



# The Fight for Equal Pay Continues...

## **Closing the Wage Gap: Effects on New Mexico**

In New Mexico, 22.1% of working aged women lived below the Federal Poverty Level (FPL) in 2015. The state had approximately 107,000 women as the head of households. Of those households, 37% live below the FPL. The median income for women working a full time job is \$32,473 per year compared to a man's average income of \$41,561. Women earn 78 cents for every dollar a man makes in New Mexico.

Eliminating the wage gap would help pull women out of poverty. If women were paid equally, they could afford 66 weeks of additional groceries, could pay eight additional mortgage and utility bills, or could pay for an additional twelve months of rent. Closing the wage gap would have a profound impact on low-income women and families in New Mexico.

## **History of Equal Pay in the United States and New Mexico**

Women are required to be paid equally under federal law. Currently, there are two federal laws that guarantee equal pay to women. While they made a significant impact on the wage discrimination 50 years ago (In 1963, woman earned 59 cents to the dollar), the wage gap has remained stagnant in recent years. These laws are still not strong enough to ensure women are paid equal.

### **The Equal Pay Act of 1963**

President Kennedy signed the Equal Pay Act into law in 1963. The Equal Pay Act mandates employers pay employees equally for work requiring equal skill, effort, responsibility, and are performed in similar working conditions. Under this law, an employer can pay employees differently based on seniority, merit, or "a differential based on any other factor other than sex."

While this was a critical first step towards pay equality, this law did not provide sufficient protection for working women. The requirements that work must be equal can be interpreted so narrowly that many women will lose protection. Women can be paid less than a man even if they work for the same company, have similar work descriptions, and have similar education and experience. If the company says that the woman is paid less because of any reason other than sex, the wage differential is allowed under the Equal Pay Act.

Furthermore, the Equal Pay Act of 1963 is complaint based. This means a woman has to learn she is being paid less than a man and file a complaint against the company. Women often never find out they are making less than their male counterpart. If a woman finds out she is being paid less than a man, she must then prove the reason for the pay gap is because of her sex.



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If a woman wins a lawsuit against her company for pay discrimination, the company will likely have to increase her pay and provide back pay for past work. There may be additional remedies available including paying for attorneys' fees or other damages. The problem with these remedies is they do not encourage companies to pay women at an equal rate. If a complaint is filed and the company loses, they are not facing severe enough penalties.

Women in the workplace needed more protections.

## **Title VII of the Civil Rights Act of 1964**

The very next year, Title VII of the Civil Rights Act of 1964 was passed. It prohibits a wide range of workplace discrimination based on sex (and other characteristics). This law makes it unlawful for employers to refuse to hire, fire, or otherwise discriminate against a woman based on her gender. The law specifies that discrimination includes compensation, terms, conditions, or privileges.

By including compensation, Title VII of the Civil Rights Act of 1964 is more comprehensive than the Equal Pay Act of 1963. Title VII of the Civil Rights Act covers all cases that fall under the Equal Pay Act. Title VII of the Civil Rights Act still has an exception for compensation based on merit and seniority.

Title VII of the Civil Rights Act is also a complaint driven law. A woman must file a complaint with the Equal Employment Opportunity Commission within 180 days of the discrimination. If the EEOC finds a discriminatory action has occurred, it will work with the company to come to a resolution. If the EEOC cannot reach an agreement with the company, a complaint can be filed in federal court.

## **The Influence of Lilly Ledbetter on Equal Pay**

In 2009, Title VII of the Civil Rights Act was amended to make legal action easier for women experiencing pay discrimination. This change was in response to the Supreme Court's opinion in *Ledbetter v. Goodyear Tire and Rubber Co.*

In 2007, the Supreme Court of the United States was presented the case of Lilly Ledbetter. Ledbetter worked at Goodyear Tire and Rubber Co. for nineteen years. Goodyear determined raises based on performance reviews. Throughout her career, she was given low ranks on her performance reviews because of her gender. These rankings led to her receiving reduced compensation compared to male coworkers. Ledbetter brought suit against Goodyear for wage discrimination under Title VII of the Civil Rights Act. A jury ruled that Goodyear had discriminated against Ledbetter because of her gender. The jury awarded her approximately \$3.5 million in damages, which was reduced by the court to \$360,000.



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Goodyear appealed the decision stating the statute of limitations had passed for Ledbetter to bring her suit. Title VII required the plaintiff to bring suit within 180 days of the discriminatory action. The jury had heard evidence on Ledbetter's entire career with Goodyear. Goodyear argued that the decision should only encompass that last 180 days of her employment. The Court of Appeals ruled that while Ledbetter was denied two raises during the 180 days prior to her complaint, there was not enough evidence during that time frame to prove that Goodyear acted with discriminatory intent. In a 5-4 decision, the Supreme Court agreed and ruled in Goodyear's favor.

In response, Congress passed and President Obama signed the Lilly Ledbetter Fair Pay Act of 2009. Congress noted that the Supreme Court's Decision severely limited the amount of time a woman has to challenge discriminatory compensation. The Lilly Ledbetter Fair Pay Act of 2009 amended Title VII of the Civil Rights Act to clarify that the 180-day statute of limitation is reset with every paycheck that the individual receives discriminatory compensation.

This law means that a woman can now file a complaint with the Equal Employment Opportunity Commission (EEOC) up to 180 days after she receives a paycheck based on wage discrimination. As mentioned above, it is not always easy for employees to recognize when they are being paid discriminatory wages. This amendment gives an employee more time to determine if the employer is acting with the intent to discriminate based on gender.

This clarification to Title VII of the Civil Rights Act increases a woman's access to judicial and administrative remedies. By increasing access, the law protects more women from compensation discrimination.

Federal law still has several shortcomings. A woman facing wage discrimination still has to go through the EEOC instead of having direct access to the court system.

## **New Mexico Fair Pay for Women Act 2013**

The New Mexico Human Rights Act prohibits discriminatory compensation on the basis of sex if the person is otherwise qualified. This law entitles women to make a complaint to the Human Rights Commission in New Mexico. Complaints must be filed with the Human Rights Commission within 300 days after the discriminatory action took place. The Human Rights Act requires one of three resolutions within one year of a complaint being filed. The Commission can dismiss the complaint for lack of probable cause, resolve the complaint by reaching an agreement that satisfies both parties, or file a complaint in district court. This law had limitations and made women go through a yearlong administrative process before having access to the court system.



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In 2013, the New Mexico legislature realized more needed to be done to combat the stagnate wage gap in the state. New Mexico renewed its fight against wage discrimination by passing the Fair Pay for Women Act into law. The law prohibits employers from paying workers less based on their sex for equal work. Equal work is specified to mean a job, which “requires equal skill, effort and responsibility” and performed under similar working conditions. Employers can pay employees at different rates based on seniority, merit, or by a system evaluating the employee’s quality or quantity of work. This act applies to all employers with four or more employees.

Under the Fair Pay for Women Act, women can file a complaint directly with the Courts or go through the Human Rights Commission. This law allows women to choose the process that meets their needs. This law gives women access to the judicial system without having to exhaust the administrative process. Women also have two years after the discriminatory action to file a complaint in state court.

The Fair Pay for Women Act waived the filing fee that most cases require in state court. Women should not have to pay a filing fee to get the compensation they have been denied based on their sex. The Act also allows the Court to grant plaintiffs the cost of attorney fees for bringing the case. The Court can require employers to post the violation in their business.

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