

AAUW Capitol Hill Lobby Corps
The Fair Pay Restoration Act (S. 1843)
September 13, 2007

I. SUMMARY

Message:

With the recent Supreme Court decision in the *Ledbetter* case AAUW believes now is the time to strengthen pay discrimination laws by supporting the **Fair Pay Restoration Act (S. 1843)**. In doing so, Congress can demonstrate its resolve to reduce pay inequalities and clarify and strengthen current statute in an effort to prevent future problematic court decisions.

Please cosponsor the Fair Pay Restoration Act (S. 1843). The Supreme Court's decision in *Ledbetter v. Goodyear* severely limits the ability of victims of pay discrimination to sue under Title VII. AAUW believes this decision is inconsistent with Congressional intent and the Court's own precedents. Under this new rule, employers are immunized from accountability for their discrimination once 180 days have passed. AAUW believes the Court's decision ignores the realities of today's workplace; employees generally don't know enough about what co-workers earn or how pay decisions are made to file a complaint precisely when a discriminatory pay decision is made. However, without that knowledge, the Supreme Court has declared plaintiffs have no claim – basically grandfathering in longtime pay discrimination – regardless of how egregious it might have been. The *Ledbetter* decision also reversed the Equal Employment Opportunity Commission's longstanding position that repeated payments of discriminatory paychecks can be challenged as long as one discriminatory payment occurred within the charge filing period.

AAUW is pleased that Congress is moving swiftly to address this conceptually wrongheaded decision with a legislative fix. The **Fair Pay Restoration Act (S. 1843)** will simply restore the law to how it was applied by the EEOC and the courts prior to the *Ledbetter* decision. It amends Title VII to clarify that a pay discrimination claim accrues when a pay decision is made, when an employee is subject to that decision, or at any time they are injured by it. Ironically, this rule was not something that businesses had been clamoring to change – the new rule is instead an unexpected gift that makes it much more difficult for victims of discrimination to vindicate their rights and hold employers accountable for their actions.

II. BACKGROUND

The American Association of University Women has long fought to end wage discrimination. As early as 1922, AAUW's legislative program called for a reclassification of the U.S. Civil Service and for a repeal of salary restrictions in the Women's Bureau. In 1955, AAUW supported a bill introduced by Reps. Edith Green (D-OR) and Edith Rogers (R-MA) requiring "equal pay for work of comparable value requiring comparable skills." Congress enacted the Equal Pay Act,¹ a version of the 1955 bill, in 1963. AAUW's 2007-2009 Public Policy Program states that AAUW is committed to supporting "fairness in compensation, equitable access and advancement in employment, and vigorous enforcement of employment antidiscrimination statutes."²

The Wage Gap Persists

According to the U.S. Census Bureau and Bureau of Labor statistics, women who work full time earn about 77 cents for every dollar men earn.³ Minority women face a larger wage gap. Compared to white men, African American women make 67 cents on the dollar (African American men make 75 cents); Hispanic women make almost 58 cents (Hispanic men make almost 66 cents).⁴

Origins of the Wage Gap

One partial explanation for the wage gap is occupational segregation. According to AAUW research, women are still pigeonholed in “pink-collar” jobs, which tend to depress their wages. The AAUW Educational Foundation’s 2003 report, *Women at Work*, found that women are still concentrated in traditionally female-dominated professions, especially the health and education industries. The highest proportion of women with a college education work in traditionally female occupations: primary and secondary school teachers (8.7 percent) and registered nurses (6.9 percent).⁵

Women’s achievements in higher education during the past three decades are considered to be partly responsible for narrowing the wage gap.⁶ At every education level, however, women continue to earn less than similarly educated men. Educational gains have not yet translated into full equity for women in the workplace.

The Impact of Education on the Wage Gap

The impact of education levels on the wage gap is of particular importance to AAUW. Women with a college degree earn more than women without this credential. For example, on an hourly basis, women with a four-year college degree earned about 80 percent more than women with only a high school degree in 2001. Moreover, during the past two decades, this difference has grown. Men and women with college degrees enjoyed a real increase in the purchasing power of their earnings between 1973 and 2001. Women without these credentials saw little or no improvement, and men with a high school education or less saw a decline in the purchasing power of their earnings. Nevertheless, while women with a college education earn considerably more than women without this credential, women continue to earn less than men with similar educational backgrounds.⁷

Wage inequalities are not simply a result of women’s qualifications or choices. Wage discrimination persists despite women’s increased educational attainment. The new report from AAUW released on April 23, 2007, *Behind the Pay Gap*, examines the gender pay gap for college graduates. One year out of college, women working full time earn only 80 percent as much as their male colleagues earn. Ten years after graduation, women fall farther behind, earning only 69 percent as much as men earn⁸. Controlling for hours, occupation, parenthood, and other factors normally associated with pay, college-educated women still earn five percent less than men one year out of college and 12 percent less than men 10 years out of college⁹.

Examples of Pay Inequity

According to a study done by National Association for Female Executives, women marketing and sales managers earned \$46,696 in 2004, compared with \$74,932 for men; women physicians

and surgeons earned \$50,856, compared with \$97,448 for men; and women securities, commodities, and financial services sales agents earned \$33,853, compared to \$60,736 for their male counterparts.¹⁰

The Wage Gap Has Real Consequences

With a record 69 million women in the workforce,¹¹ wage discrimination hurts the majority of American families. In addition, wage discrimination lowers total lifetime earnings, reducing women's benefits from Social Security and pension plans and inhibiting their ability to save not only for retirement but for other lifetime goals such as buying a home and paying for a college education.

Background on *Ledbetter* Case

- In this case, the plaintiff, Lilly Ledbetter, a supervisor at the Goodyear Tire & Rubber Company in Gadsden, Ala., sued her employer for paying her less than its male supervisors. Ms. Ledbetter filed a complaint with the EEOC and a jury found that Goodyear violated her rights under Title VII of the Civil Rights Act of 1964.
- Goodyear argued that Ms. Ledbetter filed her complaint too late and, by a 5-4 margin, the Supreme Court agreed. Title VII requires employees to file within 180 days of “the alleged unlawful employment practice.” The court calculated the deadline from the day Ms. Ledbetter received her last discriminatory raise, rather than – as the EEOC practice had previously made clear – from the day she received her last discriminatory paycheck. As a result, Ms. Ledbetter was unable to challenge any discrimination against her, even though the discrimination continued unabated for years.
- In this case, the jury awarded Lilly Ledbetter \$3.28 million in compensatory and punitive damages. The award was cut to about one-tenth of that amount— \$300,000—because of statutory caps under Title VII. This award would have been an insignificant loss for Goodyear. The Fair Pay Restoration Act is a good start, but there is still room for improvement in future legislation by eliminating these unfair caps. AAUW supports eliminating the caps on damages for Title VII claims for people discriminated against based on gender, religion, or disability (as they have already been eliminated for race and national origin claims).

III. TALKING POINTS

Current Wage Gap: According to the U.S. Census Bureau and Bureau of Labor statistics, women who work full time earn about 77 cents for every dollar men earn.¹²

Current Events: In light of the recent ruling in the *Ledbetter* case, now is the time for Congress to act and address pay discrimination. The issue is fresh in the public's mind.

- The Supreme Court's decision in *Ledbetter v. Goodyear* is inconsistent with Congress's intent and the Court's own precedents. Congress must address this discrepancy with a legislative fix.
- In this case, the plaintiff, Lilly Ledbetter, sued her employer for paying her less than its male supervisors. Ms. Ledbetter filed a complaint with the EEOC and a jury found that Goodyear violated her rights under Title VII of the Civil Rights Act of 1964. But, Goodyear argued that Ms. Ledbetter filed her complaint too late and, by a 5-4 margin, the Supreme Court agreed. Title VII requires employees to file within 180 days of "the alleged unlawful employment practice." The Court calculated the statute from her last discriminatory raise, as opposed to last discriminatory paycheck. And so, Ms. Ledbetter could not challenge any discrimination, although it had continued for many years.
- The Supreme Court's decision in *Ledbetter v. Goodyear* severely limits the ability of victims of pay discrimination to sue under Title VII. Under this new rule, employers are immunized from accountability for their discrimination once 180 days have passed. AAUW believes the Court's decision ignores the realities of today's workplace; employees generally don't know enough about what co-workers earn or how pay decisions are made to file a complaint precisely when a discriminatory pay decision is made.
- The *Ledbetter* decision also reversed the Equal Employment Opportunity Commission's longstanding position that repeated payments of discriminatory paychecks can be challenged as long as one discriminatory payment occurred within the charge filing period.
- The **Fair Pay Restoration Act (S. 1843)** will simply restore the law to how it was applied by the EEOC and the courts prior to the *Ledbetter* decision. It amends Title VII to clarify that a pay discrimination claim accrues when a pay decision is made, when an employee is subject to that decision, or at any time they are injured by it.
- Ironically, this rule was not something that businesses had been clamoring to change – the new rule is instead an unexpected gift that makes it much more difficult for victims of discrimination to vindicate their rights and hold employers accountable for their actions.

WHAT THIS BILL WOULD ACCOMPLISH

1. The Fair Pay Restoration Act (S. 1843) clarifies that each discriminatory paycheck is in fact another act of discrimination. The *Ledbetter v Goodyear* Supreme Court decision stated that discrimination can only be charged in the 180 days following the last discriminatory raise, even though the EEOC has consistently interpreted the law to mean last discriminatory paycheck.
2. This legislation restores the law to how it was previously been applied, which is 180 days from the last discriminatory paycheck, not 180 days from the last discriminatory raise.
3. Finally, this bill has implications beyond sex discrimination. As a Title VII fix, the Fair Pay Restoration Act would also apply to discrimination in compensation based on race, color, religion and national origin.

IV. STATUS

Sponsor: Sen. Kennedy, Edward [D-MA] introduced 7/20/2007

Status: Read twice and referred to the Committee on Health, Education, Labor, and Pensions.

This bill currently has 22 cosponsors.

[Sen Biden, Joseph R., Jr.](#) [DE] - 7/23/2007

[Sen Bingaman, Jeff](#) [NM] - 8/3/2007

[Sen Boxer, Barbara](#) [CA] - 7/20/2007

[Sen Brown, Sherrod](#) [OH] - 7/30/2007

[Sen Clinton, Hillary Rodham](#) [NY] - 7/20/2007

[Sen Dodd, Christopher J.](#) [CT] - 7/20/2007

[Sen Durbin, Richard](#) [IL] - 7/20/2007

[Sen Feingold, Russell D.](#) [WI] - 7/30/2007

[Sen Harkin, Tom](#) [IA] - 7/20/2007

[Sen Kerry, John F.](#) [MA] - 7/23/2007

[Sen Leahy, Patrick J.](#) [VT] - 7/20/2007

[Sen Levin, Carl](#) [MI] - 9/4/2007

[Sen McCaskill, Claire](#) [MO] - 7/20/2007

[Sen Mikulski, Barbara A.](#) [MD] - 7/20/2007

[Sen Murray, Patty](#) [WA] - 7/20/2007

[Sen Obama, Barack](#) [IL] - 7/20/2007

[Sen Reed, Jack](#) [RI] - 7/23/2007

[Sen Schumer, Charles E.](#) [NY] - 7/23/2007

[Sen Snowe, Olympia J.](#) [ME] - 7/20/2007

[Sen Specter, Arlen](#) [PA] - 7/20/2007

[Sen Stabenow, Debbie](#) [MI] - 7/20/2007

[Sen Whitehouse, Sheldon](#) [RI] - 7/20/2007

V. TARGETS:

Non-sponsors

VI. WHO TO ASK FOR: Labor LA

¹ Public Law No. 88-38.

² 2007 – 09 AAUW Public Policy Program (approved June 2007).

³ U.S. Census Bureau and the Bureau of Labor and Statistics. August 2006. Annual Demographic Survey. http://pubdb3.census.gov/macro/032006/perinc/new05_000.htm Accessed January 16, 2007.

⁴ U.S. Department of Labor, U.S. Bureau of Labor Statistics. Highlights of Women's Earnings in 2005, Report 995. <http://www.bls.gov/cps/cpswom2005.pdf> Accessed January 16, 2007.

⁵ AAUW Educational Foundation. *Women at Work*, p. 27. 2003..

⁶ See, for example, Francine Blau and Lawrence Khan, “The Gender Pay Gap: Going, Going ... But not Gone,” Paper presented at the Cornell University Inequality Symposium, “The Declining Significance of Gender,” September 2001, 23–24.

⁷ Economic Policy Institute. *The State of Working America 2004-2005*, Table 2.18 and Table 2.19.

⁸ AAUW Educational Foundation. *Behind the Pay Gap*, 2.2007...

⁹ AAUW Educational Foundation. *Behind the Pay Gap*, 11.2007...

¹⁰ National Association for Female Executives. 2005 Salary Survey. http://nafe.com/pr_2005survey.php Accessed December 21, 2006.

¹¹ U.S. Department of Labor, Women’s Bureau. *Employment Status of Women and Men in 2005*. <http://www.dol.gov/wb/factsheets/Qf-ESWM05.htm> Accessed December 21, 2006.

¹² U.S. Census Bureau and the Bureau of Labor and Statistics. August 2006. Annual Demographic Survey. http://pubdb3.census.gov/macro/032006/perinc/new05_000.htm Accessed January 16, 2007.