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50 YEARS OF (NON) EQUAL PAY FOR EQUAL WORK

by KATIE RINKUS

This past June marked the 50th anniversary of the day the Equal Pay Act of 1963 was signed into law. Under this Act, employers are prohibited from discriminating on the basis of sex with regard to wage payments.¹ Fifty years later, working women still face widespread wage discrimination, and women employed in the legal profession are no exception.

Women in the United States earned only 77 cents to the dollar earned by men in comparable positions in 2011.² Minority women fare even worse: African-American women earned 69 cents to the dollar, while Latina women earned 60 cents to the dollar.³ Research conducted by the Institute for Women's Policy Research in September 2013 demonstrates that at the current rate, women will not achieve pay parity until 2058.⁴

These statistics lead to two overarching questions: Why is sex-based wage discrimination still an issue 50 years after the Equal Pay Act was enacted, and what is currently being done to address this disparity?

THE LILLY LEDBETTER EFFECT

Partially in response to the ineffectiveness of the Equal Pay Act, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009.⁵ This Act states that wage discrimination claims begin to “accrue” under a variety of circumstances: whenever an employee receives a discriminatory paycheck, whenever a discriminatory pay decision or practice is adopted, or whenever a person becomes subject to or is otherwise affected by the decision or practice.⁶

Furthermore, the Act allows individuals subjected to discriminatory practices to assert their rights in numerous ways. It therefore promotes voluntary compliance by employers, as employers will have a strong incentive to eliminate discriminatory compensation practices.⁷ According to Laurel Bellows, past president of the American Bar Association (ABA) and proponent of women’s compensation rights, the Act gives women an incentive to look into their employers’ compensation practices.⁸ “If you don’t know what you’re being paid, you don’t know if you’re being treated equally,” explains Bellows.⁹

HOW DO OTHER COUNTRIES COMPARE?

Sex-based wage discrimination is not a problem unique to the U.S., but it is an issue prevalent among European countries as well. According to a report conducted by the European Commission in July 2013, the pay gap in the European Union is 16.2 percent.¹⁰ This is only slightly lower than the pay disparity in the U.S., which is 23 percent.¹¹

Each European country differs in terms of how it tackles this problem. The United Kingdom, for example, enacted the Equality Act 2010, which allows employees greater access to information regarding their employers’ compensation practices.¹² Additionally, in an effort to reach all European countries, the European Commission initiated the “Equality Pays Off” project, which aims to implement training activities, events, and tools for companies to address the pay gap.¹³ For example, the project offers an opportunity for companies from

all over Europe to exchange their experiences in fostering gender equality in the workplace, particularly in terms of tackling the causes of the pay gap.¹⁴ Even though the European Commission has worked with various companies in Europe to eliminate the pay disparity, women in these countries, similar to women in the U.S., continue to be paid less than men for equal work.

BRINGING IT HOME: WHAT IS BEING DONE WITHIN THE LEGAL PROFESSION

Pay discrimination continues to exist within the legal profession, and Bellows has made it her professional mission to bring this issue to the forefront. When Bellows was president of the ABA in 2012, she instituted the Gender Equity Task Force, which is part of the ABA's Commission on Women. "The ABA had policies on [addressing] equality and this was a perfect place to launch a campaign for awareness of the continued problem," explains Bellows.¹⁵ Bellows notes that research conducted by the National Association of Women's Lawyers confirms that there is a gender pay gap in the legal profession, as women attorneys receive only 89 cents to the dollar earned by male attorneys working in comparable positions.¹⁶ "These facts are very serious," states Bellows, "This money adds up through retirement, and the money is just lost."

The Gender Equity Task Force has published various publications that provide women with information necessary for negotiating equitable pay.¹⁷ Bellows points out that because raising compensation issues with law firms can be very controversial, it is very difficult to determine whether one is receiving equitable pay.¹⁸ This is one of the main reasons Bellows initially instituted the task force, as she believes that protecting pay information is one of the most important goals of this movement. Additionally, the task force has generated a "toolkit" for state and local bar associations to reference when discussing compensation.¹⁹ Bellows notes that this toolkit is extremely important to the movement because while the ABA cannot speak to every law firm in the country, state and local bar associations can.²⁰

CONCLUSION

It is clear that true pay equity will not and cannot occur until all employers realize the barriers that women face and embrace new methods of change. In

order to eliminate the gender pay gap, it is imperative that employers enact specific solutions that make pay information more accessible and transparent to all employees.

NOTES

- 1 The Equal Pay Act of 1963, 29 U.S.C. § 206(d) (West 2006).
- 2 Linda Meric, *50 Years After the Equal Pay Act, Women Are Still Fighting for Equality*, The Huffington Post, (June 3, 2013), available at http://www.huffingtonpost.com/linda-meric/50-years-after-the-equal-_b_3378739.html.
- 3 *Id.*
- 4 Institute for Women's Policy and Research website, *Pay Equity and Distribution*, available at <http://www.iwpr.org/initiatives/pay-equity-and-discrimination> (last visited October 24, 2013) [hereinafter *Pay Equity*].
- 5 Sheryl Gay Stolberg, *Obama Signs Equal-Pay Legislation*, The New York Times, January 29, 2009, available at http://www.nytimes.com/2009/01/30/us/politics/30ledbetter-web.html?_r=0.
- 6 National Women's Law Center website, *Lilly Ledbetter Fair Pay Act*, available at <http://www.nwlc.org/resource/lilly-ledbetter-fair-pay-act-0> (last visited Oct. 23, 2013).
- 7 *Id.*
- 8 Telephone interview with Laurel Bellows, Founder and Managing Principal of The Bellows Law Group and former president of the American Bar Association (Oct. 11, 2013) [hereinafter Bellows Interview].
- 9 *Id.*
- 10 Press Release, European Commission, *Equal Pay Day: Women in Europe work 59 days 'for free'*, February 27, 2013, available at http://europa.eu/rapid/press-release_IP-13-165_en.htm?locale=en [hereinafter European Commission Press Release].
- 11 *Pay Equity*, *supra* note 4.
- 12 *The Law*, Equal Pay Portal website, available at <http://www.equalpayportal.co.uk/the-law/> (last visited October 23, 2013).
- 13 European Commission Press Release, *supra* note 10.
- 14 *Id.*
- 15 Bellows Interview, *supra* note 8.
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 American Bar Association website, *ABA Toolkit for Gender Equity in Partner Compensation*, available at http://www.americanbar.org/groups/women/gender_equity_task_force/toolkit_for_lawyer_compensation_achieving_gender_equity.html (last visited October 24, 2013).
- 20 Bellows Interview, *supra* note 8.