



10 Essential Actions To Promote Equal Pay

By Jocelyn Frye | March 24, 2021

Year after year and across multiple surveys, women identify the lack of equal pay in the workplace and the persistence of the gender wage gap as top concerns.¹ While policy-makers eager to garner women's support frequently tout their commitment to equal pay, concrete action at the federal level demonstrating that commitment has been slow to nonexistent. Partisan gridlock and a lack of political will have derailed opportunities for progress and led to an overall failure to enact meaningful improvements to strengthen the law. With the exception of the passage of the Lilly Ledbetter Fair Pay Act of 2009, which did not break new ground but restored equal pay protections diluted by a sharply divided U.S. Supreme Court in the 2007 *Ledbetter v. Goodyear* ruling,² Congress has not advanced a major bill on equal pay in decades. As a result of this inaction, the president's role in strengthening equal pay protections has taken on added importance, particularly through the use of executive actions to invigorate enforcement and better protect workers.

It is critical for the Biden administration to send a strong signal about its commitment to taking concrete action in support of equal pay—action that is decisive, robust, and comprehensive to ensure compliance with existing laws. This issue brief outlines 10 actions—from collecting pay data from employers, increasing pay transparency, and reducing pay secrecy to investing more resources in enforcement and more—that President Joe Biden can take to move the United States forward on equal pay and help improve economic outcomes for women.

Gender pay disparities are still the norm

Unfortunately, the gender wage gap is not a recent development. For years, women have consistently earned less than their male counterparts, and although the gap has slowly closed over time, it remains a stubborn barrier for too many women workers. Women working full time, year-round in 2019 earned 82 cents for every dollar earned by their male counterparts. Moreover, while this wage gap affects all women, it is larger for most women of color: For every dollar earned by white men working full time, year-round in 2019, Black women earned 63 cents, Latinas earned 55 cents, and American Indian and Alaska Native women earned 60 cents.³

And although Asian American and Pacific Islander (AAPI) women overall earned 85 cents for each dollar earned by their white male counterparts, there were wide disparities among subpopulations; for example, Hmong women earned 60 cents, Nepali women earned 54 cents, and Burmese women earned 52 cents for every dollar earned by white male workers.⁴

The larger gaps for most women of color reflect a combination of factors, including segregation into occupations in fields, such as the services sector, where they experience too little upward mobility; overconcentration in the lowest-paying jobs, such as cashiers and care workers; and the combined effects of gender, race, and ethnic biases devaluing their work and economic contributions.⁵ The economic effects of these pay disparities are enormous: Women increasingly are breadwinners for their households, and the economic losses that result from pay inequality undermine their economic security and the long-term survivability of their families. Two-thirds of working mothers are sole, primary, or co-breadwinners—the latter meaning that they provide at least 25 percent of their household’s income.⁶ Yet the pay gap for mothers is even starker than the pay gap for women overall: In 2019, mothers earned an estimated 75 cents for every dollar earned by fathers. Specifically, AAPI mothers overall earned 91 cents, white mothers earned 71 cents, Black mothers earned 53 cents, American Indian and Alaska Native mothers earned 50 cents, and Latina mothers earned 46 cents for every dollar earned by white fathers.⁷

Research on the gender wage gap makes clear that many different factors drive wage differences. Some of these factors are measurable, such as differences in work experience and education; but some are not as easily quantified.⁸ Experts often suggest that this unexplained portion of the gap may be attributable to discrimination.⁹ Understanding these different components is critical to pinpointing the full range of interventions needed to begin closing the gender wage gap.

Several measures are critical to closing this gap, including efforts to combat pay discrimination and reinvigorate enforcement of equal pay laws; policies such as paid family and medical leave that help strengthen women’s labor force participation and improve their ability to keep their jobs; and initiatives to boost wages and improve job quality for the lowest-paid workers.

10 federal actions to combat pay discrimination and promote equal pay

Federal enforcement agencies are responsible for enforcing the key legal protections that prohibit sex-based discrimination in compensation, including the Equal Pay Act, Title VII of the Civil Rights Act of 1964, and Executive Order 11246.¹⁰ To fulfill their obligations, enforcement agencies have pursued a wide range of strategies to promote compliance with the law, unearth discriminatory pay practices, investigate pay discrimination complaints, and remedy violations.

Competing equal pay executive actions and efforts to collect compensation data from employers

The Obama and Trump administrations took very different approaches to using their authority to undertake executive actions on equal pay.

During his time in office, President Barack Obama created an equal pay task force and signed several executive actions to prohibit retaliation against employees for discussing pay, require the collection of pay data from employers, and require employers to provide workers data about their wages.¹¹ One of these executive actions was a presidential memorandum calling for the development of a tool to collect employer compensation data to assist with and strengthen agency enforcement efforts. After extensive consultation with a wide variety of stakeholders, the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs proposed a revision to an existing rule to require the collection of compensation data from employers with 100 or more employees using a form called the Employer Information Report, also known as the EEO-1 form. For more than 50 years, these employers were already required to annually file the EEO-1 form, on which they must provide a demographic breakdown of their workforce by race, sex, and ethnicity across 10 occupational categories. However, the revised rule added a new component, requiring filers to provide pay data broken down by race, ethnicity, and gender across the same occupational categories. The final rule represented a significant step forward in the fight for equal pay.

One critical reason the Obama administration adopted this type of comprehensive pay data collection was to provide enforcement officials with better tools to evaluate employer pay practices. The final rule helped ensure that enforcement officials could have access to better data on pay breakdowns by race, ethnicity, and gender. Such data also help fill critical information gaps that enforcement officials too frequently face in determining how best to target their limited resources.

In sharp contrast, the Trump administration sought to undo many of the gains made during the Obama administration and did little to pursue new equal pay protections. In particular, it saw little value in collecting pay data and immediately moved to halt the previous administration's pay data collection rule.¹² Women's and civil rights legal advocates challenged this action in federal court in 2017, and the U.S. District Court for the District of Columbia instructed the administration to restart the implementation of the pay data collection requirement for 2017 and 2018 data.¹³ Although the Trump administration eventually complied with the court's order, it simultaneously initiated a new rule-making in 2019 to renew the EEO-1 form, which is required every three years, but discontinue the pay data collection component that had been added by the Obama administration. This change was approved in June 2020.¹⁴

The divergent approaches of the Obama and Trump administrations have set the stage for new interventions and efforts by the Biden administration to combat pay discrimination at all levels. Expanding and improving existing enforcement tools is essential to strengthening enforcement efforts overall—and precisely the type of action needed from any administration, particularly given the inactivity of Congress. President Biden should prioritize actions to restore gains that were undone by the previous administration, as well as actions that can break new ground in combating unfair pay practices and disparities in order to move the needle forward.

The administration should pursue the following 10 actions immediately:

1. **Issue a presidential memorandum or directive to relaunch the White House equal pay task force.** It is crucial that the current administration show leadership on equal pay from the very top. The Obama administration made important progress on equal pay in part by bringing together experts from individual agencies to discuss different strategies for combating pay discrimination.¹⁵ The Biden administration

should convene a similar interagency task force with a mission to explore new strategies to address pay inequity. Among its first tasks, such a task force should develop an equal pay action plan within 120 days that includes action steps to be undertaken by individual agencies to strengthen equal pay enforcement, increase the number of compliance reviews to evaluate contractor pay practices, incentivize more compensation audits by employers to better surface pay disparities, combat intersectional forms of pay discrimination faced by women of color, and identify economic security policies that could help close the gender pay gap.

2. Reinstate the federal government’s collection of pay data from employers.

The Obama administration’s pay data collection rule—which required large employers to collect pay data broken down by race, ethnicity, and gender using the EEO-1 form—represented an important step forward. Among other things, the collection of such data provides enforcement officials with better information to do their work; it also facilitates a more intentional focus on the outsize pay disparities experienced by women of color. Reinstating the collection of pay data should be a top priority for the Biden administration, and both the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor should identify the best options to collect comprehensive pay data from employers using available regulatory mechanisms, as well as develop a timetable for implementation.

3. Tackle gender and racial wage gaps within the federal workforce. As of 2017, there was a 7 cent gender wage gap in the federal workforce.¹⁶ While this gap is much smaller than the overall gender wage gap among private sector workers, which stands at 82 cents, any pay disparity merits scrutiny. A 2020 U.S. Government Accountability Office report laid out a series of recommendations to address these pay gaps, including improvements to federal data collection efforts.¹⁷ Agencies such as the Office of Personnel Management should explore other measures that the federal government could take to close these pay gaps.

4. Launch a pay transparency initiative to improve employer accountability for pay practices and provide workers with better information. The Biden administration should explore different models for creating more transparency, such as that used in the United Kingdom, which requires employers with 250 or more employees to publicly report their gender pay gaps.¹⁸ Public reporting of pay disparity information could be an important tool for encouraging employers to undertake internal audits of pay practices and take corrective action where needed. Such reporting also could provide workers with additional information about individual employers. Other pay transparency strategies could require, for example, employers to include salary ranges in job postings.

5. **Undertake efforts to reduce pay secrecy.** In April 2014, the Obama administration issued an executive order prohibiting federal contractors from retaliating against workers who discussed their pay, or otherwise participated in discussions about pay, in the workplace.¹⁹ Although rules requiring pay secrecy are often illegal, many employers continue to have them in place.²⁰ The Office of Federal Contract Compliance Programs (OFCCP) should undertake an analysis to assess compliance with the executive order and identify new strategies to combat pay secrecy, helping to provide added transparency for workers seeking better information about their pay prospects.
6. **Make a budgetary commitment to significantly boost enforcement dollars.** Increased investments in enforcement efforts are critical to ensuring that enforcement agencies have access to the full range of investigatory tools and staffing that they need. Boosting enforcement budgets significantly—for example, by 15 to 25 percent each year over the next four to six years²¹—could provide new resources for the federal government to reverse recent declines in the number of full-time enforcement staff at agencies such as the EEOC and OFCCP at the Department of Labor.
7. **Conduct more compliance reviews of federal contractors to better ensure compliance with the law.** Federal contractors employ an estimated one-fifth of the nation’s workforce.²² The OFCCP conducts reviews of federal contractors to evaluate their compliance with the anti-discrimination protections within its jurisdiction. Because of limited resources, however, only a small percentage of contractors are actually reviewed each year. The OFCCP should work to maximize the number of compliance reviews that it conducts each year.
8. **Increase the OFCCP’s number of “glass ceiling” reviews examining advancement opportunities for women and workers of color.** Too many women continue to be stuck in low-paying jobs with limited advancement opportunities. The OFCCP’s enforcement responsibilities include reviewing the corporate management of federal contractors to assess leadership diversity and advancement opportunities for women and people of color. Expanding opportunities for women—particularly women of color—to gain higher-paying jobs is one important strategy for raising women’s wages overall.
9. **Pursue economic security policies to help women remain in the workforce.** Equal pay does not occur in a vacuum. Rather, policies promoting equal pay work in tandem with other policies to raise women’s wages and improve families’ economic security. By pursuing economic policies to close the wage gap, such as a comprehensive paid family and medical leave program, the administration would help to ensure that workers can manage their work and family responsibilities when caregiving crises arise without putting their jobs at risk. Such economic policies are especially important for women, who are far more likely to be caregivers in their families.²³

10. Vocally support legislative measures to strengthen equal pay protections. Despite ongoing partisan stalemates, congressional action is still sorely needed to improve the equal pay protections available to workers. The Biden administration must push lawmakers to take action that is long overdue, such as passing the Paycheck Fairness Act, so that workers have stronger protections available to challenge discriminatory practices and assert their rights.

By taking these actions, the administration would not only answer the president's mandate in support of equal pay but also lay the groundwork for necessary change.

Conclusion

The push for equal pay must be more than empty rhetoric and partisan gridlock; women need and deserve equal pay, for both themselves and their families. The president can take the concrete actions laid out in this brief to make measurable progress that is long overdue. The Biden administration must make equal pay a top priority in order to make the promise of equality a reality for women and, indeed, all workers.

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Endnotes

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