Progress report: the Equal Pay Act a half-century later

By Pat Sturdevant

This year marks a half-century since passage of the Equal Pay Act, which outlawed wage discrimination between men and women in the same establishment who perform jobs requiring substantially equal skill, effort, and responsibility under similar working conditions. This guarantee of equal pay for equal work for America’s women was signed by President John F. Kennedy in 1963 and codified as part of the Fair Labor Standards Act of 1938.

Yet today, despite that guarantee, gender-based wage disparity persists. Women still earn on average 77 percent of what men make. This disparity exists in virtually all occupations, including law. Women of color fare even worse. In 2011, the last year for which statistics are available, African American women earned 69.5 percent, and Latinas earned 60.2 percent, of the salaries paid to men.

Fifty years ago, when women earned just 59 cents for every dollar earned by men, Congress passed the Equal Pay Act to remedy a perceived serious and endemic problem of employment discrimination in private industry. This discrimination, according to the U.S. Supreme Court, was “based on an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same.” When the court made that observation in 1974, women’s earnings were still at 58.8 percent of those of men, remaining unchanged more than a decade after the act’s passage.

Beginning in the mid 1970s, women were inching toward parity with their male counterparts, but at the rate of less than half-a-penny a year. Although the gap between men’s and women’s wages did narrow gradually for several decades, figures from the U.S. Census Bureau’s population survey show that the wage gap has remained stagnant since 2004 at about 77 percent.

But citing the statistical gap in salaries does not adequately convey the enormity of pay inequity. Economist Evelyn Murphy, president of The Wage Project, estimates that over a lifetime of 47 years of full-time work, this discriminatory gap results in lost wages to women of:
- $700,000 for a high school graduate
- $1.2 million for a college graduate
- $2 million for a professional school graduate

Because of wage discrimination, America’s women and families are being shortchanged thousands of dollars a year and hundreds of thousands of dollars over a lifetime. This is unhealthy for us as a society, as Congress recognized when it sought to eliminate unequal pay for equal work a 50 years ago because it: depresses wages and living standards for employees necessary for their health and efficiency; prevents the maximum utilization of available labor resources; tends to cause labor disputes, thereby burdening, affecting and obstructing commerce; and burdens commerce and the free flow of goods in commerce.

Solving this “serious and endemic problem” is in our national interest. The National Organization for Women estimates that if women earned the same wages as men who work the same number of hours, have the same education and union status, are of similar age and in the same geographical region, women’s annual income would rise by $4,000, and poverty rates would be cut in half. Achieving pay equity for women would alleviate the crushing burden of poverty for working families in America, who would gain $200 billion in family income every year. It would also alleviate the diminished retirement benefits, based on discriminatory salaries, which have consigned so many of our mothers and grandmothers to the hardship and indignity of living out their last years in poverty.

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There are at least two good ways to contribute to the solution. Tuesday, April 9, is the national observance of Equal Pay Day, which represents how far into 2013 women must work before their salaries equal those earned by men in the prior year. Across the country, bar associations affiliated with the National Conference of Women Lawyers are hosting community forums and Unhappy Hours, wearing red to signal dissatisfaction with the continuing pay inequity that keeps women and their families “in the red,” and educating business and community leaders about the wage gap. Join with us to demonstrate how the wage gap affects, and its solution would benefit, your communities.

Recommit our nation to the elimination of wage disparity by supporting the Paycheck Fairness Act. In January, Sen. Barbara Mikulski and Rep. Rosa DeLauro reintroduced that act, which died in the last Congress. The bill would strengthen the Equal Pay Act by providing more remedies for wage discrimination. It would also require that employers who pay their male and female employees differently for doing the same work must have a business justification that is not based on the employee’s sex. In addition, it would provide guidance to business by its call for a study of data collected by the Equal Employment Opportunity Commission and voluntary guidelines to show employers how to evaluate jobs with the goal of eliminating unfair disparities. Further, it would prohibit retaliation against workers who inquire about wages or disclose their own wages to their co-workers. This is needed because current law allows employers to sue or otherwise punish workers who share their salary information, preventing workers like Lily Ledbetter from learning that their salaries are discriminatory based on gender until the time passes in which they could successfully challenge that inequity.

As lawyers committed to access, fairness and equal justice under the law, we must remedy this pervasive and persistent pay inequity for the sake of the financial stability and wellbeing of our children, families and communities.

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