

The Abominable Paycheck Fairness Act

The mainstream media is reporting that the “Paycheck Fairness Act” (PFA) was defeated in the U.S. Senate today. But because the mainstream media will not tell the whole story, many Americans will think those corporate-backing, sexist Republicans are at it again, making sure that women are treated unfairly. The truth is as follows.

First, it is worth noting that for *decades* it has been against federal law (the Equal Pay Act of 1963) for an employer to pay a woman less than a man if they both perform the same duties and have similar, equal experience. If Jane gets \$10 per hour and John gets \$12 per hour for the same work on the factory floor, Jane needs to contact the Department of Labor and complain. *That has been the law since 1963.*

Some people whine that the existing law is not tough enough because the person (man, woman, black, white, Hispanic, overweight, old, or whatever) who believes he or she is being discriminated against must provide evidence of that discrimination. (Gee, what a burden... to have to back up one’s accusations with actual facts and evidence!) Under the PFA, the burden is shifted to the employer—who must prove that he did *not* discriminate! (Imagine the police arresting you for murder and the judge saying, “Sorry, the prosecutor does not need to prove that you killed the victim... *you* need to prove that you *did not*!”)

Employers can only overcome a claim of gender discrimination if they demonstrate that a “business necessity” demands it. The PFA also leaves it up to the courts to determine what constitutes a “bona fide factor” to justify any pay discrepancies. That means that factors such as previous experience, market forces, negotiating ability and prior salaries will not necessarily be justifications for pay differentiations. Do you own a business? You are therefore assumed guilty.

In addition to that reversal of basic Constitutional rights, there are other “goodies” in the PFA. The legislation practically invites class action suits by allowing *unlimited* punitive and compensatory damages and repealing the requirement that employees must give their written consent to become a party in an “equal pay” class action suit. That would be a windfall for trial lawyers, and would cost employers incredible amounts of time and money to defend their business decisions.

The bill also requires *all* employers to submit data on sex, race, national origin, and earnings to the Equal Employment Opportunity Commission (EEOC). Trial lawyers will then of course comb through every employer’s books searching for instances of pay disparity. All they have to do is find one little appealing suggestion of unfairness, find one employee willing to say, “I was wronged!” and suddenly every employee is now involved in a class action lawsuit against the employer.)

The law would allow employers to justify pay differences between male and female employees *only* on the basis of education, training, and experience. A business could *not* take into account productivity, drive, and other subjective attributes which play a roll in compensation. (You may as well throw away those “employee of the month” posters,

because even the slugs will get the raises.)

Any companies that manage to be lucky enough to stay in business would be able to do so only by hiring lawyers to oversee practically every employment and payroll decision. And the cost of those ever-present lawyers will be passed on to consumers in the form of higher prices. (Again, assuming the company is not put out of business.)

The absurd “Paycheck Fairness Act” would result in these kinds of situations:

Example 1:

Employee Tim has a great attitude, while Marie's attitude sucks. The employer gives Tim a raise. Marie demands one too, under the PFA—because “attitude” is not a factor that can be allowed to influence pay. Marie gets the raise too. (Actually, of course, neither will get the raise—because the employer can't stay in business if he rewards everyone when only one deserve it.) You can, of course, reverse the situation and make Tim the bad employee and Marie the stellar worker; Tim would then get the same raise as Marie.

Example 2:

Jim goes on a job interview. The employer says, “Okay, I'll hire you. I'll give you \$3,000 more than your current salary.” John accepts the job.

Sue is interviewed by the same employer. The employer says, “I'll hire you. I'll give you \$3,000 more than your current position.” Sue accepts the job.

It turns out that Jim made \$40,000 at his old job and Sue made \$38,000. In his new position he will earn \$43,000 and Sue will make \$41,000. Because she is going to be paid \$2,000 less, Sue complains. Under the PFA the employer has to pay Sue \$43,000—even if she and Jim did not previously work at the same company.

Example 3:

Mike earns \$50,000 per year. Sally earns \$50,000 per year. They work at the same company. Mike goes in to see his boss and asks for a \$2,500 raise, successfully explaining to him why he deserves it. Mike gets the raise. Sally did not ask for a raise, and she did nothing to deserve one. But under the PFA Sally will get the same raise. Within a few weeks *everyone* at the company demands a \$2,500 raise, and because of the PFA the employer will be forced to boost everyone's salary—unless it can prove why it is *not* discriminating. (Remember, the employer is considered guilty until proven innocent.)

Example 4:

Mary makes \$15 per hour on an assembly line at ABC company. Sam makes \$15 per hour on the same assembly line. Mary learns that Jerry makes \$16 per hour for the exact

same work on an assembly line *at a different company*, XYZ Company. Mary demands that she be paid that same \$16 per hour as Jerry—who does not even work at her company! Under the PFA, the employer must give Mary a raise to \$16 per hour. Five minutes later, Sam—and everyone else at ABC Company—demands to be paid \$16 per hour.

All this nonsense about women being paid 77 cents per hour (or whatever the alleged amount is) less than men is just that—nonsense. There *are* no exact figures. They are *estimates* conjured up by the Department of Labor. All they do is calculate an estimate of what *all* the nation's female workers earn and compare it to an estimate of what *all* the nation's male workers earn. That proves *nothing*; it only suggests that *in general* women tend to work in jobs that pay less than jobs taken by men. I earn less than Oprah Winfrey. So what? A female toll-booth operator earns less than the male president of a large corporation. So what? Donald Trump's female secretary earns less than Trump himself. So what? But both their incomes are in the same ridiculous Department of Labor statistics. The figures mean almost nothing.

If Alice and Fred perform the exact same job at the same company and have the same education and experience, then of course it would be unfair to pay Alice less than Fred. (And Alice can file a complaint with the Equal Employment Opportunities Commission.) But it is certainly *not* unfair to pay Alice less than her male supervisor, George. And it is certainly *not* unfair to pay Fred less than his female manager, Ann.

It is more than absurd to believe that if you add up the salaries of all the men in the workforce and those of all the women in the workforce they must be exactly the same. Yet that is what the “77 cents on the dollar” complaint suggests should be the case. Many women go into the teaching profession because they get the same vacations as their children. Because of that, there are more prospective teachers than there are teaching positions. That keeps the salaries low—it is simple supply and demand.

Few people—men or women—have the skills or education to be brain surgeons. The supply exceeds the demand, and that keeps the salaries of all brain surgeons high. It is the law of supply and demand. There is no “Republican conspiracy” that calls for elementary school teachers to be paid less than brain surgeons. They simply get paid what they get paid because of supply and demand.

Think about it for a moment. Most businesses make a profit of less than 8 percent. For most businesses, payroll costs are their greatest expense. Further, thousands of businesses fail every year. *Given those facts, if women will work for 77 cents on the dollar, why would any business hire men at all?* If women will work for 77 cents on the dollar, every business in the United States could reduce its payroll costs dramatically simply by firing all of its male employees and replacing them with women! Why do they not do that? Because it is simply not true that women earn less than men. It is only true that *some* women earn less than *some* men, just as it is also true that *some men* earn less than *some* women.

The question is *not* “Do female kindergarten teachers earn less than male iron workers who build skyscrapers?” The question is only “Do female kindergarten teachers at ABC School earn less than male kindergarten teachers at that same ABC School when they both have equal educations and experience?” The fact that teacher Julie earns less than iron worker Matt means absolutely nothing—other than you have to pay a lot of money to get someone to risk his or her life to walk around on steel beams 50 floors above ground level.

The PFA is an abominable law—which Obama (of course) said he would sign. The morons in the House of Representatives passed it in 2009. In the Senate today, Harry Reid could (fortunately) gather only 58 of the 60 votes he needed to proceed with debate. If your Senators voted to advance the legislation, you may want to keep that in mind on election day 2012.

Don Fredrick

November 19, 2010