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(Un)Equal Pay in the United States and Policy Solutions to Make a Difference

October 21, 2021, marked Latina Equal Pay Day in the United States (Mefferd and Hegewisch 2021). The date was set based on the earnings of Latinas who worked full-time year-round in 2020 and whose median annual earnings were just 57 percent of those of White non-Hispanic men.^{1,2} Translated into working days, this gender earnings ratio means that Latinas had to work almost 22 months to earn the same amount that White non-Hispanic men earned in just 12 months. If anything, this estimate of gender, racial, and ethnic earnings differentials underestimates the extent of inequality in the US labor market because of the disproportionate impact of the Covid-19 related recession on women in the lowest paid jobs. Job losses and cutbacks in hours were highest in low-paying service jobs in leisure, hospitality, and retail – jobs that are predominantly held by women – and employ a disproportionate number of Black, Latina, and/or Native American women (Hegewisch and Mefferd 2021b; Liebeler 2015).³ As a result of these changes in the composition of the full-time work during the Covid-19 pandemic, the gender earnings ratio improved between 2019 and 2018, whether looking at all women and men or at women of different racial and ethnic backgrounds compared to White non-Hispanic men.⁴

The Covid-19 pandemic has resulted in an increased focus on gender and racial inequality in the United States. It has brought to the fore struc-

tural inequalities in access to employment, education, and healthcare, and economic security more broadly (Hardy and Logan 2020; Mizota and Darity 2020), and has highlighted the pernicious impact of such pre-existing inequality on outcomes during Covid-19, including higher death rates for communities of color (Artiga et al. 2021; Reeves and Rothwell 2020). It has also led to growing awareness of the impact of gender inequality in paid and unpaid work on women's earnings and the factors causing such pay inequalities, including the undervaluation of work predominantly done by women, the lack of child care and elder care supports, and discrimination. Efforts to address these inequalities characterize the policies pursued by the administration of President Biden, including attempts to build a better care infrastructure in the United States that provides access to quality child and elder care to those who need it and also ensure that those who provide such care – many of whom are women of color – receive good pay and benefits. At the same time, there are increased efforts to directly address unequal pay and discrimination through statutory innovation and enforcement.

This paper begins with a brief historical overview of equal pay in the United States and research on the factors which contribute to the wage gap. It will then turn to recent legislative and policy initiatives at the state and federal level aimed at addressing the persistence of the wage gap in the US economy.

PROGRESS IN CLOSING THE GENDER WAGE GAP IN THE UNITED STATES HAS STALLED, PARTICULARLY FOR WOMEN OF COLOR

Pay discrimination by gender and race has been illegal in the United States since the passage of the 1963 Equal Pay Act and of Title VII of the Civil Rights Act of 1964. The Equal Pay Act provides that men and women working in the same establishment must be paid equally for equal work; Title VII of the Civil Rights Act provides a broader scope for protection against



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¹ The focus on full-time year-round workers reflects a long-standing convention among advocates highlighting gender earnings inequality, reflecting partly the historical availability of data (the US Census began publishing annual earnings estimates for full-time year-round workers in the early 1960s while weekly and hourly earnings estimates became only available from 1979 onwards). The annual earnings data additionally best capture commissions and bonuses paid on an annual basis and include self-employed workers; thus, while weekly earnings measures tend to include a larger number of workers, particularly of women workers who are more likely to work part-time or part-year than men, they arguably provide a more comprehensive measure of gender differences in earnings.

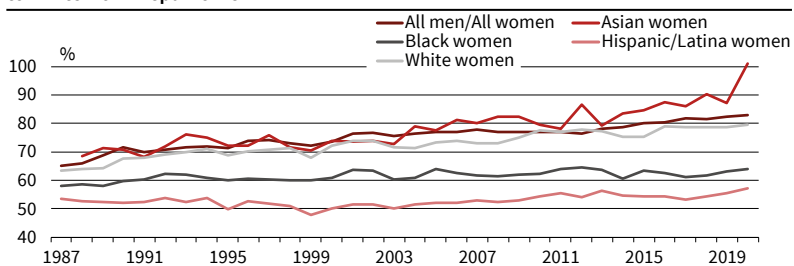
² White non-Hispanic men are taken as the reference group for gender and racial/ethnic comparisons by the equal pay advocacy community in the United States because they are the dominant group in the labor market.

³ See also Holder et al. (2021). Between 2019 and 2020, the number of full-time women workers in service occupations – the occupations with the lowest median earnings – fell by almost 19 percent and that of men by 15 percent, while the number of full-time women working in management occupations slightly increased by 1.5 percent and stayed unchanged for men (Hegewisch and Mefferd 2021c).

⁴ The gender earnings ratio based on median annual earnings for full-time year-round workers rose from 82 to 83 percent for all women and men between 2019 and 2020; for full-time year-round working women compared to White non-Hispanic men, it rose from 55 to 57 percent for Latinas; 63 to 64 percent for Black women; 78.7 to 79.4 percent for White non-Hispanic women, and, most markedly, from 87 to 101 percent for Asian women; see Hegewisch and Mefferd (2021b). Earnings dispersions within the group of Asian Americans are particularly marked, reflecting substantial differences in educational attainment and economic outcomes by national origin (Bahn and Sanchez Cumming 2021).

Figure 1

Earnings Ratio in Median Annual Earnings, Full-Time Year-Round Workers, Compared to White Non-Hispanic Men



Note: Earnings are reported in 2020 dollars. Between 2002–2020, the category for the White non-Hispanic population is "White Alone, Not Hispanic," before 2002, the category is "White, Not Hispanic." Between 2002–2020, the category for the Black population is "Black Alone," before 2002 the category is "Black." From 2002–2020, the category for the Asian population is "Asian Alone," before 2002 the category is "Asian and Pacific Islander." Those who are Hispanic or Latino/a can be of any race. Source: IWPR analysis based on US Census Bureau (2021), "Historical Income Tables: Table P-38. Full-Time, Year-Round Workers by Median Earnings and Sex," Current Population Survey, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-people.html>. © ifo Institute

discrimination, both by including race and national origin (and with later amendments and complementary laws, age, and disability) and by including all aspects of employment, from hiring and recruitment, to promotion, access to training, and benefits (USEEOC 1997). Additionally, since 1965 when Executive Order 11246 was passed, firms receiving federal contracts have to take affirmative action beyond non-discrimination on the basis of race, color, religion, sex, or national origin to achieve equal representation and equal pay in their workforce (USDOL n.d.).⁵

Since the passage of the Equal Pay and Civil Rights Acts, the wage gap has narrowed substantially, from 61 percent in 1960 to 83 percent in 2020 (Hegewisch and Mefferd 2021a). Progress in closing the wage gap was more pronounced during the 1980s and early 1990s than in this century. This reflects a number of factors, such as access to the birth control pill and hence greater control over when and how many children to have, the opening up of educational opportunities, particularly to professional careers in medicine and the law, and pro-active enforcement of anti-discrimination legislation (Goldin and Katz 2002; Goldin 2014; Blau and Kahn 2017). While pay discrimination in the United States never included a formal right to comparable worth or equal value, in the 1980s many US states implemented comparable worth approaches to public sector workforces, resulting in significant increase to women's pay (Hartmann and Aaronson 1994; Killingsworth 2002). Change in the gender wage gap also reflected the stagnation of wage growth for men, as a result of industrial decline and anti-union policies (Blau and Kahn 2017). While real earnings continued to rise for women on average – albeit from a much lower base, and never surpassing men's – Black women's earnings were particularly impacted by deindustrialization because they were more likely than other women to work in manufacturing, including in better paid union jobs (Ahmed and Hegewisch 2021; Scott et al. 2022).

⁵ Approximately a one-fifth of the workforce is covered by these regulations which apply beyond just those employees working on a particular federal contract to all employees of the firm.

From the mid-1990s to the present day, change in the wage gap has been slower despite women surpassing men at all education levels (Hegewisch and Williams-Baron 2017; Hegewisch and Hartmann 2014). Indeed, the largest wage gaps are observed at the highest levels of education. Black women are particularly likely to see lower returns to educational attainment (Budig et al. 2021). Figure 1 shows change in the gender earnings ratio for all women and men and for women of the largest racial and ethnic groups compared to White men from 1987 onwards.⁶ It shows that progress towards pay equity has been particularly slow for Black and Hispanic women. Indeed, if progress in closing the gender earnings ratio continued at the same rate as it has since 1985, it would take Hispanic women almost 200 years – until 2206 – to reach equal pay with White non-Hispanic men, Black women over a hundred years, to 2133, and White women almost four decades, until 2058 (Sun and Hayes 2021).

The gender and racial/ethnic earnings ratios shown in Figure 1 only include those workers who work full-time year-round. Because women are more likely than men to work part-time or part-year, and because working in lower-wage service jobs, such as in leisure and hospitality, retail, child care and elder care, often makes it particularly difficult to find full-time year-round employment (Shaw et al. 2016), the full-time year-round wage gap data underestimates the underlying gender wage gap. When all women and men with earnings are included, the wage gap widens substantially, from 83 to 73 percent in 2020.⁷ This effect has been particularly visible during the Covid-19 pandemic when median annual earnings increased for women because of the disproportionate impact of the Covid-19 pandemic on low-wage jobs in the service sector (Hegewisch and Mefferd 2021b). The effect has been most extreme for Asian women whose overall level of educational attainment is much higher than that of White non-Hispanic men and who are particularly likely to work in professional jobs, but who also constitute a high number of women in the lower-wage service occupations that were most impacted by the pandemic (Tucker 2020).

The wage gap grows even larger when calculated over a number of years, capturing women's greater likelihood to take time out of the labor market for caregiving. Over a 15-year period, from 2000 to 2015, women's earnings only account for 49 percent of men's (Rose and Hartmann 2018). One reason for this gap is the lack of accessible and affordable child care in America. Half of US families live in a child care

⁶ 1987 is chosen here because data for Asian women was not published until then; it should be noted that the definition of Asian American women adopted by the US Census Bureau when publishing earnings data does not include Native Hawaiian and Other Pacific Islanders, although advocacy groups typically do see themselves as part of one AAPI group (see, for example, <https://www.api-gbv.org/resources/census-data-api-identities/>); the median earnings of the latter are substantially lower, and adopting the more inclusive definition leads to a lower gender earnings ratio.

⁷ Authors' calculations based on Table A-7, Shrider et al. (2021).

desert, areas where the supply of licensed child care providers is insufficient to meet the local need, with even higher rates for Hispanic families and American Indian and Alaska Native families (Malik et al. 2018). Given the gender wage gap, it typically makes more economic sense for mothers rather than fathers to cut back their time in paid work to provide family care (Hegewisch and Williams Barron 2017).

OCCUPATIONAL SEGREGATION AND DISCRIMINATION ACCOUNT FOR THE LARGEST SHARE OF THE WAGE GAP

The wage gap in the United States is not easily explained by a single factor; instead, it is comprised of the overlap between occupational segregation, gender differences in hours of work, devaluation of “women’s work,” discrimination, and other issues (Blau and Kahn 2017; Goldin 2014).

The biggest factor behind the gender wage gap is occupational and sector segregation. That is, the fact that women tend to work in different occupations and industries from men and that occupations and industries which primarily employ women tend to have lower earnings than those that primarily employ men.⁸ Differences in the gender distribution across occupations and sectors account for just over half of earnings differences between women and men (Blau and Kahn 2017). Jobs primarily done by women are often culturally and economically undervalued, despite the fact that the training and education required for lower-paid, women-dominated jobs are often comparable to those required for better-paid, male-dominated jobs (Addison et al. 2015; Hegewisch et al. 2016). After considerable progress in occupational integration during the 1980s and early 1990s, further integration – and further progress towards pay equity – slowed down substantially, partly a reflection of the rapid expansion of female-dominated jobs in health and eldercare (Hegewisch and Hartmann 2014). With the exception of Asian women, occupation and sector integration has slowed down for women of all major racial and ethnic groups, and for women of each group it is a major contributing factor to the gender wage gap (Hegewisch and Hartmann 2014; Alonso-Villar and del Rio 2017; Bahn and McGrew 2018; Bahn and Sanchez Cummings 2021).

Over time, occupational segregation has become more important in accounting for earnings differences, while other factors such as education, time in the labor market, or rates of unionization have become less important (Blau and Kahn 2017). While a reduction in discrimination – or the unexplained wage gap – played a significant role in the narrowing of the overall wage gap (explaining 58 percent of the change between 1980 and 2010, with most of the change occurring at the beginning of the period), discrimination

still accounts for a very substantial 38 percent of the total (Blau and Kahn 2016; Blau et al 2021).

Women experience discrimination based on their intersectional identities, including but not limited to gender, race, ethnicity, motherhood status, and immigration status. Taking Hispanic and Latina women as an example, the unexplained portion of the wage gap with White non-Hispanic men represents over half the total race-gender wage gap (55 percent). Furthermore, the wage gap for Hispanic or Latina women is greater than the sum of racial and ethnic or gender effects alone (Bahn and McGrew 2018).

US POLICY APPROACHES TO TACKLE PAY DISCRIMINATION

There has been no major reform of the federal Equal Pay Act (EPA) since it was passed in 1963. Since 1997, the Paycheck Fairness Act has been introduced to Congress each year to update the legislation, so far unsuccessfully. Most recently, the Paycheck Fairness Act of 2021 passed in the House of Representatives but a vote in the Senate was blocked by Republicans (Carrazana 2021). The Paycheck Fairness Act would increase financial remedies for pay discrimination, aligning it more closely with the remedies available under Title VII of the Civil Rights Act, and would clarify the permissible legitimate, job-related reasons for justifying pay differences. It would protect workers against retaliation for discussing their salaries and prohibit employers from requiring salary history information as part of the hiring process. Lastly, it would expand the protected classes of the 1963 Equal Pay act to include pregnancy, sexual orientation, gender identity, and sex characteristics (National Partnership for Women and Families 2021).⁹

State and local efforts have had more success.¹⁰ Equal pay legislation of the last few years has focused on four main areas: pay transparency; limiting the use of salary history questions in the recruitment process; expanding the worker characteristics that are explicitly protected from discrimination, and measures to strengthen pay data collection, monitoring, and oversight.

Pay Transparency

Research suggests that lack of transparency over pay decisions is a major contributor to bias and discrimination and that greater transparency and accountability can reduce gender earnings disparities.¹¹ A 2010 national survey found that the majority of workers reported that they were prohibited or strongly dis-

⁹ See the full bill, <https://www.congress.gov/bills/117th-congress/house-bill/7>.

¹⁰ For a comprehensive list of equal pay laws in the US states, see Robinson-Dorn (2021); see also National Women’s Law Center (2020) for an overview of issues addressed in state laws.

¹¹ For a review of the literature and one of the few organizational case studies, see Castilla (2015).

⁸ See Hegewisch and Hartmann (2014) for a review.

couraged from discussing their pay with colleagues, with women more likely to do so than men (Hayes and Hartmann 2011). Only 1.5 percent of the close to 70,000 discrimination charges received by the US Equal Employment Opportunity Commission (EEOC) concern pay discrimination (all discrimination charges have to be lodged with and reviewed by the EEOC before an individual can bring a lawsuit against their employer) (USEEOC 2021). Key to lifting up the issue of pay secrecy was the case of Lilly Ledbetter, a supervisor in a tire plant, who after two decades of suspicion was only able to finally challenge her discriminatory pay when she received an anonymous note with pay slips from a male colleague. She lost her discrimination case on a technicality – remedied in the Lilly Ledbetter Fair Pay Act of 2009, the first law to be signed by former President Obama – yet that law failed to address the pay secrecy practices that prevented her from challenging her discrimination earlier (Kim 2015).

Since 2010, over a dozen states have passed pay transparency legislation to prohibit employers from retaliating against employees for discussing their pay. A 2017/2018 national survey found that while these laws had reduced the number of workers who were contractually prohibited from discussing their pay, it did not significantly increase the number of workers who felt that they were freely able to do so, or indeed, worked for an employer where pay rates were publicly available (Sun et al. 2021). On the other hand, in an earlier 2010 survey women were more likely than men to work in organizations with restrictive pay practices. The lack of impact likely reflects lack of information as much as lack of enforcement. A 2015 analysis, on the other hand, found higher earnings and lower-wage gaps for women in states with pay transparency laws (Kim 2015). It is not clear how far the measured impacts are attributable to pay transparency laws directly or instead reflect the characteristics of states more likely to pass such laws, including the greater likelihood of having better work-family supports.¹²

Complementing laws facilitating employees' access to pay data are efforts to improve pay data collection and monitoring from employers. The EEOC added reporting requirements on pay ranges to its existing mandated reporting requirements from employers; pay data were collected in 2017 and 2018 and are currently under review (following an attempt to stop such collection during the Trump administration).¹³ Reporting requirements support other wage gap reduction initiatives because they provide a basis for accountability and enforcement and provide useful aggregate data for equal pay scholars; importantly, individual firm data are not published. Laws in California and Illinois require employers to report pay data to the state government to ensure gender pay

equity in a method similar to existing federal-level EEO-1 reporting requirements (Hastings 2021).

Salary History Bans

The most recent innovation in state-level legislation is setting limits or prohibiting the use of prior salary information during the recruitment and selection process. In the United States, a job candidate's starting pay typically is set at their prior salary plus a percentage increase. Where prior salaries are tainted by discrimination, as is typically the case for women or people of color, such practices exacerbate wage gaps. Twenty states and twenty-one localities have introduced such bans, including prohibiting retaliation against workers who refuse to provide their salary history, limiting salary history questions to the job offer stage, or requiring employers to provide pay ranges on job postings (Hartmann 2021). The City of New York has recently gone further by passing a bill which requires employers with four or more employees to make salary ranges (minimum and maximum salaries/wage rates to be paid to an employee hired for the position) public on all job postings. The same requirements apply for transfer or promotion opportunities provided to current employees (New York City Council 2022; Lucente Sterling 2021; McShane 2022).

Data suggests that pay transparency can be of particular help to groups that are historically underpaid, like women and people of color, by reducing the need for workers to negotiate for salaries and increasing their ability to make informed decisions during the job application process (Lalljee 2021). Using comparisons between localities with and without salary history bans, several evaluations have found a positive impact on the earnings of women and minorities.¹⁴ Research also suggests that there has been an increase in the voluntary posting of pay ranges with job announcements (Bessen et al. 2020).

The positive impacts of pay transparency are already demonstrated in the public sector, where the practice is more common (Bahn and McGrew 2018). One study found that at organizations where women feel pay is transparent, women's average pay is approximately equal to men's, while the gap persists in non-transparent organizations (Payscale 2021). There is now considerable research from the United States and elsewhere finding that pay transparency, during recruitment and within the employment relationship, leads to reduced gender wage gaps; yet such effects are primarily achieved by capping or limiting the pay of the highest earners (who are predominantly men) rather than by lifting up the pay of most women.¹⁵ While greater equity in itself can be a desirable goal, it also suggests that other redistributive measures

¹² Hegewisch and Williams Baron (2017) find that states with better work-family supports have lower gender wage gaps.

¹³ See National Academy of Science (2021).

¹⁴ See Sun et al. (2022) for a compilation of recent research on salary history.

¹⁵ See Sun et al. (2022) for a compilation of recent research.

may be needed to improve women's earnings and economic security.

Beyond these, state laws are also targeting the expansion of the classes or individual characteristics that are protected under existing equal pay laws to include identities such as gender identity, race, age, sexuality, religion, and country of origin. Some of these laws also expand the definition of equal pay to "comparable" rather than "equal" work (Folger-Hartwell et al. 2021; Rigby 2021).

POLICIES TO TACKLE UNEQUAL PAY BEYOND DISCRIMINATION

The current political moment in the US presents great opportunity for supporting women's entry into non-traditional careers. The US Infrastructure Bill which was passed in November 2021 allocates one trillion US dollars to development and maintenance of physical infrastructure. The bill is projected to create and support up to 15 million jobs in construction over the coming decade, jobs which are often high-wage with strong benefits and paid training, particularly if they are union represented (Carnevale and Smith 2021). Women only make up 4 percent of the construction workforce in the United States (300,000 women in 2020), but federal diversity goals and funding (like the US Department of Labor Women's Bureau's WANTO grants) have helped increase women's representation in states with proactive policy initiatives (Hegewisch and Mefferd 2021e). The Infrastructure Bill presents a prime opportunity to set and enforce stronger diversity expectations to ensure that women and people of color get their fair share of new jobs. The recently issued Gender Strategy by the Gender Policy Council highlights the White House's commitment to increasing women's access to better jobs and mandates government agencies to prepare detailed and measurable goals for achieving change (Whitehouse Gender Policy Council 2021).

Work-family support policies are another important part of the wage gap equation. Without policies like paid family and medical leave and affordable and accessible child care, women's wages will continue to trail behind those of men in the United States. While the Family and Medical Leave Act (FMLA) entitles workers in the public sector and those working for private companies with at least 50 employees to take up to 12 weeks of leave, employers are not required to provide pay during that period. Furthermore, the FMLA only protects cases of a serious health condition, military deployment or military-related health conditions, or birth, adoption, or new foster care responsibility (USDOL 2015). Expanding paid leave, work flexibility, and child care provisions will allow women to enter more men-dominated occupations, where before they had to sacrifice such financial opportunities to choose a more female-dominated occupation that provided greater work-family supports and flex-

ibility. It also allows more women to enter the labor force or work more hours (Addison et al. 2015; Hegewisch and Williams-Baron 2017). Raising the minimum wage and increasing union representation so more workers are protected by union wage floors will also raise women's wages significantly and serve to close the wage gap, due to women's overrepresentation at the bottom of the wage scale (Hegewisch and Williams-Baron 2017).

The companion to the Infrastructure Bill, which is still going through the legislature with an uncertain fate at this article's time of writing, is the Build Back Better Act, which would fund social infrastructural investment. The original proposal includes universal free preschool, investment in child care and elder-care, and expansion of the Child Tax Credit, among other initiatives (US White House 2021). Passing the bill would mean tremendous benefits to American families and would make great strides in addressing many of the issues that contribute to the wage gap, including women's disproportionate care burden.

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