



ACLU of New York

Legislative Affairs
One Whitehall Street
New York, NY 10004
212-607-3300
www.nyclu.org

2021 – 2022 Legislative Memorandum

Subject: Advancing pay equity by requiring employers to disclose compensation, or range of compensation, to applicants and employees – A.6529-A (Joyner)

Position: SUPPORT

Two decades into the 21st century, and more than 50 years after gender-based wage discrimination was outlawed in the United States,¹ the gender wage gap persists.² Beginning with the hiring process, women³ continue to face significant structural barriers to achieving equal pay for equal work. Other marginalized and intersectional groups including women of color, LGBTQ+ people, and women with disabilities, are especially vulnerable to pay inequities.

Pay secrecy - the longstanding employer practice of withholding critical information about compensation - is a known factor contributing to pay inequity.⁴ Without access to compensation information, many job applicants are forced to negotiate their own salaries and for women this is a serious risk. Because women are considered less likeable when they advocate for themselves, the act of negotiation negatively impacts hiring, promotion and compensation.⁵ And women of color are even more acutely affected by these harmful stereotypes.⁶

¹ The Equal Pay Act of 1963 prohibited gender-based wage discrimination. See U.S. EQUAL EMP. OPPORTUNITY COMM'N, *The Equal Pay Act of 1963*, <https://www.eeoc.gov/statutes/equal-pay-act-1963>.

² In 2020, women earned 84% of what men earned. See Amanda Borroso & Anna Brown, *Gender pay gap in U.S. held steady in 2020*, PEW RSCH. CTR. (May 25, 2021), <https://www.pewresearch.org/fact-tank/2021/05/25/gender-pay-gap-facts/>.

³ The use of the term “women” in this legislative memo is meant inclusively to capture all individuals who face pay disparities because of their identity as women.

⁴ See, e.g., *Private Sector Workers Lack Pay Transparency: Pay Secrecy May Reduce Women’s Bargaining Power and Contribute to Gender Wage Gap*, INST. FOR WOMEN’S POL’Y RSCH. (Dec. 10, 2017), <https://iwpr.org/iwpr-publications/quick-figure/private-sector-workers-lack-pay-transparency-pay-secrecy-may-reduce-womens-bargaining-power-and-contribute-to-gender-wage-gap/>.

⁵ See Tara S. Bernard, *Moving Past Gender Barriers to Negotiate a Raise*, N.Y. TIMES (Mar. 24, 2014), <https://www.nytimes.com/2014/03/25/your-money/moving-past-gender-barriers-to-negotiate-a-raise.html> (noting that employment discrimination can emerge when women advocate for themselves).

⁶ See, e.g., Chandelis R. Duster, *Leveling The Equal Pay Field: Negotiating While Black*, NBC NEWS (Apr. 4, 2017 10:28 AM), <https://www.nbcnews.com/news/nbcblk/leveling-equal-pay-field-negotiating-while-black-n742271>; *Counteracting Negotiation Biases Like Race and Gender in the Workplace*,

Further, when women do negotiate, they are disproportionately impaired by a history of discrimination and lower wages making negative negotiation outcomes more likely.⁷ In addition, pay secrecy allows employers to insert harmful gender stereotypes and unconscious biases into the salary-setting process unchecked, with men often assumed by employers to be more naturally competent or deserving than women.⁸ Moreover, when employers rely on applicants' salary histories to determine their compensation, they build upon years of compounded disparities and the pay gap only widens.

This year, women have been devastated by the economic turmoil fueled by the COVID-19 pandemic, resulting in the lowest women's labor force participation rate since 1988.⁹ Millions of women have left the workforce since its onset, due partly to our society's ongoing and outsized reliance on women as caretakers and the closure of child care centers and partly to the types of industries most affected by the pandemic.¹⁰ As women begin to return to the workforce, salary-setting practices that rely on applicants' prior wages, rather than on the skills that any given position requires, will only reinforce the disproportional harm that women have already suffered from the pandemic.

A.6529-A is an important step toward remedying gender-based pay disparities. It would require all private employers in New York to disclose compensation or compensation ranges upon issuing employment opportunities, and upon request by current employees. The bill would also prohibit employers from retaliating against workers who make such information requests.

Enacting A.6529-A would significantly lighten the burden on women to close their own pay gaps. By increasing transparency around salary practices, employees and potential employees will have the tools and bargaining power they need to confront systemic gender-based income disparities.

The bill would help employers too. Pay transparency has proven to help employers retain talent and build more trusting relationships with employees.¹¹ Many employers

HARVARD L. PROGRAM ON NEGOTIATION BLOG, <https://www.pon.harvard.edu/daily/leadership-skills-daily/counteracting-racial-and-gender-bias-in-job-negotiations-nb/>.

⁷ See, e.g., Benjamin Artz, Amanda Goodall & Andrew J. Oswald, *Research: Women Ask for Raises as Often as Men, but Are Less Likely to Get Them*, HARVARD BUS. REV. (June 25, 2018), <https://hbr.org/2018/06/research-women-ask-for-raises-as-often-as-men-but-are-less-likely-to-get-them>.

⁸ See, e.g., *Why Is It That Women Are Seen As Less Competent?*, FORBES (Apr. 14, 2021, 10:30 AM), <https://www.forbes.com/sites/85broads/2011/04/14/why-is-it-that-women-are-seen-as-less-competent/?sh=47132cfa394d>.

⁹ See Claire Ewing-Nelson, *Another 275,000 Women Left the Labor Force in January*, NAT'L WOMEN'S L. CTR. (Feb. 2021), <https://nwlc.org/wp-content/uploads/2021/02/January-Jobs-Day-FS.pdf>.

¹⁰ See Alexandra Kelley, *Women's labor force participation hits 33-year low*, THE HILL (Feb. 8, 2021), <https://thehill.com/changing-america/respect/equality/537884-womens-labor-force-participation-hits-33-year-low> (noting that "the sectors most affected by the pandemic-induced recession," including leisure, hospitality, retail, and child care, are "overrepresented by female employees").

¹¹ See, e.g., *2021 Compensation and Culture Report*, BEQOM (2021), <https://www.beqom.com/2021-culture-compensation-report-employee-attitudes-employer-responses-effective-rewards-strategy>; *2021*

who might elect for more transparent systems are hesitant to do so for fear of being placed at an economic disadvantage in relation to other employers who use opaque pay practices to underpay workers. By requiring all employers to disclose this information and develop a data-driven approach to compensation, A.6529-A would create more equitable hiring practices, resulting in positive effects on employee engagement, job satisfaction, and productivity.¹² Its passage would move New York one step closer towards closing the gender wage gap in the state for all women, ultimately uplifting the rights and dignities for New York's workforce.

For the above reasons, the NYCLU urges lawmakers to support and pass A.6529-A.

Compensation Best Practices Report, Payscale (2021), <https://www.beqom.com/2021-culture-compensation-report-employee-attitudes-employer-responses-effective-rewards-strategy>.

¹² See *Does Pay Transparency Close the Gender Gap?*, Payscale (2020), <https://www.payscale.com/data/pay-transparency>.