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Pay Equity: Women Can't Just Work Harder (v1n11, November 2004)

By Casey Schacher

Do you get paid what you're worth? If you are a woman living in the United States, you might not be. According to the U.S. Census Bureau, women earn substantially less than men.[1] In fact, a 2003 study showed that female salaried workers earned 77.6 cents for every dollar that male salaried workers made. For every five days a male works, a female labors for 7 days to earn the same amount.[2]

The gender gap in earnings between men and women widens even further if race and time are factored in the equation. B lack women earn 64 cents for every dollar earned by white men, and Hispanic women earn only 52 cents of that dollar.[3] Also, over the course of her lifetime, a woman makes even less. During the prime working years from the ages of 26 to 59, women make a total of only 38% of what men make during that same time frame.[4]

Problems arise from this gap, especially for families. Many families today depend on the income of both parents in order to survive. In 2000, only 29.2% of married-couple families existed in which only the father worked.[5] The burden of financing a household now falls increasingly on the shoulders of women. In addition to performing unpaid labor as mothers, wives, and community and church members, women operate in a labor system that often compensates them unfairly for their time.

The Equal Pay Act of 1963 helps ensure that a woman will be paid the same wages as a man, providing they work the same job and have identical qualifications and seniority.[6] While this policy deals with bold, undeniable discrimination against women in the workplace, it does not address the systematic undervaluing of positions typically occupied by women, i.e. "women's jobs." Wages in female-dominated professions, such as nursing, are lower than wages in male-dominated professions, such as janitorial services.[7] Nursing requires an individual to acquire extensive training as well as to work in an often physically and mentally taxing environment. So why pay nurses less? The statistics mentioned above suggest that nurses are paid less simply because women's jobs are undervalued.

One possible solution to this injustice lies in creating Comparable Worth laws. The objective of Comparable Worth, or Pay Equity, is to create a pay system promoting equal pay for jobs of comparable value. Under this system, a job's value is determined through analysis of specific criteria covering a broad range of factors.[8] Factors evaluated include job-related skills and knowledge, interpersonal skills, responsibility and accountability, and working conditions.[9] A point value is then assigned to each job based on the evaluation. Jobs with equal or near equal point values are

considered to have comparable worth. A library director in a large city, for instance, ranks within five percent of a police captain.[10]

There are many arguments against Pay Equity.[11] Opponents often argue that a comparison of two unrelated jobs, despite similarities, would be highly subjective and possibly unfair. Also, the implementation of a comparative wages system could be costly to companies and could ultimately result in job loss, particularly among women. Another argument is that pay equity laws may lead to government wage setting. Others say that the gap is smaller if "age, education, occupation, number of years in the workforce, and experience."[12] Perhaps the most widely argued point, however, is that women often leave the workforce to have and raise children, thus lessening their value to a company.

Proponents of Pay Equity have countered these accusations. On the issue of subjectivity, they respond that voluntary job evaluation systems are already widely used by employers for pay setting and that all systems used for determining pay are subjective. On the second point, advocators insist that data simply does not support the theory that Pay Equity would be a significant burden that results in job loss. Thirdly, Pay Equity bills propose that companies, not the government, set wages. Government agencies would only intervene to investigate and correct discrimination complaints. Finally, proponents argue that the majority of women are returning to work after childbirth. According to labor statistics in 1998, 64.9% of mothers with children under the ages of six had jobs.[13] Also, if a system of pay equity were established, more women might choose to work since they would have as much earning power as their husbands.

Advocates have reasons for believing systems of pay equity can work. For more than two decades, the state of Minnesota has paid state employees according to a pay equity plan.[14] As a result, undervalued jobs were gradually granted fair wages, with only 10% of the adjustments going to men. The gender gap in earnings narrowed by nine percent while costs and job loss were minimal. Similar results have occurred in Quebec, Canada, where law requires both public and private sector employers to set wages based on comparable worth.

Pay Equity offers a possible solution to the complicated problem of pay discrimination against women in the workplace. The concept has rallied strong support and evoked heavy opposition. Whether Pay Equity be the right solution or not, it still provides evidence that people are working toward equality for everyone. Advocators of equality in earnings understand that if one group is allowed to bear the burden of discrimination, all groups are liable to have that burden placed upon them. By allowing discrimination to occur simply because a solution is hard to obtain, we put at risk not only our futures but our children's as well.

If you would like to know how your state ranks in pay equity and how long it will take for your state to reach pay equity, the National Committee on Pay Equity has a list. Washington, D.C., ranks first as having the smallest wage gap, and it is calculated to close as soon as 2006. Utah, New York and Tennessee, on the other hand, are three of many calculated to close their gaps after 2050.

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It’s So Hard to Say Goodbye: What Employers and Employees Should Know about Terminations (v3n8, August 2006)

By George K. Pitchford Esq.

Few things bother both employees and employers as much as involuntarily terminating the employment relationship. Of course, no employee likes to get fired, and, surprisingly, terminating the employment relationship is no picnic for employers either. I have personally worked with some of the largest employers in the State of Michigan and can tell you that management often agonizes over the decision to terminate employees, even in extreme performance and disciplinary cases. These discomforts notwithstanding, in this day and age where downsizing is a way of life, both employers and employees should be aware of some of the issues surrounding the termination of the employment relationship, and how to handle it properly while minimizing potential liability.

Advice for Employees

Although management may struggle with terminating employees, in my experience, termination is always harder on the employees. Not only may it represent a huge financial burden, but many employees also take it as a form of rejection, and a judgment of their personal worth. One of the first steps an employee facing termination should do is resist these feelings. If given an opportunity, request an interview with the decision maker of the organization as soon as possible. This is usually the last person an employee who was just terminated wants to talk to; however, an employee should try to assess whether the termination is because of performance or an economic decision. Although economic decisions are rarely reversed, employers will often reconsider a termination based on performance if an employee has an explanation or shows real commitment to improvement.

Once it is determined that the decision to terminate will not be reversed, an employee should immediately plan an exit from the current position and, more importantly, an entrance into a new position. When facing termination, most employees fail to realize that they will probably soon be seeking a job in the same industry and usually in the same general geographic region. It is therefore paramount that they exit with dignity and decorum, mindful of the necessity of protecting their professional reputation. I recommend that employees draft a report that details their current duties, and any open projects and forward it to their employer. This will not only demonstrate professionalism, but it can also be a starting point for updating a resume, cover letters, portfolios and other important employment tools.[1]

Avoid revenge. Whatever momentary satisfaction may be derived from reformatting a hard drive, destroying the filing system or verbally/physically assaulting a manager, will be far outweighed by the damage that will occur to an employee's reputation. These acts rarely do any real damage to an organization, but they reflect badly on the employee and, more often than not, create more work for former colleagues, who may be a great resource in the upcoming job search. When the final day comes, don't just leave the building, leave everything behind. Unexpectedly entering the job market is daunting, but employees will have a very hard time moving forward if they are constantly looking back. Employees should have faith in themselves, and do what is necessary to secure a new position.

Advice for Employers

Employers considering terminating an employee also have a myriad of considerations.

One of the initial issues that must be addressed in any prospective termination should be whether there is cause. Not only will the incumbent be adversely affected, but there are also economic factors to consider such as re-training a new worker and/or losing the employee's skill set. Accordingly, every employer should establish a core set of standards, usually at minimum documented in an Employee Handbook, that the employee must have failed to comply with to have sufficient cause for the termination.[2] This employer protection can be enhanced if an employer conducts periodic performance evaluations to ensure that the employee is fully informed of any unsatisfactory performance, misconduct or attendance issues that should be addressed regularly throughout the employment relationship. Before terminating an employee for performance and disciplinary issues, I often recommend that employers consider using a Last Chance Agreement. This is an informal written agreement between the employer and employee that clearly sets forth the employer's expectations, a timeline for the employee to comply and the consequences if the employee fails to meet the expectations of the employer. This is an excellent tool that lets both parties know exactly where they stand.

Once the decision to terminate has been made, the employers' next step is to consistently follow a method of work rules or standards that have been adopted by the organization to reduce the possibility of litigation in the future. These standards must be applied consistently for each employee and notice of any changes must be immediately communicated to each employee being affected by the modifications. This helps reduce any possible legal claims by an employee for unfair treatment or other related discriminatory practices.

All of the above notwithstanding, employers should be sensitive to possible employee reactions. Be prepared to address the range of reactions, from emotional to violent. If you have any reason to believe that an employee may become violent, do not hesitate involve security or law enforcement to protect yourself or your colleagues.

The topic of terminating the employment relationship is unpleasant and uncomfortable to most people. In spite of this employers and employees must be prepared for this unfortunate event. Employees should always have an updated resume ready, and make networking within their industry a constant practice. Employers must have clear policies that are applied in a fair and non-discriminatory manner. Most importantly, both employees and employers must focus on their

futures.

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National Labor Relations Board Redefines "Supervisor" (v3n10, October 2006)

October 1, 2006—The NLRB issued a lead case addressing supervisory status in response to Supreme Court decision in *Kentucky River*, a collective of three cases hinging on the definition of "supervisor." The action is being criticized by Democrats and unions who argue that it could mean that there will be a separate class of workers who are neither truly management nor allowed to join unions. Business leaders argue that the change is appropriate and will not affect a large number of workers.

From NLRB:

The National Labor Relations Board has set forth guidelines for determining whether an individual is a supervisor under the National Labor Relations Act. In a major decision made public today, with a 3-2 vote, the Board held that the permanent charge nurses employed by the Employer, Oakwood Heritage Hospital, an acute care hospital, exercised supervisory authority in assigning employees within the meaning of Section 2(11) of the Act. Oakwood Healthcare, Inc.—348 NLRB No. 37 (Sept. 29, 2006).

The Board found that the charge nurses, as a regular part of their duties, assigned nursing personnel to the specific patients for whom they would care during their shift. The Board found that such assignments, which consisted of giving "significant overall duties" to an employee, met the statutory definition of "assign" under the Act. The Board further found that the Employer met its burden to show that its charge nurses exercised independent judgment in making such assignments. Finally, the Board found that the Employer failed to establish that the rotating charge nurses exercised supervisory authority for a "substantial" part of their work time. As a result, the Board found that only the Employer’s permanent charge nurses were supervisors, rather than employees, under the Act. The majority opinion is signed by Chairman Robert J. Battista and Members Peter C. Schaumber and Peter N. Kirsanow. Members Wilma B. Liebman and Dennis P. Walsh dissented. The decision is posted on the Board’s Web site.

In NLRB v. Kentucky River Community Care, 532 U.S. 706 (2001), the Supreme Court criticized the Board’s extant interpretation of the Section 2(11) term "independent judgment." As a result, the Board endeavored in today’s Oakwood Healthcare decision to reexamine and clarify its interpretations of the term "independent judgment" As well as the terms "assign" and "responsibly to direct," as those terms are set forth in Section 2(11). The Board proffered the following definitions.

The Board defined "assign" as the act of "designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee." Further, to "assign" for purposes of the

Act, "refers to the . . . designation of significant overall duties to an employee, not to the . . . ad hoc instruction that the employee perform a discrete task."

The Board then defined the statutory term "responsibly to direct" as follows: "If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both 'responsible' . . . and carried out with independent judgment." The Board held that the element of "responsible" direction involved a finding of accountability, so that it must be shown that the "employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary" and that "there is a prospect of adverse consequences for the putative supervisor" arising from his/her direction of other employees.

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