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REPORT TO THE LEGISLATURE

WAGE DISPARITIES REPORT

JANUARY 15, 2002

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

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BACKGROUND

During the 2001 session, legislation required the Department of Labor and Industry (DLI) to report back to the legislature with information regarding wage disparities between men and women and between minorities and non-minorities and also provide a listing of some of the pay equity studies that have been conducted recently.¹ DLI researched the pay equity and comparable worth topic and easily found over 100 documents ranging from editorial pieces in newspapers to entire books and everything in between. What we found and what we refer to in this report by no means contains all pay equity-related literature. There are hundreds of sources that speak to pay "gaps". We chose a variety of information sources and attempted to present different opinions and studies on this topic. For every claim of a discernable gap in pay between men and women, there is a counter claim that such a gap does not exist when various criteria are taken into account.² Attached is a listing of some of the reports that were reviewed by DLI.

SUMMARY OF INFORMATION GATHERED

The terms "pay equity" and "comparable worth" are sometimes used interchangeably, however they do have distinct meanings in the literature. The term "pay equity" means that individuals should be paid equally for jobs that require equal skill, responsibility, effort and working conditions. In other words, a female performing clerical work should be paid the same as a male performing clerical work and there also should be no difference in pay if the worker is white or is African-American or a member of some other minority group. "Comparable worth", on the other hand, is a process by which wage rates are set for job categories based on the particular job's "worth". Dissimilar jobs that are equal in value or worth to the employer should be paid the same. Proponents of this approach believe that the true social worth or value of a job is different than it's market value. The true value can be determined through a job ranking process. This is generally done by applying a point value to a job based on that job's value or worth which is determined outside of the marketplace and the characteristics of specific workers. This process results in jobs that have the same point value being paid the same.

There are both federal and state laws currently in place that prohibit wage discrimination by sex. On the federal level, individuals have rights under the Equal Pay Act and Title VII of the Civil

¹ 2001 Minn. Laws Ch. 4 (First Special Session), Art. 1, Sec. 12, Subd. 4.

² Most of this report speaks in terms of pay equity in regard to female workers. It was DLI's experience that information is lacking in the area of pay equity studies and literature regarding minority individuals.

Rights Act.³ Minnesota also has an Equal Pay for Equal Work Law and the Human Rights chapter contains provisions that prohibit discrimination against an individual based on sex or race. Both laws provide a right of action for individuals who have been discriminated against in violation of the statutory provisions.⁴

A number of proponents of an increase in pay equity policies and pay equity legislation state that women earn anywhere from \$.72 - \$.77 for every \$1.00 a man earns. This number is usually based on annual earnings reported by the US Census Bureau (Current Population Survey). The AFL-CIO and the Institute for Women's Policy Research together conducted a national study to analyze data from the Census Bureau and the Bureau of Labor Statistics.⁵ Their study found that women working full time are paid \$.72 for every dollar men earn. In addition, women of color who work full time are paid only \$.64 cents for every dollar men earn. Through expanded analysis of their data, the study asserted that because of this pay disparity women have an overall average earnings loss. Furthermore they assert that this pay disparity is due to discrimination. However, what is problematic about this study is the manipulation of the data used to arrive at these conclusions. The study used the Current Population Survey data to estimate the effects of various characteristics on the earnings of adult male workers. The results of this analysis were then used to predict earnings for three groups of female workers. For each woman in the study, there is an actual wage listed and this "predicted" wage. If the woman's actual wage is higher than the predicted wage, the observation is not counted in the analysis. If the woman's actual wage is lower than the predicted wage, then the difference is counted as an earning loss. The study then concludes that the data shows that women are "underpaid." Data for this study was thus manipulated by systematically removing data that would result in higher earnings for women. Manipulation of the data in such a manner lessens the credibility of group's study and its

³ Equal Pay Act of 1963, 29 U.S.C. §206(d) (2000); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e.

⁴ The Equal Pay for Equal Work Law, found at Minn. Stat. §§ 181.66 - 181.71, provides that violation of the law's provisions is punishable as a misdemeanor. In addition, the employee has a right of action against the discriminating employer for recovery of the amount of unpaid wages for the one year period preceding the commencement of the action and also up to this amount an additional penalty may be levied by the court as exemplary damages. Reasonable attorney fees may also be charged to the employer.

The prohibition against unfair discriminatory practices by an employer can be found in the Minnesota Human Right Law under Minn. Stat. § 363.03, subdivision 1. Employees who are aggrieved by violations of this law may bring a civil action against the employer and may recover compensatory and punitive damages.

⁵ AFL-CIO and the Institute for Women's Policy Research (IWPR), *Equal Pay for Working Families: National and State Data*, <<http://www.alfcio.org/women/exec99.htm>>.

conclusions.⁶

As we reviewed the various pay equity or pay differential studies, we found that in order to be able to fully appreciate the weight a study holds, a discerning eye must be paid to the quality of the data and the variables involved in the study. For example, a study was conducted of nonprofit human services organizations to determine whether a "glass ceiling" exists for women in this sector.⁷ Historically, the nonprofit labor force contained a large percentage of women, so the authors believed this would be a good industry to study. In assessing the concept of a glass ceiling, three specific issues were explored. The study looked at the representation of women in management positions compared to their representation in the total organization; whether women were promoted upward within the organization; and whether there was equal pay for equal work at the management level. At the conclusion of the analysis, the study confirms the existence of a glass ceiling. However, there were a number of variables involved in this study that make its findings questionable or at the very least not useful as being indicative of an overall societal pattern of glass ceilings for women. Some items of concern include: the sample was self-selected;⁸ only quantitative measures were used; and factors such as hours of work were not taken into consideration.

Part of the pay equity debate has focused around the concentration of women in occupations that are traditionally paid less (for example, retail, service, clerical, teaching). Proponents of pay equity policies argue that the reason these professions are paid less is because they are undervalued; and the reason these professions are undervalued is because they are performed mainly by women. These arguments naturally lead to the comparable worth discussions and debates about whether laws should address situations of unequal pay for equivalent work in different jobs.

Advocates for comparable worth policies state that such policies alleviate gender-based and race-

⁶ Employment Policy Foundation, *Fact & Fallacy: AFL-CIO Study's Estimates of Losses from "Unequal Pay" are Meaningless*, June, 1999, <<http://www.epf.org/research/newsletters/1999/ff990616.asp>>.

⁷ Abstract, *The Nonprofit Sector and Gender Discrimination: A Preliminary Investigation into the Glass Ceiling*, NONPROFIT MANAGEMENT AND LEADERSHIP, Spring 2000, (reporting on study conducted by Margaret Gibelman).

⁸ Agencies were asked to respond only if they met certain criteria. The data collectors had no way of independently verifying how many organizations met the criteria but chose not to respond or how many of the originally asked agencies did not meet the criteria. Out of a sample of 850 agencies, the overall response rate was 75 agencies, a little more than 8%.

based wage discrimination and will help reduce poverty among the working poor.⁹ However, implementing a comparable worth system can be extremely cumbersome and troubling. Attempting to determine whether jobs are of equal worth is a difficult and arbitrary process. Assigning a point value to certain jobs could easily be influenced by differences of opinion or personal biases. In addition, going through the process can create a difficult working environment for employees as they now would need to argue why their positions are of greater worth than their coworkers'.

Critics of comparable worth policies agree that indeed some professions are paid less than others, but maintain that this difference is not in response to discrimination against women who occupy the majority of the positions in these certain industries. Instead, others assert that the reason why certain occupations are paid less than others is because a number of these professions offer the flexibility needed to balance work and family life, which is something that is greatly valued and used more often by women. In addition, some claim that the paying of higher salaries for certain occupations, such as construction where there is a concentration of men is not due to discrimination but is instead because of the premium placed on physical strength.¹⁰ Individuals who provide these counter-arguments to pay equity and comparable worth policies claim that many women make a rational choice between pay and job flexibility. They choose occupations in which their skills will survive if they spend years out of the labor market.

Both pay equity supporters and their critics note that the wage gap between men and women has steadily declined since the passage of the Equal Pay Act. This is another point on which there is a difference of opinion. Some claim that the narrowing of the gap is illusory because in reality the reason for the closing gap is not that women's real earnings are growing but instead men's real earnings are declining.¹¹ However, a criticism of this argument is that calculation of real earnings is based on the Consumer Price Index (CPI). Some believe the CPI overstates inflation. Thus when you adjust the CPI so it more accurately reflects inflation levels, a real earnings calculation shows that both men and women have had their annual earnings increase in recent years.¹² Thus,

⁹ Jane Lapidus & Deborah M. Figart, *Remedying "Unfair Acts": U.S. Pay Equity by Race and Gender*, FEMINIST ECONOMICS, Vol. 4, Issue 3 (1998).

¹⁰ George F. Will, *Lies, Damned Lies And...*, NEWSWEEK, Vol. 133, Issue 13, at 84 (1999), arguments and statistics pulled from *Women's Figures: An Illustrated Guide to the Economic Progress of Women in America*, Diana Furchtgott-Roth and Christine Stolba.

¹¹ AFL-CIO, *The Case for Equal Pay: Responding to Common Arguments Against Equal Pay*, <http://www.alfcio.org/women/case_eqpay.htm>

¹² Between 1989 and 1997 the increase was .5% for men and 8.5% for women. Employment Policy Foundation, *Economic Bytes: Does a Fall in Men's Earnings Explain the Narrowing of the Gender Pay Gap? Entitlement*, October 14, 1999, <<http://www.epf.org/research/newsletters/1999/eb991014.asp>>.

the gap narrowed even as men's wages were rising.

There are a number of factors that influence the gap in pay between men and women that, when taken into consideration and factored in to the measurements, result in a near zero difference between the two groups.¹³ The hours of work between men and women is a large difference. Men work more hours per week on average than women. Years and type of education is another factor that contributes to the pay difference. Men generally have achieved higher levels of education than women. Whether or not a woman has children appears to play a role in the size of the wage gap, with those women who have children seeing a much larger gap than those who do not.¹⁴ The industry in which an individual is employed and the individual's occupation also contribute to the rate of pay. Unionization has also been found to play an influential role in pay rates and in lessening the gap.¹⁵ Some researchers have even looked to an individual organization's politics and culture as contributing to the existence of and the extensiveness of any pay differentials between men and women.¹⁶ Which state a woman is working in even makes a difference in pay rates.¹⁷ The two key factors in explaining the wage gap are tenure and experience. Women on average have a longer period of time away from the work world than

¹³ Employment Policy Foundation, *Background on Comparable Worth*, 2000, <<http://www.epf.org/research/newsletters/2000/compworth.asp>>; Employment Policy Foundation, *Economic Bytes: Does a Fall in Men's Earnings Explain the Narrowing of the Gender Pay Gap?* Entitlement, October 14, 1999, <<http://www.epf.org/research/newsletters/1999/eb991014.asp>>.

¹⁴ *Progress of Women and Minorities in the Illinois Workforce 2001*, Illinois Department of Labor, at 11, citing Jane Waldfogel in BLS Daily Report, Tues. May 16, 2000.

¹⁵ Marta M. Elvira & Ishak Saporta, *How Does Collective Bargaining Affect the Gender Pay Gap?*, WORK AND OCCUPATIONS, Vol. 28, Issue 4 (Nov. 2001).

¹⁶ Robert L. Nelson & William P. Bridges, *LEGALIZING GENDER INEQUALITY: COURTS, MARKETS, AND UNEQUAL PAY FOR WOMEN IN AMERICA*, Cambridge, 1999. These authors focus on the dynamics within organizations that operate to perpetuate gender disparities, as opposed to employer claims that "the market" is what drives the pay rates. Their book focuses on four case studies of major pay equity lawsuits, including the state of Washington and Sears, Roebuck and Co.

¹⁷ A number of studies have compared the status of women's wages among the various states. Women in the state of Minnesota are ranked among the highest in terms of earnings when compared to male workers. AFL-CIO, *The Pay Gap, by State*, <http://www.alfcio.org/women/eqp_stat.htm>; Institute for Women's Policy Research, *The Status of Women in the States 2000*, <<http://www.iwpr.org/states.mn.htm>>; Laurent Belsie, *Gender Pay Gap Varies Widely by City*, THE CHRISTIAN SCIENCE MONITOR, Dec. 12, 2001.

men.¹⁸ These years out of the workforce contribute to women having less experience and tenure which in turn translates into lower pay once the woman returns to the workplace.¹⁹

Many researchers, economists and policy makers who have looked into disparities in pay between men and women and between whites and minority groups have agreed that it is not a given to say that any remaining pay gap is due to discrimination. Such a conclusion is simply guess work. To prove this point, one economist states that there is a pay gap between the average earnings of younger and older men, with the earnings of older men being more than those of younger men. It would be easy to take this example and also assert discrimination; there must be discrimination against younger men. Obviously that is not the case, there are other reasons to explain this gap.²⁰ In testimony before a Congressional committee in June of 2000, Dr. Katherine Abraham, the commissioner of the Bureau of Labor Statistics, discussed the pay gap between men and women that the Bureau's data confirmed. Although the data the Bureau collects indicates a remaining gap, the data do not take into account any differences in levels of education and work experience or any of the other previously discussed variables. Dr. Abraham cautioned the committee against making any broad assumptions based on the Bureau's data and stated that in order to tell with any certainty whether a pay gap is a result of discrimination, a much more focused study with richer information and particular situations would have to be conducted.²¹

Perhaps the enormity of the task of looking into pay disparities is best illustrated by the approach being taken by the state of Illinois. In 1991, the Illinois legislature passed a law designating the Illinois Department of Labor as the agency responsible for "monitor[ing] the employment progress of women and minorities in the Illinois workforce including access to the public sector,

¹⁸ Women spend an average of 14.7 potential years out of the workforce, whereas men only spend 1.6 years out of the workforce. Employment Policy Foundation, *Background on Comparable Worth*, 2000, <<http://www.epf.org/research/newsletters/2000/compworth.asp>>

¹⁹ Diana Furchtgott-Roth, *The Statistically Misleading 74 Cent Wage Gap*, Testimony before the Equal Employment Opportunity Commission, April 12, 1999, <<http://www.aei.org/ct/ctdrf.htm>>.

²⁰ Employment Policy Foundation, *Fact & Fallacy: The Facts About Pay Equity*, March, 1999, <<http://www.epf.org/research/newsletters/1999/ff990315.asp>>.

²¹ *Examining the Bureau of Labor Statistics Report Which Provides a Full Picture of the Gender-Based Wage Gap, the Reasons for These Gaps and the Impact This Discrimination Has on Women and Families, and the Effectiveness of Current Laws and Proposed Legislative Solutions, and S. 74, to Amend the Fair Labor Standards Act of 1938 to Provide More Effective Remedies to Victims of Discrimination in the Payment of Wages on the Basis of Sex: Hearing of the Committee on Health, Education, Labor and Pensions*, 106th Cong. (June 8, 2000).

private sector, labor unions and collective bargaining units.”²² Originally, no additional funds were given to the Department for this task. Each year the Department presented the legislature with a one page report basically indicating that the law was a good idea, however money was needed to fulfill this mandate. The legislature finally gave the Department \$200,000 in 1999. Three full time employees are dedicated to this responsibility and reports to the legislature have been produced. The most recent report, issued in April 2001 is titled *Progress of Women and Minorities in the Illinois Workforce 2001*. The report is divided into five separate chapters that address the signs of progress for workers, non-traditional fields, regional differences within Illinois, progress in the Illinois public sector and progress in the Illinois private sector. In their 2001 report, the department states that “signs of progress are observed in increased participation rates, decreased unemployment, increased earnings, and heightened access to positions associated with greater responsibility and autonomy.”²³ But the report also notes that more progress can be made for both women and minorities. However, even given the large amount of data the department was able to work with and the various analyses they were able to conduct over the past few years of funding, they state that in order to adequately assess whether the pay gaps are due to any one of the various factors (education, industry, training, family responsibilities, etc), including whether any of gap is caused by discrimination, more detailed data is needed. Until the time that such data are available, the department will only be able to provide overviews of generalized, quantitative data.²⁴

CONCLUSION

There is an endless amount of information and studies currently available regarding pay equity and comparable worth. Some researchers spend much of their careers studying, analyzing, writing and speaking about these topics. While some literature points to a considerable gap in pay between men and women based on annual earnings, other literature takes a more thorough approach to analyzing data and finds a much smaller, nearly nonexistent gap. What is clear from a review of current information is that in order to truly and adequately assess whether a pay gap does indeed exist and, more importantly, if discrimination plays a role in any gaps found, a extremely in-depth, specific, quantitative and qualitative study must be conducted. The study would have to control for a number of variables and would most likely require a large sample group in order to accomplish such controls. A study of this nature would be of significant magnitude and would be a time consuming process. Until such a study is completed, it is difficult to determine what legislative actions, if any, should be proposed and whether such actions are likely to be successful in reducing any wage disparities.

²² Public Act 87-0405, signed into law on Sept. 10, 1991.

²³ *Progress of Women and Minorities in the Illinois Workforce 2001*, Illinois Department of Labor, at 88.

²⁴ *Id.* at 13.

A SAMPLE OF RESOURCES AVAILABLE

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AFL-CIO, *Fact Sheet - Strategies for Achieving Equal Pay*,
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AFL-CIO, *It's Time for Working Women to Earn Equal Pay*,
<<http://www.aflcio.org/women/equalpay.htm>>.

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