

Female Attorney Speaking to Jury



Attorney Speaking to Jury. 2013. Fuse, Getty Images. Web.

During the past several decades, American women have made great advances in the workplace. More women are working, and their earning power has increased. Despite this, women still earn less on average than men.

For several decades, various acts of legislation have attempted to address the differences in pay as well as in workplace treatment of women. Recently, legislators in Washington, DC, have proposed the Paycheck Fairness Act. However, Congress has yet to pass this. As with other legislation that has expanded the rights of women and minorities, this legislation has both supporters and opponents.

In this activity, you will review primary and secondary sources to understand the Paycheck Fairness Act and past legislation that attempted to address this issue. You will also review the arguments of supporters and opponents of the act. You will present your research on the Paycheck Fairness Act through a presentation or a report in which you support or oppose the Paycheck Fairness Act.

I. Analyzing the Paycheck Fairness Act

1. Form a team of three or four students. This will be your research group. Together, think about what you know about gender-based pay inequality from reading and reviewing the EXPLORE page, "Challenges to the Feminist Movement." In a quick stop-and-jot activity, write down everything you can think of about gender-based pay inequality. How severe is this income gap? What are possible reasons for this income gap? Compare your notes to the notes of your other group members. Did you have similar or different answers and reasons?
2. Review the information on the Paycheck Fairness Act. Use the graphic organizer on the next page to take notes.

Paycheck Fairness Act

Question 1: What are the main issues that this act addresses?

Question 2: What groups would be most likely to support this legislation? Why?

Question 3: What groups would be most likely to oppose this legislation? Why?

Summary of the Paycheck Fairness Act, 2013

This summary of the Paycheck Fairness Action was written in part by the Congressional Research Service, a division of the Library of Congress.

Paycheck Fairness Act

Amends the portion of the Fair Labor Standards Act of 1938 (FLSA) known as the Equal Pay Act to revise remedies for, enforcement of, and exceptions to prohibitions against sex discrimination in the payment of wages.

Men and women may no longer be paid different wages based solely on their sex. Wage differentials may only be based on such factors as: education, training, or experience.

Employers must be able to demonstrate a reasonable application of one of these factors when establishing wage differentials. Adequate defense for paying of different wages must:

1. Not be based on sex
2. Be job-related based on the job position in question
3. Be consistent with the business needs

Employers are prohibited from retaliating against employee complaints with regards to unfair payment practices. There cannot be employer retaliation for: inquiring about, discussing, or disclosing the wages of the employee or another employee in response to a complaint or charge, or in furtherance of a sex discrimination investigation, proceeding, hearing, or action, or an investigation conducted by the employer.

Makes employers who violate sex discrimination prohibitions liable in a civil action for either compensatory or (except for the federal government) other damages.

States that any action brought to enforce the prohibition against sex discrimination may be maintained as a class action in which individuals may be joined as party plaintiffs without their written consent . . .

Requires the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs to train EEOC employees and affected individuals and entities on matters involving wage discrimination.

Establishes the Secretary of Labor's National Award for Pay Equity in the Workplace for an employer who has made a substantial effort to eliminate pay disparities between men and women.

DeLauro, Rosa. "H.R. 377: Paycheck Fairness Act." 23 January 2013. *Congress Bills*. Govtrack. Web.

Excerpt from the Bill S. 84, the Version of the Paycheck Fairness Act,
Introduced in 2013

SEC. 2. FINDINGS

(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.

Mikulski, Barbara. "S. 84: Paycheck Fairness Act." 23 January 2013. *Congress Bills*. Govtrack. Web.

Excerpt from a Speech in Support of the Paycheck Fairness Act by Senator Barbara Mikulski, 2012

I come to the floor to urge my colleagues to affirmatively and unabashedly vote for . . . the Paycheck Fairness Act . . . This is part of a very long march that the women of the United States of America have been walking for a very long time.

In 1963, President Lyndon Johnson wanted to create a Great Society, and he envisioned three civil rights acts to right the wrongs of the past. One was equal pay—the Equal Pay Act, which would ensure that women would get equal pay for equal work - the second was the benchmark Civil Rights Act and the third was the Voting Rights Act.

Lyndon Johnson picked the Equal Pay Act as his first action because he felt it would be one of the easier ones to pass and to implement. Little did he know the corporate wrath that was going against women in the past would come down on that legislation. But a Democratically controlled Senate moved that bill and began the long march for civil rights . . .

On June 10 of 1963, President Johnson signed that bill. Forty-nine years later women still make less than men. Women in the United States of America make only 77 cents for what men doing the same job make.

Women fight every day for equal pay. When they do, they're sidelined, redlined or even pink slipped. Right now in the marketplace it is legal to fire a woman if she asks about her pay, whether she goes to the personnel director or if she asks the person next to her at the water cooler. Often, women are harassed or intimidated for just asking . . .

Now, we need to pass Paycheck Fairness to close the loopholes that allow discrimination to happen in the very first place. . .

This is fundamental fairness . . . no longer will employers be able to retaliate against workers for sharing information about wages. Remember what I said earlier – if you ask someone what you get paid, you can get fired.

No longer will women be able to seek only back pay when they are discriminated against. They will also be able to seek punitive damages. No longer will employers be able to use almost any reason to justify paying a woman less. 'The guys do harder jobs. The guys do dangerous jobs. Oh, they have a better education.' We're talking about equal pay for equal work that requires the same education. No longer will women be on their own, because we're going to be able to include various education and training. . . .

When I listen to a constituent in Silver Spring with years of teaching experience, even in public employment she was paid less. We have listened to a trauma center professional . . . She filed suit because she found out her male surgeon doing the exact same surgery was paid \$25,000 more than she was. Another woman . . . was told by her supervisor that hiring a woman would be simply a liability because you're going to get pregnant. . .

More and more women are in the workplace. And . . . we want to have equal pay for equal work.

Mikulski, Barbara. "Mikulski Urges Senate Passage of Paycheck Fairness Act." 5 June 2012. *Speeches—Media Center*. Barbara A. Mikulski U.S. Senator for Maryland Website. Web.

Excerpt from a Letter Opposing the Paycheck Fairness Act, 2010

This letter was written by the U.S. Commission on Civil Rights. This is a federal commission formed to examine laws and policies to look for possible areas of discrimination or lack of equal protections.

We write today to express our opposition to the proposed Paycheck Fairness Act (S.182).

...

Rather than making wage rates fair for men and women, S.182 will . . . place . . . burdens on employers . . .

The proposal's primary effects will be to make it difficult for employers to know whether they are in compliance with the law and, if they are found not to be, to increase the likelihood of large compensatory and punitive damages. Employers with as few as two employees are subject to the bill's provisions . . .

"One size" does not fit all employers. For example . . . a freight company may . . . need especially reliable truck drivers because its customers are especially demanding . . . But if it pays its truck (who are mostly male) more generously than the average employer does, and it pays its (mostly female) office crew the prevailing wage, it will be exposing itself to litigation.

The foundation upon which the argument for S.182 is built—that women are paid only 77¢ for every dollar men are paid is shaky . . . This comparison fails to take into consideration . . . factors other than sex discrimination that contribute to the gap. For example:

1. Men are more likely than women to have college degrees in high-paying fields . . . although the gap is closing for younger women.
2. Women are more likely than men to leave the labor force temporarily for child birth, child care and elder care. Career interruptions . . . have a negative effect on wages.
3. Men are more likely than women to take jobs that involve physical risks and hence command higher wages.
4. Women are more likely than men to take jobs with child-friendly policies so they can . . . leave work . . . when a child is sick. These policies cost employers and hence tend to reduce wages.

"The Proposed Paycheck Fairness Act (S.182)." 30 September 2010. *Correspondences—Pay Equity*. United States Commission on Civil Rights. Web.

II. Analyzing Previous Gender-Equity Legislation

Now, review the sources that explain previous gender-equity legislation. Complete the chart below as you prepare for your presentation or report.

Legislation	How is the act similar to the Paycheck Fairness Act? How is it different?	Which individuals/groups are the act's most likely supporters? Why?	Which individuals/groups are the act's most likely opponents? Why?
<i>Lilly Ledbetter Act</i>			
<i>Title VII of the Civil Rights Act</i>			
<i>The Equal Pay Act</i>			

Summary of the Lilly Ledbetter Fair Pay Act, 2009

This summary of the Lilly Ledbetter Fair Pay Act was written by the Congressional Research Service, a division of the Library of Congress.

Amends the Civil Rights Act of 1964 to declare that an unlawful employment practice occurs when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid. Allows liability to accrue, and allows an aggrieved person to obtain relief, including recovery of back pay, for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to practices that occurred outside the time for filing a charge. Applies the preceding provisions to claims of compensation discrimination under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

Amends the Age Discrimination in Employment Act of 1967 to declare that an unlawful practice occurs when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to the decision or other practice, or when a person is affected by the decision or practice, including each time wages, benefits, or other compensation is paid.

Mikulski, Barbara. "S. 181 (111th): Lilly Ledbetter Fair Pay Act of 2009." 8 January 2009. *Congress Bills*. Govtrack. Web

Remarks by President Barack Obama on Signing the Lilly Ledbetter Fair Pay Act, 2009

[The] Lilly Ledbetter Fair Pay Restoration Act . . . uphold[s] one of this nation's first principles: that we are all created equal and each deserve a chance to pursue our own version of happiness. . . .

Lilly Ledbetter didn't set out to be a trailblazer . . . She was just a good hard worker who did her job—and did it well—for nearly two decades before discovering that for years, she was paid less than her male colleagues for the very same work. Over the course of her career, she lost more than \$200,000 in salary, and even more in pension and Social Security benefits—losses she still feels today.

Now, Lilly could have accepted her lot and moved on . . . But instead, . . . she set out on a journey that would . . . take her all the way to the Supreme Court, and lead to this bill which will help others get the justice she was denied.

Because while this bill bears her name, Lilly knows this story isn't just about her. It's the story of women across this country still earning just 78 cents for every dollar men earn—women of color even less—which means that today, in the year 2009, countless women are still losing thousands of dollars in salary, income and retirement savings over the course of a lifetime.

But equal pay is by no means just a women's issue—it's a family issue. It's about parents who find themselves with less money for tuition or child care; couples who wind up with less to retire on; households where, when one breadwinner is paid less than she deserves, that's the difference between affording the mortgage—or not; between keeping the heat on, or paying the doctor's bills—or not. And in this economy, when so many folks are already working harder for less . . . the last thing they can afford is losing part of each month's paycheck to simple discrimination. . . .

[M]aking our economy work means making sure it works for everyone. That there are no second class citizens in our workplaces, and that it's not just unfair and illegal—but bad for business—to pay someone less because of their gender, age, race, ethnicity, religion or disability.

Obama, Barack. "President Obama Signs the Lilly Ledbetter Fair Pay Act: January 29, 2009." The White House Office of the Press Secretary, 2009. *The White House*. Web.

Excerpt from a Speech Opposing the Lilly Ledbetter Fair Pay Act by Representative Tom McClintock, 2009

Much has been said about the chilling effect this legislation will have on our economy because of the endless lawsuits it makes possible—including for grievances that may stretch back 30 years or more. And I certainly share those concerns.

But I want to express a deeper concern with this legislation: I believe it hurts the cause of equality and opportunity in the workplace by making it more difficult for people who most need jobs and most want jobs to get them.

Any person's labor is worth exactly what that person is willing to receive and what another is willing to pay. The decisions that are made by both the employee and the employer are unique to those people and to those circumstances.

Someone passionately wanting to break into a field, for example, or to stay in a region—or shorten a commute—or an infinite variety of other considerations—may be willing to accept less, in order to gain those non-economic advantages, than someone who is equally qualified but indifferent to those advantages.

Imposing rigid one-size-fits-all requirements into the relationship between an employee and an employer reduces the employee's freedom to negotiate for the best set of conditions for his or her own unique circumstances.

And lest we forget, when all else fails there is a fail-safe and absolute protection the market provides to all: it is the word, "no." "No, the pay isn't acceptable;" "No, the conditions aren't satisfactory;" "No, I can get a better offer elsewhere."

McClintock, Tom. "Speech in Opposition to S. 181 - Lilly Ledbetter Salary Act." 27 January 2009. *House Chamber Speech*. Congressman Tom McClintock 4th District of California. Web.

“Equal Employment Opportunity” from *The Way We Live: Venus and Mars: Gender Stratification*

This video segment explains the reasons for the passage of Title VII of the Civil Rights Act and the opposition to it.

“Equal Pay Act” from *A History of Equal Rights in America: 1936–1970*

This video segment explains the origins of the Equal Pay Act in 1963 and the opposition to it that led to other gender-equity legislation.

III. Planning and Creating Your Presentation

1. Have everyone on your team share information about the Paycheck Fairness Act from his or her graphic organizers. Then, share information from earlier gender-equity legislation as a team. Determine the best way to organize the information about the acts. Then, decide as a team whether you support or oppose the passage of the Paycheck Fairness Act.
2. Develop a group presentation or a report that follows the same sequence from present to past as presented in the sources. Have each team member prepare separate presentation screens or sections of the report based on the information gathered. Then, work together to assemble the presentation or report.
3. Using your presentation materials and research, participate in a debate with another team of classmates who have taken the opposing position regarding the passage of the act. You will be debating the topic “How Fair Is the Paycheck Fairness Act?” To participate in the debate, you will need to “defend” your group’s position on the debate topic against those presented by students representing the other perspective. Use the following outline to plan your group’s argument.

<p>Opening Statement (Start with the most compelling argument or an overview of all arguments.)</p>	
<p>Topic Question</p>	<p>How fair is the Paycheck Fairness Act? Does it properly and fairly address gender-equality issues?</p>
<p>Response to Question</p>	
<p>Three Pieces of Evidence</p>	
<p>Rebuttal to Anticipated Counterargument (How will the opposition respond to your position? How will you refute their argument?)</p>	
<p>Three Pieces of Evidence</p>	
<p>Closing Argument (Summarize and provide synthesis)</p>	

4. Next, conduct the debate. To participate in the debate, follow these guidelines:
 - Present your opening statements to one another. Each group should be given two minutes to present its opening statement.
 - Pause to reflect on what you heard and why it was interesting. Consider whether the opposing group's statements helped you change or rethink your position.
 - Present your responses and rebuttals to the topic question to one another. Each person should be given an equal amount of time to present his or her responses and rebuttals.
 - Pause to reflect on what you heard and why it was interesting. Consider whether the opposing group's responses helped you change or rethink your position.
 - Repeat this procedure for the closing argument.
5. After conducting your debate, write an essay summarizing your presentation or report and indicating whether you support or oppose the Paycheck Fairness Act. Consider including any new ideas or arguments that came from the debate. Write your essay on the lines below.

A large rectangular area with a black border, filled with horizontal lines for writing. The lines are evenly spaced and extend across most of the width of the box, leaving a narrow margin on the left and right sides. There are approximately 30 lines in total.