



GET THE FACTS: On the Paycheck Fairness Act

The Paycheck Fairness Act (S.797, H.R.1519), sponsored by Senator Barbara Milkuski (D-MD) and Representative Rosa DeLauro (D-CT), is under consideration in Congress.

What would the Paycheck Fairness Act do?

The Paycheck Fairness Act would amend the Fair Labor Standards Act of 1938 to "provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex," according to the bill's proponent. However, it would really increase the number of costly lawsuits and create a less flexible workplace, reducing opportunities for both men and women.

Why are lawmakers considering this bill?

Statistics on men's and women's wages indicate that women earn about 80 percent as much money as men do. Some lawmakers mistakenly assume this is due to sexism, and want to make sure women are free from discrimination. In reality, the so-called "wage gap" is caused by many factors, including hours worked, experience and education levels, other benefits, workplace flexibility, and industry. Women who face workplace discrimination are already protected by the Equal Pay Act and the Fair Labor Standards Act.

If this bill is passed, what would be the consequences?

The Paycheck Fairness Act basically attempts to solve a problem that doesn't exist. In so doing, this bill would create new headaches and encourage *unfairness* in the workplace. The Act would:

- Invert our justice system by requiring employers to prove that salary decisions are all "job related" and "consistent with business necessity."
- Limit the salary decisions of employers, preventing them from rewarding more productive workers for fear of discrimination allegations.
- Make paychecks less fair by encouraging employers to pay all workers the same, regardless of work environment, shift, location, or performance.
- Allow women to sue for unlimited compensatory and punitive damages, even if there was no proof that any intentional discrimination had taken place.
- Harm small businesses by exposing them to potentially bankrupting lawsuits.
- Promote class action lawsuits by automatically including plaintiffs in a class unless they specifically opt out.
- Lead to lower wages for men and women, as employers divert money toward expanded legal liability insurance instead of increasing workers' pay.
- Lead to fewer jobs for women: Employers will be discouraged from hiring women when they see women as legal risks rather than meritorious workers.

The Paycheck Fairness Act – like many bills considered by Congress – has a nice name. It is a good opportunity for politicians to talk about their interest in workplace fairness. But sadly, the bill is based on the misguided assumption that all employers are sexist, and it creates hurdles to employment and wage growth. Ultimately, it has the potential to cause more harm than good.