



September 9, 2014

United States Senate  
Washington, DC 20510

**ACLU Urges the Senate to Vote YES on the Paycheck Fairness Act, S. 2199**

AMERICAN CIVIL  
LIBERTIES UNION  
WASHINGTON  
LEGISLATIVE OFFICE  
915 15th STREET, NW, 6<sup>TH</sup> FL  
WASHINGTON, DC 20005  
T/202.544.1681  
F/202.546.0738  
[WWW.ACLU.ORG](http://WWW.ACLU.ORG)

NATIONAL OFFICE  
125 BROAD STREET, 18<sup>TH</sup> FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

RICHARD ZACKS  
TREASURER

Dear Senator:

With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law. On behalf of the ACLU, we urge you to vote both to allow debate and to support the Paycheck Fairness Act (S. 2199) without weakening amendments. We understand that the **bill may be considered as soon as tomorrow, September 10, 2014.**

Due to the importance of this bill for millions of women and their families, we urge Senators to not block this bill on procedural grounds, but rather to debate and consider the merits of a bill that could help your constituents all across America. **The ACLU will score both the procedural votes and the vote on the merits.**

The Paycheck Fairness Act provides a much needed update to the Equal Pay Act of 1963 – a law that has not been able to achieve its promise of closing the wage gap because of limited enforcement tools and inadequate remedies. Specifically, the Paycheck Fairness Act would:

- require employers to demonstrate that wage differences between men and women doing the same work have a business justification and stem from factors other than sex;
- prohibit retaliation against workers who inquire about their employers' wage practices or disclose their own wages, while also protecting certain confidential wage information;
- level the playing field by ensuring that women can obtain the same remedies as those subject to discrimination on the basis of race or national origin; and
- authorize additional training for EEOC staff to better identify and handle wage disputes and require the U.S. Department of Labor to provide technical assistance to employers and reinstate the collection of certain wage-related data.
- provide important safeguards for small businesses, including:
  - an exemption for small businesses;

- a six-month waiting period from the time of enactment that allows businesses covered under the Act sufficient time to comply with its requirements;
- a requirement that the Department of Labor help educate small businesses about what is required under the law and assist them with compliance;
- recognition for employers' excellence in their pay practices; and
- federal outreach and assistance to all businesses to help improve equal pay practices and training assistance to empower women to negotiate for fair pay.

As the Equal Pay Act celebrated its 50<sup>th</sup> anniversary last year, there should be little doubt that additional improvements are still necessary. Even fifty years after its passage, according to the U.S. Census Bureau, women who work full time still earn, on average, only 77 cents for every dollar men earn.<sup>1</sup> African American women were paid only 64 cents and the gap for Latinas widened over the last few years to, only 54 cents, as compared to white men.<sup>2</sup>

According to a nationwide poll, support for the Paycheck Fairness Act is overwhelming. In the poll of registered voters, 84% said they support a new law that would provide women more tools to get fair pay in the workplace.<sup>3</sup> High levels of support for this bill held true regardless of political party, gender, race, ethnicity, or regions of the country. For example, 77% of Republicans support it, along with 91% of Democrats and 87% of Independents. Large majorities of both men and women support the law as well – 81% and 87% respectively. In another poll, support is equally high with 66% of Latino voters and 78% of African American voters supporting the bill.<sup>4</sup>

This bill is a measure that the American public – **across the country and across parties** – overwhelmingly supports. Perhaps this is because in a record 40% of households with children under the age of 18, mothers are the sole or primary source of income. That figure jumps to 65% of families, when including women who are the primary or co-breadwinners.<sup>5</sup>

In fact, research shows that if women received pay equal to their male counterparts, the U.S. economy would produce **\$447.6 billion in additional income**.<sup>6</sup> Not only is correcting discrimination a matter of fundamental fairness, but doing so would help to contribute to economic prosperity nationwide. Moreover, when businesses do not play by the rules, they make it harder on those companies trying to pay employees fairly. That is why business groups like the U.S.

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<sup>1</sup> See NWLC, Fact Sheet: The Wage Gap is Stagnant in Last Decade (Sept. 2012), *available at* [http://www.nwlc.org/sites/default/files/pdfs/poverty\\_day\\_wage\\_gap\\_sheet.pdf](http://www.nwlc.org/sites/default/files/pdfs/poverty_day_wage_gap_sheet.pdf) (last visited Mar. 31, 2014).

<sup>2</sup> NWLC, Fact Sheet: Closing the Wage Gap is Crucial for Women of Color and Their Families (November 2013), *available at* [http://www.nwlc.org/sites/default/files/pdfs/2013.11.13\\_closing\\_the\\_wage\\_gap\\_is\\_crucial\\_for\\_woc\\_and\\_their\\_families.pdf](http://www.nwlc.org/sites/default/files/pdfs/2013.11.13_closing_the_wage_gap_is_crucial_for_woc_and_their_families.pdf) (last visited Mar. 31, 2014).

<sup>3</sup> For more poll results, *see* Paycheck Fairness Act Coalition 2010 Polling Data, *available at* <http://www.aclu.org/womens-rights/paycheck-fairness-act-coalition-polling-data-graphs-2010>.

<sup>4</sup> For more poll results, *see* Voters Support Economic Justice Policies (Feb. 2014), *available at* <http://www.americanwomen.org/research>.

<sup>5</sup> PEW RESEARCH CENTER, BREADWINNER MOMS (May, 2013), *available at* <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/5/#appendix-1-additional-charts>.

<sup>6</sup> The Shriver Report, A Woman's Nation Pushes Back from the Brink (Jan. 2014), *available at* <http://shriverreport.org/5-barriers-women-face-when-negotiating-compensation/>.

Women's Chamber of Commerce support this legislation, and companies across the country are leading the way to support their employees receiving equal pay for equal work by removing barriers that result in pay discrimination

For example, just this month, Gap revealed that among their 130,000 employees worldwide there is "no significant gender wage difference between women and men."<sup>7</sup> These statistics are not just coincidence; the company has worked quite hard at its internal policies, which encourage discussion of equal pay and focus on rewarding performance and merit appropriately, regardless of gender.<sup>8</sup>

IBM conducts annual audits on the base pay of women and minorities and if a difference among similarly situated employees is found, the manager must provide a raise or a written explanation as to why the raise not be given.<sup>9</sup> This policy reflects provisions in the Paycheck Fairness Act that would require employers to demonstrate that wage differences between men and women doing the same work have a business justification and stem from factors other than sex.

In addition, Whole Foods has eliminated the problem of workers facing retaliation when they inquire about wage practices or disclose their own wages by sharing pay data with its employees at every store. While the Paycheck Fairness Act would merely ban retaliation for wage disclosure, not require open pay policies, at Whole Foods any employee who wants to know how his or her "pay relates to that of others can simply open the binder that exists in every store and see who got paid what in the previous year, from [CEO] John Mackey on down".<sup>10</sup> These practices have also led Whole Foods employees to choose the company as one of Fortune magazine's best companies to work for over a decade.

Congress has the historic opportunity to follow these examples and help to change the lives of women and families all across America. The bill is a common-sense, modest approach that will reap rewards for employers and employees alike. **We strongly urge you to support and seek swift passage of the Paycheck Fairness Act without weakening amendments.**

If you have questions or need additional information, please contact Deborah J. Vagins at (202) 675-2335 or [dvagins@aclu.org](mailto:dvagins@aclu.org).

Sincerely,



Laura W. Murphy  
Director, Washington Legislative Office



Deborah J. Vagins  
Senior Legislative Counsel

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<sup>7</sup> Kim Bhasin, *How Gap Instituted Equal Pay For Men And Women*, HUFF. PO. Sept. 5, 2014, available at [http://www.huffingtonpost.com/2014/09/05/gap-equal-pay\\_n\\_5768780.html](http://www.huffingtonpost.com/2014/09/05/gap-equal-pay_n_5768780.html).

<sup>8</sup> *Id.*

<sup>9</sup> Deborah Thompson Eisenberg, *Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 *Ariz. St. L.J.* 951, 1013-14 (2011) (citing Lisa A. Mainiero & Sherry E. Sullivan, *The Opt-Out Revolt: Why People Are Leaving Companies to Create Kaleidoscope Careers* 286 (2006)).

<sup>10</sup> *Id.* at 1010-11 (citing Diane Durkin, *How to Gain the "Loyalty Advantage,"* Enterprise Engagement Alliance, available at <http://www.enterpriseengagement.org/articles/content/500200/how-to-gain-the-loyalty-advantage> (last visited Sept. 21, 2011)).