

February 16, 2017

The Honorable Virginia Foxx  
Chairwoman  
House Committee on Education and the  
Workforce

The Honorable Robert “Bobby” C. Scott  
Ranking Member  
House Committee on Education and the  
Workforce

The Honorable Bradley Byrne  
Chairman  
House Committee on Education and the  
Workforce, Subcommittee on Workforce  
Protections  
Washington, DC 20515

The Honorable Mark Takano  
Ranking Member  
House Committee on Education and the  
Workforce, Subcommittee on Workforce  
Protections  
Washington, DC 20515

Dear Representatives Foxx, Scott, Byrne and Takano:

The National Women’s Law Center is pleased to submit this letter in relation to the Subcommittee on Workforce Protections’ hearing, “Federal Wage and Hour Policies in the Twenty-First Century Economy.” The National Women’s Law Center has worked for 45 years to advance and protect women’s equality and opportunity, and has long worked to remove barriers to equal treatment of women in the workplace, including by ending pay discrimination against women.

Effective wage and hour polices must address the reality of the twenty-first century economy and of those who work. Today women are half the country’s workforce, and they are breadwinners or co-breadwinners in two-thirds of American families. The previous administration took significant steps to remove barriers to women’s opportunity in the workplace and strengthen enforcement of current of current wage and hour and anti-discrimination protections. Instead of undoing this important work and moving backward, Congress and this administration should further improve current policies to ensure that women receive equal pay, which is critical to their economic security and that of the families who depend on their income.

Women working full time, year round continue to confront a stark wage gap, typically making only 80 percent of the median annual wages made by men working full time, year round.<sup>1</sup> The wage gap is even worse when we look specifically at women of color: African American women typically are paid only 63 percent, Native American women only 58 percent, and Latinas only 54 percent of the wages typically paid to white, non-Hispanic men for full-time,

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<sup>1</sup>NAT’L WOMEN’S LAW CTR., THE WAGE GAP IS STAGNANT FOR NEARLY A DECADE (Sept. 2016), *available at*

year-round work.<sup>2</sup> This wage gap has remained stagnant for nearly a decade.<sup>3</sup> The result is that a woman working full time, year round stands to lose \$418,800 over a 40-year period due to the wage gap.<sup>4</sup> To make up this lifetime wage gap, a woman would have to work ten years longer than her male counterpart.<sup>5</sup>

A range of factors contributes to the pay gap, including pay discrimination between employees of different genders who are doing the same job.<sup>6</sup> Women are still paid less than men in nearly every occupation;<sup>7</sup> workers in low-wage and higher-paying occupations face a gender wage gap.<sup>8</sup> Studies show that even controlling for race, region, unionization status, education, experience, occupation, and industry leaves 38 percent of the pay gap unexplained.<sup>9</sup> Conscious and unconscious stereotypes about working women remain a factor in this unexplained gap. Another key driver of the wage gap is the overrepresentation of women in low-wage jobs, including minimum wage and sub-minimum wage positions, and underrepresentation in high-wage ones. Nearly two-thirds of minimum wage workers and tipped workers in the United States are women — and the minimum wage falls far short of what it takes to live above the poverty line.<sup>10</sup> Women also are concentrated in occupations

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<http://nwlc.org/resources/wage-gap-stagnant-nearly-decade/> [THE WAGE GAP IS STAGNANT].

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>*Id.* Lifetime wage gaps for women of color are significantly larger: African American women lose \$840,040, Native American women \$934,240; and Latinas \$1,043,800. Jasmine Tucker, “The Wage Gap Isn’t Just Sexist – It’s Racist Too,” NAT’L WOMEN’S LAW CTR., Oct. 6, 2016, available at <https://nwlc.org/blog/the-wage-gap-isnt-just-sexist-its-racist-too/>.

<sup>5</sup>*Id.*

<sup>6</sup>Blau, F. D. & Kahn, L.M, *The Gender Wage Gap: Extent, Trends and Explanations*, NAT’L BUREAU OF ECONOMIC RESEARCH (Jan. 2016), available at <http://www.nber.org/papers/w21913.pdf>; see NAT’L WOMEN’S LAW CTR., FIFTY YEARS AND COUNTING: THE UNFINISHED BUSINESS OF ACHIEVING FAIR PAY (2015), available at <http://nwlc.org/resources/50-years-counting-unfinished-business-achieving-fair-pay/>.

<sup>7</sup>Hegewisch, A. & Ellis, E., *The Gender Wage Gap by Occupation 2014 and by Race and Ethnicity*, INST. FOR WOMEN’S POLICY RESEARCH (Apr. 2015), available at <http://iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2014-and-by-race-and-ethnicity>; Schieder, S. & Gould, E., “Women’s work” and the gender pay gap 3, ECONOMIC POLICY INST. (July 2016), available at <http://www.epi.org/publication/womens-work-and-the-gender-pay-gap-how-discrimination-societal-norms-and-other-forces-affect-womens-occupational-choices-and-their-pay/>.

<sup>8</sup>NAT’L WOMEN’S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO (Sept. 2016), available at <http://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/>; Jena, A.B., et al., *Sex Differences in Physician Salary at U.S. Public Medical Schools*, 176 JAMA INTERN. MED. 1294 (2016), <http://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2532788>.

<sup>9</sup>Blau & Kahn, *supra* note 6.

<sup>10</sup>NAT’L WOMEN’S LAW CTR., RAISE THE WAGE: WOMEN FARE BETTER IN STATES WITH EQUAL TREATMENT FOR TIPPED WORKERS (Oct. 2016), available at <http://nwlc.org/resources/raise-the-wage-women-fare-better-in-states-with-equal-treatment-for-tipped-workers/>. Full-time earnings of \$14,500 at the federal minimum wage of \$7.25 leave a family of three thousands of dollars below the poverty line. NAT’L WOMEN’S LAW CTR., WOMEN AND THE MINIMUM WAGE: STATE BY STATE (Aug. 2016), available at <http://nwlc.org/resources/women-and-minimum-wage-state-state/>.

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that are female-dominated, such as child care workers, family caregivers, or servers, which pay low wages *simply because* women are the majority of workers in the occupation.<sup>11</sup>

Congress could take a few immediate and effective steps to ensure equal pay. Congress should introduce and pass the Paycheck Fairness Act, a commonsense solution that would help employees to uncover and challenge pay discrimination, prohibit retaliation against employees who discuss their salaries, improve remedies for employees who have been discriminated against, and ensure employers are provided with effective incentives to comply with the law. Efforts to close the wage gap would be strengthened further by providing that women should receive equal pay for “similar” work, which recognizes that women’s work is devalued just because women do it. Congress should introduce and pass a related bill, the Pay Equity for All Act, which would prevent prospective employers from asking applicants to disclose their prior salary; relying on a job applicant’s prior salary in hiring or setting pay perpetuates prior discrimination and compounds gender and racial wage gaps. Congress also should raise the federal minimum wage and ensure that tipped workers are entitled to the same minimum wage as everyone else, which would help close the wage gap and lift women and the families they support out of poverty.

Congressional action to increase wages, strengthen legal protections and improve enforcement to secure real progress on equal pay is more important than ever, given the nomination of Andrew Puzder, a millionaire fast-food CEO, to be the Secretary of Labor. Mr. Puzder would be responsible for directing the Department of Labor’s interpretation and enforcement of a number of laws vital to women’s economic security and right to be free from workplace discrimination. Yet he has consistently and publicly expressed hostility to these protections, including wage and hour provisions<sup>12</sup> in the Fair Labor Standards Act, the Family and Medical Leave Act, and executive orders prohibiting employment discrimination by federal contractors and setting labor standards for federal contractors’ employees, including protection of the right to earn paid sick days.<sup>13</sup> These policies are essential to closing the gender wage gap: they remove barriers to women’s employment opportunity, including sex discrimination; raise women’s wages; allow women to meet caregiving responsibilities without sacrificing their employment; and ensure women’s health and safety so they can

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<sup>11</sup>Philip N. Cohen, *Devaluing and Revaluing Women’s Work*, HUFFINGTON POST (April 3, 2010), available at [http://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w\\_b\\_444215.html](http://www.huffingtonpost.com/philip-n-cohen/devaluing-and-revaluing-w_b_444215.html). A study of more than 50 years of data revealed that when women moved into a field in large numbers, wages declined, even when controlling for experience, skills, education, race and region. Levanon, A., et al., *Occupational Feminization and Pay: Assessing Causal Dynamics Using 1950-2000 U.S. Census Data*, SOCIAL FORCES (Dec. 2009), available at <http://sf.oxfordjournals.org/content/88/2/865.short>.

<sup>12</sup>Mr. Puzder has consistently opposed raising the minimum wage, and opposes the current Department of Labor’s rule expanding eligibility for overtime pay, which would benefit an estimated 12.5 million modestly paid U.S. workers. See NAT’L WOMEN’S LAW CTR., ANDREW PUZDER’S RECORD: WHAT’S AT STAKE FOR WOMEN (Jan. 2017), available at <http://nwlc.org/resources/andrew-puzders-record-whats-at-stake-for-women/>.

<sup>13</sup>*Id.*

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continue to support their families. Given his record, Mr. Puzder cannot be trusted to pursue the best interests of working women.

We urge the Subcommittee to resist any efforts to undo the important progress on this issue. We call on the Subcommittee to take timely and effective action to close gender and racial wage gaps and ensure federal wage and hour laws address the reality and needs of our current workforce. Women can't afford to be shortchanged any longer, and neither can the millions of families who rely on women's income.

Sincerely,

A handwritten signature in blue ink, appearing to read "Emily Martin".

Emily Martin  
General Counsel & Vice President for Workplace Justice

A handwritten signature in blue ink, appearing to read "Maya Raghu".

Maya Raghu  
Senior Counsel & Director of Workplace Equality