

Civil Rights and the Gender Wage Gap in Utah



A Report of the
Utah Advisory Committee to the
U.S. Commission on Civil Rights

July 2020

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Utah Advisory Committee to the
U.S. Commission on Civil Rights**

The Utah Advisory Committee to the U.S. Commission on Civil Rights submits this report on the gender wage gap in Utah. The Committee sought to understand factors that may cause or contribute to the gender wage gap; the impact of the wage gap on individuals on the basis of sex and race; and the impact of federal and state level enforcement efforts aimed to address pay inequity. In particular, the Committee emphasized their examination on women and women of color. The Committee submits pursuant to its responsibility to study and report on civil rights issues in the state of Utah. The contents of this report are primarily based on testimony the Committee heard during a public hearing on October 3, 2019, in Salt Lake City, Utah and written statements.

This report details concerns about the gender wage gap among women and women of color. Primary concerns include factors that likely contribute to the wage gap such as implicit bias, impact of pay secrecy policies, the lack of family leave policies, and occupational segregation. Additionally, women of color experience a larger gender wage gap in comparison with their white counterparts and disproportionately occupy low-wage and part-time occupations. Finally, testimony indicated concerns with federal and state enforcement efforts to address pay inequity because, so few complaints ruled in favor of employees. The Committee offers the Commission recommendations for addressing short-term and long-term issues concerning gender inequality and provides additional considerations for employers and the religious community.

**Utah Advisory Committee to the
U.S. Commission on Civil Rights**

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EXECUTIVE SUMMARY

For more than half a century, key laws were passed to ensure fair treatment of women in the workplace. First, the Equal Pay Act was signed into law on June 10, 1963, mandating that men and women receive equal pay for substantially equal work at the same establishment.¹ A year later, Congress passed the Civil Rights Act of 1964, protecting individuals against discrimination based on their race, color, religion, sex, or national origin.² Most recently, the Lilly Ledbetter Fair Pay Act was signed into law in 2009 aimed to strengthen protections against pay discrimination by amending Title VII the Civil Rights Act so that the 180-day statute of limitations for filing a pay discrimination lawsuit resets with each new paycheck.³

While these laws make it more likely that women receive equal pay for equal work, women continue to earn considerably less than men. According to the Salt Lake Tribune, Utah has the nation's second worst gender pay gap.⁴ In 2017, Utah had a gender wage gap “for women of \$14,997, behind Louisiana’s gap of 15,737.”⁵ Utah women make an average of 71 cents for every dollar earned by men,⁶ lagging behind the national average of 80 cents per dollar. The difference in earnings is known as the “gender wage gap” or “gender pay gap” and is calculated based on median salaries for all full time, year-round workers. Pay equity advocates designate a date each year, normally observed in April, symbolizing how far into the following year women have to work to earn what white, non-Hispanic men earned the previous year.⁷ In 2019, April 19 was designated as Equal Pay Day, however for certain groups of women, pay parity dates are much later. For example, mothers’ Equal Pay Day is June 10, 2019; African American women’s Equal Pay Day is August 22, 2019, and Latina women’s Equal Pay Day is November 20, 2019.⁸

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination

¹ 29 U.S.C. § 206.

² 42 U.S.C. § 2000e.

³ 550 U.S.C. § 618.

⁴ “Happy Equal Pay Day: Utah Has the Nation’s Second Worst Gender Pay Gap, a New Report Says,” *Salt Lake Tribune*, Apr. 2, 2019, <https://www.sltrib.com/news/2019/04/02/happy-equal-pay-day-utah/>.

⁵ Ibid.

⁶ U.S. Census Bureau, *American Community Survey 1-Year Estimates 2017, Geographies: Utah and United States, Table B20017: Median Earnings in the Past 12 Months by Sex by Work Experience in the Past 12 Months (in 2017 Inflation-Adjusted Dollars) for the Population 16 Years and Over with Earnings in the Past 12 Months* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B20017&prodType=table.

⁷ “Other Equal Pay Days in 2019,” National Committee on Pay Equity, <https://www.pay-equity.org/> (last accessed May 8, 2019).

⁸ Ibid.

or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice.⁹ The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission on issues in their states that are within the Commission's jurisdiction.

In 1997, the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights issued a seminal report, "Employment Discrimination in Utah."¹⁰ The report raised concerns with barriers employees face when attempting to file employment discrimination complaints with the Utah Antidiscrimination and Labor Division, the state agency that was found 20 years later to have an extremely low rate of cause findings and high rate of no cause findings during a 2017 legislative audit.¹¹ On April 26, 2019, the Committee voted unanimously to examine the gender wage and the impact of federal and state level enforcement efforts aimed to address pay inequity, a topic that is relevant to their 1997 study regarding employment discrimination and state and federal level enforcement.

On October 3, 2019, the Committee hosted a series of five panel discussions as part of a public meeting at the University of Utah in Salt Lake City. The Committee invited a wide range of stakeholders who provided testimony in the following areas: (i) factors that may cause or contribute to the gender wage gap; (ii) the impact of the wage gap on individuals on the basis of sex and race; (iii) and the impact of federal and state level enforcement efforts aimed to address pay inequity. In particular, the Committee emphasized their examination on women and women of color. These stakeholders include federal and state labor enforcement agencies, academics, national and state advocacy organizations; consultants; and individuals impacted by the gender wage gap.

On June 26, 2020, the Committee voted unanimously to approve the report. Through this study, the Committee offers a series of findings and recommendations below. Support for these findings and recommendations is found throughout this report. Also, while the Committee's primary focus is to issue findings and recommendations to the Commission that would then be forwarded to federal entities, the Committee offers additional recommendations for consideration directed at employers and the religious community. The Committee strongly recognizes that addressing the gender wage gap is multifaceted and requires collective effort among multiple stakeholders.

⁹ 42 U.S.C. § 1975a.

¹⁰ U.S. Commission on Civil Rights, Utah Advisory Committee, *Employment Discrimination in Utah*, 1997, <https://www.usccr.gov/pubs/2018/11-13-Utah-Employment-Discrimination-1997.pdf>.

¹¹ *Ibid.*

Findings

1. The gender wage gap for women working full-time, year-round in Utah is 70 cents per dollar earned by white men – 10 cents lower than national figures where women earn 80 cents per dollar respectively. Based on estimates, this disparity can accumulate to roughly half a million dollars over her career. If nothing is done to address the gender wage gap, it will not close until 2059; and if nothing is done in Utah, it will not close until 2106.
2. Women of color face an even larger gender wage gap in Utah compared with white men. Hispanic women earn 47 cents, Black women earn 52 cents, Native American women earn 54 cents, and Asian women earn 67 cents for each dollar paid to white men.
3. Utah has a higher share of part-time workers than the rest of the U.S. with 38 percent of Utah women versus 28 percent at the national level. This is of concern because part-time workers earn less income and are offered little to no benefit coverage. In addition, part-time workers have more variable and unpredictable work schedules, which adversely impact women who have caregiving responsibilities.
4. Occupational segregation explains half of the gender wage gap. According to Census figures, women make up nearly two-thirds of workers in the 40 lowest-paying jobs and conversely, women are underrepresented in higher wage occupations, making up only 37 percent of workers in the 40 highest-paying occupations.
5. The gender wage gap continues to widen with age, and differences among older workers are considerably larger than differences among younger workers. For younger, full-time workers between 20-24 years of age, the wage gap is closer to parity with women earning 89 cents for every dollar their male counterparts earn. However, as workers enter their prime working years, the gender wage gap widens, which also coincides with women's prime childbearing years. Earnings continue to decrease after age 45. Women 55–64 years of age experience a larger wage gap and are paid 75 cents for every dollar men are paid in the same age range. These figures likely demonstrate the long-term effects of explicit and implicit bias, which compound over time.
6. A gender wage gap exists in varying occupations that are both female-dominated and male-dominated. According to an analysis of the Bureau of Labor Statistics examining common occupations for genders, within the 20 most common occupations for women, women earn less than men in all but two of the largest occupations for women. Women make up 88 percent of elementary and middle school teachers earn 86 percent of men's earnings; and for women working as registered nurses where women make up 88 percent, women earn 91 percent of men's earnings. This continues to be the case, for women employed in male-dominated jobs. For women working in construction trade occupations, comprising of roughly 3 percent of workers in that field, women earn 94 percent of men's earnings.

7. Union membership has been proven to provide women with higher wages and better benefits. Working women in unions are paid 94 cents for every dollar paid to working men in unions, compared with 78 cents for every dollar for non-union women as a share of nonunion men's dollar. Unions can also provide a boost to women's earning regardless of their race or ethnicity. The gender wage gap is significantly smaller among both white and black unionized workers than their nonunion counterparts. Unionized workers are also more likely to have access to various kinds of paid leave such as paid sick days, vacations, holidays, and paid family and medical leave – benefits that would enable them to balance work and family obligations.
8. Utilizing salary history to set a worker's starting salary negatively impacts subsequent raises, bonuses, and promotions that accumulate overtime. This is concerning because women are more likely to be offered lower starting salaries from previous jobs and therefore, may have less retirement security to fall back on due to lower earnings accumulated throughout their career.
9. Because women are paid less than men, they have less income to devote to retirement savings to draw upon in retirement, smaller contributions to employer-sponsored retirement plans, smaller Social Security benefits, and smaller paychecks for those women who continue to work later in life.
10. Prohibiting the discussion of wages among employees, also known as pay secrecy, is a common practice among private sector employers. Yet, for most workers, pay secrecy policies are illegal. According to the National Labor Relations Act, employers are prohibited from banning employees below supervisory level from discussing their wages. Despite this law, employers continue to penalize employees. Women are particularly affected because if they are underpaid and want to engage in salary negotiations, they are starting from a lower negotiating point.
11. Women make up two-thirds of the workforce in jobs that pay the federal minimum wage and make up 70 percent of tipped workers in the U.S. In addition to women making up a large majority of low-wage jobs, women of color constitute almost a quarter of minimum wage workers. The composition of workers in minimum wage and tipped minimum wage jobs is of concern because these workers experience twice the poverty rate than the rest of the U.S. workforce and have economic insecurity.
12. The low number of Equal Pay Act and Title VII of the Civil Rights Act complaints reported to the Utah Antidiscrimination Labor Division (Utah Labor Division) and Equal Employment Opportunity Commission may be due to workers unaware of their rights and what constitutes as a violation under these laws; and poor federal and state enforcement efforts. On a state level, this is partially explained through the Utah Legislative Audit's analysis of the Utah Labor Division's handling of employment discrimination complaints. The report found that the Utah Labor Division ruled in favor of employees only 0.7 percent of the time, which is less than surrounding states and nationwide.

13. Employees who file complaints with state and federal enforcement agencies alleging discrimination must show a considerable burden of proof in the four affirmative defenses built into the Equal Pay Act. An employee must show that the disparity in pay is not due to a seniority system, a merit system, a pay system based on quantity or quality of output, and/or any other factor other than sex. This is of concern because, in its current writing, some in the legal community find that the Equal Pay Act is ineffective in addressing pay inequity allegations.

Recommendations

The U.S. Commission on Civil Rights should send this report and issue the following formal recommendations to the U.S. Department of Labor to: (i) develop initiatives to encourage women to enter nontraditional and STEM-related careers; and (ii) vigorously enforce the Fair Labor Standards Act.

The U.S. Commission on Civil Rights should send this report and issue the following formal recommendation to the Equal Employment Opportunity Commission to vigorously enforce the Equal Pay Act and the Pregnancy Discrimination Act.

The U.S. Commission on Civil Rights should send this report and issue the following formal recommendation to the National Labor Relations Board to vigorously enforce the National Labor Relations Act.

The U.S. Commission on Civil Rights should send this report and issue the following formal recommendations to the U.S. Congress to strongly consider passing legislation that:

- Requires employers with 100 or more employees to collect pay data by race, ethnicity, and gender to help identify and address pay discrimination.
- Prohibits employers from screening applications based on their salary history to be considered as candidates for a position.
- Closes the “factor other than sex” loophole by adding a requirement that the factor proffered by the employer be “bona fide,” which ensures that the factor neutral and unrelated to sex. Such legislation would make clear that the “factor other than sex” affirmative defense only excuses a pay differential when the factor is related to the position in question, forwards and business necessity, and accounts for the entire pay differential.
- Eliminates pay secrecy.
- Raises the minimum wage.
- Eliminates the subminimum wage.

The U.S. Commission on Civil Rights should send this report and issue the following formal recommendations to the Utah Legislature to strongly consider passing legislation that:

- Prohibits employers from relying on salary history of a prospective employee in considering the prospective employee for employment, including requiring that a

prospective employee's prior wages satisfy minimum or maximum criteria as a condition of being considered for employment.

- Eliminates pay secrecy.
- Raises the minimum wage.
- Eliminates the subminimum wage.
- Provides mandatory paid parental leave.
- Allows for the examination of the gender wage gap that includes disaggregation of earnings data by race.

Considerations for Employers

The Utah Advisory Committee recommends Utah employers to consider instituting employment practices that encourage a culture of pay equity. While all items below may not be feasible for employers, the Committee hopes the following recommendations provide a menu of actionable steps to narrowing the gender wage gap within the company.

Conduct a Pay Equity Audit

At the outset, employers should consider conducting a pay equity audit to assess which employee groups are underpaid and how it may have happened. Gathering salary and bonus data by gender, department, tenure, age, education, and location is key to driving the process and the methodology. Employers should also consult with senior management and their counsel to limit any legal risks.

If a pay gap exists between employees at the same level, employers should consider taking several steps. First, employers should make salary information transparent for various roles and levels within the company. Making this information transparent will engender trust and loyalty from employees by showing that the company wants to compensate all employees fairly. In addition, employers can immediately raise the compensation of employees who are underpaid to equalize pay. Finally, employers can implement a policy that automatically increases pay when hiring an employee for a higher salary than their team members, those team members proactively receive an off-cycle increase in pay.

Provide Unconscious/Implicit Bias Trainings for Management and Human Resources

Employers can benefit from providing unconscious bias training to staff. Unconscious bias training can be helpful to raising awareness about the unconscious biases we all carry about others' identities, how to recognize those thought patterns, and ways to not let these biases influence decision-making.

Training should also be offered to individuals who are involved in the hiring process. Unconscious bias can play a huge role in hiring and recruitment. Hiring personnel should keep an eye out for shifting criteria about qualifications, setting higher bars for women to demonstrate more evidence of competence and success than men, and applying extra scrutiny on women by doubting their abilities, experiences, and commitment.

Aspire for and Implement a Culture of Transparency

Employers should aspire to implement a culture of transparency. Revising policies that prohibit employees from discussing wages can do this. Also, employers should be open about salary ranges and how compensation is decided especially during hiring and evaluation phase.

Eliminate the Use of Salary History to Set Starting Salary

Employers should have one approach for handling salary negotiations. During the hiring process, the focus should be on the candidate's salary expectations rather than their salary history, and then focusing on the candidate's skill set and qualifications for the role. Employers should also post a salary range for open positions and eliminate the use of salary history to set starting wages.

Implement Family Friendly Policies

Family friendly policies such as family leave, flexible scheduling, and return to work programs for those returning from parental leave can be incredibly helpful for employees who have caregiving responsibilities. If possible, employers should consider offering paid family leave as it is believed the rewards outweigh the costs. These outcomes include improved employee retention, better talent attraction, improved employee engagement, morale and productivity.

Considerations for the Religious Community

The status of women in society is diverse worldwide. Among many important traits associated with the differentiation of gender inequality is religion. Because some religious norms and traditions can contribute to the formation of gender inequality, leaders should take steps to achieving gender equity, which then can influence the community over time.

Address Sexual Harassment

No industry has been immune, including faith communities, from receiving complaints about pervasive sexual harassment. Building on the #MeToo movement, that aims to destigmatize survivors of sexual violence, religious communities should hold churches and those in leadership accountable for their actions and make a commitment to ensuring a safe space for community members.

Hold Leadership Positions

Due in large part to institutionalized patriarchal models of leadership present in many houses of worship, 1 out of the 100 largest churches in the U.S. is led by women. Women of faith can redefine leadership in their houses of worship by being an important role model for young worshippers and push to transform gender inequality from within their religious traditions.

INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice.¹ The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission on Civil Rights issues occurring in their states that are within the Commission's jurisdiction.²

On April 26, 2019, the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to examine the gender wage gap³ as a civil rights topic of interest. The Committee sought to understand factors that may cause or contribute to the gender wage gap; the impact of the wage gap on individuals on the basis of sex and race; and the impact of federal and state level enforcement efforts aimed to address pay inequity. In particular, the Committee emphasized their examination on women and women of color.

This report begins with background on the status of the gender wage gap in Utah impacting women and women of color and a discussion regarding federal and state laws that aim to address pay inequity. A summary of themes based on testimony including factors that may contribute to the gender wage gap, potential solutions to addressing pay inequity, and enforcement efforts follow. The report concludes with findings and recommendations issued to the Commission to forward to appropriate federal and state entities and additional considerations directed to employers and the religious community.

BACKGROUND

In 1997, the Utah Advisory Committee to the U.S. Commission on Civil Rights issued a seminal report, "Employment Discrimination in Utah."⁴ The report raised concerns with barriers employees face in attempting to file employment discrimination complaints with the Utah Antidiscrimination and Labor Division.⁵ In recognition of these ongoing challenges and reported figures about the women's earnings, the Committee sought to examine a related issue in 2019:

¹ 42 U.S.C. § 1975a.

² 42 C.F.R. § 703.2.

³ The terms gender wage gap, pay gap, etc. are used interchangeably throughout this report and signify the difference in men and women's earnings based on full-time earnings. Women's earnings will always be compared with white, non-Hispanic men's earnings.

⁴ U.S. Commission on Civil Rights, Utah Advisory Committee, *Employment Discrimination in Utah*, 1997, <https://www.usccr.gov/pubs/2018/11-13-Utah-Employment-Discrimination-1997.pdf>.

⁵ *Ibid.*

the gender wage gap and the impact of federal and state level enforcement efforts aimed to address pay inequity.

The following section details background information about the gender wage gap including potential contributing factors, a brief history of Utah's unique accomplishments in advancing gender equity; and key federal and state antidiscrimination laws related to employment.

Potential Factors that Influence the Gender Wage Gap

For more than half a century, key laws were passed to ensure fair treatment of women in the workplace. First, the Equal Pay Act was signed into law on June 10, 1963 mandating that men and women receive equal pay for substantially equal work at the same establishment.⁶ A year later, Congress passed the Civil Rights Act of 1964, protecting individuals against discrimination based on their race, color, religion, sex, or national origin.⁷ Most recently, the Lilly Ledbetter Fair Pay Act was signed into law in 2009, which aimed to strengthen protections against pay discrimination by amending Title VII the Civil Rights Act so that the 180-day statute of limitations for filing a pay discrimination lawsuit resets with each new paycheck.⁸

While these laws make it more likely that women receive equal pay for equal work, women continue to earn considerably less than men. According to the Salt Lake Tribune, Utah has the nation's second worst gender pay gap, citing 2017 U.S. Census Bureau figures when the median salaries for full-time, year-round workers showed women earning 81.6 cents for every dollar men earned.⁹ The median salaries of all full-time, year-round workers showed women earning \$45,097 compared to \$55,291 for men in 2018.¹⁰ Utah had the second-highest wage gap for women of \$14,997, behind Louisiana's gap of 15,737.¹¹ Utah women make an average of 71 cents for every dollar earned by men,¹² lagging behind the national average of 81 cents per

⁶ 29 U.S.C. § 206.

⁷ 42 U.S.C. § 2000e.

⁸ Lilly Ledbetter Fair Pay Act of 2009, Pub. L. 111-2, Jan 29, 2009, 123 Stat. 5 (codified as 42 U.S.C. 2000e-5).

⁹ U.S. Census Bureau, *Income and Poverty in the United States: 2018, Current Population Reports P60-266*, Table A-7, by Jessica L. Semega, Melissa A. Kollar, John Creamer, and Abinash Mohanty (note that rounded percentages are 82 percent for the wage ratio and 18 percent for the wage gap)

<https://www.census.gov/content/dam/Census/library/visualizations/2018/demo/p60-266/p60-266.pdf>.

¹⁰ Ibid.

¹¹ "Happy Equal Pay Day: Utah Has the Nation's Second Worst Gender Pay Gap, a New Report Says," *Salt Lake Tribune*, Apr. 2, 2019, <https://www.sltrib.com/news/2019/04/02/happy-equal-pay-day-utah/>.

¹² U.S. Census Bureau, *American Community Survey, 1-Year Estimates 2017, Geographies: Utah and United States, Table B20017: Median Earnings in the Past 12 Months by Sex by Work Experience in the Past 12 Months (in 2017 Inflation-Adjusted Dollars) for the Population 16 Years and Over with Earnings in the Past 12 Months*

dollar.¹³ The difference in earnings between men and women is known as the “gender wage gap” or “gender pay gap” and is calculated based on median salaries for all full time, year-round workers.¹⁴ Pay equity advocates designate a date each year, normally observed in April, symbolizing how far into the following year women need to work to earn what white men¹⁵ earned the previous year.

Gender pay gaps are greater for women of color.¹⁶ Among women who hold full-time, year-round jobs in the U.S., Black women are typically paid 61 cents, Native American women earn 58 cents, and Latinas earn just 54 cents for every dollar paid to white, non-Hispanic men.¹⁷ White, non-Hispanic women are paid 77 cents, and Asian women 85 cents for every dollar paid to white, non-Hispanic men, and if disaggregated further, Asian and Pacific Islander women of some ethnic and national backgrounds fare much worse.¹⁸ Based on 2018 figures for women in Utah, Hispanic women earn 48 cents, Black women earn 52 cents, Native American women earn 52 cents, Asian women earn 63 cents, and Native Hawaiian or Other Pacific Islander Women earn 54 cents for every dollar paid to white, non-Hispanic men.¹⁹

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B20017&prodType=table.

¹³ U.S. Census Bureau, *American Community Survey 1-Year Estimates 2017, Geographies: All States within United States and Puerto Rico, Table B20017: Median Earnings in the Past 12 Months by Sex by Work Experience in the Past 12 Months (in 2017 Inflation-Adjusted Dollars) for the Population 16 Years and Over with Earnings in the Past 12 Months*

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B20017&prodType=table.

¹⁴ The State of the Gender Pay Gap 2020, *Payscale*, <https://www.payscale.com/data/gender-pay-gap>.

¹⁵ White men and white, non-Hispanic men will be used interchangeably throughout this report, as these are categories used by the U.S. Census Bureau.

¹⁶ See Figure 1.

¹⁷ “The Wage Gap: The Who, How, Why, and What To Do,” National Women’s Law Center, <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2019.pdf>.

¹⁸ U.S. Census Bureau, *Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-05: Work Experience in 2017 – People 15 Years Old and Over by Total Money Earnings in 2017, Age, Race, Hispanic Origin, Sex, and Disability Status*, <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html> (Unpublished calculation based on the median annual pay for all women and men who worked full time, year-round in 2018).

¹⁹ See Table 1.

Women's Earnings as a Percentage of Men's Earnings, by Race/Ethnicity in the U.S. and Utah						
	All Women	Black Women	Latina Women	Native Women	Asian Women	Native Hawaiian or Other Pacific Islander Women
U.S.	80%	63%	54%	58%	90%	* ²⁰
Utah ²¹	73.7%	51.7%	47.5%	52.1%	63.4%	54.4%

Table 1

The difference in women’s earnings accumulate over time (See Figure 1). For younger, full-time workers, the wage gap is close to parity. However, as workers enter their prime working years, the gender wage gap widens, which also coincides with women’s prime childbearing years. Earnings increase more slowly after age 45 and even decrease after age 55.²² Working women 55–64 years of age experience a larger wage gap and are paid 75 percent as much as men in the same age range. These figures likely demonstrate the long-term effects of explicit and implicit bias, which compound over time.²³

²⁰ National data was not disaggregated between Asian American women and Pacific Islander, Native Hawaiian women.

²¹ “The Wage Gap, State by State,” National Women’s Law Center, <https://nwlc.org/resources/wage-gap-state-state/>, (accessed date) (Figures were calculated by the National Women’s Law Center using 2014-2018 American Community Survey Five-year Estimates).

²² Kevin Miller, “The Simple Truth About the Gender Pay Gap,” *American Association of University Women*, Fall 2018 Edition, p. 10. <https://files.eric.ed.gov/fulltext/ED596219.pdf>.

²³ Ibid. (Fall 2019 update: https://www.aauw.org/app/uploads/2020/02/Simple-Truth-Update-2019_v2-002.pdf using U.S. Census Bureau figures).

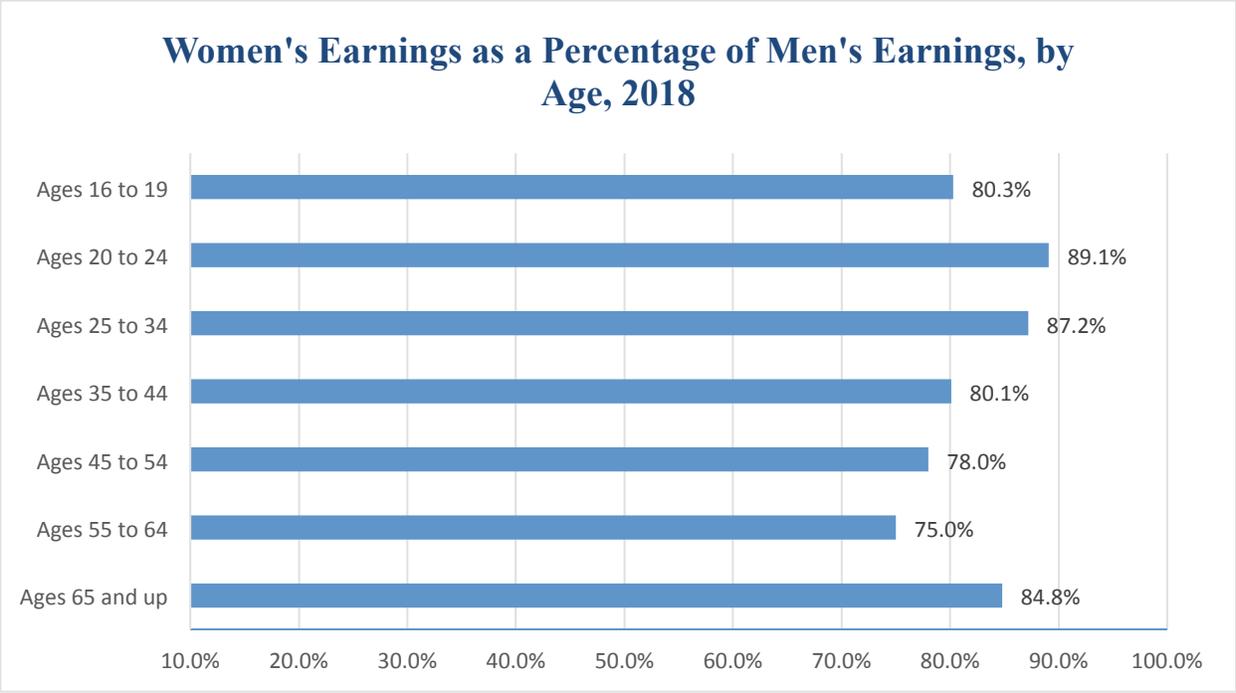


Figure 1

A report by the Institute for Women’s Policy Research found that over the span of a woman’s career, that yearly difference could accumulate to half million dollars.²⁴ If current trends continue, pay equity advocates argue the gender wage gap will remain until 2058 and will not close until the next century in some states, including Utah.²⁵ For Utah women, the wage gap will not close until 2106.²⁶

²⁴ According to the Center for American Progress, the “career earnings gap” is now nearly \$434,000. Jessica Arons, “Lifetime Losses: The Career Wage Gap,” *Center for American Progress*, Dec. 2008, https://www.americanprogressaction.org/wp-content/uploads/issues/2008/pdf/equal_pay.pdf. The Institute for Women’s Policy Research has separately estimated that women born between 1955 and 1959 who worked full time, year-round each year lost more than \$530,000 by the time they reached age 59 (Cynthia Hess, Jessica Milli, Jeff Hayes, Ariane Hegewisch, Yana Mayayeva, Stephanie Roman, Julie Anderson and Justine Augeri, “The Status of Women in the States: 2015,” *Institute for Women’s Policy Research*, p. 50, <http://statusofwomendata.org/wp-content/uploads/2015/09/PDF-of-final-Employment-Earnings-chapter-9-4-15.pdf>).

²⁵ Cynthia Hess, Jessica Milli, Jeff Hayes, Ariane Hegewisch, Yana Mayayeva, Stephanie Roman, Julie Anderson and Justine Augeri, “The Status of Women in the States: 2015,” *Institute for Women’s Policy Research*, pp. 44–45, <http://statusofwomendata.org/wp-content/uploads/2015/02/Status-of-Women-in-the-States-2015-Full-National-Report.pdf>.

²⁶ “Status of Women in the States: Projected Year the Wage Gap Will Close by State,” *Institute for Women’s Policy*, Mar. 2017, <https://iwpr.org/wp-content/uploads/2017/03/R476.pdf> (accessed on April 20, 2020).

Explaining the gender wage gap is multifaceted. Experts attribute several measurable factors such as educational attainment, occupation, industry, work experience, union status, etc. that can influence earnings. Several pay equity studies control for observable characteristics that may explain the difference in earnings; however, some researchers like Claudia Goldin cite an unexplained or “residual” gap.²⁷ In 2014, economist Claudia Goldin found that the unexplained gap explains more of the wage gap today than it did in the 1980s.²⁸ Women today have made great strides in education attainment and work experience, which explains the influence of those factors on the wage gap; however, the gap is not consistent across occupations. According to Ms. Goldin, some professions disproportionately incentivize workers to work long hours in science and technology fields and some high-wage firms adopt pay-setting practices that disproportionately pay workers who work long and specific hours, including weekends or late nights. Her analysis concludes that even if men and women work the same number of hours, their earnings depend on the number of hours and particular times they work.²⁹

Gender discrimination is regularly cited as part of the unexplained factor contributing to the wage gap.³⁰ Because women are more likely to take breaks from their careers to handle caregiving responsibilities, social scientists argue the “motherhood penalty” may account for a significant portion of the gender wage gap.³¹ Research indicates that mothers suffer a penalty relative to non-mothers and men in the form of perceived lower competence and commitment, higher professional expectations, lower likelihood of being hired and opportunity for promotion, and lower recommended salaries. Such evidence implies that being a mother leads to discrimination in the workplace.³²

Family caregiving responsibilities, especially motherhood, can lead to interruptions in career paths for women and can have an impact on long-term earnings. According to a 2013 Pew survey, four in ten mothers said that at some point in their work life they had taken a significant amount of time off or reduced their work hours to care for a child or other family member.³³ Roughly a quarter said they had quit work altogether to take care of these familial responsibilities. Fewer men said the same. Less than a quarter of fathers said they had taken a

²⁷ Claudia Goldin, *A Grand Gender Convergence: Its Last Chapter*, 104(4) AM. ECON. REV., 1091–1119 (2014).

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Jessica Schneider and Elise Gould, “‘Women’s Work’ And The Gender Pay Gap,” *Economic Policy Institute*, Jul. 20, 2016, <https://www.epi.org/publication/womens-work-and-the-gender-pay-gap-how-discrimination-societal-norms-and-other-forces-affect-womens-occupational-choices-and-their-pay/>.

³¹ Shelley Correll, Stephan Benard and In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOCIOL., 1297-1338 (2007).

³² *Ibid.*

³³ “On Pay Gap, Millennial Women Near Parity – For Now,” *Pew Research Center, Social & Demographic Trends*, Dec. 11, 2013, <https://www.pewsocialtrends.org/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/>.

significant amount of time off to care for a child or other family member.³⁴ Mothers were also nearly twice as likely as fathers to say taking time off had a negative impact on their job or career. Among those who took leave from work in the past two years following the birth or adoption of their child, 25 percent of women said this had a negative impact at work, compared with 13 percent of men.³⁵

The “Me Too” movement³⁶ and sexual harassment or assaults are regularly discussed in relation to gender discrimination in the workplace. When allegations of serial sexual misconduct by movie mogul Harvey Weinstein broke in 2017, they triggered a national reckoning over sexual harassment and assault in the workplace prompting complaints filed against perpetrators.³⁷ Based on preliminary sexual harassment data for the 2018 fiscal year, the Equal Employment Opportunity Commission (EEOC) filed 66 sexual harassment lawsuits, including 41 that included allegations of sexual harassment—a more than 50 percent increase in lawsuits challenging sexual harassment compared with the year prior.³⁸ New charges filed with the EEOC alleging sexual harassment increased by more than 12 percent over 2017 to more than 7,500—the first increase in at least eight years.³⁹ On a statewide level, the Utah Antidiscrimination and Labor Division received 605 inquiries in November 2017— more than what it received in the previous two months combined. In November 2016, the agency received 228 inquiries.⁴⁰

The impact of sexual harassment and assault negatively affects survivors and can impact a woman’s earnings. Women who have experienced sexual harassment are 6.5 times more likely to leave their jobs than those who have not.⁴¹ Subsequently, these women may take jobs with lower

³⁴ Ibid.

³⁵ Ibid.

³⁶ A movement founded in 2006 to help survivors of sexual violence, particularly Black women and girls, and other young women of color find pathways to healing. In 2017, the viral hashtag, “#MeToo” continued the conversation about sexual violence and forced its way into the national dialogue and called for perpetrators to be held accountable.

³⁷ Christina Pazzanese and Colleen Walsh, “The women’s revolt: Why now, and where to,” *Harvard Gazette*, Dec. 21, 2017, <https://news.harvard.edu/gazette/story/2017/12/metoo-surge-could-change-society-in-pivotal-ways-harvard-analysts-say/>.

³⁸ EEOC Releases Preliminary FY 2018 Sexual Harassment Data, Oct. 4, 2018 <https://www.eeoc.gov/newsroom/eeoc-releases-preliminary-fy-2018-sexual-harassment-data>.

³⁹ Ibid.

⁴⁰ Nate Carlisle, “‘It Doesn’t Matter What You Say’: In Utah, the Agency That Investigates Job Discrimination is So Mistrusted That Some Lawyers Go to the Feds Instead,” *Salt Lake Tribune*, Dec. 19, 2017. <https://www.sltrib.com/news/politics/2017/12/17/it-doesnt-matter-what-you-say-in-utah-the-agency-that-investigates-job-discrimination-is-so-mistrusted-that-some-lawyers-go-to-the-feds-instead/>.

⁴¹ Heather McLaughlin, Christopher Uggen, Amy Blackstone, *The Economic and Career Effects of Sexual Harassment on Working Women*, 31(3) GEN. & SOCI., 333-58 (2009), <https://journals.sagepub.com/doi/10.1177/0891243217704631>.

wages, move to an entirely different industry, and/or reduce the amount of hours they work. By moving jobs, these employees lose their seniority and standing within the company – ultimately impacting the timeline of moving up in terms of pay and receiving promotions.⁴² Research also indicates that sexual harassment is one of many manifestations of power imbalances in the workplace. It affects women and men across industries and occupations and can have greater consequences for women who face other forms of discrimination and harassment, such as women of color, LGBTQ women and women with disabilities.⁴³

The discussion around sharing salary information with coworkers has long been considered taboo; however, proponents have urged companies to adopt full pay transparency policies as a solution for addressing the wage gap.⁴⁴ If everyone knows everyone else's pay in an organization, then an organization would be forced to make appropriate corrections because those disparities could be highlighted and, in some cases, could be obvious. States such as California, Delaware and Colorado have recently passed laws banning employers from penalizing workers for discussing their salary or inquiring about a colleague's compensation.⁴⁵ Websites like GlassDoor and PayScale allow employees to share compensation data anonymously and determine the market rate for their job position.⁴⁶ Opponents of pay transparency argue that companies may hire or retain fewer people, transparency could put employees against each other, and that pay differences could be taken out of context.⁴⁷

Women's involvement in the criminal justice system also has an influence on women's earnings. Female offenders are economically marginalized and face substantial challenges related to employment when they return to the community after incarcerated.⁴⁸ Research indicates that

⁴² Ibid.

⁴³ "Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women," *National Women's Law Center*, Aug. 2017, <https://nwlc.org/resources/out-of-the-shadows-an-analysis-of-sexual-harassment-chargesfiled-by-working-women/>.

⁴⁴ Susan Dominus, "Breaking the Salary Sharing Taboo," *New York Times*, Feb. 19, 2020. <https://www.nytimes.com/interactive/2020/02/19/magazine/salary-sharing.html>.

⁴⁵ Samantha Cooney, "Should You Share Your Salary with Co-workers? Here's What Experts Say," *TIME*, Aug. 14, 2018, <https://time.com/5353848/salary-pay-transparency-work/>.

⁴⁶ Visit www.glassdoor.com and www.payscale.com to view their published data.

⁴⁷ Samantha Cooney, "Should You Share Your Salary with Co-workers? Here's What Experts Say," *TIME*, Aug. 14, 2018, <https://time.com/5353848/salary-pay-transparency-work/>.

⁴⁸ Patricia O'Brien, "Reducing Barriers to Employment for Women Ex-Offenders: Mapping the Road to Reintegration," *Safer Foundation*, Jun. 2002, <http://saferfoundation.jellcreative.com/files/documents/CARRE%20Paper%20202.pdf>; U.S. Department of Labor, Employment and Training Administration, *The Jewish Vocational Services Women Offender Reentry Collaborative—A Practitioner's "Blueprint" for Replication*, by Rebecca Zarch and Glen Schneider of Abt. Associates, Inc. 2007, <https://www.cmcainternational.org/wp-content/uploads/2019/10/a-oractioners-blueprint-for-replication.pdf>.

women ex-offenders are both underemployed and unemployed, work fewer hours and make less per hour than their male counterparts, and are often employed in nonpermanent, low-level, or entry-level occupations that offer limited advancement opportunities.⁴⁹ The existence of a criminal record also affects their opportunities for employment and potential earnings.⁵⁰ Employers have been reluctant to hire ex-offenders for several reasons such as the perceived risk of continued engagement in criminal behavior⁵¹ and concerns about trustworthiness of the individual.⁵²

Cultural and religious beliefs may also contribute to the gender wage gap.⁵³

The Uniqueness of Utah

Although Utah has made headlines over the years for being the lowest ranking in gender equity by several measures,⁵⁴ many are unaware that the state made early strides toward gender equity before many other states in the union. In fact, Utah women voted half a century before most

⁴⁹ Michael Bullis and Paul Yovanoff, *Idle Hands: Community Employment Experiences of Formerly Incarcerated Youth*, 14(2) J. EMOT. BEHAV. DISORD, 71-85 (2006); Cynthia L. Blitz, *Predictors of Stable Employment Among Female Inmates in New Jersey: Implications for Successful Reintegration*, 43(1) J. OFFENDER REHABIL. 1–22 (2006).

⁵⁰ Marina Duane, Nancy La Vigne, Matthew Lynch, Emily Reimal, “Criminal Background Checks: Impact on Employment and Recidivism,” *Urban Institute*, Mar. 2, 2017, <https://www.urban.org/research/publication/criminal-background-checks-impact-employment-and-recidivism>.

⁵¹ Patricia M. Harris and Kimberly S. Keller, “Ex-Offenders Need Not Apply: The Criminal Background Check in Hiring Decisions,” 21(1) J. CONTEMP. CRIM. JUST. 6–30 (2005), <https://journals.sagepub.com/doi/10.1177/1043986204271678>.

⁵² Michael A. Stoll and Shawn D. Bushway, “The Effect of Criminal Background Checks on Hiring Ex-Offenders.” 7(3) CRIMINOLOGY & PUB. POL’Y 371–404 (2008), https://www.russellsage.org/sites/default/files/STOLL_et_al-2008-Criminology_%26_Public_Policy.pdf.

⁵³ Because the Commission’s statute prohibits “the Commission [and] its advisory committees [from] inquir[ing] into or investigat[ing] . . . any religious organization,” 42 U.S.C. § 1975a(b), the Utah Advisory Committee does not herein discuss the beliefs of any specific religious organization.

⁵⁴ Taylor Stevens, “Women Made Gains in Utah’s Recent Elections, But Men Still Hold Nearly 3 of Every 4 City Offices Along the Wasatch Front,” *Salt Lake Tribune*, Dec. 5, 2017 <https://www.sltrib.com/news/politics/2017/12/04/women-made-gains-in-utahs-recent-elections-but-men-still-hold-nearly-3-of-every-4-city-offices-along-the-wasatch-front/>; Lee Davidson, “Utah Now Has America’s Biggest Gender Wage Gap – Women Earn 70 Cents on the Dollar Compared to Men,” *Salt Lake Tribune*, Apr. 11, 2018 <https://www.sltrib.com/news/politics/2018/04/10/utah-now-has-americas-biggest-gender-wage-gap-women-earn-70-cents-on-the-dollar-compared-to-men/>; Erin Alberty, “Utah is the Second-Most Sexist State, Researchers Say – and Women’s Internalized Sexism Appears to Play a Unique Role Here,” *Salt Lake Tribune*, Feb. 7, 2019 <https://www.sltrib.com/news/2018/08/21/researchers-identify-most/>.

American women. Utah's territorial legislature adopted suffrage rights for female citizens in 1870, and Utah women were the first in the nation to vote under a women's suffrage law.⁵⁵ When Utah became a state in 1896, there were only two other states that protected a woman's right to vote.⁵⁶ Utah women also played key roles in advocating for the 1920 passage of the 19th Amendment to the United States Constitution, which guaranteed all women in the United States the right to vote. Interestingly, the National Women's Suffrage Association gathered more petitions in favor of the constitutional amendment in Utah than in any other state despite tensions created by Utah's early practice of polygamy.⁵⁷ Emmeline B. Wells, editor of *The Exponent*, a Mormon women's newspaper in Utah, joined Susan B. Anthony and Elizabeth Cady Stanton at the 1879 National Woman's Suffrage Association convention in Washington to advocate for nationwide suffrage.⁵⁸

Besides being pioneers in women's suffrage, Utah women outpaced other states when it came to political leadership. Twenty-four years before the adoption of the 19th Amendment, Martha Hughes Cannon, a pioneer, physician, and suffragist, was the first female state senator elected in the state and United States.⁵⁹ Cannon defeated four men running for the office, including her own husband.⁶⁰ Her legacy is known for introducing bills that include prohibiting the sale of liquor to minors and requiring merchants to provide seats for their saleswomen.⁶¹ She sponsored a pure food law; an appropriation for a hospital for the deaf, dumb, and blind; and successfully sponsored a state medical bill that put the sanitation of the entire state on a working basis.⁶² It was a female state senator, Elizabeth Hayward, who introduced the 19th Amendment for ratification in the Utah legislature.⁶³ Senator Hayward had previously been the second woman to

⁵⁵ Katherine Kitterman, "Utah Women Had the Right to Vote Long Before Others—and Then Had it Taken Away," *Washington Post*, Feb. 14, 2020. (While Wyoming had passed a women's suffrage law of its own before Utah did, the timing of elections was such that Utah women voted under Utah's law first); *See Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Wells and Anthony became life-long friends, and Susan B. Anthony, just before she died, had one of her gold rings sent to Wells as a memento of their friendship. *See* Barbara Jones Brown, "Emmeline B. Wells, A Thinking Woman," *Better Days* 2020, <https://www.utahwomenshistory.org/bios/emmelinewells/>.

⁵⁹ *See* "Martha Hughes Cannon," Utah State Capitol website, <https://utahstatecapitol.utah.gov/explore/capitol-grounds/martha-hughes-cannon>.

⁶⁰ *Ibid.*

⁶¹ Elizabeth Cannon Porter McCrimmon, "About My Mother, Martha," *Send Martha*, <https://www.sendmartha.com/about-my-mother-martha>.

⁶² *Ibid.*

⁶³ *See* Amy Tanner Thiriot with Tiffany Greene, "Elizabeth Pugsley Hayward, Legislator, Delegate, and Advocate for Children's Rights," *Better Days* 2020, <https://www.utahwomenshistory.org/bios/elizabeth-pugsley-hayward/>.

be elected as a delegate to a National Democratic Convention and was one of only two women delegates at the convention in 1908.⁶⁴

Utah's early suffrage history has been the subject of recent media coverage and commentary.⁶⁵ Now, 150 years since Utah's adoption of women's suffrage and 200 years since the ratification of the 19th Amendment, Utah's lag in gender equity is a marked departure from its early history that merits discussion and action.

Today, efforts to advance gender equality continue in Utah. In January of 2020, Utah legislators introduced a bill to ratify the federal Equal Rights Amendment (ERA).⁶⁶ The ERA is a proposed amendment to the Constitution that would make men and women equal in the eyes of federal law.⁶⁷ Unfortunately, the effort to ratify the ERA was defeated during the 2020 legislative session.⁶⁸ Advocates expressed that they plan to re-introduce it again next year.⁶⁹

Equal Pay Act of 1963

The Equal Pay Act of 1963, which amends the Fair Labor Standards Act of 1938, prohibits pay discrimination on the basis of sex.⁷⁰ This federal law requires that employers pay similarly situated employees in the same establishment the same wage, regardless of sex, if they perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions.⁷¹ Employers are legally prohibited from retaliating against employees who act against discriminatory practices in the workplace.⁷² However, the law allows for pay differentials

⁶⁴ *Ibid.*

⁶⁵ *See, e.g.*, "Power of the Past: Retelling Utah's Suffragist History to Empower Modern Women," *NPR*, Feb. 14, 2020, <https://www.npr.org/2020/02/14/805725359/power-of-the-past-retelling-utahs-suffragist-history-to-empower-modern-women>; Katherine Kitterman, "Utah Women Had the Right to Vote Long Before Others—and Then Had it Taken Away," *Washington Post*, Feb. 14, 2020; Becky Jacobs, "How Polygamy Helped Utah Women Get the Right to Vote," *Salt Lake Tribune*, Feb. 12, 2020, <https://www.sltrib.com/news/2020/02/12/utah-women-first-won/>.

⁶⁶ H.R.J. Res. 7, 63rd Leg., 2020 Gen. Sess. (Utah 2020), <https://le.utah.gov/~2020/bills/static/HJR007.html>.

⁶⁷ *Id.* *See also* Equal Rights Amendment, <https://www.equalrightsamendment.org/>.

⁶⁸ Becky Jacobs, "Advocates Will Try to Push Utah to Ratify Equal Rights Amendment Again Next Year," *Salt Lake Tribune*, Mar. 6, 2020, <https://www.sltrib.com/news/2020/03/05/advocates-will-try-push/>; H.R.J. Res. 7, 63rd Leg., 2020 Gen. Sess. (Utah 2020) available at <https://le.utah.gov/~2020/bills/static/HJR007.html> (sent to House file for bills not passed on March 12, 2020).

⁶⁹ Becky Jacobs, "Advocates Will Try to Push Utah to Ratify Equal Rights Amendment Again Next Year," *Salt Lake Tribune*, Mar. 6, 2020, <https://www.sltrib.com/news/2020/03/05/advocates-will-try-push/>.

⁷⁰ Equal Pay Act of 1963, Pub. L. 88-38, 77 Stat. 56 (codified as 29 U.S.C. §§ 201–219).

⁷¹ *Id.* at § 206(d).

⁷² 29 U.S.C. § 218c.

when individuals are evaluated based on criteria such as seniority, production levels, and merit.⁷³ The Equal Employment Opportunity Commission is the federal agency charged with enforcing the Equal Pay Act and other employment discrimination laws.⁷⁴

Title VII of The Civil Rights Act

Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin and religion.⁷⁵ It generally applies to employers with 15 or more employees, including federal, state and local governments.⁷⁶ Title VII also applies to private and public colleges and universities, employment agencies, and labor organizations.⁷⁷ The law forbids discrimination in any aspect of employment including: hiring and firing; compensation, assignment or classification of employees; transfer, promotion, layoff or recall; job advertisements recruiting; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans and disability leave; and other terms and conditions of employment.⁷⁸ Employers are legally prohibited from retaliating against employees who take action against discriminatory practices in the workplace.⁷⁹

Lilly Ledbetter Fair Pay Act

The Lilly Ledbetter Fair Pay Act, named after a woman who discovered her employer was paying her less than men doing the same job, allows for employees to effectively challenge illegal unequal pay.⁸⁰ The law amended the 1964 Civil Rights Act and covers pay discrimination based on gender, race, national origin, religion, age and disabilities.⁸¹ The law states the EEOC's longstanding position that each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination began.⁸² The Lilly Ledbetter Fair Pay Act

⁷³ *Id.* at § 206(d)(1).

⁷⁴ Exec. Order No. 12067, 43 Fed. Reg. 28,967 (Jan. 3, 1979).

⁷⁵ Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (codified as 42 U.S.C. § 2000e–2000e-17).

⁷⁶ 42 U.S.C § 2000e.

⁷⁷ *Id.*

⁷⁸ *Id.* at § 2000e-2.

⁷⁹ *Id.* at § 2000e-3.

⁸⁰ Lilly Ledbetter Fair Pay Act of 2009, Pub. L. 111-2, 123 Stat. 5 (codified as 42 U.S.C. 2000e-5).

⁸¹ 42 U.S.C. § 2000e-5(e).

⁸² *Id.*; U.S. Equal Employment Opportunity Commission, “Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009,” <https://www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009>.

recognizes the "reality of wage discrimination" and restores "bedrock principles of American law."⁸³ Particularly important for the victims of discrimination, the Act contains an explicit retroactivity provision that each new discriminatory paycheck triggers a new 180-day statute of limitations.

Utah Antidiscrimination Act

Utah does not have a separate equal pay related law requiring that men and women be paid equally for equal work. However, under the Utah Antidiscrimination Act, an employer is prohibited from compensation discrimination based on race, color, sex, pregnancy and childbirth, age (40 years and over), religion, national origin, disability, sexual orientation, or gender identity.⁸⁴ Under the Utah Antidiscrimination Act, it is unlawful for an employer to pay different wages or salaries to employees having substantially equal experience, responsibilities, and skills for the particular job.⁸⁵ The law provides an exception for increases in pay based on seniority if the increases are uniformly applied and available to all employees on a substantially proportional basis.⁸⁶ The law does not prohibit an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments.⁸⁷ It applies to any employer employing 15 or more employees within the state, and to the state regardless of the number of employees; this law does not apply to a religious organization, any corporation or association of any religious organization, a religious leader when acting in the capacity of a religious leader, or the Boy Scouts of America.⁸⁸

⁸³ Lilly Ledbetter Fair Pay Act of 2009 § 2.

⁸⁴ Utah Code Ann. § 34A-5-106(1)(a)(i)(C), (J).

⁸⁵ *Id.* at § (1)(a)(i), (iii).

⁸⁶ *Id.* at § (1)(a)(iii)(B)(I).

⁸⁷ *Id.* at § (1)(a)(iii)(B)(II).

⁸⁸ Utah Code Ann. § 34A-5-102(1)(i).

SUMMARY OF PANEL TESTIMONY

The panel discussion on October 3, 2019, at the University of Utah in Salt Lake City and written statements included testimony from federal and state labor enforcement agencies, academics, national and state advocacy organizations, and consultants. Panelists who presented on October 3, 2019, were selected to provide a diverse and balanced testimony the gender wage gap, factors that contribute to it, solutions, and enforcement efforts. Several themes emerged that attempt to explain multiple factors that contribute to the wage gap include cultural and organizational indicators; enforcement efforts on a federal and state level; and solutions that government, the private sector, and society can consider to narrow the gender wage gap.

Implicit Bias, Sexual Harassment, and Occupational Segregation

Research concludes that occupational segregation is a significant contributor to the gender wage gap. According to the National Bureau of Economic Research, about half of the gender wage gap is due to occupational segregation.⁸⁹ The Bureau of Labor Statistics defines occupational segregation as a dynamic that occurs “when workers are excluded from certain jobs, and overrepresented in others, for reasons such as race, gender, or national origin”⁹⁰ Consistently, the labor market demonstrates that work done predominantly by women is valued less. Based on 2017 figures, women made up nearly two-thirds of workers in the 40 lowest-paying jobs—occupations such as personal care aides, home health aides, and fast food workers.⁹¹ Conversely, women are underrepresented in higher wage occupations, making up only 37 percent of workers in the 40 highest-paying occupations.⁹² In fact, female-dominated jobs at every skill level—low, medium, and high—are associated with lower median earnings than comparable male-dominated

⁸⁹ Francine D. Blau and Lawrence M. Kahn, “The Gender Wage Gap: Extent, Trends, and Explanations.” Working Paper 21913 (National Bureau of Economic Research, 2016), available at <http://www.nber.org/papers/w21913.pdf>.

⁹⁰ U.S. Department of Labor, Bureau of Labor Statistics, *Gender differences in occupational distributions among workers*, by Paul Gabriel, Suzanne Schmitz, Monthly Labor Review, Jun. 2007, <https://www.bls.gov/opub/mlr/2007/06/art2full.pdf>.

⁹¹ U.S. Census Bureau, *2017 American Community Survey using IPUMS*, <https://ipums.org/>. (The low wage workforce is defined as the 40 detailed occupations that have the lowest median hourly wages based on U.S. Department of Labor, Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat); “The Wage Gap: The Who, How, Why, and What to Do,” National Women’s Law Center, p. 3, <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2019.pdf>.

⁹² Ibid. The high-wage workforce is defined as 40 detailed occupations that have the highest median hourly wages based on U.S. Department of Labor, Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm.; “The Wage Gap: The Who, How, Why, and What to Do,” National Women’s Law Center, p. 3, <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2019.pdf>.

jobs.⁹³ Based on 2010 Bureau of Labor Statistics data, examples of low-skilled female-dominated occupations are home health aides and housekeeping cleaners; examples of medium-skilled female-dominated occupations are secretaries and administrative assistants; and examples of high-skilled female-dominated occupations are elementary school teachers and registered nurses.⁹⁴

Pay disparities are pervasive even in female dominated industries. Valerie Lacarte, postdoctoral research fellow at the Institute for Women’s Policy Research testified that women experience a gender wage gap of 5 percent or more in 108 occupations that are female dominated.⁹⁵ According to Maya Raghu, director of Workplace Equality and Senior Counsel at the National Women’s Law Center, work done by women has been unpaid work tied to the home and family such as cleaning, laundry, food preparation and service, and caregiving.⁹⁶ Wages in these occupations that are made up predominantly of women, are known as “pink collar” occupations pay low wages⁹⁷ largely because it is work performed by women, and “women’s work” is undervalued.⁹⁸ For example, elementary and middle school teachers, where women make up 80 percent of the sector, women earn 86 percent of men’s earnings.⁹⁹ Similarly, for registered nurses, women represent 88 percent of the profession and make 91 percent of men’s earnings.¹⁰⁰ On the other hand, male-dominated occupations happen to be the top-paid occupations.¹⁰¹ In the

⁹³ Ibid. (The high-wage workforce is defined as 40 detailed occupations that have the highest median hourly wages based on U.S. Department of Labor, Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat).

⁹⁴ Ariane Hegewisch Hannah Liepmann, Jeffrey Hayes, & Heidi Hartmann, “Separate and Not Equal? Gender Segregation in the Labor Market and the Gender Wage Gap,” *Institute for Women’s Policy Research*, <https://iwpr.org/publications/separate-and-not-equal-gender-segregation-in-the-labor-market-and-the-gender-wage-gap/>.

⁹⁵ Valerie Lacarte, testimony, *Briefing Before the Utah Advisory Committee to the U.S. Commission on Civil Rights, Salt Lake City, UT*. October 3, 2019, transcript, pp. 14-15 (hereafter cited as Salt Lake City Briefing).

⁹⁶ Maya Raghu, Director of Workplace Equality and Senior Counsel, National Women’s Law Center, Written Statement for the Utah Briefing before the Utah Advisory Committee to the U.S. Commission on Civil Rights, October 3, 2019 at p. 4 (hereinafter Raghu Statement).

⁹⁷ “Low Wage Jobs Are Women’s Jobs: The Overrepresentation of Women in Low Wage Work,” *National Women’s Law Center*, Aug. 2017, <https://nwlc.org/resources/low-wage-jobs-are-womens-jobs-the-overrepresentation-of-women-in-low-wage-work/>.

⁹⁸ Philip N. Cohen, “Devaluing and Revaluing Women’s Work,” *Huffington Post*, Apr. 3, 2010, https://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w_b_444215.html; Raghu Statement, at p. 4.

⁹⁹ Lacarte, Valerie. “The Gender Wage Gap in Utah and in the US.” Presentation slide 18. See Appendix for presentation slides.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

highest-paid occupations, there is generally an even larger wage gap. Among the top paid occupations and male dominated: chief executives, software developers, and managers.¹⁰² The gender wage gap in those occupations is largely 70 percent to 87 percent.¹⁰³ These are sectors where women represent less than a third of workers.¹⁰⁴ It is also worth noting that a study of more than 50 years of data revealed that when women moved into a field in large numbers, wages declined, even when controlling for experience, skills, education, race, and region.¹⁰⁵

Implicit bias may influence occupational segregation and therefore can perpetuate the gender wage gap. Implicit or unconscious bias involves “attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.”¹⁰⁶ These unconscious attitudes held about other people often are based on categories such as race, gender, age, or ethnicity. Implicit bias is believed to be pervasive and expressed at both an individual and institutional level. One panelist noted that this could be observed in the employment context when employers make decisions in recruiting, hiring, conducting performance evaluations, giving out promotions, and providing opportunities for advancement and leadership development.¹⁰⁷ This is concerning for workers and potential candidates, Ms. Lacarte says, “[they] are not being evaluated based on their intrinsic value or their particular experience”¹⁰⁸ and when this occurs, those assessments are not effective or efficient from a labor market standpoint.¹⁰⁹ Consequently, employers miss out on great candidates and/or candidates are discouraged from entering certain industries.¹¹⁰

In the employment context, gender can influence how an employer makes decisions that limit women’s employment opportunities and an applicant’s potential and starting salary. Gender bias can be due to long-term exposure to and compliance with cultural beliefs regarding gender appropriate attributes, skills, and occupations. Based on this assertion, men are often encouraged

¹⁰² Lacarte, Valerie. “The Gender Wage Gap in Utah and in the US.” Presentation slide 19. See Appendix for presentation slides.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Asaf Levanon, Paula England & Paul Allison, *Occupational Feminization and Pay: Assessing Causal Dynamic Using 1950-2000 U.S. Census Data*, 88(2) SOC. FOR. 865–891 (2009), <http://sf.oxfordjournals.org/content/88/2/865.short>.

¹⁰⁶ Kirwan Institute for the Study of Race and Ethnicity, “Understanding Implicit Bias,” Ohio State University, 2015, <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>.

¹⁰⁷ Lacarte Testimony, *Salt Lake City Briefing*, p. 16.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

to pursue occupations that involve masculine stereotypes, skills, and authority, while women are encouraged to pursue occupations associated with stereotypes, skills, and traits.¹¹¹

Germane to the discussion of addressing the wage gap is encouraging women to enter into higher paying occupations. While on its face, it appears to be a sound recommendation, women have cited sexual harassment and hostile work environments as a few reasons that makes staying in these occupations challenging and sometimes deters them from entering.¹¹² An example of this is when women union members working in a Ford automotive assembly plant endured years of gender and racial harassment.¹¹³ Female employees were pressured not to report harassers and faced retaliation if they did.¹¹⁴ Some union members quit their job rather than try to remain in difficult environments where harassers were not held accountable.¹¹⁵ In another scenario, a doctor shared that she filed a complaint with her local hospital board and the Office of Inspector General at the Department of Health and Human Services against her employer for misconduct that includes stealing of her patient record and threatening to fire her if she did not work after a major surgery.¹¹⁶ In addition to being threatened with legal action by the hospital board for speaking out against her employer, when her employer learned of the complaint, they demanded that she sign a non-disclosure form recognizing the allegations made against the hospital.¹¹⁷ Throughout her dispute with her employer, she spent thousands of dollars and she and her family were intimidated by private investigators she believed were tied to the hospital.¹¹⁸

Religion

Susan Madsen, Professor of Leadership and Ethics at Utah Valley University testified that religion might play a role in the widening of the gender wage gap.¹¹⁹ This assessment is

¹¹¹ Margaret S. Stockdale and Joel T. Nadler, *Paradigmatic Assumptions of Disciplinary Research and Gender Disparities: The Case of Occupational Sex Segregation*, 68 *SEX ROLES*, 207–15 (2013).

¹¹² Raghu Testimony, *Salt Lake City Briefing*, p. 54.

¹¹³ Susan Chira and Catrin Einhorn, “How Tough Is It to Change a Culture of Harassment? Ask Women at Ford,” *New York Times*, Dec. 19, 2017, <https://www.nytimes.com/interactive/2017/12/19/us/ford-chicago-sexual-harassment.html>.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ Kimberly Beck, Written Statement for the Utah Briefing before the Utah Advisory Committee to the U.S. Commission on Civil Rights, October 3, 2019.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Madsen Testimony, *Salt Lake City Briefing*, p. 33.

supported by a study published in the Journal of Academy of Management,¹²⁰ that examined sociological theories of religion in 130 countries and 50 United States revealing that religious cultures were positively linked to the gender wage gap after controlling for a range of human capital, economic, and cultural predictors.¹²¹ The study also found that the gap is explained by minimizing women's power in the public domain and sexually objectifying women.¹²² When researchers examined religious cultures, they found common threads. For example, beliefs within religion operate as a macro force affecting the collective gender attitudes and behaviors of societal members and a large portion of religious supporters in the society leads to greater inequality across genders.¹²³ Also, across religious cultures, women are enormously cherished and protected. Therefore, that "special treatment" fosters benevolent sexism, with an underlying assumption that women are weak and need men's protection, which reinforces patriarchal norms that are linked to the gender wage gap.¹²⁴ This dynamic cultivates beliefs that men's role is public and economic, and women's role is private and domestic. At the core, most religions espouse that men and women are fundamentally different by design, which ascribes less value to women. Finally, the study revealed that each major religion fosters cultural values of gender differentiation, male dominance, patriarchy, and sexist attitudes toward women.¹²⁵

Motherhood Penalty

The Motherhood Penalty is one of the most cited factors contributing to the gender wage gap. The Motherhood Penalty is the notable decline in earnings that women suffer after taking time out of the labor force to care for their children and often locks women into lower incomes for the rest of their careers.¹²⁶ Mothers, panelists argued, suffer a substantial wage penalty in the workplace in various points of the employment phase. Katie Hudman, staff attorney for Employer's Council Utah, a nonprofit organization that provides human resource and employment law consultation to employers, explained that the motherhood penalty occurs during the hiring phase.¹²⁷ According to a Stanford study, when female applicants with children were

¹²⁰ Traci Sitzmann and Elizabeth Margaret Campbell, *Hidden Cost of Prayer? How and Why Religiosity Influence the Gender Wage Gap*, 1 ACADEMY OF MANAGEMENT (2019), <https://journals.aom.org/doi/abs/10.5465/AMBPP.2019.10702abstract>.

¹²¹ Ibid.; Madsen Testimony, *Salt Lake City Briefing*, p. 34.

¹²² Ibid.; Madsen Testimony, *Salt Lake City Briefing*, pp. 34-35.

¹²³ Ibid.; Madsen Testimony, *Salt Lake City Briefing*, p. 33.

¹²⁴ Ibid.; Madsen Testimony, *Salt Lake City Briefing*, p. 33.

¹²⁵ Ibid.

¹²⁶ Joan R. Kahn, Javier García-Manglano and Suzanne M. Bianchi, *The Motherhood Penalty at Midlife: Long-Term Effects of Children on Women's Careers*, 76(1) J. MARRIAGE FAM., 56-72 (2014).

¹²⁷ Hudman Testimony, *Salt Lake City Briefing*, p. 36.

being considered for employment, they were significantly less likely to be hired.¹²⁸ In the case when female applicants were hired, they were paid a lower salary than male applicants with children.¹²⁹ By contrast, research has also indicated that working fathers receive a “Fatherhood Bonus” where high-income men get the biggest pay bump for having children, and low-income women pay the biggest price.¹³⁰

Further testimony explained the impact of the Motherhood Penalty on women attempting to reenter the workforce. Anne Thomsen asserted that she experienced the Motherhood Penalty when she took time off from paid employment to care for her family.¹³¹ She argued that while she was caring for her family, she was gaining valuable experience running her household 24 hours a day, 7 days a week as well as volunteering at her children’s schools, and at two hospitals.¹³² Yet, when she returned to the paid workforce, most job listings explicitly required years of “paid” employment.¹³³ After months of ignored job applications, she finally received an interview and accepted a salary far below her educational credentials at approximately \$28,000 a year.¹³⁴ She has since been filled out applications and sent out resumes that continue to be ignored by companies, that she believes is because of the large gap in her work experience.¹³⁵ Ms. Thomsen said that the gap in many women’s resumes would not exist “if society would simply recognize that someone must take care of the children.”¹³⁶

Childcare

Related to the discussion of the Motherhood Penalty and its impact on the gender wage gap is the concern about availability and affordability of childcare. For some working mothers, choosing to stay home to care for their children is the most economical choice; however, in today’s economy, most households need two incomes and do not have the choice for one parent to stay home to care for their children. In 2017, 41 percent of families relied on the mother to take on a sole or

¹²⁸ Shelley J. Correll, Stephen Bernard, and In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112(31) AM. J. SOC. (2007), https://www.researchgate.net/publication/5023056_Getting_a_Job_Is_There_a_Motherhood_Penalty.

¹²⁹ Ibid.

¹³⁰ Michelle Budig and Melissa Hodges, *Who Gets the Daddy Bonus? Organizational Hegemonic Masculinity and the Impact on Fatherhood Earnings*, 24 (6) J. GEN. SOC., 717-745, (2009) <https://www.jstor.org/stable/25789904?seq=1>.

¹³¹ Anne Thomsen, Written Statement for the Utah Briefing before the Utah Advisory Committee to the U.S. Commission on Civil Rights, October 3, 2019 at p. 1 (hereafter cited as Thomsen Statement).

¹³² Ibid., 2.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

primary breadwinning role and 23.2 percent of mothers were co-breadwinners.¹³⁷ In Utah, women are the sole breadwinners for 88,000 households, 25 percent of which live below the poverty line.¹³⁸

Utah women, who participated in a commissioned study by the YWCA inquiring about women's labor force issues, said that access to high quality childcare was the number one issue. Erin Jemison, director of public policy for the YWCA said:

it's what we constantly hear from women.... it's not just childcare, it's about caregiving in general. And we by far see that as the most important issue that we need to look at as a state if we're going address the gender wage gap. Until that is more evenly shared across genders, we will continue to see that that is impacting people's participation in the workforce and ultimately the[ir] pay.¹³⁹

Testimony also indicated that not only is there a lack of affordable childcare, there is an overall shortage of childcare providers in the state.¹⁴⁰ According to Ms. Jemison, "there are far more children in Utah who have both parents unavailable for caregiving because of their participation in the workforce than we have slots in terms of childcare in the state."¹⁴¹ Families have been so desperate to find childcare that they have apparently even sought childcare on the yard sale pages on Facebook so that they can go to work or attend a job interview.¹⁴² For Ms. Thomsen, who shared her story about experiencing the motherhood penalty when she returned to work, had the opinion that while there is a lack of affordable childcare, she believes that it has two connotations:

anything else a woman can be doing is more valuable than taking care of [her] children[;] and that children should be taken care of[;] but as a society, we are unwilling to pay those who provide childcare the amount it is worth.¹⁴³

¹³⁷ "Equal Pay for Mothers Is Critical for Families," *National Women's Law Center*, Jun. 2019, <https://nwlc.org/resources/equal-pay-for-mothers-is-critical-for-families-factsheet/>.

¹³⁸ Susan R. Madsen, Robbyn T. Scribner, Janika Dillon, "The Gender Wage Gap and Unpaid Care Work in Utah," *SquareTwo*, Vol. 10 No. 2 (Summer 2017), <http://squaretwo.org/Sq2ArticleMadsenGenderWageGap.html>, accessed (accessed July 24, 2020).

¹³⁹ Jemison Testimony, *Salt Lake City Briefing*, p. 88.

¹⁴⁰ Sara Israelsen-Hartley, "Utah's Child Care Shortage Impacts the Gender Wage Gap," *Deseret News*, Nov. 27, 2017 <https://www.deseret.com/2017/11/27/20636427/how-utah-s-child-care-shortage-impacts-the-gender-wage-gap> (last accessed January 7, 2020).

¹⁴¹ Jemison Testimony, *Salt Lake City Briefing*, p. 89.

¹⁴² *Ibid.*, pp. 88-89.

¹⁴³ Thomsen Statement at 1.

Minimum Wage

One factor driving the gender wage gap is women's overrepresentation in low-wage jobs. According to the Bureau of Labor Statistics, women are close to two-thirds of the workforce in jobs that pay the federal minimum wage or just a few dollars above it, and make up more than two-thirds of workers in tipped jobs for whom the federal minimum cash wage is just \$2.13 per hour.¹⁴⁴ This is of concern because while women make up a large majority of low-wage jobs, women of color constitute almost a quarter of minimum wage workers.¹⁴⁵

Jonathan Ruga, a member of Patriotic Millionaires, a group of like-minded wealthy Americans who advocate destabilizing the concentration of power and money in the economy¹⁴⁶ supports raising the minimum wage as step toward addressing the gender wage gap. He believes that every worker should be paid a living wage and should be able to support their family. In Utah, the minimum wage is \$7.25 and pays \$15,000 a year for full-time workers. In addition, minimum wage workers make up less than 3 percent of workers in Utah.¹⁴⁷ He said:

If we want to eliminate the wage gap, we need to start by giving meaningful wage increases to this massive underclass of women that we required to work for poverty wages. Virtually no one in Utah or anywhere else in the country can live on 15,000 a year. And by keeping the minimum a wage at that level, we're literally consigning these women to an exceptionally difficult life.¹⁴⁸

He also advocated for removing the subminimum tipped wage, which is \$2.13 an hour – a rate that has been at that level since 1991 – because of its impact on women and other vulnerable workers such as minorities. Removing the subminimum tipped wage, he said, would “go a long way toward increasing pay for women, specifically for women of color.”¹⁴⁹ Women make up 70 percent of tipped workers in the U.S. While people of color make up 55 percent of the overall workforce, they account for 70 percent of the tipped workforce.¹⁵⁰ Mr. Ruga raised concern primarily because tipped workers suffer over twice the poverty rate of the rest of the U.S. workforce, as well as economic insecurity and women experience sexual harassment on the job.¹⁵¹

¹⁴⁴ U.S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Minimum Wage Workers, Table 1, 2017*, <https://www.bls.gov/opub/reports/minimum-wage/2017/home.htm>.

¹⁴⁵ Ruga Testimony, *Salt Lake City Briefing*, p. 104.

¹⁴⁶ *Ibid.*, 103.

¹⁴⁷ “Minimum Wage Workers by State,” *Governing*, <https://www.governing.com/gov-data/economy-finance/minimum-wage-workers-by-state-totals.html>.

¹⁴⁸ Ruga Testimony, *Salt Lake City Briefing*, p. 104.

¹⁴⁹ *Ibid.*, 105.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, 106.

Furthermore, he believes that the subminimum tipped wage should be removed due to its racist history. In the late 1930s, when Congress debated the new rights and protections within the Fair Labor Standards Act, these protections were seen as “racial legislation” because Southern Democrats refused to accept legislation that would put in place a minimum wage for African-Americans.¹⁵² Texas representative Martin Dies stated that, “you cannot prescribe the same wages for the black man as for the white man.”¹⁵³ The bill that Congress eventually passed included exceptions to the minimum wage requirement for occupations with a significantly African-American labor force, like agriculture and domestic labor. The legacy of the subminimum tipped wage continues to hurt minority populations across America, as almost 40 percent of tipped workers are people of color, with women of color and immigrants overrepresented among tipped workers.¹⁵⁴ The poverty rate for tipped workers who are people of color is higher than that of tipped workers who are white; 17 percent versus 14 percent.¹⁵⁵

According to an analysis by the National Women's Law Center, the poverty rate for women tipped workers in states that employers pay their employees the full minimum wage, regardless of tips, is 28 percent lower than the rate for women tipped workers in other states.¹⁵⁶ These states include California, Oregon, Washington, Nevada, Montana, Minnesota, and Alaska¹⁵⁷. Interestingly, these states have a higher restaurant sales per capita, higher job growth among restaurant workers and tipped workers.¹⁵⁸ Because the tipped workforce is predominately female, the gender wage gap is 31 percent smaller states that do not have a tipped minimum wage.¹⁵⁹

Critics of raising the minimum wage assert that it would cause mass job loss or force employers to go out of business. However, research indicates those claims are unfounded.¹⁶⁰ For instance, the U.S. Federal Reserve of New York compared retail and hospitality businesses on the border

¹⁵² Sean Farhang and Ira Katznelson, *The Southern Imposition: Congress and Labor in the New Deal and Fair Deal*, 19 STUDIES IN AMERICAN POLITICAL DEVELOPMENT 14, https://gspp.berkeley.edu/assets/uploads/research/pdf/article_4.pdf.

¹⁵³ Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-century America*. 2005 New York: W.W. Norton.

¹⁵⁴ Ruga Testimony, *Salt Lake City Briefing*, p. 108.

¹⁵⁵ Ibid.

¹⁵⁶ Morgan Harwood, Jasmine Tucker, and Julie Vogtman, “One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers,” *National Women’s Law Center*, May 2019, <https://nwlc.org/wp-content/uploads/2019/05/Tipped-Worker-New-2019-v2.pdf>.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Sylvia A. Allegretto, Anna Godoey, Carl Nadler and Michael Reich, “The New Wage of Local Minimum Wage Policies: Evidence from Six Cities,” *Institute for Research on Labor and Employment*, Sept. 6, 2018 <https://irle.berkeley.edu/the-new-wave-of-local-minimum-wage-policies-evidence-from-six-cities/>.

of New York and Pennsylvania when New York raised its minimum wage.¹⁶¹ The effect demonstrated a significant increase in earnings for workers in New York as a result of the state's minimum wage hike compared to workers in Pennsylvania and on the employment end, there was no discernable difference in job loss between the two states.

Starting Salary, Negotiating, and Pay Secrecy

Explaining the gender wage gap often involves the dynamics at play during the hiring phase and employment phase: culture of pay secrecy; and negotiating and setting starting salary. Throughout the briefing, several panelists argued that the gender wage gap is attributed to women's propensity to negotiate a competitive salary during the interview process and the impact of the informal and formal culture of pay secrecy within organizations. On a deeper level, these arguments focus on two areas: the responsibility of women to advocate for themselves to negotiate a higher salary and on the other hand, the acceptance of a culture that prevents workers from learning about the monetary value of their specific jobs in comparison with their peers.

Pay secrecy includes rules, policies and practices that prohibit workers from discussing or sharing information about their earnings. These include formal policies written in employee handbooks and informal policies conveyed to workers at some point during their employment. Many believe that pay secrecy perpetuates the gender wage gap because if women do not know what other workers are paid, gender discrimination in earnings will persist.

The 2007 case, *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*,¹⁶² demonstrates the impact of pay secrecy. Lilly Ledbetter, the only female supervisor, among sixteen male supervisors for Goodyear Tire in Alabama, earned less than all these men, including some who had less seniority.¹⁶³ For twenty years, she was unaware that she was underpaid because her workplace had a policy that prohibited employees from discussing their pay and it was only because of an anonymous tip revealing the earnings of some of male managers that she realized she was significantly underpaid.¹⁶⁴

Ms. Ledbetter's story is similar to most employees who are prohibited from discussing their earnings. In 2010, nearly half of all workers nationally reported they were either contractually

¹⁶¹ Jason Bram, Faith Karahan, and Brendan Moore, "Minimum Wage Impacts along the New York-Pennsylvania Border," *Federal Reserve Bank of New York*, Sept. 25, 2019 <https://libertystreeteconomics.newyorkfed.org/2019/09/minimum-wage-impacts-along-the-new-york-pennsylvania-border.html>.

¹⁶² *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007).

¹⁶³ *Id.* at 643 (Ginsburg, J., dissenting).

¹⁶⁴ "Combating Punitive Pay Secrecy Policies," *National Women's Law Center*, Feb. 2019, p. 2, <https://nwlc.org/wp-content/uploads/2019/02/Combating-Punitive-Pay-Secrecy-Policies.pdf>.

forbidden or strongly discouraged from discussing their pay with their colleagues.¹⁶⁵ Prohibiting or discouraging any discussion of wages in the workplace is more common in the private than in the public sector. Roughly 23 percent of private sector workers reported that discussion of wages and salaries was formally prohibited, and an additional 38 percent reported that managers discouraged such discussion.¹⁶⁶

Yet, for most workers, pay secrecy policies are illegal. Ms. Hudman explained that under the National Labor Relations Act, employers are prohibited from banning employees who are below supervisor level, from discussing their wages.¹⁶⁷ The law states that private-sector employees have the right to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection.”¹⁶⁸ Although the law has been in effect for 85 years, employers still run into compliance issues and continue to penalize employees. It has, according to Ms. Hudman, been understood as a law that only protects union employees but extends to all employees regardless of union membership.¹⁶⁹ Ms. Hudman explained that the National Labor Relations Board has ruled broadly that private employers are in violation of the law if they restrict employees from discussing their wages.¹⁷⁰

The propensity to negotiate starting salary and raises was also discussed. Research indicates that women are less likely to negotiate¹⁷¹ which several panelists and advocates believe contribute to the widening of the gender wage gap. Lack of negotiation results in a lower starting salary and missed opportunity to access other benefits such as flexible scheduling and projects, among other things.¹⁷² Dan Kuang, vice president of legal and audit support services at Biddle Consulting, works with employers to address gender wage gap issues by conducting pay audits testified that

¹⁶⁵ “Pay Secrecy and Wage Discrimination,” *Institute for Women’s Policy Research*, [https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/Q016%20\(1\).pdf](https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/Q016%20(1).pdf).

¹⁶⁶ *Ibid.*

¹⁶⁷ 29 U.S.C. § 157; Hudman Testimony, *Salt Lake City Briefing*, p. 69.

¹⁶⁸ 29 U.S.C. § 257.

¹⁶⁹ Hudman testimony, *Salt Lake City Briefing*, p. 70.

¹⁷⁰ *Ibid.*; *See T-Mobile US*, NLRB 14-CA-106906 (2015).

¹⁷¹ Emily T. Amanatullah and Michael W. Morris, *Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women’s Fear of Backlash and Attenuated When Negotiating on Behalf of Others*, 98(2) *J PERS SOC PSYCHOL*, 256–267(2010); Linda Babcock, Sara Laschever, Michele Gelfand, & Deborah Small, *Nice Girls Don’t Ask*, 81 *HARVARD BUSINESS REVIEW* 14–15 (2003); Linda Babcock, Michele Gelfand, Deborah Small, & Heidi Stayn, *Gender Differences in the Propensity to Initiate Negotiations*, *SOC. PSY. ECON.* 239–259 (2006); Benjamin Artz, Amanda Goodall, and Andrew J. Oswald, *Research: Women Ask for Raises as Often as Men, but Are Less Likely to Get Them*, *HARVARD BUSINESS REVIEW*, June 25, 2018 <https://hbr.org/2018/06/research-women-ask-for-raises-as-often-as-men-but-are-less-likely-to-get-them>.

¹⁷² “3 in 5 Employees Did Not Negotiate Salary,” *Glassdoor*, May 2, 2016. <https://www.glassdoor.com/blog/3-5-employees-negotiate-salary/> (last accessed on January 8, 2020).

based on his 20 years of experience consulting with companies seeking to address pay inequity, he stated, “there’s no other more powerful explanatory factor [influencing the pay inequity] than starting salary.”¹⁷³

Women are less likely than men to negotiate, panelists noted, for several reasons. First, women are socialized from an early age not to promote their own interests and focus instead, on the needs of others.¹⁷⁴ This message, women may not realize, can be internalized and affects their propensity to negotiate. Second, women are perceived as being greedy, demanding, and not nice.¹⁷⁵ When women negotiate their salary, they are essentially penalized for violating gender expectations. According to one study, when women do negotiate, they’re less likely to receive the raises that they seek, or they ask for less.¹⁷⁶

While it is true that women are likely to receive higher salaries when they negotiate, Ms. Raghu does not believe that it can address the wage gap alone. Employers, using a cognitive tendency called “anchoring” often relying on salary history as part of the negotiation process can create and perpetuate wage gaps.¹⁷⁷ Ms. Raghu said:

[Employers] are more likely to fixate on that amount, and it will have an out-sized effect on the salary negotiation. Even if the employer [is] willing to offer a higher salary, they’ll start at a lower place. So[,] limiting the use and scope of negotiations can narrow wage disparities between male and female employees.¹⁷⁸

In response to the harmful the effect of pay secrecy, a growing number of states and cities across the country have passed pay equity laws banning pay secrecy and prohibiting employers from asking job applicants about their salary history. Between 2000 and 2014, eight additional states – Colorado, Illinois, Louisiana, Maine, Minnesota, New Jersey, Vermont, and New Hampshire – enacted “pay secrecy” laws.¹⁷⁹ According to Professor Madsen, this public policy move on pay transparency creates a “more equitable situation” for employees.¹⁸⁰

¹⁷³ Ibid., p. 187.

¹⁷⁴ Linda Babcock, Sara Laschever, Michele Gelfand, & Deborah Small, *Nice Girls Don’t Ask*, 81 HARVARD BUSINESS REVIEW 14–15 (2003).

¹⁷⁵ Raghu Testimony, p. 57.

¹⁷⁶ Emily T. Amanatullah and Michael W. Morris, *Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women’s Fear of Backlash and Attenuated When Negotiating on Behalf of Others*, 98(2) J PERS SOC PSYCHOL, 256–267, (2010).

¹⁷⁷ Raghu Testimony, *Salt Lake City Briefing*, p. 57.

¹⁷⁸ Ibid.

¹⁷⁹ U.S. Department of Labor, Women’s Bureau, *Pay Secrecy Factsheet*, Aug. 2014, https://www.dol.gov/wb/media/pay_secrecy.pdf.

¹⁸⁰ Madsen Testimony, *Salt Lake City Briefing*, p. 30.

In 2019, Utah attempted to legislate a ban on salary history.¹⁸¹ Jonathan Thorne, attorney with Strindberg and Scholnick, worked with Representative Wheatley to author House Bill 204, “Prohibition on Inquiry into Compensation History” that focused on employers with 15 or more employees and provided the Labor Commission with the jurisdiction to investigate and levy penalties.¹⁸² The purpose of the bill was to set wages based on merit and experience.¹⁸³ Concerned with the status quo, Mr. Thorne explained that “[b]y allowing employers to set salaries based on a prospective employee's prior salary, we are perpetuating this inequality of pay and allowing employers to capitalize on the persistence of the wage gap, and perpetuate this gap ad infinitum.”¹⁸⁴ In addition, it impacts subsequent raises, bonuses, and promotions that are tied to initial salary, which add up to huge losses over a woman’s career and impact her retirement security.¹⁸⁵ Despite raising these concerns, Utah legislators did not pass legislation.¹⁸⁶

Even though legislators failed to pass legislation, panelists continue to advocate for it by noting other issues and challenging employers to take initiative.¹⁸⁷ Professor Berik, professor of economics at the University of Utah supports the passage of prohibiting employers from asking about salary history and explained that the practice may appear neutral on its face, but it has a disparate, negative impact on female applicants.¹⁸⁸ She also noted that with the growing number of states enacting such laws, employers have had to deal with compliance challenges because they have interstate employees.¹⁸⁹ Ms. Hudman added that while public policy is important, employers should voluntarily end the practice altogether and be more transparent about salary ranges with employees and job applicants.¹⁹⁰

¹⁸¹ Employment Selection Procedures Act, H.R. 204, 62d Leg., 2019 Gen. Sess. (Utah 2019) available at <https://le.utah.gov/~2019/bills/static/HB0204.html>.

¹⁸² Employment Selection Procedures Act, H.R. 204, 62d Leg., 2019 Gen. Sess. (Utah 2019) available at <https://le.utah.gov/~2019/bills/static/HB0204.html>; Thorne Testimony, *Salt Lake City Briefing*, p. 163.

¹⁸³ Employment Selection Procedures Act, H.R. 204, 62d Leg., 2019 Gen. Sess. (Utah 2019) available at <https://le.utah.gov/~2019/bills/static/HB0204.html>; Thorne Testimony, *Salt Lake City Briefing*, pp. 163-164.

¹⁸⁴ Thorne Testimony, *Salt Lake City Briefing*, p. 164.

¹⁸⁵ Employment Selection Procedures Act, H.R. 204, 62d Leg., 2019 Gen. Sess. (Utah 2019) available at <https://le.utah.gov/~2019/bills/static/HB0204.html>; Raghu Testimony, *Salt Lake City Briefing*, p. 56.

¹⁸⁶ Employment Selection Procedures Act, H.R. 204, 62d Leg., 2019 Gen. Sess. (Utah 2019) available at <https://le.utah.gov/~2019/bills/static/HB0204.html> (the bill was voted on and died in Committee See <https://www.sltrib.com/news/2019/10/05/there-are-solutions-utahs/>).

¹⁸⁷ Berik Testimony, *Salt Lake City Briefing*, p. 172; Madsen Testimony, *Salt Lake City Briefing*, p. 30; Raghu Statement, at 9.

¹⁸⁸ Berik Testimony, *Salt Lake City Briefing*, p. 172.

¹⁸⁹ *Ibid.*

¹⁹⁰ Hudman Testimony, *Salt Lake City Briefing*, p. 39.

Enforcement Efforts

The Committee invited federal and state labor enforcement agencies to understand their role in addressing the gender wage gap coupled with concerns that stemmed from earlier reports about the Utah Antidiscrimination and Labor Division's (Utah Labor Division) handling of employment discrimination complaints and growing mistrust.¹⁹¹ According to a legislative audit examining five years of enforcement activity, the Utah Labor Division ruled in favor of the employee 0.7 percent of the time, far less than the averages in surrounding states and less than the nationwide federal rate.¹⁹²

Kendra Shirey, director of the Utah Labor Division testified to the jurisdiction of the Utah Antidiscrimination Act, explaining that it is a state version of Title VII of the Civil Rights Act that prohibits discriminatory employment practices.¹⁹³ One difference between the laws is the timeframe victims can bring a claim under the Utah Antidiscrimination Act are 180 days from the initial filing whereas the EEOC allows for 300 days.¹⁹⁴ The Utah Labor Division accepts complaints related to employment discrimination generally; however, based on a formal work-share agreement between the Utah Labor Division and EEOC, cases filed with the Utah Labor Division can be investigated by the Utah Labor Division or can be transferred to the EEOC.¹⁹⁵ Cases are primarily transferred to the EEOC if they exceed the Utah Antidiscrimination Act's jurisdictional timeframe of 180 days and if they involve Equal Pay Act allegations.¹⁹⁶

According to Ms. Shirey, since 2016 to October 2019, the Utah Labor Division received 19 inquiries that implicated a violation of the Equal Pay Act; four of which did not result in a discrimination charge.¹⁹⁷ Of the 15 remaining cases, two resulted in a determination of no cause and the rest of the cases were waived to the EEOC pursuant to their work-share agreement.¹⁹⁸

¹⁹¹ Nate Carlisle, "'It Doesn't Matter What You Say': In Utah, the Agency That Investigates Job Discrimination is So Mistrusted That Some Lawyers Go to the Feds Instead," *Salt Lake Tribune*, Dec. 19, 2017, <https://www.sltrib.com/news/politics/2017/12/17/it-doesnt-matter-what-you-say-in-utah-the-agency-that-investigates-job-discrimination-is-so-mistrusted-that-some-lawyers-go-to-the-feds-instead/>

¹⁹² Office of the Legislative Auditor General, *A Performance Audit of the Utah Antidiscrimination and Labor Division's Employment Discrimination Unit*, January 2019, <https://le.utah.gov/interim/2017/pdf/00002314.pdf>

¹⁹³ Utah Code Ann. §§ 34A-5-101 — 34A-5-112; Shirey Testimony, *Salt Lake City Briefing*, p. 117.

¹⁹⁴ 42 U.S.C. § 2000e-5(e)(1); Utah Code Ann. § 34A-5-107(1)(c); Shirey Testimony, *Salt Lake City Briefing*, p. 117.

¹⁹⁵ Utah Code Ann. § 34A-5-107(1)(d); Shirey Testimony, *Salt Lake City Briefing*, p. 118.

¹⁹⁶ Shirey Testimony, *Salt Lake City Briefing*, p. 122.

¹⁹⁷ Shirey Testimony, *Salt Lake City Briefing*, p. 123.

¹⁹⁸ *Ibid.*

The EEOC and Utah Labor Division have similar investigation processes. When they receive inquiries, they conduct an intake interview to formalize a charge of discrimination.¹⁹⁹ Staff then investigates the charge through interviews, document requests, subpoenas, and conduct an on-site investigation.²⁰⁰ One key difference between the EEOC and Utah Labor Division's investigation process is that mediation is required before it is waived to EEOC.²⁰¹ Unlike the Utah Labor Division, the EEOC mediation program is voluntary and not all charges go through the mediation process, but those that do, according to James Driscoll-MacEachron, supervisory trial attorney at the EEOC, have a high resolution rate.²⁰²

When handling equal pay related cases under the Equal Pay Act, the law does not allow for the EEOC to utilize mandatory administrative exhaustion requirements, which means the plaintiff may file a charge of discrimination with the EEOC, alleging an Equal Pay Act violation, but is not required to do so before filing a lawsuit in federal court.²⁰³ Under the Equal Pay Act, there is a two year statute of limitations from the last act of discrimination, or 3 years if the discrimination is willful.²⁰⁴ Mr. Driscoll-MacEachron also noted that there are differences in the proof structures for the Equal Pay Act and Title VII claims.²⁰⁵ When a plaintiff makes a prima facie case using circumstantial evidence under Title VII, the employer need only articulate a non-discriminatory reason and the burden will shift back to the plaintiff to prove that reason is pretextual.²⁰⁶ The Equal Pay Act is different; when the plaintiff makes a prima facie case under the Equal Pay Act, the burden shifts to the defendant to prove an affirmative defense.²⁰⁷

In fiscal year 2018, the EEOC received 1,066 charges that included an Equal Pay Act claim.²⁰⁸ During that time, they resolved 1,214 Equal Pay Act charges of discrimination, which included 63 reasonable cause determinations and 32 successful conciliations.²⁰⁹ EEOC obtained 10.5 million in monetary relief using administrative enforcement actions through conciliation or

¹⁹⁹ Ibid., 126.

²⁰⁰ Ibid.

²⁰¹ 42 U.S.C. § 2000e-5(b); Utah Code Ann. § 34A-5-107(3)(a); Shirey Testimony, *Salt Lake City Briefing*, p. 123.

²⁰² James Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 127.

²⁰³ See 29 U.S.C. § 216 (b); James Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, pp. 127-128.

²⁰⁴ 29 U.S.C. § 255(d).

²⁰⁵ James Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 128.

²⁰⁶ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–03 (1973).

²⁰⁷ *Corning Glass Works v. Brennan*, 417 U.S. 188, 196 (1974); Shirey Testimony, *Salt Lake City Briefing*, p. 138.

²⁰⁸ Equal Employment Opportunity Commission, *Equal Pay Act Charges (charges filed with EEOC) (Includes concurrent charges with Title VII, ADEA, ADA, and GINA)*
<https://www.eeoc.gov/eeoc/statistics/enforcement/epa.cfm>.

²⁰⁹ Ibid.

settlement.²¹⁰ In the previous year, the EEOC received \$8.1 million dollars in monetary relief.²¹¹ As part of EEOC's conciliation remedies, they not only seek monetary relief on behalf of the charging party and aggrieved individuals, but also equitable relief that target discriminatory practices and policies.²¹² For example, this includes requiring training for managers and coworkers, revising policies, and place notice postings about federal rights.²¹³ Mr. Driscoll-MacEachron anticipates these changes will "make it less likely for discrimination to occur in the future."²¹⁴

Mr. Driscoll-MacEachron explained that while there are remedies in resolving wage discrimination charges (i.e. entering consent decrees, conciliation agreements, monetary relief, etc.), using conciliation requires that all agreements are confidential, meaning employers who violate the law are not required to share the nature of the violation and the plaintiff also must not disclose information about the case.²¹⁵ Whereas a consent decree, a publicly filed document with the court and the court retains jurisdiction, ensures the terms for compliance.²¹⁶

In terms of discrimination charges in 2018 that had an Equal Pay Act allegation, the EEOC received over approximately a thousand charges.²¹⁷ For charges involving Utah in 2018, the EEOC received 233 total charges; seven of which had Equal Pay Act allegations; and 79 that alleged sex discrimination that could include discrimination in wages and compensation on the basis of sex.²¹⁸ The EEOC saw a slight increase in charges from Utah employees with 264; 16 of which involved Equal Pay Act charges and 101 involved sex discrimination charges.²¹⁹ In 2016, Utah employees filed 259 charges with the EEOC, five of which had an Equal Pay Act charge, and 84 with for sex discrimination.²²⁰ These figures may demonstrate a lack of understanding on

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² 42 U.S.C. § 2000e-5(g); James Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 130.

²¹³ 42 U.S.C. § 2000e-5(g) (authorizing "any other equitable relief as the court deems appropriate"); § 2000e-10 (requiring posting notice of federal rights under Title VII); James Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 130.

²¹⁴ Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 130.

²¹⁵ 42 U.S.C. 2000e-5(b); Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 132

²¹⁶ Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 132.

²¹⁷ Equal Employment Opportunity Commission, Equal Pay Act Charges (charges filed with EEOC) (Includes concurrent charges with Title VII, ADEA, ADA, and GINA) <https://www.eeoc.gov/eeoc/statistics/enforcement/epa.cfm>; Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 131.

²¹⁸ Equal Employment Opportunity Commission, FY 2009 - 2019 EEOC Charge Receipts for UT, <https://www.eeoc.gov/statistics/enforcement/charges-by-state/UT>.

²¹⁹ Ibid.

²²⁰ Ibid.

behalf of employees about wage discrimination and/or the how difficult it is to enforce the Equal Pay Act. Mr. Thorne, explained that the Equal Pay Act is simply “not working” because the law places the onus on the plaintiff to find disparities which is why it is very rare for lawyers to pursue Equal Pay Act charges.²²¹

In addition to investigations, the Utah Labor Division and EEOC also conduct outreach to employers and anyone interested in learning more about their enforcement practices.²²² For the Utah Labor Division, the Utah Legislature recently allotted funds dedicated to hiring an outreach person who will focus on two priority areas: educating employers of enforcement efforts and timeliness of case determinations.²²³ Their goal is to complete cases within six months, a goal that is challenging because the Utah Labor Division is understaffed with only four staff members.²²⁴

When asked by Committee members if the issue of equal pay has been a popular topic at the Utah Labor Division, Ms. Shirey responded that it is an issue that the Utah Labor Division has on their radar.²²⁵ In particular, she has seen a rise in requests for sexual harassment training, which she believes was triggered by the #MeToo movement.²²⁶ As for the EEOC, they have done significant outreach educating employers and workers on the Equal Pay Act; however, Mr. Driscoll-MacEachron said it is easy to discuss of “in the abstract, but hard to see in the particular in many workplaces.”²²⁷ The EEOC expects to learn more from the incoming EEO-1 reports, a report mandated by Title VII of the Civil Rights Act that requires employers to report to the EEOC on the racial/ethnic and gender composition of their workforce by specific job categories, that include compensation information for fiscal years 2017 and 2018.²²⁸

Solutions to Address the Gender Wage Gap

Panelists testified to a variety of solutions to address the gender wage gap that can be implemented on an individual, institutional, and policy level.

²²¹ Thorne Testimony, *Salt Lake City Briefing*, p. 161.

²²² 42 U.S.C. § 2000e-4(h); Utah Code Ann. § 34A-5-104(2).

²²³ Shirey Testimony, *Salt Lake City Briefing*, p. 140.

²²⁴ *Ibid.*, 119, 121.

²²⁵ *Ibid.*, 141.

²²⁶ Shirey Testimony, *Salt Lake City Briefing*, p. 141.

²²⁷ Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 142.

²²⁸ 42 U.S.C. 2000e-8(c); Driscoll-MacEachron Testimony, *Salt Lake City Briefing*, p. 143.

Individual

Personal choice is cited as a reason for the pay differences between men and women; and these decisions made over the course of one's life, could have long-term impacts.²²⁹ When applied to education, women tend to pursue social sciences and liberal arts degrees, while men pursue science, technology, engineering, and math (STEM) related disciplines.²³⁰ Degrees in those fields often lead to employment in related fields that vary in earnings.²³¹ For instance, occupations within social science and liberal arts yield much lower earnings than STEM related occupations.²³²

Men and women also differ in their preference on how much to work, a decision that ultimately impacts earnings.²³³ According to the Pew Research Center, 37 percent of working moms and 22 percent of nonworking moms prefer full-time work. According to men, 75 percent of fathers with children under 18 prefer working full-time and is viewed as an ideal work schedule.²³⁴

Solutions that would enable higher earnings for women involve encouraging women to enter non-traditional career pathways, that is, careers that are male-dominated and/or yield higher earnings. Karin Lips, founder of Network of Enlightened Women said women should be educated about how much certain occupations pay.²³⁵ Female students should be aware of the potential trade-offs about pursuing majors that lead to lower paying salaries and those that lead to more lucrative careers.²³⁶

Another solution involves encouraging women to enter unionized occupations. Union membership has been proven to provide workers with higher wages and better benefits.²³⁷ According to the Economic Policy Institute, working women in unions are paid 94 cents, on average, for every dollar paid to unionized working men, compared with 78 cents on the dollar

²²⁹ Madsen Testimony, *Salt Lake City Briefing*, pp. 31-32.

²³⁰ Andrew Chamberlain and Jyotsna Jayaraman, "The Pipeline Problem: How College Majors Contribute to the Gender Pay Gap," *Glassdoor*, <https://www.glassdoor.com/research/app/uploads/sites/2/2017/04/FULL-STUDY-PDF-Gender-Pay-Gap2FCollege-Major.pdf>.

²³¹ *Ibid.*

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ "Chapter 1: Changing Views About Work" *Pew Research Center: Social & Demographic Trends*, Mar. 14, 2013. <https://www.pewsocialtrends.org/2013/03/14/chapter-1-changing-views-about-work/> (last accessed January 16, 2020); Lips Testimony, *Salt Lake City Briefing*, p. 98.

²³⁵ Lips Testimony, *Salt Lake City Briefing*, pp. 95-96

²³⁶ *Ibid.*, 101.

²³⁷ Raghu Statement, at 18.

for non-union women as a share of nonunion men’s dollar.²³⁸ Unions can provide a boost to women regardless of their race or ethnicity.²³⁹ Data indicates the gender wage gap is significantly smaller among both white and black unionized workers than their nonunion counterparts.²⁴⁰ For example, black women are paid a dollar, on average, for every dollar paid to unionized working men, compared with 88 cents on the dollar for non-union women as a share of nonunion men’s dollar.²⁴¹

Unionized workers are also more likely to have access to various kinds of benefits such as paid leave, which enable them to balance work and family obligations.²⁴²

Collective bargaining agreements for women union members are a considerable factor in narrowing the gender wage gap.²⁴³ These agreements establish many of the policies proven to combat gender pay inequity such as standardizing wage rates, promote pay transparency, and include grievance procedures for workers who allege discrimination.²⁴⁴ Setting clear standards of pay can help eliminate or diminish the effects of gender discrimination.²⁴⁵ Pay transparency gives workers more information about what similar workers are paid and whether they are being undercut.²⁴⁶ Unfortunately, it has been a common practice among employers to provide employees with insufficient information about their peer’s pay to know if they are being paid fairly.²⁴⁷ Providing workers with access to effective grievance procedures can help to ensure that antidiscrimination provisions are enforced.²⁴⁸

Institutional

Organizations have a significant role in addressing the wage gap since they control starting salary, promotions, bonuses, and other decisions that could advance a woman’s career. Such decisions include allowing individuals to take on challenging projects that may provide exposure

²³⁸ Elise Gould and Celine McNicholas, “Unions Help Narrow the Gender Wage Gap,” *Economic Policy Institute*, Apr. 3, 2017. <https://www.epi.org/blog/unions-help-narrow-the-gender-wage-gap/> (accessed on April 20, 2020).

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

to skill development or to attend out of office events that may enable additional networking opportunities.

Forward thinking companies who wish to remain competitive ought to consider reviewing their policies as a first step. Jacey Skinner, general counsel and vice president of public policy for the Salt Lake Chamber of Commerce, said that employers should consider implementing best practices in their 2018 guide²⁴⁹ because it will make companies more attractive to employees by showing they are committed to pay equity. If employers do it for no other reason, at the very least, it increases their applicant pools and chances of recruiting and maintaining highly skilled workers.²⁵⁰

Best practices in their guide focus on five areas: evaluation, education, recruitment, retention, and advancement.²⁵¹ In the area of evaluation, companies should analyze their pay distribution by role, level, and gender. Employers could also assemble a diverse team of employees from different departments and assign them the task of identifying what internal factors contribute to inequity. Also, a recommendation to consider for long-term change involve companies reviewing their workforce by position, salary, job level, gender, as well as other forms of compensation, such as benefits, bonuses, and overtime.²⁵² If companies find inequity in pay, the Salt Lake Chamber encourages employers to consider publishing salary information, raise compensation of the underpaid employees to equalize pay, and implement an automatic pay bump-up.²⁵³

To take evaluating of a company's internal practices a step further, Mr. Kuang instructed that employers should effectively diagnose the problem by examining two important components: within-job pay equity and between-job pay equity.²⁵⁴ He argued that the issue is largely based on workforce distribution of the between-job pay equity, or in other words, occupational segregation.²⁵⁵ When employers attempt to address within-job pay inequity, he does not recommend "throw[ing] money at the problem"²⁵⁶ because those pay differences did not happen spontaneously. Instead, the solution is to find the human resource structure that causes the pay difference. For between-job differences, Mr. Kuang noted, are more difficult for employers to address as it involves a "complicated structural change" and requires employers to invest in

²⁴⁹ "Best Practices Guide for Closing the Gender Wage Gap," *Salt Lake Chamber*, Nov. 26, 2018, https://issuu.com/saltlakechamber/docs/wagegap_2018_8x11_finaldigital.

²⁵⁰ Skinner Testimony, *Salt Lake City Briefing*, p. 176.

²⁵¹ "Best Practices Guide for Closing the Gender Wage Gap," *Salt Lake Chamber*, Nov. 26, 2018, https://issuu.com/saltlakechamber/docs/wagegap_2018_8x11_finaldigital.

²⁵² *Ibid.*, 179.

²⁵³ Skinner Testimony, *Salt Lake City Briefing*, p. 180.

²⁵⁴ Kuang Testimony, *Salt Lake City Briefing*, p. 155.

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*, 156.

“reengineering their recruitment.”²⁵⁷ Employers ought to “rethink their job architecture” and apply the “substantially similar”²⁵⁸ pay practice that has been incorporated in the California Equal Pay Act that examines similarly situated and substantially similar work that could help to narrow pay differences.

In a similar approach, the Salt Lake Chamber of Commerce recommended employers to encourage advancement of employees by conducting an assessment on the distribution of men and women among projects and high-level responsibilities.²⁵⁹ This practice would enable a company to observe if whether women are afforded the same opportunities as men to demonstrate their skills. While doing so, employers should watch for disproportionate amounts of “less glamorous work”²⁶⁰ being given to women because this would further encourage inequity among employees. Employers should then create a fair process for assigning tasks and rotate them for a set period if necessary. In the long-term, employers should set goals and achievements based on promotions for employees.

Employers should also conduct performance measures. She says that employers should be specific as “ambiguity and overly narrow definitions of success can amplify bias.”²⁶¹ Employers should also take advantage of mentoring programs for women to ensure there is a pipeline of qualified women employees when leadership positions become available.

In the absence of mandated policies that seek to address the gender wage gap, employers can commit to increasing the number women in leadership within their organization by accepting the Women’s Leadership Institute’s ElevateHER²⁶² challenge which is a research-based action plan to help companies transform the leadership of women with their organization.²⁶³ Several Utah employers have accepted this challenge, including the Utah Governor.²⁶⁴

²⁵⁷ Ibid.

²⁵⁸ Cal. Lab. Code § 1197.5(a); “Substantially similar work” refers to work that is mostly similar in skill, effort, responsibility, and performed under similar working conditions. Skill refers to the experience, ability, education, and training required to perform the job. Effort refers to the amount of physical or mental exertion needed to perform the job. Responsibility refers to the degree of accountability or duties required in performing the job. Working conditions has been interpreted to mean the physical surroundings (temperature, fumes, ventilation) and hazards. https://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm.

²⁵⁹ Skinner Testimony, *Salt Lake City Briefing*, p. 180.

²⁶⁰ Ibid.

²⁶¹ Ibid., 181.

²⁶² ElevateHER Challenge, *Women’s Leadership Institute*, <https://wliut.com/elevateher-challenge/> (last accessed January 22, 2020).

²⁶³ Skinner Testimony, *Salt Lake City Briefing*, p. 181.

²⁶⁴ Ibid., 182.

Government Intervention

Panelists advocated for passing and making specific changes to federal and state legislation to close the gender wage gap and address pay discrimination.²⁶⁵

Passing paid family and medical leave legislation is a popular, and largely cited, solution to closing the gender wage gap and to advancing gender equality.²⁶⁶ Ms. Raghu stated that the law should cover all workers; cover the range of caregiving needs workers face across their lifespan including child bonding, personal medical care, and family caregiving; protect workers against adverse consequences for taking leave; and providing meaningful wage replacement and benefits that do not force workers into trade-offs between access to leave and a secure retirement, or result in cuts to other family programs.²⁶⁷

Several states have taken a proactive approach to addressing the gender wage gap by banning salary history inquiries. As of August of 2019, 17 states and 20 cities passed legislation that bans employer inquiries.²⁶⁸ The laws are aimed at ending the cycle of pay discrimination and some go further than merely banning pay history questions. A few also prohibit an employer from relying on an applicant's pay history to set compensation if discovered or volunteered; while others prohibit an employer from taking disciplinary action against employees who discuss pay with coworkers.²⁶⁹

States have also passed laws eliminating pay secrecy.²⁷⁰ Passing such a law would prohibit employers from retaliating against employees from disclosing and/or discussing their wages with other employees. Despite the National Labor Relations Act protecting employees from employer retaliation from discussing their wages,²⁷¹ states took additional steps to strengthen worker protections. For example, Michigan was one of the earliest states to pass a pay secrecy policy by enacting it in 1982 and between 2000 and 2018, eight additional states enacted pay secrecy laws.²⁷² The federal government also passed an executive order in 2014 banning pay secrecy for

²⁶⁵ Lacarte Testimony, *Salt Lake City Briefing*, p. 23; Berik Testimony, *Salt Lake City Briefing*, p. 169; Raghu Statement, at 16.

²⁶⁶ Lacarte Testimony, *Salt Lake City Briefing*, p. 23; Berik Testimony, *Salt Lake City Briefing*, p. 169; Raghu Statement, at 16.

²⁶⁷ Raghu Statement, at 16-17.

²⁶⁸ Robert Sheen, "More States and Cities Passing Salary History Bans," *Pay Parity Post*, Jun. 20, 2019 <https://payparitypost.com/more-states-and-cities-passing-salary-history-bans-update/>.

²⁶⁹ Ibid.

²⁷⁰ U.S. Department of Labor, Women's Bureau, *Equal Pay and Pay Transparency Protections*, <https://www.dol.gov/agencies/wb/equal-pay-protections> (accessed July 27, 2020).

²⁷¹ 29 U.S.C. § 157.

²⁷² U.S. Department of Labor, Women's Bureau, *Pay Secrecy Factsheet*, Aug. 2014, https://www.dol.gov/wb/media/pay_secrecy.pdf.

federal contractors.²⁷³ At the same time, states can also mandate pay transparency. Research indicates that transparency is important because keeping salaries a secret reinforces discrimination.²⁷⁴ Benefits of requiring employers to publish salary data include increased motivation for employees to work harder that causes a boost in productivity and combats gender inequality.²⁷⁵

Panelists also examined existing federal legislation and advocated to strengthen the Equal Pay Act by passing the Paycheck Fairness Act.²⁷⁶ Ms. Raghu explained that the Paycheck Fairness Act proposes to ensure robust protection against sex-based pay discrimination, promote pay transparency by barring retaliation against workers who voluntarily discuss or disclose their wages, and by requiring employers to report pay data to the EEOC.²⁷⁷ It would prohibit employers from relying on salary history to set pay when hiring new employees, so that pay discrimination does not follow women and people of color from job to job.²⁷⁸ It would close loopholes that have allowed employers to pay women less than men for the same work without a legitimate business justification related to the job. It would strengthen workers' ability to demonstrate pay discrimination by modifying the "same establishment" requirement in the Equal Pay Act, and removing barriers allowing workers to come together as a class to challenge pay discrimination. Finally, it would ensure women could receive the same robust remedies for sex-based pay discrimination that are currently available to those subjected to discrimination based on race or ethnicity.

Finally, raising the minimum wage and eliminating the federal tipped minimum wage is also believed to boost women's wages, especially for women of color. Women represent nearly two-thirds of the workforce in jobs that pay the federal minimum wage and make up more than two-thirds of workers in tipped jobs for whom the federal minimum wage is just \$2.13 per hour. Passing legislation that raises the minimum wage would impact nearly 40 percent of Black and Latina working women across the country. At the same time, states could raise their minimum wage and eliminate the tipped wage altogether. Advocates noted that a \$15 minimum wage, as proposed in the Raise the Wage Act and one fair wage for tipped workers, millions of women would not only have more money in their paychecks, but may be less vulnerable to sexual

²⁷³ Exec. Order 13,665, 79 F.R. 20,749 (April 2014).

²⁷⁴ Emiliano Huet-Vaughn, "Striving for Status: A Field Experiment on Relative Earnings and Labor Supply" (Working paper) http://econgrads.berkeley.edu/emilianohuet-vaughn/files/2012/11/JMP_e.pdf.

²⁷⁵ Samantha Cooney, "Should You Share Your Salary With Co-Workers? Here's What Experts Say," *TIME*, Aug. 14, 2018. <https://time.com/5353848/salary-pay-transparency-work/>.

²⁷⁶ Paycheck Fairness Act, H.R. 7, 116th Cong. (2020).

²⁷⁷ *Id.*; Raghu Statement, at 9.

²⁷⁸ Paycheck Fairness Act, H.R. 7, 116th Cong. (2020).

harassment from customers²⁷⁹ because they would not have to rely on tips for nearly all of their income.

FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.²⁸⁰

Below, the Committee offers to the Commission a summary of findings identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission to consider several recommendations for federal and state actors. In addition, it offers additional considerations for employers and the religious community.

Findings

1. The gender wage gap for women working full-time, year-round in Utah is 70 cents per dollar earned by white²⁸¹ men – 10 cents lower than national figures where women earn 80 cents per dollar respectively.²⁸² Based on estimates, this disparity can accumulate to roughly half a million dollars over her career.²⁸³ If nothing is done to address the gender wage gap, it will not close until 2059; and if nothing is done in Utah, it will not close until 2106.²⁸⁴

²⁷⁹ According to a study by the Restaurant Opportunities Centers United, women who had previously worked as tipped workers were 1.6 times as likely to live with inappropriate behaviors in the workplace as women who were currently employed as tipped workers. See “Take Us Off the Menu: The Impact of Sexual Harassment in the Restaurant Industry,” *ROC United*, May 2018. https://rocunited.org/wp-content/uploads/2018/05/TakeUsOffTheMenu_Report_2.pdf.

²⁸⁰ 45 C.F.R. § 703.2.

²⁸¹ When referring to white men, the interpretation is white, non-Hispanic men.

²⁸² U.S. Census Bureau, *2017 American Community Survey 1-Year Estimates for full-time year round civilian employed population 16 years and over*.

²⁸³ “The Status of Women in the States: 2015, Employment & Earnings,” *Institute for Women's Policy Research*, p. 50 <http://statusofwomendata.org/wp-content/uploads/2015/09/PDF-of-final-Employment-Earnings-chapter-9-4-15.pdf>. The IWPR estimated that women born between 1955 and 1959 who worked full time, year-round each year lost more than \$530,000 by the time they reached age 59.

²⁸⁴ Julie Anderson, Jessica Milli, Melanie Kruevelis, “Projected Year the Wage Gap Will Close by State,” *Institute for Women's Policy Research*, <https://iwpr.org/publications/projected-year-wage-gap-will-close-state/>.

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2. Women of color face an even larger gender wage gap in Utah compared with white men. Hispanic women earn 47 cents, Black women earn 52 cents, Native American women earn 54 cents, and Asian women earn 67 cents for each dollar paid to white men.²⁸⁵
 3. Utah has a higher share of part-time workers than the rest of the U.S. with 38 percent of Utah women versus 28 percent at the national level. This is of concern because part-time workers earn less income and are offered little to no benefit coverage. In addition, part-time workers have more variable and unpredictable work schedules, which adversely impact women who have caregiving responsibilities.
 4. Occupational segregation explains half of the gender wage gap. According to Census figures, women make up nearly two-thirds of workers in the 40 lowest-paying jobs and conversely, women are underrepresented in higher wage occupations, making up only 37 percent of workers in the 40 highest-paying occupations.
 5. The gender wage gap continues to widen with age, and differences among older workers are considerably larger than differences among younger workers. For younger, full-time workers between 20-24 years of age, the wage gap is closer to parity with women earning 89 cents for every dollar their male counterparts earn. However, as workers enter their prime working years, the gender wage gap widens, which also coincides with women's prime childbearing years. Earnings continue to decrease after age 45. Women 55-64 years of age experience a larger wage gap and are paid 75 cents for every dollar men are paid in the same age range. These figures likely demonstrate the long-term effects of explicit and implicit bias, which compound over time.
 6. A gender wage gap exists in varying occupations that are both female-dominated and male-dominated. According to an analysis of the Bureau of Labor Statistics examining common occupations for genders, within the 20 most common occupations for women, women earn less than men in all but two of the largest occupations for women. Women make up 88 percent of elementary and middle school teachers earn 86 percent of men's earnings; and for women working as registered nurses where women make up 88 percent, women earn 91 percent of men's earnings. This continues to be the case, for women employed in male-dominated jobs. For women working in construction trade occupations, comprising of roughly 3 percent of workers in that field, women earn 94 percent of men's earnings.
 7. Union membership has been proven to provide women with higher wages and better benefits. Working women in unions are paid 94 cents for every dollar paid to working men in unions, compared with 78 cents for every dollar for non-union women as a share of nonunion men's dollar. Unions can also provide a boost to women's earning regardless of their race or ethnicity. The gender wage gap is significantly smaller among both white and black unionized workers than their nonunion counterparts. Unionized workers are
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also more likely to have access to various kinds of paid leave such as paid sick days, vacations, holidays, and paid family and medical leave – benefits that would enable them to balance work and family obligations.

8. Utilizing salary history to set a worker's starting salary negatively impacts subsequent raises, bonuses, and promotions that accumulate overtime. This is concerning because women are more likely to be offered lower starting salaries from previous jobs and therefore, may have less retirement security to fall back on due to lower earnings accumulated throughout their career.
9. Because women are paid less than men, they have less income to devote to retirement savings to draw upon in retirement, smaller contributions to employer-sponsored retirement plans, smaller Social Security benefits, and smaller paychecks for those women who continue to work later in life.
10. Prohibiting the discussion of wages among employees, also known as pay secrecy, is a common practice among private sector employers. Yet, for most workers, pay secrecy policies are illegal. According to the National Labor Relations Act, employers are prohibited from banning employees below supervisory level from discussing their wages. Despite this law, employers continue to penalize employees. Women are particularly affected because if they are underpaid and want to engage in salary negotiations, they are starting from a lower negotiating point.
11. Women make up two-thirds of the workforce in jobs that pay the federal minimum wage and make up 70 percent of tipped workers in the U.S. In addition to women making up a large majority of low-wage jobs, women of color constitute almost a quarter of minimum wage workers. The composition of workers in minimum wage and tipped minimum wage jobs is of concern because these workers experience twice the poverty rate than the rest of the U.S. workforce and have economic insecurity.
12. The low number of Equal Pay Act and Title VII of the Civil Rights Act complaints reported to the Utah Antidiscrimination Labor Division (Utah Labor Division) and Equal Employment Opportunity Commission may be due to workers unaware of their rights and what constitutes as a violation under these laws; and poor federal and state enforcement efforts. On a state level, this is partially explained through the Utah Legislative Audit's analysis of the Utah Labor Division's handling of employment discrimination complaints. The report found that the Utah Labor Division ruled in favor of employees only 0.7 percent of the time, which is less than surrounding states and nationwide.
13. Employees who file complaints with state and federal enforcement agencies alleging discrimination must show a considerable burden of proof in the four affirmative defenses built into the Equal Pay Act. An employee must show that the disparity in pay is not due to a seniority system, a merit system, a pay system based on quantity or quality of output, and/or any other factor other than sex. This is of concern because, in its current writing, some in the legal community find that the Equal Pay Act is ineffective in addressing pay inequity allegations.

Recommendations

1. The U.S. Commission on Civil Rights should send this report and issue recommendations to the U.S. Department of Labor to:
 - a. Develop initiatives to encourage women to enter nontraditional and STEM-related careers.
 - b. Vigorously enforce the Fair Labor Standards Act.
2. The U.S. Commission on Civil Rights should send this report and issue recommendations to the Equal Employment Opportunity Commission to:
 - a. Vigorously enforce the Equal Pay Act.
 - b. Vigorously enforce the Pregnancy Discrimination Act.
3. The U.S. Commission on Civil Rights should send this report and issue recommendations to the National Labor Relations Board to:
 - a. Vigorously enforce the National Labor Relations Act.
4. The U.S. Commission on Civil Rights should send this report and issue recommendations to the U.S. Congress to:
 - a. Strongly consider passing legislation that requires employers with 100 or more employees to collect pay data by race, ethnicity, and gender to help identify and address pay discrimination.
 - b. Strongly consider passing legislation that would prohibit employers from screening applications based on their salary history to be considered as candidates for a position.
 - c. Strongly consider passing legislation that closes the “factor other than sex” loophole by adding a requirement that the factor proffered by the employer be “bona fide,” which ensures that the factor neutral and unrelated to sex. Such legislation would make clear that the “factor other than sex” affirmative defense only excuses a pay differential when the factor is related to the position in question, forwards and business necessity, and accounts for the entire pay differential.
 - d. Pass legislation eliminating pay secrecy.

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- e. Raise the minimum wage.
 - f. Eliminate the subminimum wage.
5. The U.S. Commission on Civil Rights should send this report and issue recommendations to the Utah Legislature to:
- a. Pass legislation that prohibits employers from relying on salary history of a prospective employee in considering the prospective employee for employment, including requiring that a prospective employee's prior wages satisfy minimum or maximum criteria as a condition of being considered for employment.
 - b. Pass legislation eliminating pay secrecy.
 - c. Raise the minimum wage.
 - d. Eliminate the subminimum wage.
 - e. Conduct a statewide gender wage gap study that includes disaggregation of earnings data by race.
 - f. Pass legislation to provide mandatory paid parental leave.

Considerations for Employers

The Utah Advisory Committee recommends Utah employers to consider instituting employment practices that encourage a culture of pay equity. While all items below may not be feasible for employers, the Committee hopes the following recommendations provide a menu of actionable steps to narrowing the gender wage gap within the company.

Conduct a Pay Equity Audit

At the outset, employers should consider conducting a pay equity audit to assess which employee groups are underpaid and how it may have happened. Gathering salary and bonus data by gender, department, tenure, age, education, and location is key to driving the process and the methodology. Employers should also consult with senior management and their counsel to limit any legal risks.

If a pay gap exists between employees at the same level, employers should consider taking several steps. First, employers should make salary information transparent for various roles and levels within the company. Making this information transparent will engender trust and loyalty from employees by showing that the company wants to compensate all employees fairly. In addition, employers can immediately raise the compensation of employees who are underpaid to equalize pay. Finally, employers can implement a policy that automatically increases pay when

hiring an employee for a higher salary than their team members, those team members proactively receive an off-cycle increase in pay.

Provide Unconscious/Implicit Bias Trainings for Management and Human Resources

Employers can benefit from providing unconscious bias training to staff. Unconscious bias training can be helpful to raising awareness about the unconscious biases we all carry about others' identities, how to recognize those thought patterns, and ways to not let these biases influence decision-making.

Training should also be offered to individuals who are involved in the hiring process. Unconscious bias can play a huge role in hiring and recruitment. Hiring personnel should keep an eye out for shifting criteria about qualifications, setting higher bars for women to demonstrate more evidence of competence and success than men, and applying extra scrutiny on women by doubting their abilities, experiences, and commitment.

Aspire for and Implement a Culture of Transparency

Employers should aspire to implement a culture of transparency. Revising policies that prohibit employees from discussing wages can do this. Also, employers should be open about salary ranges and how compensation is decided especially during hiring and evaluation phase.

Eliminate the Use of Salary History to Set Starting Salary

Employers should have one approach for handling salary negotiations. During the hiring process, the focus should be on the candidate's salary expectations rather than their salary history, and then focusing on the candidate's skill set and qualifications for the role. Employers should also post a salary range for open positions and eliminate the use of salary history to set starting wages.

Implement Family Friendly Policies

Family friendly policies such as family leave, flexible scheduling, and return to work programs for those returning from parental leave can be incredibly helpful for employees who have caregiving responsibilities. If possible, employers should consider offering paid family leave as it is believed the rewards outweigh the costs. These outcomes include improved employee retention, better talent attraction, improved employee engagement, morale and productivity.

Considerations for the Religious Community

The status of women in society is diverse worldwide. Among many important traits associated with the differentiation of gender inequality is religion. Because some religious norms and traditions can contribute to the formation of gender inequality, leaders should take steps to achieving gender equity, which then can influence the community over time.

Address Sexual Harassment

No industry has been immune, including faith communities, from receiving complaints about pervasive sexual harassment. Building on the #MeToo movement, that aims to destigmatize survivors of sexual violence, religious communities should hold churches and those in leadership

accountable for their actions and make a commitment to ensuring a safe space for community members.

Hold Leadership Positions

Due in large part to institutionalized patriarchal models of leadership present in many houses of worship, 1 out of the 100 largest churches in the U.S. is led by women. Women of faith can redefine leadership in their houses of worship by being an important role model for young worshipers and push to transform gender inequality from within their religious traditions.

APPENDIX

October 3, 2019 Briefing Agenda & Minutes

October 3, 2019 Briefing Transcript

October 3, 2019 Presentation Slides

Written Testimony

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Anne Thomsen

Cindy King

Maya Raghu, National Women's Law Center

Kim Rehman

Materials can be found here:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1VUL0dlbmRlciBXYWdlIEdhcA%3D%3D

**Utah Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights

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