

INTRODUCTION: *Overwhelmingly, women believe that sex-based discrimination remains a big problem in American workplaces. And certainly, American workplaces are imperfect, bad bosses exist, and our laws must give women proper recourse against discrimination. Yet often lost in this discussion is that equal pay for equal work is already the law of the land. Workers who feel they are being discriminated against can and do sue under the Equal Pay Act on 1963 and Civil Rights Act of 1964.*

Democrats have called for new legislation called the Paycheck Fairness Act (PFA), saying that this is needed to truly ensure there is equal pay and to close the wage gap.

*To start this discussion, **test your knowledge** about at what the law would actually do.*

1: What would the “Paycheck Fairness Act” do?

- A. Finally require that employers must pay men and women the same for equal work.
- B. Give women the opportunity to sue employers who discriminate against them.
- C. Encourage businesses to create jobs and pay women better.
- D. Increase the potential payouts for discrimination lawsuits and make it harder for employers to defend themselves.

ANSWER: D – A and B are already covered under current law and have been for fifty years (Under the Civil Rights Act and Equal Pay Act).

And C is wrong because the “Paycheck Fairness Act” will do the opposite, discouraging job creation and leading to less compensation for workers.

The misleadingly named “Paycheck Fairness Act” simply would change how discrimination lawsuits are conducted, dramatically increasing the potential payout from lawsuits. It also encourages class action suits, by putting the burden on employees to opt out of (rather than into) a class. It makes it more difficult for employers to defend against charges of discrimination, which will encourage businesses to reduce their workforces and create more rigid compensation plans.

2: Businesses will have to think twice—and may well be discouraged by their lawyers altogether—from making which of the following compensation decisions if the “Paycheck Fairness Act” becomes law?

- A. Giving an employee a bonus for superior performance.
- B. Allowing a worker to renegotiate compensation for more flexible hours or a reduced schedule.
- C. Offering a counter-offer to retain a valued employee.
- D. All of the above

ANSWER: D – The “Paycheck Fairness Act” would make employers vulnerable to virtually any compensation decision that they make. Rather than being able to justify differences in pay based on factors such as experience, job duties, and business necessity, under PFA, employers would be vulnerable to a lawsuit if an employee could demonstrate that “an alternative employment practice exists that would serve the same business purpose without producing such differential.” What does that mean? No one knows exactly. This ambiguity would be an invitation to lawyers looking for clients (and a piece of damage awards) to initiate lawsuits, regardless of their merits. That’s why even the Washington Post called the PFA “a flawed approach to job bias.”

3: What group stands to benefit the most if the Paycheck Fairness Act becomes law?

- A. Women
- B. Workers
- C. Taxpayers
- D. Lawyers

Answer: D – The clear winners from the PFA would be lawyers, since this law would encourage more lawsuits and increase potential payouts from those lawsuits. For example, by creating a provision that would require employees to opt out of, rather than in to, a class for a class action suit, the PFA would make it much easier to get a class certified and increase the likelihood of a jackpot award—a huge cut of which goes to the lawyers.

4: How would the Paycheck Fairness Act encourage more lawsuits?

- A. By requiring employees to opt out of (rather than into) a class for the purpose of a class action lawsuits.
- B. By removing the current cap on punitive damage awards
- C. By allowing punitive damage awards for unintentional discrimination
- D. By changing the rules to make it harder for businesses to defend themselves during a lawsuit
- E. All of the Above

ANSWER: E – The PFA would make all these changes to increase payouts for potential lawsuits, making it much more likely that lawyers will initiative litigation, regardless of the merits of the claim.

Real World Examples

The “Paycheck Fairness Act” wouldn’t help women earn more or advance the cause of justice. It would make our workplaces less flexible and discourage businesses from creating jobs, and particularly from hiring women. The real winners from the “Paycheck Fairness Act” would be trial lawyers, who unsurprisingly are among the chief donors of those who are advancing this legislation. Discrimination based on sex is already illegal. The best way to help women earn more is to create an economy that offers a wide variety of employment opportunities. More frivolous litigation and meddling by government bureaucrats won’t help create jobs and will in fact backfire on those we need to help.

Karen – age 35

Karen has worked at the same advertising firm for 12 years. She’s worked hard and moved into a management position at her company, and always felt treated fairly. She recently had her first child and now would prefer to cut back on the number of days that she works. She is willing to take a pay cut so that she could only come into the office four days a week and spend an extra day home with her son, but her boss has told her that—as much as she’d like to help and knows that such a work arrangement would be a win-win situation—she’s been advised by the company’s lawyers that offering such flexibility opens them up to a potential lawsuit since Karen would be earning less than her male coworkers. Karen is now left with a tough decision: Does she keep working full-time and miss out on spending time with her son or quit her job entirely?

Discussion Questions

- Do you know of anyone who has been discriminated against by his or her employer? How did he or she handle it?
- Do you think that most women know that equal pay for equal work is already the law of the land?
- Do you think that more lawsuits will lead to greater justice?
- Do you think that employers will be less likely to offer flexibility and hire women if they have more reason to fear a costly lawsuit? If you were an employer, would you take such factors into consideration?

Articles to Read

The “Paycheck Fairness Act” Fact Sheet, Independent Women’s Forum: <http://www.iwf.org/publications/2787936/fact-sheet:-paycheck-fairness>

The “Paycheck Fairness Act” Policy Focus, Carrie Lukas, Independent Women’s Forum : <http://www.iwf.org/publications/2788151/paycheck-fairness-act>

Action Items

- Ask your friends if they have heard about the “Paycheck Fairness Act.” If they have, ask them if they know what is actually in it and explain that the major impact of this legislation would be to increase the number of lawsuits against employers. Ask if they think that more lawsuits are the solution to our economy’s problems.
- Write a letter to the editor of your local paper anytime they refer to how the “Paycheck Fairness Act” will advance equal pay. Make sure they understand that this legislation is about changing the legal terrain to encourage more lawsuits and greater payouts for lawyers, not increasing the paychecks or employment opportunities for women workers.

Further Study

Watch [this testimony](#) by IWF’s Sabrina Schaeffer before the U.S. Senate on the Paycheck Fairness Act.

Make sure to complete the IWN Wage Gap Curriculum. The claim that women are regularly paid a fraction of what men are paid for the same work is an important talking point for proponents of the “Paycheck Fairness Act.” Make sure you know the truth on what really explains men and women’s earnings.