

## **Follow California's lead — help women recover damages for workplace sex / gender discrimination**

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When one category of students dominates the classroom, wouldn't you expect them to earn at least the same wage as their peers when they graduate?

Women are more likely than men to earn a bachelor's degree and attend graduate school, and they tend to have higher undergraduate GPAs than men.

Young women also account for more than 60 percent of the honors graduates as well as those invited to join the Phi Beta Kappa national honor society in 2015.

A study from the University of Washington School of Law compared men's and women's undergraduate academic performances by looking at which students are graduating with honors and which students are being invited to join Phi Beta Kappa. Colleges participating in this study include elite national universities like Stanford, Duke, Northwestern, and the University of Chicago, as well as large state schools like the University of Southern California and small liberal arts schools like Allegheny College.

The results are stark, but consistent: Young women are outperforming young men to a significant degree in classrooms across the country.

Based on honors data from 21 schools across the country, women, on average, make up 60.8 percent of the students graduating with honors — about 9 percent above their total enrollment of 51.8 percent of the student population.

Nineteen of the 21 schools surveyed provided detailed Latin honors data, which allows us to look specifically at the number of summa cum laude, magna cum laude, and cum laude graduates. Women's average enrollment at these 19 schools was 52 percent. At the summa cum laude level 63.9 percent are women, at the magna cum laude level 61 percent are women, and at the cum laude level 60 percent are women. The difference is greater in public schools than in private schools.

Twenty-seven schools submitted Phi Beta Kappa statistics for use in this study, out of 62 schools surveyed. On average, women make up 51.9 percent of the total

student population at these schools and a 60.8 percent of the students invited to join the society in 2014-15.

The small population of elite students in this country is absolutely dominated by young women. Despite all of this, women may be being paid only 78 percent of what their male colleagues are making.

According to a study by the American Association of University Women, a 23 percent wage gap exists as early as one year after graduation.

As early as one year after graduation, women teachers are paid 11 percent less than what male teachers with similar experience are paid. In business and management occupations, women make only 86 percent of what their male peers are paid, and only 77 percent of their male counterparts' pay in sales.

The existence of any wage gap suggests the presence of sex discrimination in the workplace.

In 2014 alone, 26,027 sex discrimination complaints were filed with the federal Equal Employment Opportunity Commission, accounting for 29.3 percent of all discrimination complaints filed that year.

Historically, employment discrimination suits have had a very low success rate. According to a study released by the American Bar Foundation, only 6 percent of employment discrimination filings between 1987 and 2003 went to trial, and only 1/3 of those cases were successful. More than 40 percent of employment discrimination cases are dismissed or lost at summary judgement. Federal anti-discrimination statutes have not been amended since 2003 to make it easier for plaintiffs to recover.

Although sex discrimination is prevalent in the American workplace, women face an uphill battle when trying to recover monetary damages for such cases through the courts. The federal anti-discrimination laws in place today are not well-suited to solve the wage gap issue.

The existing federal laws need to be supplemented by state law in order to make recovery a viable option for victims of sex discrimination.

The California state Legislature recently approved a bill that amends California's Equal Pay Act, a statute that was nearly identical to the federal Equal Pay Act. The bill has now been signed into law by Gov. Jerry Brown. The bill introduces greater burdens on employers to justify wage disparities by requiring that employers

account for the entire wage differential and by placing limitations on the “factor other than sex” defense.

For example, the bill provides a list of factors that could satisfy this defense and it shifts the burden to employers to show that (1) the factor is not based on or derived from a sex-based differential in compensation; (2) is job related with respect to the position in question; and (3) is consistent with a business necessity.

The California bill also eliminates the “same establishment” requirement — meaning, for instance, that a female department store manager could sue her employer upon learning that she makes less than a similarly situated male manager at a different branch across town.

Whether you are a man or a woman, it should be obvious by now that sex discrimination is a major problem in this country.

Though by most measurable standards, women significantly outperform men at the time of their college graduation, studies show a pay gap still exists between men and women working the same jobs.

This should be a wake-up call to our state and country leaders.

Washington State needs legislative reform in this area and it doesn’t look like Congress is going to act. States should follow California’s in creating a viable avenue for women to recover for sex discrimination.