# A REPORT OF THE

# VIRGINIA COMMISSION ON THE STATUS OF WOMEN

# ON PAY EQUITY

# TO

# THE GOVERNOR

# AND

# THE GENERAL ASSEMBLY OF VIRGINIA


**HOUSE DOCUMENT NO. 5**

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**1984**

# COMMONWEALTH of VIRGINIA

*Commission on the Status of Women*

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November 15, 1983

TO: The Honorable Charles S. Robb, Governor
Commonwealth of Virginia
State Capitol

Members of the General Assembly
Commonwealth of Virginia
State Capitol

FROM: Jane H. Hopkins, Chairperson
Virginia Commission on the Status of Women

Attached please find the Commission's report on pay equity developed and herewith submitted pursuant to House Joint Resolution 86, enacted in the 1983 Session of the General Assembly.

cc: The Honorable Charles S. Robb
Clerk, House of Delegates
Clerk, Senate

ACKNOWLEDGEMENTS

A study of this nature, undertaken with virtually no financial support, would not have been possible without the help of a great number of people.

Susan Crow patiently typed all our changes and revisions and dealt with our sometimes unreasonable timeframes; Jere Kittle designed many of the charts; the Pay Equity Advisory Committee generously gave time and expertise, often at personal sacrifice.

Tremendous gratitude is also extended to the following individuals for their contributions to the effort: the Pay Equity Subcommittee, particularly Anna Dees; Lyn Oliver; Jane Hopkins; Virginia Martin; Jordon Goldman; Edith Barnett; Dr. Joseph Fisher; Secretary Wayne Anderson; Stuart Connock; Gordon Davies; Gerald Baliles; Regina Williams; and David McCloud.

Finally, the Commission is indebted to Leonard Hopkins, who provided his best legal advice.

To all of you listed above, and everyone else who contributed, thank you.

Maya Hasegawa, Chair
Pay Equity Subcommittee

# EXECUTIVE SUMMARY

The study of pay equity, completed by the Virginia Commission on the Status of Women, has found that:

1. There is an earnings gap between men and women, with full-time working women earning, on the average, 62 cents for every dollar earned by full-time working men.

2. This earnings gap is caused by a number of factors, including the segregation of half of women workers into 20 of 427 occupations. These 20 occupational groups generally have lower paying salaries than the occupations in which men predominate.

3. Occupational segregation is leading to the "feminization of poverty." It has been projected that if the proportion of the poor who are in female-headed households continues to increase at the present rate, by the year 2000 only women and children will live below the poverty line.

4. The federal Equal Pay Act has successfully eliminated most of the differences in pay between men and women in identical jobs, but has not been able to address the problems of occupational segregation and the undervaluing of women's jobs.

5. Virginia's (and other states') equal pay policies have also been unsuccessful in addressing the problems of the earnings gap between males and females.

6. Many organizations, from private companies to state and local governments, are moving toward study and implementation of pay equity policies.

7. Pay equity is a concept which has come to encompass both equal pay for identical work and equal pay for work requiring comparable skill, effort and responsibility.

The Commission has concluded that eradicating extant sex-based wage discrimination requires a threefold approach. First, women and men must be paid equally for identical work. Second, women must be assured access into non-traditional jobs, including managerial and other traditionally male positions. Third, and the approach that would affect the most women in accomplishing pay equity, is that women and men must be paid equally for work requiring comparable skill, effort, and responsibility -- work of comparable value. The first two steps both have a place in federal and state law, and have enhanced women's opportunities for equity in important

ways. The third step, however, is essential to women's attainment of economic equality, and pay equity.

The Commission thus recommends that the Commonwealth make a decisive commitment to the principle of equal pay for comparable worth and take steps necessary to achieve pay equity. As initial steps toward that goal, the Commission requests that:

1. The Governor appoint a task force to study and make recommendations for: 1) a specific pay equity policy for the Commonwealth; 2) models for correcting wage inequities in local governments; and 3) ways in which the private sector can implement the Commonwealth's pay equity commitment; and

2. The General Assembly authorize the Commission to conduct a second phase of its pay equity study. The second phase would consist of compiling data and information of a technical nature on job evaluation, classification, and compensation systems, with the goal of developing a plan to implement pay equity within state government.

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# PREFACE

Recognizing that economic equity is essential to women's equal status in society, the 1983 legislative session of the General Assembly requested the Virginia Commission on the Status of Women to study the subject of equal pay for equal work for women in Virginia. The Commission was empowered to make recommendations to the Governor and General Assembly for improving the status of women as wage earners and as citizens.

In directing this study, the General Assembly joined some 85 state and local initiatives that have taken action on this issue, which has been called the most important issue of our time. Equal pay for equal work has been established by law since 1963, but today, equal pay for equal work means not only equal pay for identical work but equal pay for comparable work or work of comparable value. Pay equity and its companion term, comparable worth, have come to embrace the notion and dictates of fairness in the workplace. Simply stated, pay equity involves setting equivalent wage and salary scales for jobs of comparable value to an employer or to society as a whole, considering the relative skill, effort, responsibility and working conditions involved. Pay equity has become a social, economic, and political issue, seeking to correct the practice of paying less for "women's work," work typically performed in the labor market by women or jobs dominated by women.

With the restrictions of a six-month time frame and no funding for this study, the Commission had to limit its scope and design. Thus, a comprehensive pilot study analyzing the actual earnings discrepancies between men and women in any employment sector or classification in Virginia was not feasible.

The objectives of this report are to present a systematic and comprehensive examination of pay equity and to offer appropriate recommendations to the Commonwealth's policy makers for embracing pay equity as a public policy. The report defines an economic problem -- the earnings gap between men and women -- and explores the scope and underlying causes of this problem. Relevant laws are reviewed. Various approaches that have been taken to solve the problem are described, as are difficulties encountered in implementing pay equity programs. Our recommendations call for a course of action for determining where and to what extent pay inequities exist in Virginia and finding remedies for any wage disparities that are discovered.

It is the Commission's hope that the policy makers and citizens who read this report will find it informative. It is meant to be a first step toward achieving pay equity for all persons who work in the Commonwealth, regardless of their sex, thereby improving the economic status of women in Virginia. Assuring pay equity will require cooperative study, planning and action by the government, business, labor and women's leaders in our Commonwealth. The Commission looks forward to commencing those deliberations and to working with all interests in going forward with our recommendations. Finally, the Commission would like to thank the General Assembly for the opportunity to begin to examine what has appropriately been called the leading women's issue of the decade.

Jane H. Hopkins
Chairperson
Virginia Commission on the Status of Women

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Maya Hasegawa, Chair
Pay Equity Subcommittee

# I. INTRODUCTION

> For every first woman construction worker, there are thousands of secretaries. For every first woman electrician and first left-handed, blue-eyed female bus driver, there are hundreds more working on a line with other women like them. In fact, 80 percent of the women in the country work in 25 job categories and those are overwhelmingly "women's jobs."
>
> And so, those who want to improve women's lives by improving their paychecks, those who are looking for equity, have begun shifting their emphasis. They are less ardent about trying to urge women out of the jobs they hold -- and often like -- and more concerned with getting women's jobs reevaluated according to their "real worth."[1]

In Montgomery County, Maryland, a liquor clerk with a high school diploma and two years experience earned $12,479 a year in 1979. In the same county, a school teacher with a bachelor's degree and the same experience earned $12,323 a year. Almost all of the county's liquor clerks were men while almost two-thirds of the teachers were women.[2]

The situation is but one of a multitude of examples of the earnings gap problem. Twenty years after passage of the Equal Pay Act and amendment of the Civil Rights Act to prohibit sex discrimination in wages, the fully-employed woman in this country earns on the average a third less than the fully-employed man.

The objective of this study is to examine the pay equity issue, which is inextricably related to the earnings gap problem that exists between men and women in the work force. In its 1983 Session, the General Assembly of the Commonwealth of Virginia, responding to growing public concern about women's continuing inability to reach earnings parity with comparably employed men, passed a resolution instructing the Virginia Commission on the Status of Women to study the subject of equal pay for equal work for women in Virginia. The Commission was further charged to make recommendations to the Governor and General Assembly for improving the status of women as wage earners and citizens.

In directing that this study be undertaken, the General Assembly joined some 85

state and local initiatives on pay equity, an issue which has been called the most important issue of our time. Although equal pay for equal work has been established by law since 1963, the term pay equity has come to mean not only equal pay for identical work, but equal pay for comparable work or work of comparable value. Pay equity and its companion term, comparable worth, have come to embrace the notion and dictates of fairness in the workplace. Simply stated, pay equity involves setting equivalent wage and salary scales for jobs requiring comparable skill, effort, responsibilities, and working conditions. Pay equity has become a social, economic, and political issue, seeking to correct the practice of paying less for "women's work," work typically performed in the labor market by women or in jobs dominated by women.

The Commission approached its assignment by undertaking a systematic and comprehensive review of the literature on the subject of pay equity, a policy which seeks to remedy the earnings gap problem. The questions to which answers were sought were:

1. What are the dimensions of the wage gap between male and female workers?
2. What are the economic consequences of the wage gap between male and female workers?
3. What are the underlying causes of the wage gap?
4. What statutes affect women's compensation?
5. What is being done to advance pay equity and who is doing it?
6. What problems arise in pay equity implementation?
7. What action can be taken to assure equitable pay to women in Virginia?

Obviously, the scope and methodology of the Commission's research was limited by time and funding constraints. The research was to be completed within six months of its inception and no funding accompanied the request for the study. The review of the literature was limited to generally available publications and electronically-accessible legal data bases. Pay equity studies completed by other states and two recent and

comprehensive studies made by the National Academy of Sciences and the University of Michigan's Institute for Social Research were heavily relied upon. Newspapers and business periodicals provided background and perspective on the issue.

The data on the economic status of women in Virginia based on the 1980 Census were unavailable at the time the study was completed. These data will be analyzed and presented as a separate Commission publication at a later date.

## II. OVERVIEW OF THE EARNINGS GAP PROBLEM

### The Earnings Gap Is a Root Cause of Poverty

One of America's most persistent and pervasive economic problems is the earnings gap between male and female workers. In 1955, for every dollar men earned, on the average women earned 64 cents; by 1979 the gap had widened to 59 cents on the dollar[3] (see Table 1, page 4A). By 1982, the gap had narrowed somewhat, to 62 cents. For full-time work, one-half of all men earn more than $15,000 a year, while ninety percent of all women working outside the home earn less than $15,000. The wage gap is even broader for black women. According to figures furnished by the Women's Bureau of the U.S. Department of Labor in 1982, the average full-time working woman earns $9,350 per year, while annual wages for black women are $8,837.

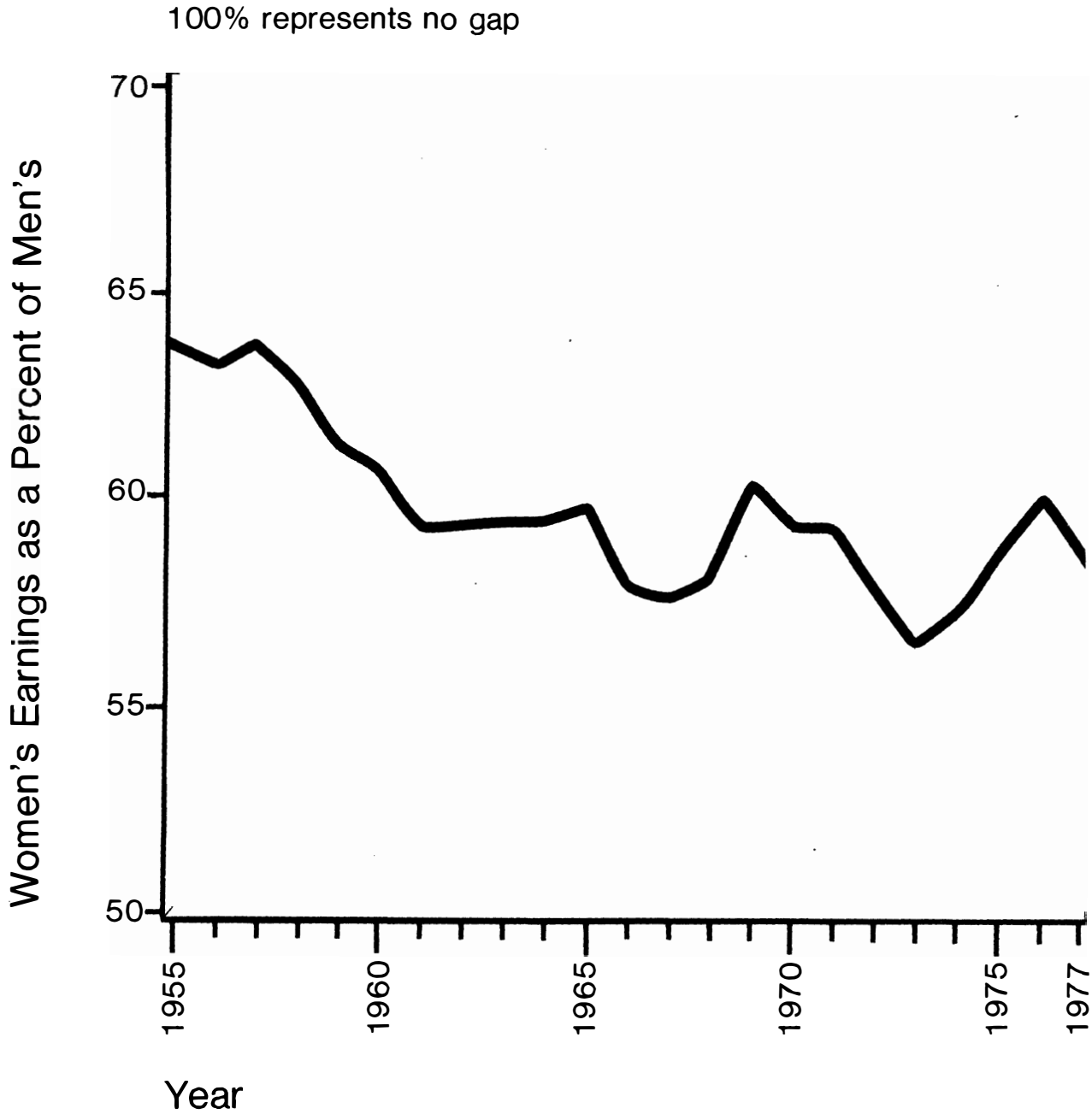
And the future does not bode improvement in the wage gap for women in or entering the labor force. It is projected that fully-employed female high school graduates will earn, on the average, less than fully-employed males who have not completed elementary school.[4] In 1981, women with four or more years of college education had incomes comparable to men who had only one to three years of high school. When employed full-time, female high school graduates (no college) averaged about the same income as fully employed men who had not completed elementary school - $12,332 and $12,866, respectively. Table 2 contrasts the earnings expectations of men and women of comparable education.

TABLE 2: CONTRASTING EARNINGS EXPECTATIONS OF MEN AND WOMEN OF COMPARABLE EDUCATION

| Education | Median Annual Earnings | |
|---|---|---|
| | Women | Men |
| Completed less than 8 years of school | $7,425 | $11,034 |
| Completed 8 years of school | 7,766 | 14,475 |
| Completed 1-3 years of high school | 8,552 | 15,205 |
| Completed 4 years of high school | 10,506 | 18,111 |
| Completed 1-3 years of college | 11,861 | 19,376 |
| Completed 4 years of college | 13,430 | 22,388 |
| Completed 5 years of college or more | 16,694 | 25,858 |

Source: National Commission on Working Women, Center for Women and Work, Washington, D.C.

# WAGE GAP




Source: U.S. Department of Commerce, Bureau of the Census

Table 1

Consider the following demographic evidence of the relationship between the wage gap and poverty.

- Approximately one in every three female-headed households lives in poverty*; contrasted to one in every 18 male-headed households. 75% of all Americans living in poverty are women.[5]

- It takes an annual income of $25,847 to maintain a family of four at an intermediate standard of living, well above the average income of less than $15,000 of 90% of the female work force.[6]

- Minority women are most likely to work in the lowest paying of all women's occupations and also experience the most extreme poverty. 30.7% of black women lived below the poverty level in 1978.[7]

- Slightly more than one-half of the female population--about 47 million women--is in the labor force. Of black women, approximately 53% are represented.[8]

- There has been a dramatic increase in labor force participiparticipation between 1965 and 1978 among women in all categories of marital status: the rate of single women entering the labor force has increased from 41% to 61%; widowed, divorced or separated women have increased in participation from 35% to 43%; and married women, from 39% to 48%. Women accounted for 60% of the increase in the civilian labor force between 1970 and 1980.[9]

- Married women, regardless of the ages of their children, have increased their participation in the labor force.[10]

- The average American family with only the husband working has lost 6.9% in real earnings; that is, adjusted for inflation, the average family's income decreased by almost 7% from 1979 to 1980.[11]

- Female-headed families comprise 15% of all families but constitute 48% of poor families. The percentage for poor black families headed by women was double that for white female-headed families.[12]*

*In 1981, the official poverty level was $9,287 for a family of four.

*Note: It should be noted that women in the labor force does not account for all working women. Not counted as in the labor force are: 1) discouraged workers - defined as being out of but not actively seeking a job; 2) workers in the subterranean economy - legal economic activity such as babysitting and childcare and waitresses who do not report income or portions of income, and illegal activity - those engaged in prostitution, drugs or gambling; and 3) women whose work is unpaid, such as housework and child raising.

A number of important conclusions follow from the information presented above. First, the earnings gap between working men and working women is not diminishing and has stayed relatively constant since 1930. This situation exists despite the influx of women into traditionally male-dominated jobs and the passage of legislation requiring equal pay for equal work and non-discrimination in employment. A 1981 study by the U.S. Department of Labor analyzed the weekly earnings of full-time working men and women in 100 occupations, finding, without exception, a substantial earnings gap. For example, the Department of Labor found women to earn the following percentages of their male counterparts, as follows:

| Occupation | Women's earnings as percent of men's |
|---|---|
| Bookkeeper | 69.4% |
| Clerical worker | 68.3% |
| Computer programmer | 73.6% |
| Cook | 73.4% |
| Freight handler | 78.0% |
| Lawyer | 71.0% |
| Office Manager | 65.5% |
| Social worker | 79.9% |

Second, the economic consequences of the earnings gap is increasing as larger numbers of single, married, widowed, divorced and separated women work outside the home. It is projected that sixty-five percent of women will be in the labor force by 1995.[13]

Third, poverty has become a women's issue. The number of female-headed households is increasing and so is the incidence of poverty in these households, in direct proportion. The number of female-headed households in Virginia increased from over 130,000 in 1970 to almost 200,000 by 1980, according to a report by the Tayloe Murphy Institute at the University of Virginia (see Appendix D). The implications of

allowing deep-seated wage inequities to continue are ominous. The National Advisory Council on Economic Opportunity has revealed that if the proportion of the poor who are in female-headed families continues to increase at its present rate, by the year 2000 only women and their children will be living below the poverty line. Yet a 1977 study made by the U.S. Department of Labor concluded that if wives and female heads-of-household were paid the same wages as similarly qualified men, about half of the families living in poverty would no longer be poor.

## Occupational Segregation and Wage Discrimination Are Root Causes of the Earnings Gap

The entry of women into non-traditional jobs, while certainly an important stride, tends to detract social attention from the existing and persistent earnings gap between men and women. Most women - more than one-half of the working women - are segregated in 20 of a possible 427 occupations.[14] Thus, observes the New York Assembly's Task force on Women's Issues, . . . "achieving total equality of job placement is, in reality, an impossibility: two-thirds of all women would have to change jobs."[15] Moreover, the "feminization" of certain jobs in recent years, such as insurance adjustors and real estate agents, has actually resulted in depressing salaries in these jobs. A New York Times article explains this phenomenon as follows:

> There is quite a lot of evidence, both researched and anecdotal, showing that when women enter any job category or profession in droves, that occupation loses status. Men don't want it anymore, and the salaries become lower. It happened to bank tellers in recent years, when women took that job over, and it happened a century ago when the male clerk was replaced by the female secretary.[16]

It is agreed by all that there is an earnings gap between working men and women. It is also beyond debate that the preponderance of working women are concentrated in lower paying, female-dominated jobs. Two authoritative and thorough studies which examined and sought to explain this earnings gap have been conducted and recently

published. Neither study was able to explain more than one-half of the earnings gap. In other words, a man can expect to earn at least 29.5 cents more than a woman of comparable age, education, skills, work experience, and other measurable characteristics. Further, both studies attributed at least one-half of the current earnings gap to the antiquated but persistent belief that a woman's place is in the home and not the workplace.

The National Academy of Sciences concluded in its study measuring the comparability of jobs:

> The evidence suggests . . . that only a small part of the earnings differences between men and women can be accounted for by differences in education, labor force experience, labor force commitment, or other human capital factors believed to contribute to productivity differences among workers.[17]

The report, considered the most authoritative study to date, continued as follows:

> . . . several types of evidence support our judgement that . . . jobs held mainly by women and minorities pay less at least in part <u>because</u> they are held mainly by women and minorities.[18] (Emphasis added)

Further, the Academy observed that the heretofore (pre-Civil Rights Act of 1964) <u>acceptable</u> practice and tradition in our society of paying women and minorities less is the foundation upon which today's allegedly rational and unbiased wage structures are built.[19] In short, current wage inequities are, in part, the result of the historical and now unlawful discrimination of women in the workplace. The practice of discrimination determined the market rates.

Researchers at the Institute for Social Research (ISR) of the University of Michigan conducted an extensive study of changes in the economic status of more than 5,000 families since 1968. They used a long-term research technique in an attempt to determine whether rational explanations could be found to explain the earnings gap between men and women. They took into account personal characteristics such as age, sex, race, education, attitudes, occupation and work experience, and life events which

could affect earning potential, such as changes in the family composition through marriage, divorce, death, or the addition of new or the departure of older children, illness, disability, or involuntary unemployment. Considering all conceivable characteristics, the researchers found some significant differences in accumulated experience and job skills between men and women. Taken together, however, these differences accounted for only a third of the existing wage gap. The remaining two-thirds of the wage gap between men and women, all factors besides sex being the same or comparable, are attributable to:

1) The socialization of females in American society which leads them to make career or job choices which are traditionally "feminine;" and
2) Institutionalized sex discrimination in the labor market which may obstruct women's access to higher pay jobs through hiring and promotion practices, or may simply permit paying women less than men in any job.[20]

By way of remedy, the researchers called for public policies which are designed to:

> attack discrimination directly by enforcing strict guidelines to ensure that equally qualified women and men receive equal treatment in hiring, pay and promotion.[21]

The costs, financial and other, of not doing so, they concluded, would be greater in the long run than finding ways now to achieve such equity. IRS researchers forecast that:

> . . . in the long run, the costs of tolerating the undeserved pay gap between men and women may also be great. Keeping women underemployed relative to their skills and abilities results in reduced productivity and substantial economic costs that arise when a persistently motivated group begins to question both the credibility of society's widely endorsed goal of equal opportunity and the legitimacy of the economic system that sets the labor market rules.[22]

The National Conference on State Legislatures (NCSL) reached the same conclusion for even more pragmatic reasons. Noting that the major share of

means-tested entitlement programs goes to single-parent households headed by females and that the cost of these programs is borne one hundred percent by taxpayers, the NCSL concluded that the additional financial support which equitable salaries provide would significantly reduce federal and state taxpayer costs for cash assistance and in-kind service programs.[23]

## III. WAGE DISCRIMINATION STATUTES

The impetus for correcting wage inequalities grew strong in the decade of the 1950s. Equal pay for equal work was the first major public policy articulated. At the national level, the equal pay for equal work movement of the 1960s resulted in the enactment of the Equal Pay Act of 1963,[24] Title VII of the Civil Rights Act of 1964,[25] and amendment of Executive Order 11246[26] in 1968 to include sex discrimination. Numerous state governments, including the Commonwealth of Virginia, have also enacted equal pay laws.

Federal Equal Pay Policies Have Not Closed the Wage Gap

1. The Equal Pay Act was passed by Congress in 1963, amending the Fair Labor Standards Act of 1938 to prohibit unequal pay for women and men who work in the same establishment and whose jobs require equal skill, effort and responsibility. Pay differences based on a bonafide seniority or merit system or on a system that measures earnings by quantity or quality of production are permissible. Employers were not permitted to reduce the wage rate of any employee in order to eliminate illegal wage differences. The law is interpreted as applying to all forms of compensation, including overtime, uniforms, travel and other fringe benefits. In addition to covering employees subject to the minimum wage requirements of the Fair Labor Standards Act, the Equal Pay Act of 1963 applies to federal, state and local government employees; executive, administrative, and professional employees and outside salespeople.

Between 1964 and 1970, the U.S. Department of Labor, the initial enforcement agency for the Equal Pay Act, tried fifteen equal pay cases and won four. This poor record was attributable in part to the courts' interpretations of the term, "equal." The question became: how equal must jobs be to be covered by the terms of the Equal Pay Act?

In Schulz v. Wheaton Glass Company, the Third Circuit Court of Appeals held that all jobs must be "substantially equal" to meet the requirements of the Equal Pay

Act.[27] The U.S. Supreme Court declined to review the decision of the lower court; thus, while the Equal Pay Act was expanded, the Act still cannot reach occupational segregation, wage discrimination, and the wage gap which results.

2. Title VII of the Civil Rights Act of 1964: Title VII prohibits discrimination by sex covering many types of employment situations. Because it includes a ban on wage discrimination on the basis of sex, it is broader than the Equal Pay Act and possibly provides the legal base for equal pay for work of comparable value.

At the time this bill was being debated in Congress, the Bennett Amendment was added, setting the stage for considerable controversy in the future regarding pay equity. The Bennett Amendment partially incorporated the Equal Pay Act into the Title VII legislation as follows:

> It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)), i.e., the Equal Pay Act.[28]

The intent of the Amendment remained a topic of debate until the recent Gunther decision. One interpretation of the Amendment had been that for a claim of pay discrimination against women to be established, the jobs being compared had to meet an Equal Pay Act test of similarity of content. Another interpretation was that the Amendment intended to incorporate into Title VII only the defenses available for an employer under the Equal Pay Act, i.e., seniority, merit, quantity or quality of production, or differences in any factor other than sex.[29] In County of Washington et. al. v. Gunther et. al., in June, 1981, the U.S. Supreme Court held that

> [T]he Bennett Amendment does not restrict Title VII's prohibition of sex-based wage discrimination to claims for equal pay for 'equal work'. Rather, claims for sex-based wage discrimination can also be brought under Title VII even though no member of the opposite sex holds an equal but higher paying job, provided that the challenged wage rate is not exempted under the Equal Pay Act's affirmative defenses . . .[30]

Thus, the Supreme Court has ruled that the Bennett Amendment does not preclude pay discrimination claims from being brought under Title VII by employees in completely sex-segregated jobs, even where jobs are different in content. The Court thereby opened the door to certain claims of sex discrimination in jobs of different content being brought under Title VII of the Civil Rights Act.

Title VII was also the basis for the recent ruling by Judge Tanner in AFSME (AFL-CIO) v The State of Washington. The ruling, which found "overt and institutional discrimination," is one of the most significant compensation case decisions since the Supreme Court's ruling in Gunther. Judge Tanner's decision was delivered orally from the bench in September, 1983. His written decision will be studied closely for signs which may indicate the future direction of pay equity. In addition, attorneys for the State of Washington have indicated they will appeal the decision.

3. Executive Order 11246, which was amended in 1968 to include sex discrimination, prohibits discrimination by federal contractors. The Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor enforces this Executive Order. (The Equal Pay Act and the Civil Rights Act are enforced by the Equal Employment Opportunity Commission.) OFCCP took the view that this executive order does reach differences in pay for work of comparable value. Employers are specifically prohibited by implementing regulations under the order from making any distinctions based upon sex in employment opportunities, wages, hours, or any other conditions of employment. Proposed amendments to the regulations to clarify what constitutes wage discrimination were published December 28, 1979. Final regulations have not yet been issued.

Federal restrictions prohibiting sex discrimination in employment have succeeded in giving a few women access to jobs previously reserved for men and usually have assured equal pay to women who perform the same work as men. These federal policies, however, have had no discernible impact on the wage gap in the marketplace because

this wage gap has resulted primarily from occupational segregation. For this reason, a number of states have recently expressed their own commitment to the achievement of pay equity by enacting new equal pay for work of comparable value laws or amending existing equal pay for equal work laws to include the comparable worth concept.

Most States' Equal Pay Policies Fall Short of Achieving Equity

Laws providing for equal pay for equal work currently are in place in most states. Chart 1, presented on the following pages, describes in detail the types of equal pay and other pay equity policies in each of the fifty states. Fifteen of thirty-nine states' equal pay laws have a comparable worth standard. Forty-one states have fair employment practices laws which broadly prohibit discrimination on the basis of sex. These laws are summarized in Chart 2. Many of these laws are weak from a pay equity perspective because they lack enforcement provisions and/or any defined method for comparing dissimilar jobs.

# State Equal Pay Statutes

This chart indicates which state codes contain provisions concerning equal pay for women, and among those codes some of the major elements. Below is an explanation of each element included on the chart.

**Equal pay provision-(●)** State statute mandates that women who perform work equal to men be paid at the same rate as men. Date of statute or most recent amendment is indicated.
(○) Statute prohibits discrimination on the basis of sex.

**Enforcement provision-(●)** State statute has provision which explains equal pay enforcement procedure.

**Statute of limitations-(●)** Statute of limitations, where indicated in state statute.

**Sanctions-(●)** Penalty for employer who violates equal pay provision.

**Damages-(●)** Employee may recover compensatory and punitive damages, and attorney's fees. Partial damages are indicated

**State will bring action-(●)** At request of complaining employee, state will bring action against employer. Department which will bring action is indicated.

**Posting required-(●)** Employer must post abstract of equal pay provision in a conspicuous place.

**Record keeping required-(●)** Employer must keep records of wages and wage rates of employees.

**Comparable worth statute-(●)** State statute mandates equal pay between male dominated and female dominated job classes in state employment. Effective date of statute is indicated.

| State | Equal Pay Provision | Enforcement Provision | Statute of Limitations | Sanctions | Damages | State will bring action | Posting Required | Record Keeping Required | Comparable Worth Statute |
|---|---|---|---|---|---|---|---|---|---|
| AL | | | | | | | | | |
| AK | ● 1974 | | | ● misdemeanor $500/30 days | ● | ● Dept. of Labor | | ● | |
| AZ | ● 1973 | ● | ● 6 months | | ● compensatory | ● Industrial Commission | | | |
| AR | ● 1977 | ● | ● 2 years | ● up to $500/1 yr. | ● | ● Dept. of Labor | | ● | |
| CA | ● 1983 | ● | ● 2 years | ● at least $50/30 days | ● | ● Div. of Labor Standards Enforcement | | ● | ● 1982 |
| CO | ● 1963 | ● | ● 1 year | | ● compensatory & punitive | ● Division of Labor | | | |
| CT | ● 1979 | ● | ● 1 year | ● up to $100 | ● comp. and attorneys fees | ● Labor Commission | | | |
| DE | ○ 1979 | | | | | | | | |
| DC | ○ 1977 | | | | | | | | |

| State | Equal Pay Provision | Enforcement Provision | Statute of Limitations | Sanctions | Damages | State will bring action | Posting Required | Record Keeping Required | Comparable Worth Statute |
|---|---|---|---|---|---|---|---|---|---|
| FL | ● 1969 | | ● 6 months | | ● | | | | |
| GA | ● 1966 10 or more employees | ● | ● 1 year | ● up to $100 | ● comp. and attorneys fees | | ● | | |
| HI | ○ 1972 | | | | | | | | |
| ID | ● 1982 | ● | | | ● | ● Human Rights Commission | | | |
| IL | ● 1973 6 or more employees | | ● 6 months | ● $25-$100 | | | | | |
| IN | ● 1969 4 or more employees | | | | | | | | |
| IA | ○ 1978 4 or more employees | | | | | | | | |
| KS | ● 1978 | ● | | ● $250-$1,000 | ● comp. and attorneys fees | | | ● | |
| KY | ● 1980 | ● | ● 6 months | ● at least $500/6 mo. | ● | ● Commission of Labor | ● | | |
| LA | | | | | | | | | |
| ME | ● 1965 | | | ● up to $200 | | | | | |
| MD | ● 1979 | ● | ● 3 years | ● $50-$300 | ● | ● Commission of Labor and Industry | ● | ● | |
| MA | ● 1972 | ● | ● 1 year | ● up to $100 | ● | ● Commission of Labor and Industry | | | |
| MI | ● 1979 | ● | ● 3 years | ● misdemeanor | ● | ● Dept. of Labor | | | |
| MN | ● 1974 | | | ● misdemeanor | ● | | | | ● 1982 |
| MS | | | | | | | | | |
| MO | ● 1963 | ● | ● 6 months | | ● compensatory | | | | |

| State | Equal Pay Provision | Enforcement Provision | Statute of Limitations | Sanctions | Damages | State will bring action | Posting Required | Record Keeping Required | Comparable Worth Statute |
|---|---|---|---|---|---|---|---|---|---|
| MT | ● 1979 | | | ● misdemeanor $25-$500 | | | | | |
| NE | ● 1969 | ● | ● 4 years | ● misdemeanor up to $100/30 days | ● | ● Equal Opportunity Commission | ● | ● | |
| NV | ● 1975 | | | | | | | | |
| NH | ● 1947 | ● | ● 1 year | ● up to $200/6 mo. | ● compensatory & punitive | ● Labor Commission | | | |
| NJ | ● 1952 | ● | | ● $50-$200 10-90 days | ● | ● Commission of Labor and Industry | | | |
| NM | ○ 1975 | | | | | | | | |
| NY | ● 1981 | ● | ● 6 years | ● $50 | ● | ● Commission of Human Rights | | ● | |
| NC | | | | | | | | | |
| ND | ● 1975 | ● | ● 2 years | ● class B misdemeanor | ● | ● Commission of Labor | ● | ● | |
| OH | ● 1975 | ● | ● 1 year | ● up to $100 | ● comp. and attorneys fees | ● Dept. of Industrial Relations | | | |
| OK | ● 1965 | ● | | ● misdemeanor $25-$100 | | ● Commission of Labor | | | |
| OR | ● 1975 | | | | ● | | | | |
| PA | ● 1968 | ● | ● 2 years | ● $50-$200/ 30-60 days | ● | ● Commission of Labor and Industry | ● | ● | |
| RI | ● 1956 | ● | | ● up to $200/60 days | ● compensatory & punitive | ● Dept. of Labor | | | |
| SC | ○ 1979 | | | | | | | | |
| SD | ● 1978 | | ● 2 years | | ● comp. and attorneys fees | | | ● 25 or more employees | |
| TN | ● 1979 | ● | ● 2 years | ● up to $300/6 mo. | ● | ● Commission of Labor | | | |

| State | Equal Pay Provision | Enforcement Provision | Statute of Limitations | Sanctions | Damages | State will bring action | Posting Required | Record Keeping Required | Comparable Worth Statute |
|---|---|---|---|---|---|---|---|---|---|
| TX | ● Public Employees Only | | | | | | | | |
| UT | ● 1979 | | | | | | | | |
| VT | | | | | | | | | |
| VA | ● 1974 | | ● 2 years | | ● compensatory | | | | |
| WA | ● 1943 | | | ● misdemeanor $25-$100 | ● compensatory | | | | |
| WV | ● 1965 | | | ● misdemeanor $25-$100 | ● | | | | |
| WI | ○ 1945 | | | | | | | | |
| WY | ● 1959 | ● | ● 2 years | ● at least $25-$200 10-180 days | ● compensatory & punitive | ● Labor Commission | | ● | |
| **TOTALS** | **39** equal pay/ equal work<br>**7** no discrimination because of sex | **26** | **25** | **26** | **31** | **23** | **7** | **11** | **2** |

CHART 2

SELECTED CHARACTERISTICS OF STATE
FAIR EMPLOYMENT PRACTICE (FEP) LAWS

| State[1] | Specific Language on Compensation | Specific Language on Classification and/or Segregation | Specific Language on Comparable Worth |
|---|---|---|---|
| Alabama[2] | | | |
| Alaska[3] | x | | x |
| Arizona | x | x | |
| Arkansas | | | |
| California | | | |
| Colorado | x | | |
| Connecticut | x | x | |
| Delaware | x | x | |
| Florida | x | x | |
| Georgia | x | x | |
| Hawaii | x | x | |
| Idaho | x | x | |
| Illinois | | x | |
| Indiana | | | |
| Iowa | | x | |
| Kansas | x | x | |
| Kentucky | x | x | |
| Louisiana[4] | | | |
| Maine | x | | |
| Maryland | x | x | |
| Massachusetts[3] | x | | |

| | | | |
|---|---|---|---|
| Michigan[5] | x | x | |
| Minnesota | x | x | |
| Mississippi | | | |
| Missouri[6] | x | x | 6 |
| Montana | x | | |
| Nebraska | x | x | |
| Nevada | x | x | |
| New Hampshire | x | | |
| New Jersey | x | | |
| New Mexico | x | | |
| New York | x | | |
| North Carolina | | | |
| North Dakota | x | | |
| Ohio | | | |
| Oklahoma | x | | |
| Oregon[5] | x | | |
| Pennsylvania | x | | |
| Rhode Island | x | x | |
| South Carolina | x | x | |
| South Dakota | | | |
| Tennessee | x | x | |
| Texas | | | |
| Utah[7] | | | 7 |
| Vermont | | | |
| Virginia | | | |
| Washington | | x | |
| West Virginia | x | | |

| | |
|---|---|
| Wisconsin | x |
| Wyoming | x |

Chart 2: Notes

1. All FEP laws include private and public sector employment except for Georgia, Texas, and North Carolina, which only include public sector.

2. Alabama has no FEP law, but in 1976, 1978, 1979, 1980, and 1982, the state budget bill has included a clause forbidding discrimination based on race or sex in state employment. (BNA FEP Manual 453:1.)

3. Alaska's law is the only FEP law which presently includes "comparable" work pay disparities as a specifically enumerated discriminatory employment practice.

4. In 1981, an FEP bill was introduced in the Louisiana legislature but died during the legislative session.

5. Bills were introduced in Michigan in 1979 and 1981, and in Oregon in 1981, which would specifically prohibit comparable worth pay disparities under existing FEP laws. Both bills died during the legislative session.

6. Guidelines to Missouri's FEP Act provide that "wage schedules . . . must not be related to or based on sex of employees."

7. Utah's FEP law specifically defines "discrimination in matters of compensation" as "the payment of differing wages or salaries to employees having substantially equal experience, responsibilities and competency for the particular job."

Source: Virginia Dean, Margaret Klaw, Joy Ann Grune, and Susan Bluer. State and Local Government Action on Pay Equity: New Initiatives, 1983 Draft, pp. 12-14.

Virginia's Equal Pay Provisions Are Inadequate in Addressing Pay Equity

The Constitution of the Commonwealth states, in relevant part:

> The right to be free from any governmental discrimination on the basis of any religious conviction, race, color, sex, or national origin shall not be abridged . . .[31]

Although Virginia's Constitution clearly prohibits sex discrimination, the need remains for forceful and unequivocal expressions of public policy which hold all sex-based wage discrimination unlawful.

The 1974 Session of the General Assembly enacted legislation making it unlawful for employers not already covered by the federal Equal Pay Act to discriminate in wages between men and women performing equal work. The statute is worded as follows:

> No employer having employees subject to any provision of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions . . .[32]

Its language is identical to the federal Equal Pay Act. The state statute does not apply to public sector employers or to any but a few relatively small private sector employers. There is enforcement language in this statute, but it is not as strong as the enforcement language of the federal law.

The state's enforcement provisions would allow an individual to go into state court to collect up to twice the wages due him or her for a period of up to two years before the institution of the lawsuit. There is no provision for payment of attorney's fees; nor are there provisions for enforcement of the Act and lawsuits brought by the Attorney General on behalf of affected employees. Federal law, on the other hand, allows suits by the government on behalf of individuals affected, allows back wages up

to three years prior to the initiation of the lawsuit, where violations are "willful," and permits individuals who bring lawsuits to collect attorney's fees.

Virginia also has a Fair Employment Contracting Act which prohibits companies which contract with the state in amounts of more than $10,000 from discriminating against employees or applicants for employment because of race, religion, color, sex or national origin.[33] It is presumed that this prohibition includes sex discrimination in compensation -- or wage discrimination. It, however, cannot be assumed that including wage discrimination was, in fact, the legislature's intent.

Further, it is not clear how Virginia's Fair Employment Contracting Act is to be enforced. To date, there is no state agency comparable to the Federal Office of Contract Compliance Programs to investigate contractors to determine whether or not they are in compliance. Thus, there is no mechanism currently available for securing information from state contractors to determine whether there are violations to the state's Fair Employment Contracting Act.

Federal law provides for debarment from contracts of federal contractors who discriminate, a very effective enforcement mechanism when used. State law, effective January 1, 1983, has established a basis in the Virginia Public Procurement Act for the possible debarment of government contractors in the event of the contractor's unsatisfactory performance for a public body.[34] The Act repeats Virginia's Fair Employment Contracting Act prohibiting employment discrimination on the basis of sex.[35] Thus, the possibility exists for the institution of procedures permitting debarment sanctions for contractors who discriminate in their compensation systems on the basis of sex.

In conclusion, it is important to note that Virginia does not have sufficient state anti-discrimination laws for effectively dealing with sex discrimination in employment, and specifically, for addressing wage inequities. As to the laws which do exist, there are insufficient state mechanisms for enforcing those laws. While the Virginia Equal

Employment Opportunity Committee is charged with the responsibility for monitoring the state's equal opportunity programs for state employees, the scope of its authority is limited.

In order to adequately enforce pay equity in both the public and private sectors, Virginia will have to develop better enforcement mechanisms for existing laws as well as amending them to include specific language addressing pay equity.

## IV. INITIATIVES TO ACHIEVE PAY EQUITY

A widespread national movement is underway challenging the assumption that work is worth less simply because it is performed by women. Action has been taken by unions, management, political organizations, women's organizations and government at all levels. These initiatives are described in the section that follows. Particular emphasis is placed on state government activity.

### Unions Use Pay Equity As an Organizing Tool

Unions, particularly those with large present or potential memberships, find that equal pay for work of comparable worth is an effective organizing tool. As manufacturing jobs disappear and employment in service industries increases, unions realize that their futures lie in organizing women workers. Women who belong to unions average thirty-five percent higher earnings than non-union women, hence union success in bargaining and litigation to achieve equal pay for work of comparable value is a strong appeal to unorganized women workers. Notable union victories include:

- The International Union of Electrical Workers (IUE) relied on Title VII to win equal pay for a plant's male and female workers performing comparable work in IUE v. Westinghouse,[36] and subsequently achieved back pay award and upgrading for predominately female assembly jobs in five other settlements with the corporation.

- The American Federation of State, County and Municipal Employees affiliate in San Jose, California, after a nine-day strike, won pay equity raises of 5 to 10 percent for employees in predominately female jobs.

- District 1199 of the New England Health Care Employees Union negotiated wage equity increases for members employed by the State of Connecticut in female-dominated hospital and health care jobs.[37]

### Management Initiates Voluntary Pay Equity Programs

Though numerous organizations are believed to be voluntarily reviewing their compensation practices and correcting wage inequities, little has been published about their efforts. The best-known voluntary program is the joint labor-management Job Evaluation Committee that the American Telephone and Telegraph Company negotiated

with the Communication Workers of America. For the past two years, the company and its principal union have worked cooperatively to develop and test an objective job evaluation system for non-managerial employees.

Political Organizations Make Pay Equity a Campaign Issue

The Democratic Party endorses the concept of equal pay for work of comparable value and Democratic candidates are using the issue to attract the women's vote. The 1980 Democratic Party Platform states:

> The Democratic Party is committed to the principle of equal pay for work of comparable value . . . we will ensure that women in both the public and private sectors are not only paid equally for work which is identical to that performed by men but are also paid equally for work which is of comparable value to that performed by men.[38]

In July, 1983, the Democratic National Committee adopted a resolution that enunciates specific actions public officials and candidates for public office should take to promote pay equity. The Woman's National Democratic Club simultaneously wrote a letter to all organizations known to advocate pay equity urging those organizations and their members to press candidates and public officials to take action to achieve pay equity.

Presidential candidates have recently been the target of pay equity advocates. Comparable worth was one of the issues about which announced presidential candidates were asked to speak by the non-partisan National Women's Political Caucus at its 1983 conference in San Antonio. The ad hoc Women's Presidential Project, via an April 19, 1983 "Women's Statement to the Presidential Candidates," included pay equity as one of the issues about which declared presidential candidates were asked to express their intentions in writing. Five of the candidates have committed themselves to achieving equal pay for work of comparable value, and one candidate, Walter Mondale, is circulating his response as campaign literature. Another candidate, Gary Hart, has included a chapter on achieving pay equity in his book, A New Democracy.

Women's Organizations Advocate Pay Equity

A large number of national women's organizations, including the League of Women Voters and the National Federation of Business and Professional Women, have given high priority to the elimination of sex-based wage discrimination. Their activities include publishing educational materials, conducting workshops, and lobbying.

Women's groups such as 9 to 5: National Association of Office Workers and Women Employed have organized workers to fight for pay equity. Targeting banks and insurance companies, 9 to 5 has organized campaigns in several cities to expose unfair wage policies. In Boston, for example, 9 to 5 exposed a consortium of employers called the Boston Survey Group that colluded to set low wages for clerical workers throughout the city. John Hancock Company clerical employees won a ten percent wage increase with the help of 9 to 5. In 1982, 9 to 5 joined the Service Employees International Union to form a union affiliate, District 925, solely for office workers.

Other female-dominated professional organizations, such as the American Library Association and the American Nurses' Association, also are beginning to take collective action locally and nationally to win wages commensurate with the value of their members' jobs. For example, in May, 1983, fifty-one librarians employed by Fairfax County, Virginia, filed formal charges with the federal Equal Employment Opportunity Commission (EEOC), claiming wage-based sex discrimination. The President of the Fairfax County Public Library Employees' Association -- the plaintiffs in this action -- maintains that the county had been advised since 1972 that it was unlawfully discriminating against the librarians in compensation. The filing of the charges was said to be the only legal means available to achieve compliance with Title VII of the Civil Rights Act, as all other attempts by the librarians had been exhausted. Ninety-two percent of Fairfax County's librarians are female; the national average is eighty to eighty-five percent female. The county funded a study by independent consultants which recommended upgrades for entry-level professional librarian positions. The

entry-level professional males who were compensated at the same level had no commensurate educational requirements. The county declined to upgrade the positions and the EEOC charges ensued.

The National Committee on Pay Equity, a national coalition of sixty-five organizations and numerous individual members, was formed in 1979 to achieve equal pay for work of comparable worth through public education and provision of leadership, information, coordination and strategy direction to its members.

Many commissions on the status of women have held pay equity hearings in their states and been instigators or active participants in the state government initiatives that are described in the next section.

## State and Local Governments Today Move Faster Than Federal Government Toward Pay Equity

Federal Government Activity:

The federal government is not presently providing as much leadership in correcting wage discrimination as state and local governments or the governments of some other countries. For example, Canada's Human Rights Law, which prohibits wage differences between male and female workers performing work of equal value, has been enforced successfully many times for nurses, librarians, data processing workers and other groups of underpaid women. Australia instituted pay equity several years ago without any of the inflationary or disruptive impacts that adjusting wages upward is sometimes feared to cause.

During the late 1970s, the federal government was active in calling public attention to wage discrimination as a major cause of the chronic wage gap between male workers and minority and female workers. In addition to commissioning the previously quoted National Academy of Sciences study, the Equal Employment Opportunity Commission (EEOC) held three days of hearings on occupational segregation and wage discrimination April 28-30, 1983. The Office of Federal Contract

Compliance Programs asserted that Executive Order 11246 required equal pay for work of comparable worth and initiated pay equity litigation. The federal government committed itself to pay equity for its own employees in the Civil Service Reform Act of 1978, which established as a merit principle that "equal pay should be provided for work of equal value".[39]

Since 1981, however, executive branch attention to pay equity has come to a standstill. The EEOC and OFCCP have not yet developed recent enforcement guidelines in response to the Gunther decision for addressing the issue of Title VII's coverage of comparable worth situations.

Congress recently has evidenced concern about the pace of comparable worth enforcement. Three subcommittees of the House Post Office and Civil Service Committee held joint hearings on pay equity in September, 1982. The International Personnel Management Association was among the organizations that testified in favor of equal pay for work of comparable value. Many witnesses called upon the federal government to undertake a study of its own pay practices and the female-male wage relationship. Congress subsequently instructed its General Accounting Office to undertake a preliminary review of the Civil Service job evaluation process.

State and Local Government Activity

Numerous efforts to achieve pay equity through executive and legislative action are currently underway in state and local government. Wage inequities between men and women workers are being attacked through a variety of activities and strategies falling into one or more of the following categories:

1. Information and data collection
2. Job evaluation
3. Pay equity policy and implementation
4. Enforcement of existing laws[40]

This section describes these activities according to the four categories, discussing specific Virginia activities where applicable.

1. Information and data collection

As a first step, many state and local governments have sponsored studies or public hearings to become more informed about pay equity and the extent to which inequities exist. Such information and data collection is being conducted by a variety of public agencies, including commissions on the status of women, human relations commissions, personnel departments, labor departments, and state legislatures.

To date, eleven states -- North Carolina, Kentucky, Maryland, Pennsylvania, New Jersey, Iowa, Michigan, Minnesota, Nebraska, Nevada, and Oregon -- have either started or completed examinations of job segregation and wage gaps within their state civil service systems. Further, Hawaii has requested the University of Hawaii to investigate approaches other states are taking to pay equity. In Michigan, a law has been enacted which will assist in the collection of wage data by prohibiting wage secrecy policies. In many states, the practice of collecting wage data to identify wage gaps is ongoing, on an annual basis. (California collects data annually on comparable worth activities in other workplaces; in Washington, the personnel boards for state and higher education employees collect data on the continuing gap in wages between males and females, initially identified in its 1974 state study.)

At the local level, seminars, hearings, task forces, and studies have been sponsored by the governing bodies in recognition of the problems of the wage gap and in an effort to discover the extent of the problem.

2. Job evaluation studies

Job evaluation studies have been initiated by a number of states and localities already. These studies continue to be authorized and funded by other state legislatures,

county boards, city councils, and school boards in an effort to assess the extent to which there is a male-female salary gap in their compensation systems. In some instances, state or local agencies are designated to conduct the study. In other cases, outside consultants have been chosen to conduct the evaluation. It appears that the greatest success has been found with the practice of authorizing an agency to direct and oversee such a study and affording the agency discretion to work with other agencies or consultants.

Eight states -- Connecticut, Illinois, Idaho, Minnesota, New Jersey, Washington, Michigan, and Wisconsin -- have already completed job evaluation studies of their state personnel systems, finding in every instance wage discrimination on the basis of sex. New York State is beginning the largest and most innovative examination of comparable worth ever done. Its $500,000 study will look at the relationship of wage discrepancies to race as well as sex. Additionally, the Kentucky state legislature has directed its legislative review commission to rank all state jobs "based on the comparable worth theory."

In local government, a number of job evaluation studies have been conducted nationwide. Especially notable from a Virginia perspective is the study conducted in 1980 in Virginia Beach by the city's personnel department. It was noted in the report of the study that the city had not considered this job evaluation study to be a comparable worth initiative; rather, the study was conducted with the intent of making the salary structures "internally equitable"; that is, not dependent on prevailing labor market wage rates. The result was that the city's "internal equity analysis" did detect and eliminate some of the sex bias which exists in the labor market wage rates. The ultimate effect, then, was the upgrading of a number of "women's" jobs and thus incorporated practices advocated by pay equity proponents. When market wage rates are lower than the city's internally set system, the salary is to be adjusted to the higher "equitable level", which is generally the case with traditional women's jobs. In

short, the prevailing labor market rates are used by the Virginia Beach system only when they are higher than the city's internal system.

Job evaluation studies can be pilot projects or they can be more comprehensive in examining an employer's job classification system. They have been used to determine whether wage discrimination exists or as a basis for eliminating the wage gap, or both. Because so many studies have been conducted on specific personnel systems statewide and locally throughout the nation, and because other studies, such as that conducted by the National Academy of Sciences, have found without exception that a wage gap does exist, it would now appear that job evaluation studies should be initiated solely to determine the extent of the wage gap. That is, sponsors of job evaluation studies could reasonably assume that wage-based discrimination exists and focus resources and time on correcting this discrimination. It needs to be noted, however, that when governments initiate such job evaluation studies, they must also commit to resolving any discrepancies which are found. Failure and/or inability to take corrective action can form the basis of litigation as occurred in Washington and Connecticut.

3. Pay equity policy and implementation

An increasing number of state and local governments are enacting policies which require pay equity for their employees. The State of Minnesota enacted comparable worth legislation and an implementation plan, as well.[41] Washington State recently enacted a comparable worth law and will develop an implementation plan over the next year, with the express goal of eliminating wage-based sex discrimination by 1994. The states of Montana, California and Hawaii have officially made commitments to pay equity, but the implementation plans have yet to be worked out. Hawaii's legislature adopted a resolution encouraging private employers to apply the comparable worth concept to their wage-setting policies.

In other instances, localities and states have made a commitment to the principle

of pay equity, such as in the case of the City of Virginia Beach, through practice and without legislation.

4. Enforcement of existing laws

As a way of achieving pay equity, many proponents have looked to enforcement of existing state and local laws. Sex discrimination prohibitions have little impact however, unless they include enforcement mechanisms.

## V. PROBLEMS IN PAY EQUITY IMPLEMENTATION

Determination of compensation is a complex process. Currently, most employers look at three factors. These are internal equity (job evaluation), external equity (labor market) and the funds they have available. Each of these factors impacts the implementation of equal pay for work of comparable value.

### Job Evaluation Systems Often Undervalue Women's Jobs

There are numerous methods or systems of job evaluation. Many have been used by employers since the early 1900s. Job evaluation systems are designed to aid employers in establishing pay rates for jobs. While such systems may differ in design, all follow basic steps. These are: 1) describing the jobs in question; 2) determining reasonable compensable factors (those factors for which the employer is willing to pay);* 3) comparing the jobs described against the compensable factors; 4) ranking or otherwise rating the jobs; and 5) determining relative rates of pay. A job evaluation system should produce internal equity within a given compensation plan.

Several problems arise, however, in the use of job evaluation systems as part of the effort to remedy wage discrimination. First, employers do not always use the same compensable factors for all jobs, but sometimes use different systems for different groups of jobs. This tends to continue the undervaluation of women's jobs and, more importantly, does not provide for the comparisons necessary to reveal wage discrimination. Male-dominated and female-dominated jobs are thus rarely compared to each other.

Second, the job evaluation systems used are largely based on industrial models using compensable factors such as strength, work hazards, and responsibility for equipment, which are more suitable for male-dominated than female-dominated jobs.

*Note: It is a fundamental assertion in this report that these "compensable factors" are not reasonable or rational if they are gender-based.

More important, such compensable factors are difficult to relate to current more service-oriented jobs, jobs held more often by women.

Proponents of pay equity agree that alternative methods of job evaluation must be developed for measuring the relative worth of jobs so that more equitable internal salary scales can be developed.

Labor Market Considerations Perpetuate Wage Discrimination

Most employers do not use job evaluation systems in a vacuum but take labor market factors into consideration as part of their wage rate-setting process. Wages, it is argued, should be determined by the law of supply and demand.

Generally in doing this, the employer surveys other employers, asking what each employer pays individuals who perform certain tasks. Professional organizations are consulted as well, to determine median income levels. This process may, in fact, perpetuate unequal pay structures, as most employers have undervalued traditionally women's jobs. In some instances, job evaluation systems have rated as equal a male-dominated and a female-dominated job, but labor market rates have resulted in a lower salary for the female-dominated job. Use of the labor market, in combination with the job evaluation systems currently used, tends to perpetuate the status quo of unequal pay structures.

Funding Requirements Constrain Corrective Action

Despite the use of job evaluation systems and the labor market, the bottom line for any employer is the amount of money available for compensation of employees. There is understandable concern that pay equity will strain budgets, adversely affect competition and lower men's wage rates. In practice however, the costs of implementing pay equity have proven to be comparable to, or less than, the cost of routine across-the-board or cost-of-living increases. For example, in Minnesota, implementation of the comparable worth policy is projected to cost only two to four percent of the state's entire payroll. Australia instituted equal pay for work of

comparable value several years ago without experiencing any economic ill effects.

Nonetheless, several state government pay equity projects have floundered at the funding stage, when studies to determine whether wage discrepancies exist invariably have revealed their presence. Profiting from other states' experiences, Minnesota included a funding provision for wage adjustments in its original legislation. Gradual correction of wage inequities and protection of male workers from loss of income appear to be key features of successful implementation plans.

Pay equity proponents recognize that comparable worth is sought in a labor market which has been to a very large degree segregated by sex. The federal Equal Pay Act does not address the issue of job segregation and is thus ineffective in achieving pay equity between two jobs that are comparable but not substantially equal. Those who seek to have comparable worth and pay equity replace equal pay for equal work as public policy recognize that it is indeed a complex issue. Further, they contend that arguments that the issue is complex and the method is uncertain are not legitimate when equality under the law is in the balance. Finally, they recognize that sex discrimination is perpetuated as long as people are paid less for "women's work" than they are for "men's work."

## VI. SUMMARY AND RECOMMENDATIONS

The Virginia Constitution clearly prohibits sex discrimination resulting from any governmental action. The issue of pay equity is derived from this prohibition.

As a result of our study of the history and scope of pay equity, the existence and impact of current federal and state policies providing for equal pay for equal work, and the results of the job evaluation studies done in other states and localities, we know that women and their families continue to suffer from pay inequities. Women earn only sixty-two cents for every dollar men earn, a situation which aggravates the feminization of poverty and the injustice therein. In response to our charge to make recommendations for improving the status of women as wage earners and citizens, we call upon the Governor and the General Assembly to move cooperatively and without delay to eradicate all vestiges of sex discrimination in every aspect of employment, with special attention to discrimination in wages on the basis of sex.

WE RECOMMEND THAT THE COMMONWEALTH MAKE A DECISIVE COMMITMENT TO THE PRINCIPLE OF EQUAL PAY FOR WORK OF COMPARABLE WORTH AND TAKE THE STEPS NECESSARY TO ACHIEVE PAY EQUITY.

In moving toward the goal of pay equity for the Commonwealth, we recommend several specific actions. While the Governor and the General Assembly have direct authority and responsibility for the state's personnel system, local governments and the private sector determine their respective wage structures, subject to applicable state, local, and federal law. Differences in authority and responsibility for wage structures in these different settings are thus accounted for in our recommended actions for implementing the Commonwealth's goal of achieving pay equity.

o WE RECOMMEND that existing state law be expanded as required--both in jurisdiction and substantive coverage--to ensure that neither public nor private personnel classification and compensation systems discriminate on the basis of sex, or any other factor.

The Commission recognizes that because sex-based wage discrimination is so pervasive and cuts across public and private sectors alike, the statutory remedy must be constructed carefully to bring about pay equity through the least burdensome mechanism. The Commission requests that the Governor appoint a committee to recommend specific pay equity policy for the Commonwealth--including statutory changes--which will achieve the necessary and desired effect of eradicating sex-based wage discrimination in employment. This committee should be constituted with representatives from the Commission on the Status of Women, business and industry, labor, the General Assembly, state and local governments, and legal scholars. It is envisioned that this committee would have three major tasks, as follows:

1. To recommend specific policies which would commit the Commonwealth to pay equity and to the principle embraced therein, equal pay for work of comparable value. The issues to be addressed include: a) procedures and a timetable for implementing the pay equity policies; b) legitimate employer defenses for differences in male and female wage rates; and c) enforcement mechanisms.

2. To develop models for identifying and correcting existing pay inequities in local government; and

3. To recommend ways in which the private sector can implement the Commonwealth's commitment to pay equity.

o WE RECOMMEND that the General Assembly authorize the Commission to conduct a second phase of its study of pay equity. The second phase of study would consist of compiling data and information of a technical nature on job evaluation, classification, and compensation systems.

Such information would be derived from other Commonwealth of

Virginia agencies, other states, private non-profit organizations working in the pay equity area, private consultants, and further literature searches. The Commission would issue a report in October, 1984 containing the compiled technical information together with a proposed comprehensive plan for job evaluation, classification, and compensation to be applied to the Commonwealth's personnel system. This plan would implement the concept of equal pay for work of comparable value in a manner most amenable to the Commonwealth's personnel system.

## NOTES

[1] Ellen Goodman, Washington Post, October 16, 1978.

[2] Comparable Worth: Every Woman's Right, A Report by the New York State Assembly's Task Force on Women's Issues; Maya Altman, Research Associate, May, 1983.

[3] Nancy D. Perlman and Bruce J. Ennis, Preliminary Memorandum on Pay Equity: Achieving Equal Pay for Work of Comparable Value, Center for Women in Government (Introduction), April, 1980.

[4] Women's Equity Action League, Comparable Worth Fact Sheet, p. 15.

[5] U.S. Department of Labor, National Commission on Working Women, An Overview of Working Women, 1982.

[6] Ibid.

[7] Ibid., National Commission on Working Women, Center for Women and Work, An Overview of Minority Women in the Workplace.

[8] Bettina Berch, The Endless Day: The Political Economy of Women and Work (New York: Harcourt Brace Jocanovich, Inc., 1982), p. 4; U.S. Department of Labor, 20 Facts on Women Workers. 1092.

[9] Ibid., p. 8; U.S. Department of Labor, 20 Facts on Women Workers, 1982.

[10] Berch, p. 9.

[11] Berch, p. 8.

[12] Ellen Boneparth (Ed.), Women, Power and Policy (New York: Pergamon Press, Inc., 1982), pp. 71-72.

[13] Donald J. Treiman and Heidi I. Hartman (Eds.), Women, Work and Wages: Equal Pay for Work of Equal Value (Washington, D.C.: National Academy Press, 1981), Committee on Occupational Classification and Analysis, Assembly of Behavioral and Social Science National Research Council,.

[14] Testimony of Nancy D. Perlman, Chair, National Committee on Pay Equity, before the U.S. House of Representatives' Subcommittee on Civil Service, Subcommittee on Human Resources, Subcommittee on Compensation and Employee Benefits, September 16, 1982, p. 4 citing statistics from the U.S. Department of Labor, Bureau of Labor Statistics.

[15] Comparable Worth: Every Woman's Right, p. 3.

[16] Sally Steenland, New York Times, quoted in Comparable Worth: Every Woman's Right, op. cit., p. 3.

[17] Treiman and Hartman (Eds.), p. 42.

[18] Ibid., p. 93.

[19] Ibid.

[20] University of Michigan, Institute for Social Research Newsletter, p. 4.

[21] Ibid., p. 5.

[22] Ibid., p. 6.

[23] National Conference of State Legislatures, "Workplace Equality Resolution," August, 1983.

[24] 29 U.S.C. Section 206(d)(1)(1976).

[25] 42 U.S.C. Section 2000 e to 2(h)(1964).

[26] Executive Order No. 11,375, 3 C.F.R. 684 (1966-1970 compilation) (amending Executive Order No. 11246 3 C.F.R. 340 (1964-1965 compilation)).

[27] 421 Fed. 259, 266 (3d Cir.), cert. denied, 398 U.S. 905 (1970).

[28] Op. Cit.

[29] Treiman and Hartmann (Eds.), op. cit., p. 5.

[30] 452 U.S. 161; 101 S. Ct. 2242 (1981).

[31] Article 1, Section II.

[32] Section 40.1-28.6, Code of Virginia (1950), as amended.

[33] Section 2.1-374 through 2.1-376.1, Code of Virginia (1950), as amended.

[34] Section 11-46.1, Code of Virginia (1950), as amended.

[35] Section 11-51.

[36] U.S. Court of Appeals, third Circuit, 13 FEP Cases 588.

[37] Comparable Worth: Every Woman's Right, p. 13.

[38] Carole W. Wilson, "Breaching the Next Barricade: Pay Equity for Women," The Union for Democratic Action Educational Fund Inc.

[39] Public Law 95-454, Title I, Chapter 23, Sec. 2301(b)(3).

[40] This section is based primarily on the Monograph by Virginia Dean, Margaret Klaw, Joy Ann Grune, and Susan Bluer. State and Local Government Action on Pay Equity: New Initiatives, 1983, Draft.

[41] Minnesota Statutes 43A-18, subd. 8(e).

# APPENDIX A

# PROPOSED RESOLUTION

Proposed Resolution

Expressing the commitment of the General Assembly to the principle of pay equity and directing the Virginia Commission on the Status of Women to direct a study of job evaluation, classification, and compensation systems.

Whereas, the Virginia Commission on the Status of Women has completed a study of pay equity; and

Whereas, the Commission has found substantial evidence of inequities in wages paid to women throughout the country; and

Whereas, the concept of equal pay for identical work and the concept of equal pay for work requiring comparable skill, effort and responsibility are both encompassed in the term, pay equity; and

Whereas, the Virginia Constitution prohibits sex discrimination; and

Whereas, inequality in wages which is based on sex constitutes a form of sex discrimination, now, therefore, be it,

RESOLVED that the General Assembly requests the Commission to direct a study to determine the best procedures for incorporating the principles of pay equity in the Commonwealth's job evaluation and classification systems. All agencies of state government shall cooperate in the study. The Commission is authorized to employ appropriate consultants. The Commission shall complete its study and report no later than October 30, 1984. A sum of $60,000 is appropriated for the study.

# APPENDIX B

# OCCUPATIONAL SEGREGATION

| | 1930 | 1940 | 1950 | 1960 | 1970 |
|---|---|---|---|---|---|
| TOTAL (in thousands) | 48,686 | 51,742 | 58,999 | 67,990 | 80,603 |
| Professional/Technical | 3,311 | 3,879 | 5,081 | 7,336 | 11,018 |
| Managers/Officials | 3,614 | 3,770 | 5,155 | 5,489 | 6,224 |
| Clerical | 4,336 | 4,982 | 7,232 | 9,617 | 13,457 |
| Craftsmen | 6,246 | 6,203 | 8,350 | 9,241 | 10,435 |
| Service | 4,772 | 6,069 | 6,180 | 7,590 | 9,591 |
| WOMEN (in thousands) | (% of TOTAL) | | | | |
| TOTAL | 10,752 (22.1) | 12,574 (24.3) | 16,445 (28.0) | 22,304 (32.8) | 30,601 |
| Professional/Technical | 1,482 (44.8) | 1,608 (41.5) | 2,007 (39.5) | 2,793 (38.0) | 4,398 (39.9) |
| Managers/Officials | 292 (8.0) | 414 (11.0) | 700 (13.6) | 794 (14.5) | 1,034 (16.6) |
| Clerical | 2,246 (51.8) | 2,700 (54.2) | 4,502 (62.3) | 6,497 (67.6) | 9,910 (73.6) |
| Craftsmen | 106 (1.6) | 135 (2.2) | 253 (3.0) | 268 (2.9) | 524 (5.0) |
| Service | 2,954 (61.9) | 3,699 (61.0) | 3,532 (57.2) | 4,780 (62.9) | 5,752 (59.9) |

SOURCE: Historical Statistics of the United States, U.S. Dept. of Commerce; Bureau of Census.

# APPENDIX C

# LEGISLATIVE HISTORY OF THE FEDERAL EQUAL PAY ACT

# Legislative History of the Federal Equal Pay Act

The Equal Pay Act was passed by the United States Congress May 28, 1963 and signed by President Kennedy on June 10th. The purpose of this legislation was the elimination of wage discrimination on the basis of sex. The Equal Pay Act was enacted as Section 6(d) of the Fair Labor Standards Act of 1938 (FLSA).

In 1964, Title VII of the Civil Rights Act was passed by Congress which included a ban on discrimination by sex covering many types of employment. When H.R. 7152, the House bill enacted by the Civil Rights Act, was being debated in the Senate, the Bennett Amendment was added.

The Bennett Amendment partially incorporated the Equal Pay Act (EPA) into the Title VII legislation, and states:

> It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C.206(d)) i.e., (the Equal Pay Act).[1]

Much controversy arose subsequently concerning the intent of the Bennett Amendment. One interpretation was that for a claim of pay discrimination against women to be established, the jobs being compared must meet an Equal Pay Act test of similarity. Another interpretation was that the Amendment intended to incorporate into Title VII only the defenses available for an employer under the Equal Pay Act, i.e., seniority, merit, quantity or quality of production, or differences in any factor other than sex.[2] When Senator Bennett was questioned as to his intent in offering the Amendment, he responded his purpose was to ensure that the provisions of the EPA would not be nullified in the event of conflicts between Title VII and EPA. The Amendment was a technical correction.[3]

In County of Washington et. al. v. Gunther et. al. (80-429), in June, 1981, the U.S. Supreme Court ruled:

> The Bennett Amendment does not restrict Title VII's prohibition of sex-based wage discrimination to claims for equal pay for 'equal work.' Rather, claims for sex-based wage discrimination can also be brought under Title VII even though no member of the opposite sex holds an equal but higher paying job, provided that the challenged wage rate is not exempted under the Equal Pay Act's affirmative defenses . . . .[4]

Thus, the Supreme Court ruled that the Bennett Amendment does not preclude pay discrimination claims from being brought under Title VII by employees in completely sex-segregated jobs.

These two Acts established the legal guarantee for pay equity between men and women performing equal work. But recognition for the principle of equal pay for equal work has existed for a longer time. In 1898, the Industrial Commission appointed by the federal government advocated "equal pay for equal work." Another body created by Congress in 1915, the Commission of Industrial Relations, also

recommended that equal pay principles be adopted. During World War I, the National War Labor Board stated the principle of equal pay for equal work and applied it to more than 50 cases.[5] The United States Railroad Administration in a 1918 order also recognized the principle of equal pay for equal work. In 1923, the United States Civil Service Commission abolished all differentials based on sex in the salary grades for federal employees fixed in the Classification Act.

Further recognition of the equal pay for equal work principle was given by the War, Navy and Labor Departments during World War II. These departments agreed on an equal pay policy and by directives established the principle of equal pay in their offices. The National War Labor Board, established to restrain wage increases in order to prevent inflation, issued an equal pay order, General Order No. 16, on August 20, 1945. This order stated:

> Increases which equalize the wage or salary rates paid to females with the rates paid to males for comparable quality and quantity of work on the same or similar operations, and increases in accordance with this policy which recognize or are based on differences in quality or quantity of work performed, may be made without approval of the National War Labor Board:. . .

From 1945 to 1962, 72 equal pay bills were submitted in Congress for consideration, but none were reported and approved. In 1962, the first equal pay bill was reported out of the House Labor Committee on May 17th. This first bill was amended, debated, rewritten, and related bills were introduced. After 18 months (covering two sessions of Congress) of hearings, committee considerations and floor debate, the 1963 Equal Pay Act was passed.

The reasons for the passage of the Equal Pay Act of 1963 are stated in the Declaration of Purpose. These are:

> Sec. 2(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex -
> (1) depresses wages and living standards for employees necessary for their health and efficiency;
> (2) prevents the maximum utilization of the available labor resources;
> (3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
> (4) burdens commerce and the free flow of goods in commerce; and
> (5) constitutes an unfair method of competition.[6]

Secretary of Labor Willard Wirtz stressed the importance of congressional action to eliminate discrimination in pay practices in a letter to Vice President Johnson urging adoption of this legislation. Three major reasons for enactment were cited.

> (1) The general purchasing power and living standards of workers are adversely affected by discriminatory pay rates.
> (2) Those employers who follow the practice, thereby realize unfair competitive advantage.
> (3) The resulting low-wage levels prevent maximum utilization of

> workers' skills to the detriment of morale which in turn is detrimental to production.[7]

In the Senate Report to accompany the Equal Pay Bill (S. 1409), the purpose of the legislation was stated as:

> The objective of this legislation is to insure that those who perform tasks which are determined to be equal shall be paid equal wages.
>
> The wage structure of all too many segments of American industry has been based on an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same. This bill would provide, in effect, that such an outmoded belief can no longer be implemented and that equal work will be rewarded by equal wages.[8]

Thus, the Equal Pay Act came into being establishing equal pay for equal work on jobs which require equal skill, effort, responsibility and are performed under similar working conditions, except where such payment is made pursuant to (1) a seniority system, (2) a merit system, (3) a system which measures earnings by quantity or quality of production, or (4) a differential based on any other factor other than sex.[9]

Ruth Blumrosen characterizes the importance and the relationships among federal equal pay statutes enacted by Congress as follows:

> The legislative histories of the EPA, Title VII, and the 1972 amendments reflect a realization of the need to improve the socio-economic status of minorities and women, a status measured by the extent of job segregation and earnings differentials. The interconnection between discrimination, attitudes toward identifiable groups, job segregation, and economic deprivation examined by economists, sociologists, and industrial relations analysts was the premise underlying the adoption of the three acts.[10]

Footnotes

[1] Equal Employment Advisory Council, Comparable Worth, Issues and Alternatives. Washington, D.C.: Equal Employment Advisory Council, 1980, p. 224.

[2] Donald J. Treiman and Heidi I. Hartmann, eds., Women, Work, and Wages: Equal Pay for Jobs of Equal Value. Washington, D.C.: National Academy Press, 1981, p. 5.

[3] Ruth G. Blumrosen, "Wage Discrimination, Job Segregation and Title VII of the Civil Rights Act of 1964." University of Michigan Journal of Law Reform, Vol. 12., No. 3, Spring 1979, p. 479.

[4] Treimann and Hartmann, p. 5.

[5] Bureau of National Affairs, Equal Pay of Equal Work, Operation Manual. Washington, D.C.: BNA Corporation, 1963, p. 3.

[6] Equal Pay Act of 1963.

[7] Senate Report No. 176, 88th Congress, 1st Session, May 13, 1963.

[8] Ibid.

[9] Equal Pay Act of 1963 (29 U.S.C. 206(d)(1)(1972)).

[10] Blumrosen, p. 466-467.