



WORKPLACE JUSTICE

## OUR EQUAL PAY LAWS NEED UPDATING, BUT THE WORKPLACE ADVANCEMENT ACT WOULD DO MORE HARM THAN GOOD

### The gender wage gap persists and costs women and their families over 10k a year.

Women across the country and in every corner of our economy continue to experience unequal pay. Today, full-time, year-round women workers are still typically paid just 80 cents for every dollar paid to full-time, year-round men workers. The situation is even worse for many women of color, with African American women being paid only 63 cents, and Latinas being paid only 54 cents, for every dollar paid to white, non-Hispanic men. Study after study shows that those disparities cannot be explained away by legitimate factors, such as differences in education or experience.

### Current law is failing to root out pay discrimination.

The Equal Pay Act's (EPA) ban on sex discrimination in pay has been undermined over time by court decisions that have opened loopholes in the Act—including by allowing employers to escape accountability for pay disparities even when they are not related to business needs—and by the incomplete remedies the Act provides workers. The EPA's remedies are also inadequate to serve as an effective deterrent to employers and to incentivize employers to self-audit their pay practices and remedy any disparities. In addition, wage disparities too often go undetected and thus unremedied because employers maintain policies that punish employees who voluntarily share salary information with their coworkers—a practice that the EPA does not prohibit.

### The stagnant wage gap requires urgent attention, but the Workplace Advancement Act (S. 345) fails to provide real solutions. Worse, it may even harm workers.

- The Workplace Advancement Act would prohibit employers from retaliating against employees for discussing their salaries with their co-workers, but *only* when the employees are discussing their salaries for the specific purpose of comparing them to determine whether they are receiving “equal pay for equal work.”
- As a result, the Act would *allow* an employer to retaliate against employees for casual conversations around the water cooler about employee raises or wages—as long as these conversations were not specifically motivated by a desire to root out pay discrimination—even though it is these sort of casual conversations that often lead to the accidental discovery of unlawful pay disparities.
- By only protecting conversations about “comparative” compensation undertaken “for the purpose of determining” whether an employer is providing equal pay for equal work, the Act puts the burden on employees to use certain magic words when initiating discussions about pay, or risk employer retaliation.
- The Act would thus invite employers to fire first and ask questions later, since, in many circumstances, it would be very difficult for an employee to prove that she was talking about pay for the purpose of determining “equal pay for equal work,” particularly when what constitutes “equal work” is often a complex legal question.
- In short, by appearing to protect employee discussions about pay, but only providing a very narrow, qualified protection, the Act might do more harm than good because it would give employees a false sense of security that they are protected if they are discussing pay with their co-workers.



- What's more, the Act does not otherwise amend the EPA and thus fails to make other critically needed improvements in pay discrimination protections. Specifically, the bill:

- o does not even attempt to close the large loopholes employers have exploited to justify continuing to pay discriminatory wages;
- o does not have remedies adequate to incentivize employers to self-audit their current pay practices and remedy any disparities;
- o does not make needed improvements in remedies to ensure victims of pay discrimination can be made whole.

- In fact, the Act entirely ignores the many loopholes and inadequacies in current equal pay laws and simply states that pay discrimination “violates existing law.” Telling women there are already laws that ban pay discrimination is patronizing and does nothing to help women who continue to experience unequal pay.

The Paycheck Fairness Act (S. 862, H.R. 1619 in the 114th Congress) offers stronger and more effective protections for working women in all of these areas. The wage gap is a real problem facing working families, and a fake equal pay bill is not the solution.

