

## When Work Doesn't Pay (the Same): Understanding the Gender Pay Gap in Oregon

**T**hroughout Oregon and other states, women are more likely to struggle financially than men. There are many historical, political, and social factors behind this disparity, but this article focuses on three main issues: pay secrecy, undervaluing jobs that women tend to hold, and the decline in collective bargaining.

Although the National Labor Relations Act of 1935 protects private-sector employees' right to discuss their pay with co-workers without fear of retribution from their employer, a recent national study found that sixty-one percent of private-sector employees had been discouraged or prohibited from discussing wage and salary information.<sup>1</sup> In 2015, the Oregon legislature passed a bill making it illegal for employers to discipline employees for inquiring about or sharing pay information.<sup>2</sup> This policy is important because when workers have good information about how people in similar jobs are compensated, they can more effectively bargain for higher or fairer wages.

Currently, governmental statistics describe the distribution of wages by state, industry, and occupation, but the most relevant data for an employee who wants a raise is what her co-workers are earning. When employees are free to discuss their compensation with each other without fear of reprisal, and more employees negotiate for raises with better information, the result will be wages that are fairer—especially for women.

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### Pay Gap Statistics

Right now, women in Oregon are paid hourly wages that average eighty-one percent of the average wages paid to men. The pay gap<sup>3</sup> becomes even more striking when comparing the median wages of full-time, year-round workers. In the 1960s and 1970s, the female-to-male pay ratio around the country was around sixty percent. That ratio started to change in the 1980s, as the median wages of women crept up and the median for men stayed flat. Women's wages gained on men's until about 2002, when they leveled off. Over the past decade, the median pay for women hovered around seventy-five percent of the median for men.<sup>4</sup> At the pace that the wage gap has shrunk since 1980, it will not disappear until at least 2050.

So how did we get here? Back in the time of the traditional nuclear family, many women worked for wages only until they got married. In 1967, in fewer than half (forty-seven percent) of married couples did both spouses work for wages. At the time, a man's salary was often enough to support a family. But over time, the cost of living increased and men's wages stayed flat. More women entered the workforce, and by 2007 two-thirds of married couples had both spouses

working.<sup>5</sup> Unfortunately, and in large part because of the pay gap, having two incomes does not guarantee financial security.

The pay gap persists in part because compensation for occupations most common among women (e.g., domestic services) is lower than compensation for occupations more common among men, though both are equally vital to a healthy society. For example, in 2015, half the child-care workers in Oregon made ten dollars an hour or less, and half the home-health aides made less than eleven dollars an hour.<sup>6</sup> In fields long dominated by men (e.g., medicine, science), many structural and cultural barriers prevent women from participating or getting paid as equals. The pay gap also exists *within* occupations, where women are generally paid (or are valued) less than their male counterparts. Among physicians and surgeons in 2014, women in the United States were paid only about sixty-two percent of what men were paid.<sup>7</sup>

The gap is smallest in low-wage industries, but only because everyone is already slammed up against

CONTINUED ON PAGE 5

### ◆ In This Issue

The Gender Pay Gap.....	1
Recent Decisions.....	2
Beyond Marriage Equality.....	3
Supreme Court Update.....	7

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*Most low-wage workers are women.*

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the wage floor. In other words, when wages vary over only a small range, the potential for wage disparities is diminished. For example, among fast-food cooks in Oregon in 2015, the tenth percentile of wages was \$9.27 an hour, and the median wage was only \$9.39 an hour.<sup>8</sup>

Most low-wage workers are women, and low-wage jobs do not offer as many benefits. The resulting wage and benefit gaps have a disproportionate impact on single-parent households, and most of those households are headed by women. In Oregon today, forty percent of single mothers live

below the federal poverty line.<sup>9</sup> A new Oregon law requires employers with at least ten workers (six in Portland) to provide up to forty hours of paid sick leave a year,<sup>10</sup> but workers at smaller businesses still face the difficult decision of paying bills or taking time off work to care for a sick child. The United States is the only industrialized nation that does not guarantee employees paid maternity leave, creating additional hardships for low-income households. According to a 2012 survey by the Oregon Health Authority, one in twenty women who worked during pregnancy did not take even one week off work after having a baby.<sup>11</sup>

Because unions bargain for fair wages and workplace policies, the gender wage gap is smaller in states and in industries in which more work-

ers are unionized. Unionization has declined, whereas the involvement of women in the workforce has increased. In 1964, twenty-nine percent of the nonagricultural US workforce was covered by a collective bargaining agreement. By 2013 that number had dropped to eleven percent. If union membership rates had not fallen, the gender pay gap would be much smaller today.

### Sustainable Wages

So how much is enough for families to be financially secure? We know the federal poverty level standard is outdated, no longer reflecting a basic level of income needed to be self-sufficient. In 2015, a family of four falls under the federal poverty level if its annual income is below

CONTINUED ON PAGE 6

recent rulings, however, may lead to a rise in federal claims as well as administrative complaints “based on sex.” Finally, nationwide same-sex marriage has contributed to a nationwide rise in awareness and support for sexual-orientation and gender-identity non-discrimination in the workplace. ♦

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### Endnotes

1. 135 S. Ct. 2584 (2015).
2. These classes are commonly referred to by the acronym LGBT, which stands for lesbian, gay, bisexual, and transgender.
3. See, e.g., *Nicolas v. Azteca Rest. Enters., Inc.*, 256 F.3d 864, 874–75 (9th Cir. 2001) (the verbal abuse directed at the plaintiff because he “did not act as a man should act” was discrimination based on sex); *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1067 (9th Cir. 2002) (en banc) (plurality opinion holding that same-sex sexual harassment constitutes discrimination

“because of sex” and is therefore actionable under Title VII).

4. 42 U.S.C. § 2000e2(a).
5. *Macy v. Holder*, No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012).
6. *Culp v. Napolitano*, No. 0720130012, 2013 WL 2146756 (E.E.O.C. May 7, 2013).
7. *Lusardi v. McHugh*, No. 0120133395, 2015 WL 1607756 (E.E.O.C. Apr. 1, 2015).
8. *Baldwin v. Foxx*, No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 16, 2015).
9. The section of Title VII applicable to federal government employers, 42 U.S.C. § 2000e16(a) (“[a]ll personnel actions affecting [federal] employees or applicants for employment . . . shall be made free from any discrimination based on . . . sex”), is analogous to the section of Title VII governing employment discrimination in the private sector, 42 U.S.C. § 2000e2(a) (making it unlawful for a covered employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate . . . with respect to his compensation, terms, conditions, or privileges of employment,” or to “limit, segregate, or classify . . . employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee” because of sex).
10. See *EEOC v. R.G. & G.R. Harris Funeral Homes Inc.*, No. 14-cv13710, 2015 WL 1808308 (E.D. Mich., Apr. 23, 2015) (alleging discrimination based on sex under Title VII for firing funeral director because she was trans-

gender and was transitioning from male to female, and/or because she did not conform to the employer’s gender-based stereotypes); Press Release, EEOC, “EEOC Sues Deluxe Financial for Sex Discrimination Against Transgender Employee” (June 5, 2015), [www.eeoc.gov/eeoc/newsroom/release/6-5-15.cfm](http://www.eeoc.gov/eeoc/newsroom/release/6-5-15.cfm); EEOC, “Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination,” [www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](http://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1) (last updated Aug. 27, 2015) (settling for \$150,000 in monetary damages and injunctive relief a case that alleged discrimination based on sex for firing an employee because she was transgender).

11. ENDA and the Equality Act would also protect heterosexual employees who are discriminated against because they are heterosexual.
12. See Edward J. Reeves & Lainie D. Decker, “Before ENDA: Sexual Orientation and Gender Identity Protections in the Workplace Under Federal Law,” 37 *N.Y. State Bar Ass’n Labor & Emp’t Law Journal*, 10 (2012) (discussing ENDA’s developments).
13. In *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751 (2014), the Supreme Court struck down a key part of the Affordable Care Act, ruling that closely held businesses do not have to offer their employees contraceptive coverage that conflicts with the owners’ sincerely held religious beliefs.
14. As proposed, the Equality Act would specifically prohibit the Religious Freedom Restoration Act of 1993 (the law relied on in *Hobby Lobby*) from providing a claim, defense, or basis for challenging such protections.

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\$24,250 (about \$2,000 per month). Compare that to the average rent for a two-bedroom apartment in Portland (\$1,470 in August 2015),<sup>12</sup> or the median child-care-center cost for a toddler in Oregon (about \$1,000 per month for full-time care),<sup>13</sup> and it is easy to see the federal poverty level is a poor reflection of the actual costs of living today. In fact, that is why eligibility for the Supplemental Nutrition Assistance Program (formerly called food stamps) is set at 185% of the federal poverty level.

A better measure of financial security comes from the self-sufficiency standard, a project of the University of Washington's School of Social Work. Researchers estimated the amount of income needed to meet basic family needs without public subsidies or private assistance, factoring in spending on housing, clothing, food, medical care, and transportation costs. They found that in Washington County, a single parent with a preschool-age child would need to make around twenty-three dollars an hour to be self sufficient.<sup>14</sup> In Wasco County, it would take around fifteen dollars an hour.<sup>15</sup> Half the jobs in Wasco County paid less than fifteen dollars an hour in 2014.<sup>16</sup>

Because wages are low and full-time jobs often scarce, hundreds of thousands of Oregonians are working hard but still not earning enough to meet basic needs without public assistance. Providing food, medical, and child-care assistance to working families in Oregon costs taxpayers more than \$1.7 billion a year.<sup>17</sup> This spending amounts to a huge subsidy for employers who pay their work-

force low wages.

A \$13.50-per-hour minimum wage would provide an income that would allow working adults in most of the state to be self-sufficient. Overall, about thirty-five percent of adult workers in Oregon made less than \$13.50 an hour in 2014.<sup>18</sup> Since thirty-nine percent of women make less than \$13.50 per hour, but only thirty percent of men do, raising the wage would help reduce the pay gap as well. To complement that change, Oregon should also do away with the law that prevents local jurisdictions from setting their own wage floor higher than the state minimum. This change would give power back to communities to decide what wages best reflect living costs in the area.

No singular policy will eliminate the pay gap, but Oregon's new law protecting the ability of workers to discuss their compensation is a step in the right direction. In addition, raising the minimum wage and lifting preemption so jurisdictions can set wage floors that make sense for their community are important steps to promote pay equity and living wages. Since women are more likely to work in low-wage jobs with fewer benefits, any policy that expands benefits such as paid sick leave, paid family leave, and access to retirement savings accounts helps reduce disparities in compensation. Rejecting anti-union proposals that make it harder for workers to collectively bargain for fair pay, benefits, and workplace policies is also critical if we are to achieve fair compensation. ♦

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### Endnotes

1. Press Release, Institute for Women's Policy Research, "Pay Secrecy and Paycheck Fairness: New Data Shows Pay Transparency Needed" (Nov. 15, 2010), [www.iwpr.org/press-room/press-releases/pay-secrecy-and-paycheck-fairness-new-data-shows-pay-transparency-needed](http://www.iwpr.org/press-room/press-releases/pay-secrecy-and-paycheck-fairness-new-data-shows-pay-transparency-needed).

2. H.B. 2007, 78th Or. Legis. Assemb., 2015

Reg. Sess. (Or. 2015), available at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2007/A-Engrossed>.

3. The pay gap refers to the difference in earnings between men and women, expressed as a percentage of men's earnings.

4. Carmen DeNavas-Walt & Bernadette D. Proctor, US Census Bureau, "Income and Poverty in the United States: 2014" 10 (2015), available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>.

5. Scott A. Hedge & Andrew Lundeen, Tax Foundation, "American Has Become a Nation of Dual-Income Working Couples" (Nov. 21, 2013), <http://taxfoundation.org/blog/american-has-become-nation-dual-income-working-couples>.

6. Data calculated with information from the Oregon Employment Department's Occupational Employment Survey 2015 (on file with author).

7. Bureau of Labor Statistics, US Dep't of Labor, "Labor Force Statistics from the Current Population Survey" (2015), <http://www.bls.gov/cps/cpsaat39.htm>.

8. See *supra* note 6.

9. US Census Bureau, "Poverty Status in the Past 12 Months of Families by Family Type by Presence of Related Children Under 18 Years by Age of Related Children," [http://factfinder.census.gov/bkml/table/1.0/en/ACS/14\\_1YR/B17010/0400000US41](http://factfinder.census.gov/bkml/table/1.0/en/ACS/14_1YR/B17010/0400000US41).

10. S.B. 454, 78th Or. Legis. Assemb., 2015 Reg. Sess. (Or. 2015), available at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB454>.

11. Spreadsheets from the Pregnancy Risk Assessment Monitoring Sys., Or. Health Auth. & Ctrs. for Disease Control & Prevention (on file with author).

12. Rent Jungle, "Rent Trend Data in Portland, Oregon," <https://www.rentjungle.com/average-rent-in-portland-or-rent-trends/> (last visited December 1, 2015).

13. Deana Grobe & Roberta B. Weber, Or. Dep't of Human Servs., "2014 Oregon Child Care Market Price Study" (Oct. 2014), available at [http://www.oregon.gov/OCC/OCC%20Forms/Document/CCMR%202014%20Report\\_Final.pdf](http://www.oregon.gov/OCC/OCC%20Forms/Document/CCMR%202014%20Report_Final.pdf).

14. Diana M. Pearce, Ctr. for Women's Welfare, "The Self-Sufficiency Standard for Oregon 2014" 29 (Oct. 2014), available at <http://www.selfsufficiencystandard.org/>.

15. *Id.* at 75.

16. Calculated using data from 2014Q1 Unemployment Insurance Wage Records provided by Oregon Employment Department (on file with author).

17. Raahi Reddy et al., Univ. of Or. Labor Educ. & Research Ctr., "The High Cost of Low Wages in Oregon" 4, 29 (2015), available at <http://lerc.uoregon.edu/wp-content/uploads/2015/01/2014-Oregon-Workforce-Report-The-High-Cost-of-Low-Wages-in-Oregon.pdf>

18. See *supra* note 16.