

## **Title: Pay Equity and Support of Paycheck Fairness Act**

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**Position Statement:** The American Medical Women’s Association (AMWA) believes in pay equity. AMWA advocates for equal pay for equal work for all physicians, especially women.

**Background:** AMWA recognizes the potential for America’s workforce to better support working families by including equal opportunities and eliminating discriminatory wage gaps. Legislation like the Paycheck Fairness Act will result in healthier lives for American families and individuals as well as increased opportunities in the workplace. The Paycheck Fairness Act has been reintroduced many times since 1997. It has failed to pass both chambers of Congress while the pay disparity continues.

Women, on average, are paid 81 cents for every dollar earned by men.<sup>1</sup> This wage discrepancy is even greater for African-American and Hispanic women, as well as women with children and single parents. African-American women earned \$0.63 and Hispanic women \$0.58 for each \$1 earned by white, non-Hispanic men, on average. Pay inequality in the U.S. workforce is discriminating against women and hurts families. More than two-thirds of women are the primary or co-breadwinners for their families, and many are responsible for the additional “unpaid” household work.<sup>2</sup> One recent analysis estimates that U.S. female physicians earn 25 percent, or \$2 million, less than their male counterparts over the course of a simulated 40-year career in medicine.<sup>3</sup> Pay inequity in the workplace leads to more families in cyclical poverty and in need of governmental assistance.<sup>4</sup> Pay inequity impacts the economy as individuals and families have fewer finances to drive the nation’s economic growth through purchasing goods and services.

AMWA believes a more inclusive policy, such as those supported by the Paycheck Fairness Act, would provide more equitable opportunities for workers of all genders, races, and nationalities, and would decrease institutionalized discrimination. States like California and Colorado have been successful in fighting pay discrimination upon enacting similar equal pay laws, which require employers to report employee pay data to the Secretary of State to identify

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<sup>1</sup> Cardman, D. (n.d.). *The Paycheck Fairness Act*. American Bar Association.

[https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/discrimination/the-paycheck-fairness-act/](https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/discrimination/the-paycheck-fairness-act/).

<sup>2</sup> Holmes, K., & Corley, D. (2017). *International Approaches to Closing the Gender Wage Gap*. Center for American Progress. <https://www.americanprogress.org/issues/women/reports/2017/04/04/429825/international-approaches-closing-gender-wage-gap/>.

<sup>3</sup> Whaley, C. M., Koo, T., Arora, V. M., Ganguli, I., Gross, N., & Jena, A. B. (2021). Female Physicians Earn An Estimated \$2 Million Less Than Male Physicians Over A Simulated 40-Year Career: Study examines estimated career gap in pay between female physicians and male physicians. *Health Affairs*, 40(12), 1856-1864.

<sup>4</sup> National Partnership for Women & Families. (n.d.). *The Paycheck Fairness Act*.

<https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/the-paycheck-fairness-act.pdf>.

discriminatory pay practices and enforce equal pay.<sup>5</sup> Numerous states have enacted policies to focus on pay equity and transparency, including California, Colorado, Connecticut, Delaware, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Oregon, Vermont, and Virginia.<sup>6</sup> Pay transparency laws prohibit employers from preventing employees from disclosing their wages and prohibits retaliation against those employees who do disclose their wages.

Many states have also enacted laws banning the required disclosure of prospective employee salary, wage, and benefit history when applying for a new position.<sup>7</sup> These states include Alabama, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Puerto Rico, Vermont, Washington, San Francisco, Kansas City, New York City, Albany, Suffolk, and Westchester counties in New York, Cincinnati, Toledo, Philadelphia and Columbia, South Carolina. These policies prohibit an employer from asking an applicant about their prior pay and using such information to decide future compensation. This prohibition prevents women, people of color, and other socially disadvantaged individuals from being longitudinally under-compensated throughout their careers by a salary that was historically biased. The Act seeks to provide protections similar to these state laws.

Enacting an equity policy for paycheck fairness would be the catalyst to the introduction and enactment of other family first policies, like paid family and medical leave. The following are key principles and requirements that promote paycheck equality in the American workforce, thereby bettering the lives of American families and individuals:

- *Training*<sup>8</sup>: Proper training ensures that the Equal Employment Opportunity Commission (EEOC) is able to recognize and address pay discrimination.
- *Research, Education, and Outreach*<sup>9</sup>: The Department of Labor (DOL) and EEOC must conduct research, provide education and outreach to address pay disparities, and give the public easy access to pay discrimination resources.
- *Enhanced Penalties*<sup>10</sup>: The Environmental Protection Act (EPA) provides employees with the opportunity to receive liquidated damages and back pay awards. The Act would allow employees to receive stronger protections, such as compensatory recovery and punitive damages, to deter further employer violations.
- *Nonretaliation Provision*<sup>11</sup>: The Act prevents employees from being fired or otherwise penalized when speaking out against pay discrimination through its nonretaliation provision. For example, employees may disclose their wages with other employees without being retaliated against.
- *Bonafide Factor Defense*: The Act would compel employers to present “a factor other than sex” to pay disparities between men and women that prove the differences are bona

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<sup>5</sup> Buccellato, B. (2021). Growing State and Local Equal Pay Protections. JD Supra. <https://www.jdsupra.com/legalnews/growing-state-and-local-equal-pay-8105056/>.

<sup>6</sup> Buccellato, B. (2021).

<sup>7</sup> Buccellato, B. (2021).

<sup>8</sup> American Civil Liberties Union. (2013). *Equal Pay for Equal Work: Pass the Paycheck Fairness Act*. <https://www.aclu.org/other/equal-pay-equal-work-pass-paycheck-fairness-act>.

<sup>9</sup> Cardman, D. (n.d.).

<sup>10</sup> National Women's Law Center. (2021). *How the Paycheck Fairness Act Will Strengthen the Equal Pay Act*. <https://nwlc.org/wp-content/uploads/2019/01/PFA-Factsheet-2021-1.27.21.pdf>.

<sup>11</sup> Cardman, D. (n.d.).

fide (i.e. job-related like educational background or experience) and not gender-related in any way.<sup>12</sup> Notably, employers will hold the burden of defending this business practice against other possibilities that would not involve a pay differential.

- *Collection of Pay Information by the EEOC*<sup>13</sup>: The EEOC must collect and ensure transparency of data on employment and compensation by race, nationality, and sex to detect discrimination and better enforce the EPA.
- *Modification of Same Establishment Requirement*: “Establishment” under the EPA is currently defined as a business operating out of one office. However, the Act would update this definition, allowing wage comparisons between employees at any of the employer’s locations within the same county or political subdivision. This is currently in effect in the State of California.

With a policy that includes data collection requirements, enforcement structure, and stronger remedies for employees, employers are incentivized to comply with equal opportunity intentions of the law.<sup>14</sup> This model could move the American workforce toward greater equity. Currently, women’s median earnings are lower than men’s in nearly all job fields, including physicians. AMWA advocates for equal pay for equal work in all fields. AMWA supports legislation, like the Paycheck Fairness Act, to fulfill this need.

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<sup>12</sup> National Women's Law Center. (2021).

<sup>13</sup> Cardman, D. (n.d.).

<sup>14</sup> Cardman, D. (n.d.).