



---

# Addressing the Gender Pay Gap in Utah with State Equal Pay Laws

---

June 29, 2021

WHITE PAPER | No. 2

**UTAH** WOMEN &  
**LEADERSHIP**  
Project

**UtahStateUniversity.**

---

# Addressing the Gender Pay Gap in Utah with State Equal Pay Laws

L. Jenna Gould | June 29, 2021

---

## Executive Summary

During the signing ceremony for the Equal Pay Act of 1963, one of the first federal laws to address the gender pay gap, President John F. Kennedy cautioned that “much remains to be done to achieve full equality of economic opportunity. . . for the average woman worker.”<sup>1</sup> In the nearly 60 years that have followed the Equal Pay Act, women have made remarkable strides toward economic equality, yet the gender pay gap—the central focus of the Equal Pay Act—continues to affect countless women across the U.S. In 1973, full-time, working women earned a median of 56.6 cents for every dollar that full-time, working men earned. Over the past several decades, women’s median earnings have gained slightly more than 25 cents, reaching an average of 82 cents in 2019. However, for many women of color, the gender pay gap continues to fall below the national average and has declined at a relatively lower rate over the past few decades.<sup>2</sup> Despite these long-term gains, the gender pay gap has held relatively steady over the past 15 years, prompting calls for greater statutory protections for women workers.

In 2009, Congress enacted the Lilly Ledbetter Fair Pay Act, which expanded the time period for filing complaints of employment discrimination concerning compensation.<sup>3</sup> Moreover, many state governments have responded to the gender pay gap with equal pay laws that go much further than the federal framework. In 2019, for example, Alabama enacted the Clarke-Figures Equal Pay Act, which prohibits employers from refusing to consider an applicant for employment because the applicant does not provide their salary history and additionally creates a private right of action for aggrieved employees.

Even as many conservative states have embraced bolder legislation to address the gender pay gap, Utah continues to lack a standalone equal pay law. Instead, women workers must rely on the comparatively narrow recourse provided by the Utah Antidiscrimination Act, which, among other things, does not provide a private right of action. Meanwhile, the state continues to receive the designation as one of the “worst states for women” and the state with the second-highest gender pay gap in the country, with full-time female workers earning an estimated 70.2 cents for every dollar earned by full-time male workers.<sup>4</sup> In a survey of 400 Utah women aged 18 and older, 76.5 percent of respondents reported that state and local government leaders should “definitely” or “probably” take further action to address Utah’s wage gap, whereas about half of those surveyed reported that they believed they had been paid less than a man

---

<sup>1</sup> Kennedy, J. F. (1963, June 10). Remarks upon signing the Equal Pay Act. *UC Santa Barbara*.

<https://www.presidency.ucsb.edu/documents/remarks-upon-signing-the-equal-pay-act>

<sup>2</sup> Miller, K., & Vagins, D. J. (2018). The simple truth about the gender pay gap. American Association of University Women. <https://www.aauw.org/app/uploads/2020/02/AAUW-2018-SimpleTruth-nsa.pdf>

<sup>3</sup> U.S. Equal Employment Opportunity Commission. (2014, April 29). Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009. <https://www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009>

<sup>4</sup> McCann, A. (2020, August 24). Best & worst states for women’s equality. WalletHub.

<https://wallethub.com/edu/best-and-worst-states-for-women-equality/5835>; Shaw, E., & Mariano, H. (2021, June).

Before the “She-Session”: A pre-pandemic snapshot shows more women in the workforce than ever. Institute for Women’s Policy Research. <https://iwpr.org/iwpr-publications/briefing-paper/before-the-she-session-a-pre-pandemic-snapshot-shows-more-women-in-the-workforce-than-ever/>

for the same work.<sup>5</sup> As noted by Dr. Susan Madsen with the Utah Women & Leadership Project, “[t]here’s too much evidence that there is a problem.”<sup>6</sup>

As Utah lawmakers face mounting calls for legislative actions to address the gender pay gap, the following White Paper will provide lawmakers and policy advocates with an overview of state equal pay laws across the country as well as targeted recommendations for Utah.

## The Gender Pay Gap Explained

The gender pay gap is generally described as “the difference between what women and men earn for paid work.”<sup>7</sup> The U.S. Census Bureau calculates the gender pay gap by dividing the reported wages earned by full-time, working women by the wages earned by full-time, working men, providing a percentage that often gets cited as the number of cents on the dollar earned by women. Yet, as with any metric that purports to make broad societal assessments, “[t]he gap is a complicated and disputed topic, and some argue it is a myth or simply the result of women’s choices.”<sup>8</sup> Indeed, the Pew Research Center notes that “much of this gap has been explained by measurable factors such as educational attainment, occupational segregation and work experience,” suggesting that overt pay discrimination may play a somewhat smaller role than entrenched, sociocultural factors, such as workforce participation, time spent on family care, salary expectations, recruitment practices, and other determinative factors that leave women economically disadvantaged.<sup>9</sup> As of 2020, for example, women held two-thirds of positions earning the federal minimum wage and accounted for 70 percent of the tipped workforce.<sup>10</sup> Nevertheless, researchers have consistently concluded that the gap cannot be wholly quantified or explained by such sociocultural, or self-selecting, control variables, with studies finding a 5-8 percent wage gap between similarly situated men and women even after controls.<sup>11</sup>

While researchers and lawmakers continue to debate the significance and scope of the gender pay gap, Utah women across the political spectrum are reporting significant concerns with pay discrimination and are demanding state action consistent with the overwhelming number of U.S. states.<sup>12</sup> Indeed, members of the Utah Women & Leadership Project note that, “[r]ather than arguing ‘if’ there is a gender wage gap in Utah, efforts could be better spent on ‘why’ there is a wage gap and addressing specific factors contributing to it.”<sup>13</sup> One such contributing factor may very well be the state’s inaccessible and ineffective regulatory framework for addressing equal pay disputes when compared to the rest of the country.<sup>14</sup>

---

<sup>5</sup> Jacobs, B. (2019, December 1). Utah women agree: Business and government leaders should work on the gender wage gap. *The Salt Lake Tribune*. <https://www.sltrib.com/news/2019/12/01/utah-women-agree-business/>

<sup>6</sup> Isrealsen-Hartley, S. (2017, August 27). The truth about Utah’s and the nation’s gender pay gap. *Deseret News*. <https://www.deseret.com/2017/8/27/20618297/the-truth-about-utah-s-and-the-nation-s-gender-pay-gap#nikki-hendriksen-works-in-the-pharmacy-at-smiths-marketplace-in-west-jordan-on-thursday-aug-10-2017>

<sup>7</sup> Madsen, S. R., Dillon, J., & Scribner, R. T. (2017, August 2). The gender wage gap in Utah. *Utah Women and Leadership Project*. <https://www.usu.edu/uwlp/files/snapshot/22.pdf>

<sup>8</sup> Ibid.

<sup>9</sup> Barroso, A., & Brown, A. (2021, May 25). Gender pay gap in U.S. held steady in 2020. *The Pew Research Center*. <https://www.pewresearch.org/fact-tank/2021/05/25/gender-pay-gap-facts/>

<sup>10</sup> Utah Advisory Committee to the U.S. Commission on Civil Rights. (2020, Dec 21). It is past time to address Utah’s gender wage game. *DeseretNews*. <https://www.deseret.com/opinion/2020/12/21/22174714/utah-gender-wage-gap-women-us-commission-on-civil-rights-recommendations-essential-workers>

<sup>11</sup> Corbett, C, & Hill, C. (2012). Graduating to a pay gap: The earnings of women and men one year after college graduation. American Association of University Women (AAUW). <https://files.eric.ed.gov/fulltext/ED536572.pdf>; <https://www.glassdoor.com/about-us/gender-pay-gap-2019/>

<sup>12</sup> Jacobs, B. (2019).

<sup>13</sup> Madsen, S. R. (2017).

<sup>14</sup> Madsen, S. R. (2017).



## The State of Equal Pay Laws

**Equal Pay Laws in Other States:** In 2019, Alabama became the 43<sup>rd</sup> state to enact a standalone equal pay law. These standalone equal pay laws often go further than the federal framework and provide aggrieved employees with a state-level course of action against pay discrimination. Notably, federal laws do not provide a direct private course of action and require employees to go through a protracted claims process with the U.S. Equal Employment Opportunity Commission. By creating a separate remedy, states hope to maintain more state control over worker’s rights and remedies, as well as provide a more tailored approach to the gender pay gap.

**A Closer Look at Utah:** Utah is one of the last U.S. states and the only Rocky Mountain West state without such a law, alongside such states as Mississippi, North Carolina, and South Carolina. However, even within the category of states without such laws, many have passed either a Human Rights Act or a Fair Employment Practice Act which close many of the lack of remedies mentioned above.

Gender based protection is provided to employees in Utah through the Utah Antidiscrimination Act, Utah Code Ann. § 34A-5-106, which prohibits employment discrimination based on race, color, national origin, sex, religion, and other protected characteristics. The employee, or their attorney or agent, must file a claim under the Act with the Utah Labor Commission within 180 days of the alleged discriminatory employment action, and then rely on the state agency to pursue the complaint and seek recourse. The Utah Antidiscrimination Act does not provide an aggrieved employee with a private right of action through state civil court, even after the employee has exhausted their administrative remedies. Given the lack of a private right of action, short statute of limitations, and relatively narrow set of remedies, Utah thus has one of the weakest regulatory frameworks for addressing the gender pay disparities.

**Antiretaliation:** In addition to providing a private right of action for aggrieved employees or extending the statute of limitations for claims beyond 180 days, most U.S. states have enacted antiretaliation protections for employees alleging pay discrimination. Additionally, some states, such as Delaware and Illinois, have enacted express provisions prohibiting employers from lowering the wage of any worker to comply with the terms of the states’ equal pay laws, whereas nearly half of states note that agreements to accept less than equal pay are unenforceable.<sup>15</sup>

**Salary History Bans and Pay Transparency:** In a more recent push to close the gender pay gap, some state and local governments have targeted employers’ use of salary history and pay transparency bans to perpetuate unequal pay for women. More than a dozen states have passed laws that ban employers from requiring applicants to provide their salary history, or alternatively, from relying on applicants’ salary history when making salary offers—such as Alabama, Colorado, and Maine. By removing salary history from hiring and compensation decisions, these bans seek to provide women with a clean slate during negotiations, rather than forcing them to carry their lower pay status from former positions. However, current research on salary history bans suggests that the actual results may be mixed. One recent study from PayScale found that among over 15,000 applicants, women who did not provide, or declined to disclose, their salary histories were offered 1.8 percent less than women who did disclose. At least one economist speculates that women lose out on wage gains because, without actual knowledge of applicants’ compensation history, employers will simply “assume that women made lower salaries.”<sup>16</sup> However, a study that analyzed the effects on salaries in states that have enacted the ban found that employers posted wages more often in job advertisements and increased pay for 6.4% of female job changers. Furthermore, the study suggests that after factoring in differences of education and experience, of the remaining unexplained gender wage gap, about half would disappear under a salary history ban.<sup>17</sup>

---

<sup>15</sup> Ark. Code Ann. § 11-4-611(b)(2).

<sup>16</sup>Meli, J., & Spindler, J. C. (2019, March 28). Salary history bans and gender discrimination. University of Texas Law, Law and Econ Research Paper No. E587. <https://ssrn.com/abstract=336143>

<sup>17</sup> Bessen, J. E., Meng, C., & Denk, E. (2020, June). Perpetuating inequality: What salary history bans reveal about wages. <https://ssrn.com/abstract=3628729>

Ultimately, these salary history bans represent a relatively novel, yet promising public policy development and may warrant further research in the Rocky Mountain West region. In addition, some advocates and policymakers focus on efforts to promote workplace pay transparency. To that end, nearly a dozen states have enacted laws that prohibit employers from preventing employees from disclosing their wages, or from retaliating against employees who choose to do so.

**Additional Requirements:** Finally, some states—namely, California, Colorado, and Delaware—have placed more onerous requirements on employers, such as posting and recording retention requirements targeted at reducing the gender pay gap. In Colorado, for example, the Colorado Wage Equality Regardless of Sex Act requires employers to post all opportunities for promotion to all current employees, complete with the hourly or salary compensation of the position, before making a promotion decision. In New Hampshire, state law provides that employers are required to post a workplace notice stating, “that it is illegal in New Hampshire to pay employees different wages for the same work based solely on sex.” N.H. Rev. Stat. Ann. § 275:49(VII).

Ultimately, these additional requirements are only set forth by a small minority of states’ equal pay laws, with the most common features consisting of: (1) a private right of action (40); (2) express antiretaliation provisions (28); (3) statewide salary history bans for most employers (14); and (4) workplace pay transparency provisions (10).

### Recommendations for Utah

Given the dismal state of Utah’s gender pay gap and the continued frustration among Utah women, state lawmakers should strive to modernize the state’s antiquated regulatory framework for resolving equal pay disputes by adopting a standalone equal pay act that adheres to the best practices set forth by the overwhelming majority of U.S. states.

In particular, the state should provide Utah women with liberty-reinforcing avenues for recourse—such as a private right of action—so they can challenge pay discrimination on their own without resorting to a state agency or protracted federal process with the U.S. Equal Employment Opportunity Commission. As with most states, the statute of limitations for such a claim should be somewhere between 1-3 years to provide employees with adequate opportunity to exercise their rights under state law. Consistent with the Utah Antidiscrimination Act, any proposed equal pay law should have an express antiretaliation provision to protect workers pursuing their rights to equal pay for equal work. Moreover, Utah lawmakers should consider leading the way on free speech and equal pay protections by preserving employees’ right to reasonably discuss their wages through an express pay transparency provision. Additionally, restricting the use of salary history as part of the hiring process has been shown to help reduce an unexplained portion of the gender pay gap, and may be particularly applicable to Utah given the high number of women who return to work after extended absences from the workforce. It is also important to note that supplementing pay gap changes with other public policies—addressing paid family leave, the state’s childcare crisis, and economic security, for example—shows tremendous promise in creating economic self-sufficiency for Utah women and families.<sup>18</sup>

Finally, Utah needs a more comprehensive study on the causes and effects of the state’s gender pay gap so state and local leaders can respond with targeted, efficient policy solutions, and thereby address one of the largest gaps in the nation and constituents’ voiced concerns.

As such, this paper recommends the following policy solutions to address Utah’s gender pay gap and expand state and private remedies available to female employees:

1. ENACT A STANDALONE EQUAL PAY ACT, PROVIDING:
  - a. A PRIVATE RIGHT OF ACTION FOR AGGRIEVED EMPLOYEES

---

<sup>18</sup> Mason, C. N. (2021). Build(ing) the future: Bold policies for a gender-equitable recovery. <https://iwpr.org/building-the-future/>

- b. AT LEAST A 1-YEAR STATUTE OF LIMITATIONS
  - c. ANTIRETALIATION PROTECTIONS
  - d. PAY TRANSPARENCY PROTECTIONS
  - e. SALARY HISTORY BAN
2. CONDUCT A COMPREHENSIVE, STATEWIDE STUDY ON THE CAUSES AND EFFECTS OF UTAH’S GENDER PAY GAP

## Conclusion

Despite the state’s alarming reputation for the status of women, there are compelling reasons to believe that Utah women will significantly shape the state’s economic and political landscape over the near future. Indeed, more than 61 percent of Utah women are workforce participants—placing us within the top third of U.S. states. Utah women also account for the fastest-growing segment of newly-elected representatives, rising to account for nearly 25 percent of state legislative seats—up from 15 percent only six years ago.<sup>19</sup> Utah women are also becoming more politically and economically active, educated, and entrepreneurial—accounting for a large percentage of the state’s new business activity. The ability of Utah lawmakers to gain and retain the political support of these new generations of Utah women thus rests on their ability to address longstanding concerns and fill decades-old gaps that disadvantage Utah women. By creating a standalone equal pay act, Utah lawmakers have the opportunity to finally modernize the state’s regulatory framework, earn the trust of young Utah women who overwhelmingly want lawmakers to act, and extend liberty-reinforcing remedies to those affected by cruel and unfair compensation practices—making us the 44<sup>th</sup> state to do so.

---

*Author:* L. Jenna Gould is a military veteran and policy analyst. She received her bachelor’s degree in Political Science and her Master of Public Administration from Columbia University.

This white paper was commissioned by Dr. Susan R. Madsen at the Utah Women & Leadership Project at Utah State University. It was completed in partnership with the “Equality and Opportunity” portion of the *One Utah Roadmap* efforts, which are overseen by Governor Spencer Cox and Lt. Governor Deidre Henderson. For questions, email Dr. Susan Madsen at [susan.madsen@usu.edu](mailto:susan.madsen@usu.edu) or find other research publications at <http://utwomen.org/>.

*Copyright © 2021 Utah Women & Leadership Project*

---

<sup>19</sup> Madsen, S. R. (2017).