Statement before the Joint Economic Committee

Hearing on “The Gender Wage Gap: Breaking Through Stalled Progress”

Misdiagnosis Leads to Ineffective Policy

Romina Boccia

Managing Director, Stonebrick LLC & Fmr. Director of the Grover M. Hermann Center for the Federal Budget, The Heritage Foundation.

June 9, 2021

Chairman Beyer, Ranking Member Lee, and distinguished members of the Joint Economic Committee, good afternoon.

Thank you for inviting me to discuss the gender wage gap.

My name is Romina Boccia and the views I express in this testimony are my own and should not be construed as representing any official position of my employer, current or former.

I am a first-generation immigrant and naturalized American citizen. I believe in the American Dream—that ours is a country that provides opportunity for all to make something of themselves with hard work, a little bit of help, and some luck.

I was raised by a single mom with a physical disability and mental health problems. We were on welfare for most of my childhood years. I started working when I was only 11 years old and have been working ever since.

As a woman who is the sole breadwinner in her family, I personally know how important it is for women to be treated equally in the workplace. We can not afford to be discriminated against on the basis of sex or any other factor that is not directly related to our performance. It would also be unfair and bad for business.

And I also know that neither men nor women necessarily earn what they are worth, automatically. We earn what we negotiate. Both market factors outside of our control (such as a recession) and factors at least partially within our control (such as skill level) affect our negotiation power. On both the employer and employee side it matters greatly what alternatives we have available.

I have studied the gender wage gap question for more than a decade. It is one of the most misleading policy issues today.

The average person assumes that policymakers who refer to the gender wage gap as evidence for discrimination must be comparing apples and apples: men and women working under the same conditions, in the same jobs, putting in the same hours etc. But that is not the case.

The gender wage gap compares apples and oranges. When you divide the median wage of all full-time working women by the median wage of all full-time working men—without adjusting for any of the important factors that explain obvious differences in earnings—you inevitably arrive at a highly misleading statistic.

Earnings are primarily a function of productivity. Only after accounting for all measurable, explanatory factors can we reasonably discern whether the gender wage gap is a useful signal alerting us to an actual problem, like discrimination based on sex, or largely a function of men and women making different choices. Relevant factors include:

- **Hours worked.** Women work, on average, 10% fewer hours than men. This holds true even in highly regulated work environments that leave little room for wage discrimination. For example, a study examining the earnings of male and female bus and train operators for the Massachusetts Bay Transportation Authority identified that women earned 89% of what men earned, concluding that "while having the same choice sets in the workplace, women and men make different choices."[1] Women in this study chose to work only half as many overtime hours as men and took an average of 17.5 days of unpaid leave compared with 10 days of leave for men. If women worked more hours and days, on average, than men, they would earn more than men (at least in this specific setting).
- **Education and what economists refer to as human capital**. More-educated and highly skilled workers generally produce more and earn more. Young women are now earning more university degrees (from bachelors to doctoral degrees) than men and we observe a gender wage gap in reverse in major metropolitan areas—among childless, college-educated women.[2] That changes once women have children and begin to reduce their hours or take more time off from work for caregiving.
- **Experience and overall tenure.** Employees become more productive as they gain more experience. Women are more likely to interrupt their careers for caregiving, primarily for children, but also for elder care. Biology, culture and gender socialization play a great role in who takes on caregiving responsibilities in a family. While some countries have taken aggressive measures in an attempt to equalize parental leave policies, public policy is a blunt tool to address this primary choice gap.
- **Benefits**. Cash wages make up roughly two-thirds of workers' total compensation. Non-cash benefits, such as health coverage and paid leave, make up the rest. Employers consider the total compensation they provide their employees but the gender wage gap does not account for benefit differentials. Women are more likely than men to

[1] Valentin Bolotnyy and Natalia Emanuel, "Why Do Women Earn Less Than Men? Evidence from Bus and Train Operators," November 28th, 2018, https://scholar.harvard.edu/files/bolotnyy/files/be_gendergap.pdf.
[2] Belinda Luscombe, "Workplace Salaries: At Last, Women on Top," September 01, 2010, http://content.time.com/time/business/article/0,8599,2015274,00.html.

work in industries that provide more of their compensation as benefits, including in government, education, and nonprofit organizations.

We should first diagnose the problem accurately to determine whether public policy is the right tool to address it, or whether there is a problem to address at all. In everything we do, we must also consider the unintended consequences, not merely the intended outcome.

There is little, if any, evidence of widespread discrimination in wages and employment based on gender in the U.S. In those rare cases where employers do discriminate based on gender, the Equal Pay Act of 1963 and the Civil Rights Act provide legal protections for individuals who are discriminated against based on several protected factors.

Some argue that the Equal Pay Act needs additional teeth by amending it with provisions in the proposed Paycheck Fairness Act. The details of the Paycheck Fairness Act suggest, however, that it was written for the benefit of trial lawyers and those who seek government control over employer compensation decisions, not for the primary benefit of women.

Beyond asking employers to prove that wage and employment differentials are due to “factors other than sex,” under the new act employers would need to prove that differentials are a “business necessity” for which there is no alternative employment practice. It would be up to the courts to define what constitutes such a business necessity. Lawyers would have their hay day while women—especially working mothers who value flexibility or reduced hours—would likely find it harder to find employment and face reduced promotion prospects.

The act would also lift the cap on compensatory and punitive damages, thereby greatly increasing employers’ potential liability. Employers’ higher insurance costs to ward off this greater legal liability would most likely be paid for by reducing employee wages and by hiring fewer workers. That would hurt employees across the board, but benefit lawyers’, creating potential “jackpot justice” pools. We should stick to gambling at the casino, not with peoples’ livelihoods in the workplace.

Another risk is that the Paycheck Fairness Act would move the U.S. economy closer to a “comparative worth” pay regime with governments playing a more active role in determining “fair” pay structures. Politically-driven wage levels and more rigid pay structures would likely reduce performance and productivity, as well as limiting employers’ ability to accommodate workplace flexibility (such as reduced hours, flexible hours, reduced travel etc).

Reporting requirements proposed in the Paycheck Fairness Act (as well as in executive orders) regarding pay by gender, and subsequent Labor Department pay guidelines seem innocuous enough on the surface. And yet, they would likely motivate employers to adopt more rigid pay structures and, thus, less-flexible work arrangements, taking away a highly valuable benefit from women.

Employers may also avoid performance-based pay, such as bonuses that encourage and reward excellence, to protect themselves against legal claims. Such a one-size fits all approach promises to reduce productivity and limit employee's choices. Importantly, it fails to recognize and reward individual contributions, negatively affecting motivation and employee wellbeing.

Denmark implemented a pay transparency law, called the 2006 Act on Gender-Specific Pay Statistics, that required firms with more than 35 employees to report pay by gender (among other factors). A subsequent study identified that although there was a slight reduction in the gender pay gap, it came at the cost of 2.8 percent decline in total pay as productivity declined. When both men and women end up earning less in order to correct some perceived, though not necessarily actual injustice, everyone is made worse off.[3]

Other policies proposed to assist women, such as mandatory paid leave, also do more harm than good. Such policies are often proposed with the stated intent of helping women who act as caretakers for children or elderly parents to meet those responsibilities without losing valuable pay. Such mandates come at a high cost. A Cornell study from 2015 identified that women hired after the 1993 Family Medical Leave Act (which mandated leave without pay) were 8 percent less likely to get promoted. This could happen if women ended up taking more leave than before the act or because employers expected them to.[4] Moreover, countries with more generous family leave policies end up creating higher gender wage gaps.[5]

One policy change that carries great promise is the Working Families Flexibility Act introduced by Senator Lee (R-UT). It would enable millions of lower-wage workers to accumulate paid family leave by eliminating a current regulation that prohibits employees who work in the private sector from choosing between pay and paid time off for any overtime hours worked. Importantly, it imposes no new mandates. Rather, it expands choices.

Under current law, workers who are paid hourly (generally those earning the equivalent of $35,568 per year for a full-year worker) must receive overtime pay at a rate of time-and-a-half if they work more than 40 hours in any week. Giving these workers the option exchange some overtime hours for paid time off would increase access to paid leave where it's most needed.

Opponents claim that employers would take advantage of workers and force them to take paid time off instead of paying them for overtime hours. The bill explicitly prohibits this and requires that workers be able to cash out their accrued comp time at any time during the year.

---

[3] Morton Bennedson, et al. "Do Firms Respond to Gender Pay Gap Transparency?" November 05, 2018, https://wpcarey.asu.edu/sites/default/files/daniel_wolfenzon_seminar_november_9_2018.pdf.

[4] Mallika Thomas, "The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection," unpublished manuscript, University of Chicago, January 22 2015, https://ecommons.cornell.edu/handle/1813/73171.

[5]Gretchen Livingston, "The link between parental leave and the gender wage gap," December 20, 2013, https://www.pewresearch.org/fact-tank/2013/12/20/the-link-between-parental-leave-and-the-gender-pay-gap/.

As policymakers seek to “break through stalled progress” as indicated in today’s hearing title, they should first seek to more deeply understand how wages are determined and not take the raw gender wage gap as evidence of a problem. To the extent that free men and women make very different choices—whether due to biology, culture, or gender socialization—the outcome of those choices should not be misunderstood as somehow unfair or unjust. Government mandates or increasing liability for employers are most likely to backfire, hurting the very same people those policies are supposedly intended to help.

Everyone, regardless of gender, should be able to earn their worth (based on the value they add), and not be subject to unfair discrimination. The best thing policymakers can do is to expand choices and create the regulatory conditions that allow the economy to thrive, creating more opportunities for workers which expands the number and quality of jobs available to them and as such increases their negotiating power.

Romina Boccia is Managing Director at Stonebrick LLC & Fmr. Director of the Grover M. Hermann Center for the Federal Budget at The Heritage Foundation.