the enforcement of federal laws prohibiting pay discrimination.

Under the PFA, the commissioner of the Labor Statistics would also continue to collect data on women workers in the Current Employment Statistics survey. The office of Federal Contract Compliance Programs would use specific types of methods in investigating compensation discrimination and in enforcing pay equity (S.84, 2013-2014). The Secretary of Labor would be mandated to make accurate information on compensation discrimination available to the public. This would include statistics, employee rights, historical analyses of discrimination, and any other information that will assist the public with understanding and addressing such discrimination. Lastly, the

Secretary of Labor and Commissioner of the EEOC would jointly develop material to assist small businesses to comply with the requirements of the PFA.

Value Premises

One of the underlying values is gender equity. Despite the advances, the wage gap still remains; women still earn less than men in the same occupations. Since its introduction in 1963, the PFA is based upon the idea that women's work life and contributions to the workplace should be valued equally to men's. In addition, women and men should be paid equally for doing the same work.

The gender wage gap is a persisting form of discrimination. Today, women continue to make 78 cents to the dollar (Hegewisch & Hartmann, 2014b). The inequity caused by the wage gap during a woman's working years becomes translated into economic insecurity in her retirement years (Ferraro, 1984). A woman, just like a man, has pensions, social security, and disability insurance that are tied to their income (Stocker, 2014).

Pay equity would improve the women's economic condition, by raising wages to levels comparable to men's (Hartmann & Aaronson 1994; Raisian, 1986). The values to society go beyond countering discrimination. Some women would be financially well off and not have to depend on public assistance programs. There would also be a decrease among poverty rates for women and the families that depend upon them (Elmelech & Lu, 2004; Hartmann & Aaronson, 1994).

Strengthening and enforcing federal regulations would protect equality and fairness in the workplace. Women, as a class, would improve their access to equal rights and gain further protection under this legislation. Jobs would be compensated on the

basis of skill, effort, and responsibility, not on the basis of gender and race (Ferraro, 1984).

Target Populations

The individuals most directly affected by this legislation are women. As of 2013, women make 78 cents compared to the dollar that men make (Institute For Women's Policy Research, 2014). Over time the gap has narrowed, but women continue to make less than men. The effects of the gender wage gap are also heightened by the factors of race and ethnicity. African American women make 84.1% in comparison to African American men while Hispanic women make 93.5% of earnings compared to Hispanic men (Hegewisch & Hartmann, 2014b). In addition, African American and Hispanic women have lower wages compared to White women.

The gender wage gap is also seen in education. Despite the high number of women outnumbering men in education, the pay of women is not equal to men. When taking education into account, women with higher levels of education earned 74.9% of their male counterparts (Kilgour, 2013). In addition, the gender gap is also seen within the same career. Among professional and related occupations, women lawyers' median weekly earnings are \$1,636 compared to men at \$2,055 (U.S. Bureau of Labor Statistics, 2013). The wage disparity affects women at all levels.

Those affected by the gender wage gap are also families. When women are faced with pay disparity, they bring less money home. When a single mother has to provide for her family, it can be difficult because she is making less money. This can lead women to seek public assistance to help provide for their families. In addition, women who are being paid less may also have to seek another job, which will require them to spend less

time with their families. Not only do women have to deal with the struggle of the pay difference, but so do their families.

Part III. Expected Effects of the Policy

Intended Effects by Lawmakers

Improvements and modifications to the laws are necessary to ensure that the PFA provides effective protection to those subject to discrimination based on sex. The PFA intends to close the gender gap that still exists. This would increase the earning power of women within all categories of race and ethnicity, gender, education, and careers and raise the earning power of those most economically vulnerable.

The elimination of barriers to the Act would positively mitigate the pay discrimination women continue to face by changing the overall workplace environment by expanding the scope of regulation, monitoring and enforcement. For example, employers who violate sex discrimination laws would be liable in a civil action. The PFA would also amend Title VII of the Civil Rights Act of 1964 to require the EEOC to collect data from employers to help in enforcing pay equity.

In addition, women earning higher salaries would contribute to the financial stability of their families and promote gender equity. Also, reducing the number of working women who earn unfair wages, would reduce their dependence on public assistance. The poverty rate for all working women would be cut in half, from 8.1% to 3.9 % (Hartmann et al., 2014). In addition, women would be able to better provide for their families. If single mothers earned comparable to men, their annual family incomes would increase on average \$6,698, or nearly 17% (Hartmann et al., 2014).

Lastly, the PFA would empower women to negotiate for equal pay. The strengthening of pay equity provisions and the availability of trainings would promote this for women employees and employers conducted by the Secretary of Labor and Education.

Part IV. Arguments Against the Paycheck Fairness Act

The history of struggles to pass the PFA and the recent failed enactment demonstrates the political unpredictability of this legislation. This section outlines some of the arguments of those opposed to the PFA. Arguments for and against PFA tend to fall under party lines with 52 of Democrats voting for PFA compared to 40 Republicans in the September 2014 vote (“Paycheck Fairness Act,” 2014).

Several arguments have been made against the PFA, some more overtly ideological and some more technical. A primary ideological argument is the negative impact of labor legislation on the private sector. The opponents fear that pay equity could lead employers to hire fewer women because it would raise the wage of employees in female-dominated jobs and, therefore, the cost to employers (Boccia, 2010; Hartmann & Aaronson, 1994). Furthermore, opponents state that raising salaries of employees in female-dominated jobs in the public sector could affect female-dominated jobs in the private sector (Hartmann & Aaronson, 1994).

Proponents argue that the increase in public sector wages could force the private sector to increase wages. Opponents counter that it would result in decreased employment in the public sector that could increase the supply of labor in the private sector, thus depressing wages (Hartmann & Aaronson, 1994). In addition, those against

the PFA argue that this legislation will increase regulations in the workforce and defeat the purpose of minimizing the gender wage gap.

While opponents are often careful not to oppose the concept of gender equity in principle, they often point to lifestyle differences chosen by women that have a negative impact on their earning power (Boccia, 2010; Ferraro, 1984; Hartmann & Aaronson, 1994). This argument states that women on average take more time out of the labor force and work fewer hours per week than do men due to women's roles in childbirth and child rearing. When a child becomes sick, opponents argue that it is women who usually take time off to care for the child (Giapponi & McEvoy, 2005). This is also why women tend to avoid jobs that require intense travel and relocation (Boccia, 2010; Kimmel & Amuedo-Dorantes, 2004). Most women continue to do the domestic work at home and care for the children; therefore, women generally prefer to stay local (Giapponi & McEvoy, 2005; Kimmel & Amuedo-Dorantes, 2004).

Opponents argue that men assume more high-risk jobs than women (Boccia, 2010). Men tend to take on occupations where they put their lives at risk. Typically, male occupations used to illustrate this claim include law enforcement, fire fighters, and construction (Kimmel & Amuedo-Dorantes, 2004). While women seek female-dominated occupations such as teachers, administrative assistants, nurses and social workers (Hegewisch & Hudiburg, 2014c).

Opponents have also blamed gender pay inequity on their perceptions that women are less likely than men to negotiate their starting salary (Boccia, 2010; Giapponi & McEvoy, 2005). During an interview a woman would settle with an offer rather than negotiate with an employer for higher pay. Women are also not as likely to ask an

employer for a raise (Boccia, 2010). In addition, women seek jobs in lower-paying industries and occupations (Blau & Kahn, 1994). Moreover, it is said that women place a higher priority on personal fulfillment than men when looking for a job (Boccia, 2010; Giapponi & McEvoy, 2005). Women tend to take on jobs where they feel a sense of satisfaction. They also take jobs where they feel they have made a difference.

An overtly non-ideological, but rather technical point opponents raise is that the gender gap statistic is misleading because it is not calculated correctly (Boccia, 2010). This argument states that the number calculated to demonstrate gender pay inequity comes from the average earnings of women in all positions, and contrasts with the average earning of men in all positions (Kukowski, Bozek, & Hougesen, 2014). This means the statistic does not compare the men and women who are not working in the same jobs with the same background. In addition, the statistic does not account for the various critical factors that influence the wages of men and women. Some of the unaccounted factors are type of occupation, number of hours worked, education and experience levels and personal choices (Boccia, 2010; Ferraro, 1984). Therefore, the opponents believe that if these factors were accounted for the wage gap would shrink.

Conservative opposition to government regulation of the market drives many of the arguments against the PFA. The PFA proposes enhanced enforcement of equal pay requirements that would facilitate class action lawsuits. Established comparable worth guidelines among establishments with different conditions could encourage frivolous lawsuits and increase class-action lawsuits. Businesses would be exposed to potential litigation anytime cost differentials exist.

Opponents concerned about business regulation have also argued that the PFA would encourage salary and work arrangement standardization, and discourage employers from offering employees more flexible work arrangements in return for lower pay (Boccia, 2010). This argument has also been extended to state that the PFA does not allow fairness for women because it could reduce the flexibility in the work place for working mothers (Kukowski et al, 2014; Stocker, 2014). It would also end merit pay that awards good work.

In addition, Title VII, which prohibits discrimination based on sex, also includes statutory caps on compensatory damages. The cap is to deter frivolous lawsuits and protect employers from financial ruin as a result of unusually large awards. In order to highlight potential costs to women, opponents state that by removing the cap, the PFA would increase lawsuits based upon gender discrimination. As a result, employers fearful of costly litigation may avoid hiring women. Following the logic of deregulation, this law would force employers to spend more time and resources on litigation or preventing litigation; therefore, businesses would have less to spend on their core business creating fewer productive jobs (Boccia, 2010).

Part V. Alternative Policy

The Fair Pay Act and Comparable Worth

An alternative policy to the PFA is contained in the Fair Pay Act. In April 2005, Senator Tom Harkin introduced the Fair Pay Act (Giapponi & McEvoy, 2005). The proposed legislation adds the notion of comparable worth, a provision that was a part of earlier versions of the PFA, but had been omitted in most recent versions.

Like the PFA, the Fair Pay Act would alter the language of the EPA. Instead of requiring equal pay for equal work, it would demand equal pay for jobs that are comparable in skill, effort, responsibility, and working conditions (Giapponi & McEvoy, 2005). Those who support the Fair Pay Act and the addition of comparable worth to federal pay legislation believe that if men and women are doing comparable work, they should be paid comparable wage (Giapponi & McEvoy, 2005; Raisian, Ward, & Welch, 1986). For example, if a woman is a social worker she should be paid as much as a probation officer.

In addition, the act would require employers to disclose job categories and pay scales to the EEOC. The EEOC would use the information retrieved for research purposes or public reports. The public would also have access to the information reported. This would decrease the lawsuits filed because employees would fully be aware of what pay level they are at. Furthermore, the disclosure would discourage employers from paying women and racial ethnic minorities less than white males.

CHAPTER 5

DISCUSSION

The purpose of the study was to analyze the Paycheck Fairness Act (PFA). The legislation would provide equal pay for equal work between males and females. In order to analyze the policy a modified version of David Gil's framework was utilized. The analysis includes a historical overview, policy objectives, expected effects, and arguments against the PFA.

This chapter will review findings from the policy analysis. It will also review the limitations encountered during the analysis of the legislation. In addition, it will include the implications for social work practice, policy and research.

Summary of Findings

The gender wage dates back to colonial times. During this time women's work was valued less than men's. Household domestic and caregiving tasks were viewed as unskilled labor that required no particular education or training, therefore women's work was deemed worthless than men's work (Mackinnon, 2014). In addition, it was believed that women did not need to earn as much as men because they were not supporting a family as were men; women's wages were seen as supplementary income (Kulow, 2013; Perry & Gundersen, 2011).

Despite the presence of previous federal legislations outlawing gender discrimination in wages, gender inequality continues to exist. The PFA is the latest

legislation addressing pay equity, following a succession of bills dating back to the Fair Labor Standards Act (FLSA) of 1938 and including the Equal Pay Act (EPA) of 1963, Title VII of the Civil Rights Act of 1964 and the Lilly Ledbetter Act of 2009. Although it has been more than 50 years since the passage of the Equal Pay Act women have made huge strides forward in the labor force. Yet, more than 50 years later the wage gap still persists.

History demonstrates that, although earnings between women and men have narrowed over time, the gender wage gap still remains today (U.S. Department of Commerce Economics and Statistics Administration, 2011). Women continue to have lower wages and are less advantaged than men in terms of employment. In 1963, a woman working full time year round typically made 59 cents for every dollar paid to her male counterpart, making the wage gap 41 cents (Kulow, 2013). Today, American women who work full time year round are typically paid only 78 cents for every dollar paid to their male counterparts, making the wage gap 22 cents (Hegewisch & Hartmann, 2014b). This demonstrates that in spite of women's large share in the work force pay inequities continue to exist.

The analysis found that the gender gap persists across race and ethnicity, all levels of educational attainment, and careers. The effects of the gender wage gap are heightened by the factors of race and ethnicity. For instance, Hispanic women's median weekly earnings are \$541 and African Americans are \$606 compared to White men's earnings of \$884 (Hegewisch & Hudiburg, 2014c). Closing the wage gap, therefore, is particularly important for African American and Hispanic women who are more likely to

have lower incomes and to be in poverty than all other groups (Hegewisch & Hudiburg, 2014c).

In addition, the gender wage gap is seen in education. In spite of the high number of women outnumbering men in education, the pay for women is not equal to men. Women with an advanced degree earned about \$52,000 a year, which was less than the \$58,000 that men with a bachelor's degree earned (Kulow, 2013). Moreover, the wage gap also exists when comparing women and men at the same level of careers. For instance, female registered nurses make weekly earnings of \$1,086 compared to male registered nurses earning \$1,236 (Hegewisch & Hudiburg, 2014c).

Pay equity can also affect women in other aspects of their lives. Gender differences in the work place can lead to inequality after retirement. As women are paid less their social security is lower. This causes women to receive lower retirement payments. Furthermore, families are also affected by pay equity. About 71% of all mothers in the United States work for pay, 32% of single mothers are often the sole support of their families (Hartmann et al., 2014). The lower pay for women leads to less family income and poverty.

The PFA continues to strengthen the EPA of 1963 by further promoting fair pay for women. The PFA would enhance the remedies available for victims of gender-based discrimination and require employers to show that wage differences are job related, not sex-based, and are not driven by bias but by business necessity.

Modifications to the laws are necessary to ensure that essential protection to those subject to discrimination based on sex is addressed. There are those that support and those that oppose the PFA. Those that support the PFA say it would help increase the

earning power of women within all categories of race and ethnicity, gender, education, and careers and raise the earning power of those most economically vulnerable. Its opponents question the data cited by the supporters and focus their concern on the impact on the private sector.

Limitations

There were limitations to the analysis of the policy. The first limitation is the author's personal bias and subjective interpretation of the articles and documents examined. Secondly, it is important to recognize the intrinsic biases found in the documents utilized for the analysis. Lastly, since the Act has not been passed there were limitations on sources and information available for the analysis of the policy.

Implications for Social Work Practice, Policy and Research

Due to the significance of women in the labor force, social workers can create awareness to inform the public of the continued pay disparity. As the wage gap continues, social workers should inform women of the long-term effects in regards to their economic well-being. Social workers could also encourage women to develop negotiation skills to ask for higher pay and other resources.

Furthermore, research needs to be conducted to have a thorough understanding of the gender wage gap throughout the nation. Also, studies need to analyze how the wage gap can be closed so that there can be pay equity based on gender. Additionally, social workers need to continue to be educated and informed on the wage gap that exists to provide women accurate information. Lastly, organizations such as the National Association of Social Workers can continue to support legislation that promotes pay equity.

APPENDIX
PAYCHECK FAIRNESS ACT (S.84)

PAYCHECK FAIRNESS ACT (S.84)

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Paycheck Fairness Act”.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) Women have entered the workforce in record numbers over the past 50 years.
- (2) Despite the enactment of the Equal Pay Act in 1963, many women continue to earn significantly lower pay than men for equal work. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can only be due to continued intentional discrimination or the lingering effects of past discrimination.
- (3) The existence of such pay disparities—
 - (A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;
 - (B) undermines women's retirement security, which is often based on earnings while in the workforce;
 - (C) prevents the optimum utilization of available labor resources;
 - (D) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;
 - (E) burdens commerce and the free flow of goods in commerce;
 - (F) constitutes an unfair method of competition in commerce;
 - (G) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce;
 - (H) interferes with the orderly and fair marketing of goods in commerce; and

(I) in many instances, may deprive workers of equal protection on the basis of sex in violation of the 5th and 14th Amendments.

(4)(A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

(B) These barriers have resulted, in significant part, because the Equal Pay Act has not worked as Congress originally intended. Improvements and modifications to the law are necessary to ensure that the Act provides effective protection to those subject to pay discrimination on the basis of their sex.

(C) Elimination of such barriers would have positive effects, including—

(i) providing a solution to problems in the economy created by unfair pay disparities;

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance;

(iii) promoting stable families by enabling all family members to earn a fair rate of pay;

(iv) remedying the effects of past discrimination on the basis of sex and ensuring that in the future workers are afforded equal protection on the basis of sex; and

(v) ensuring equal protection pursuant to Congress' power to enforce the 5th and 14th Amendments.

(5) The Department of Labor and the Equal Employment Opportunity Commission have important and unique responsibilities to help ensure that women receive equal pay for equal work.

(6) The Department of Labor is responsible for—

(A) collecting and making publicly available information about women's pay;

(B) ensuring that companies receiving Federal contracts comply with anti-discrimination affirmative action requirements of Executive Order 11246 (relating to equal employment opportunity);

(C) disseminating information about women's rights in the workplace;

(D) helping women who have been victims of pay discrimination obtain a remedy; and

(E) being proactive in investigating and prosecuting equal pay violations, especially systemic violations, and in enforcing all of its mandates.

(7) The Equal Employment Opportunity Commission is the primary enforcement agency for claims made under the Equal Pay Act, and issues regulations and guidance on appropriate interpretations of the law.

(8) With a stronger commitment by the Department of Labor and the Equal Employment Opportunity Commission to their responsibilities, increased information as a result of the amendments made by this Act to the Equal Pay Act of 1963, wage data, and more effective remedies, women will be better able to recognize and enforce their rights.

(9) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) Bona-Fide Factor Defense And Modification Of Same Establishment Requirement.— Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended—

(1) by striking “No employer having” and inserting “(A) No employer having”;

(2) by striking “any other factor other than sex” and inserting “a bona fide factor other than sex, such as education, training, or experience”; and

(3) by inserting at the end the following:

“(B) The bona fide factor defense described in subparagraph (A)(iv) shall apply only if the employer demonstrates that such factor (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job-related with respect to the position in question; and (iii) is consistent with business necessity. Such defense shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice.

“(C) For purposes of subparagraph (A), employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same county or similar political subdivision of a State. The preceding sentence shall not be construed as limiting broader applications of the term ‘establishment’ consistent with rules prescribed or guidance issued by the Equal Opportunity Employment Commission.”.

(b) Nonretaliation Provision.—Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(1) in subsection (a)(3), by striking “employee has filed” and all that follows and inserting “employee—

“(A) has made a charge or filed any complaint or instituted or caused to be instituted any investigation, proceeding, hearing, or action under or related to this Act, including an investigation conducted by the employer, or has testified or is planning to testify or has assisted or participated in any manner in any such investigation, proceeding, hearing or action, or has served or is planning to serve on an industry Committee; or

“(B) has inquired about, discussed, or disclosed the wages of the employee or another employee.”; and

(2) by adding at the end the following:

“(c) Subsection (a)(3)(B) shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee’s essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action under section 6(d), including an investigation conducted by the employer. Nothing in this subsection shall be construed to limit the rights of an employee provided under any other provision of law.”

(c) Enhanced Penalties.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: “Any employer who violates section 6(d) shall additionally be liable for such compensatory damages, or, where the employee demonstrates that the employer acted with malice or reckless indifference, punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.”;

(2) in the sentence beginning “An action to”, by striking “either of the preceding sentences” and inserting “any of the preceding sentences of this subsection”;

(3) in the sentence beginning “No employees shall”, by striking “No employees” and inserting “Except with respect to class actions brought to enforce section 6(d), no employee”;

(4) by inserting after the sentence referred to in paragraph (3), the following:
“Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.”; and

(5) in the sentence beginning “The court in”—

(A) by striking “in such action” and inserting “in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection”; and

(B) by inserting before the period the following: “, including expert fees”.

(d) Action By Secretary.—Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting “or, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b),” before “and the agreement”; and

(B) by inserting before the period the following: “, or such compensatory or punitive damages, as appropriate”;

(2) in the second sentence, by inserting before the period the following: “and, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b)”;

(3) in the third sentence, by striking “the first sentence” and inserting “the first or second sentence”; and

(4) in the last sentence—

(A) by striking “commenced in the case” and inserting “commenced—

“(1) in the case”;

(B) by striking the period and inserting “; or”; and

(C) by adding at the end the following:

“(2) in the case of a class action brought to enforce section 6(d), on the date on which the individual becomes a party plaintiff to the class action.”.

SEC. 4. TRAINING.

The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 10, shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 5. NEGOTIATION SKILLS TRAINING FOR GIRLS AND WOMEN.

(a) Program Authorized.—

(1) IN GENERAL.—The Secretary of Labor, after consultation with the Secretary of Education, is authorized to establish and carry out a grant program.

(2) GRANTS.—In carrying out the program, the Secretary of Labor may make grants on a competitive basis to eligible entities, to carry out negotiation skills training programs for girls and women.

(3) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this subsection, an entity shall be a public agency, such as a State, a local government in a metropolitan statistical area (as defined by the Office of Management and Budget), a State educational agency, or a local educational agency, a private nonprofit organization, or a community-based organization.

(4) APPLICATION.—To be eligible to receive a grant under this subsection, an entity shall submit an application to the Secretary of Labor at such time, in such manner, and containing such information as the Secretary of Labor may require.

(5) USE OF FUNDS.—An entity that receives a grant under this subsection shall use the funds made available through the grant to carry out an effective negotiation skills training program that empowers girls and women. The training provided through the program shall help girls and women strengthen their negotiation skills to allow the girls and women to obtain higher salaries and rates of compensation that are equal to those paid to similarly situated male employees.

(b) Incorporating Training Into Existing Programs.—The Secretary of Labor and the Secretary of Education shall issue regulations or policy guidance that provides for integrating the negotiation skills training, to the extent practicable, into programs authorized under—

(1) in the case of the Secretary of Education, the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), the Higher Education Act of 1965 (20

U.S.C. 1001 et seq.), and other programs carried out by the Department of Education that the Secretary of Education determines to be appropriate; and

(2) in the case of the Secretary of Labor, the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), and other programs carried out by the Department of Labor that the Secretary of Labor determines to be appropriate.

(c) Report.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Labor and the Secretary of Education shall prepare and submit to Congress a report describing the activities conducted under this section and evaluating the effectiveness of such activities in achieving the purposes of this Act.

SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

(4) providing information to employers, labor organizations, professional associations, and other interested persons on the means of eliminating the pay disparities;

(5) recognizing and promoting the achievements of employers, labor organizations, and professional associations that have worked to eliminate the pay disparities; and

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.

(a) In General.—There is established the Secretary of Labor’s National Award for Pay Equity in the Workplace, which shall be awarded, as appropriate, to encourage proactive

efforts to comply with section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)).

(b) **Criteria For Qualification.**—The Secretary of Labor shall set criteria for receipt of the award, including a requirement that an employer has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence of such effort. The Secretary shall establish procedures for the application and presentation of the award.

(c) **Business.**—In this section, the term “employer” includes—

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8) is amended by adding at the end the following:

“(f)(1) Not later than 18 months after the date of enactment of this subsection, the Commission shall—

“(A) complete a survey of the data that is currently available to the Federal Government relating to employee pay information for use in the enforcement of Federal laws prohibiting pay discrimination and, in consultation with other relevant Federal agencies, identify additional data collections that will enhance the enforcement of such laws; and

“(B) based on the results of the survey and consultations under subparagraph (A), issue regulations to provide for the collection of pay information data from employers as described by the sex, race, and national origin of employees.

“(2) In implementing paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. For this purpose, the Commission shall consider factors including the imposition of burdens on employers, the frequency of required reports (including which employers should be required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format for the data collection reports.”

SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND PAY EQUITY DATA COLLECTION.

(a) Bureau Of Labor Statistics Data Collection.—The Commissioner of Labor Statistics shall continue to collect data on women workers in the Current Employment Statistics survey.

(b) Office Of Federal Contract Compliance Programs Initiatives.—The Director of the Office of Federal Contract Compliance Programs shall ensure that employees of the Office—

(1)(A) shall use the full range of investigatory tools at the Office's disposal, including pay grade methodology;

(B) in considering evidence of possible compensation discrimination—

(i) shall not limit its consideration to a small number of types of evidence; and

(ii) shall not limit its evaluation of the evidence to a small number of methods of evaluating the evidence; and

(C) shall not require a multiple regression analysis or anecdotal evidence for a compensation discrimination case;

(2) for purposes of its investigative, compliance, and enforcement activities, shall define “similarly situated employees” in a way that is consistent with and not more stringent than the definition provided in item 1 of subsection A of section 10–III of the Equal Employment Opportunity Commission Compliance Manual (2000), and shall consider only factors that the Office's investigation reveals were used in making compensation decisions; and

(3) shall reinstate the Equal Opportunity Survey, as required by section 60–2.18 of title 41, Code of Federal Regulations (as in effect on September 7, 2006), designating not less than half of all nonconstruction contractor establishments each year to prepare and file such survey, and shall review and utilize the responses to such survey to identify contractor establishments for further evaluation and for other enforcement purposes as appropriate.

(c) Department Of Labor Distribution Of Wage Discrimination Information.—The Secretary of Labor shall make readily available (in print, on the Department of Labor website, and through any other forum that the Department may use to distribute compensation discrimination information), accurate information on compensation discrimination, including statistics, explanations of employee rights, historical analyses of such discrimination, instructions for employers on compliance, and any other information that will assist the public in understanding and addressing such discrimination.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization Of Appropriations.—There are authorized to be appropriated \$15,000,000 to carry out this Act.

(b) Prohibition On Earmarks.—None of the funds appropriated pursuant to subsection (a) for purposes of the grant program in section 5 of this Act may be used for a congressional earmark as defined in clause 9(d) of rule XXI of the Rules of the House of Representatives.

SEC. 11. SMALL BUSINESS ASSISTANCE.

(a) Effective Date.—This Act and the amendments made by this Act shall take effect on the date that is 6 months after the date of enactment of this Act.

(b) Technical Assistance Materials.—The Secretary of Labor and the Commissioner of the Equal Employment Opportunity Commission shall jointly develop technical assistance material to assist small businesses in complying with the requirements of this Act and the amendments made by this Act.

(c) Small Businesses.—A small business shall be exempt from the provisions of this Act to the same extent that such business is exempt from the requirements of the Fair Labor Standards Act pursuant to section 3(s)(1)(A) (i) and (ii) of such Act.

SEC. 12. RULE OF CONSTRUCTION.

Nothing in this Act, or in any amendments made by this Act, shall affect the obligation of employers and employees to fully comply with all applicable immigration laws, including any penalties, fines, or other sanctions.

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