



**TESTIMONY OF BRENDA HARKAVY, ESQ. ON BEHALF OF THE  
PENNSYLVANIA BAR ASSOCIATION  
PUBLIC HEARING REGARDING AMENDMENT OF THE PENNSYLVANIA EQUAL  
PAY LAW  
PENNSYLVANIA SENATE DEMOCRATIC POLICY COMMITTEE  
May 18, 2026**

**Introduction**

Chair Miller and members of the Senate Democratic Policy Committee, thank you for the opportunity to submit testimony on modernizations to Pennsylvania's Equal Pay Law. My name is Brenda Harkavy, and I submit this testimony on behalf of the Pennsylvania Bar Association, which represents over 20,000 attorneys and legal professionals from across the Commonwealth. The Pennsylvania Bar Association strongly supports reforms to the Equal Pay Law, and we thank you for the opportunity to offer testimony on this critically important issue. This testimony addresses three propositions. First, the Pennsylvania Equal Pay Law, last meaningfully amended in 1967, is no longer fit for the workforce it is intended to protect. Second, three contemporary developments: the widening of the gender pay gap, the accelerating departure of women from the workforce, and the contraction of federal protections, make the case for legislative action urgent. Third, reforms recommended by the PBA that would substantially restore the Law's effectiveness while remaining consistent with established law in other jurisdictions and at the federal level.

**I. Pennsylvania's Equal Pay Law has not been meaningfully updated in nearly sixty years.**

Pennsylvania enacted its Equal Pay Law in 1959,<sup>1</sup> four years before the federal Equal Pay Act of 1963. At the time of enactment, women in the United States earned approximately 59 cents for every dollar earned by men. The Commonwealth was an early national leader on the issue.

The statute was last meaningfully amended in 1967. That amendment did not strengthen the Law; it narrowed its reach by excluding from coverage any employee subject to Section 6 of the federal Fair Labor Standards Act.<sup>2</sup> Because virtually all private-sector employees in the Commonwealth are covered by the Fair Labor Standards Act, the practical effect of the 1968 amendment was to render the Pennsylvania Equal Pay Law a near-empty statute as to most of the workforce. The Pennsylvania General Assembly has made no further substantive amendment to the Law in the intervening decades.

Federal and sister-state law has evolved substantially over the same period. Title VII of the Civil Rights Act of 1964 has been litigated and amended extensively. The Lilly Ledbetter Fair Pay Act of 2009 reset the statute of limitations for accrual of pay-discrimination claims under federal

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<sup>1</sup> Act of December 17, 1959, P.L. 1913, No. 694, as amended, 43 P.S. §§ 336.1–336.10.

<sup>2</sup> Act of July 31, 1968, P.L. 869, No. 263 (excluding from the definition of "employee" any person subject to Section 6 of the Fair Labor Standards Act, 29 U.S.C. § 206); see *Bradford v. Peoples Nat. Gas Co.*, 60 F.R.D. 432, 436–37 (W.D. Pa. 1973).



civil rights statutes.<sup>3</sup> Twenty-one states and the District of Columbia have enacted modern equal pay statutes, including New Jersey, New York, Maryland, Massachusetts, California, Colorado, Oregon, and Washington. Despite these advancements, Pennsylvania continues to enforce a 1967-vintage statute against the conditions of a 2026 economy.

## **II. The workforce and the federal landscape have changed dramatically since 1967.**

### ***A. The composition of the Pennsylvania workforce bears little resemblance to the workforce of 1967.***

When the Pennsylvania Equal Pay Law was last amended, fewer than 37 percent of working-age women were in the labor force, and most married women did not work outside the home.<sup>4</sup> Today, women's labor force participation rate is approximately 57 percent. Women constitute roughly half of the United States workforce and approximately 47 percent of Pennsylvania's workforce.<sup>5</sup>

Educational attainment has reversed. In 1967, men earned approximately 60 percent of bachelor's degrees and the substantial majority of graduate degrees. Today, women earn the majority of bachelor's, master's, and doctoral degrees in the United States. Recent research from the United States Census Bureau confirms, however, that the gender pay gap persists at every level of educational attainment, and that the gap cannot be explained by differences in field of study, occupation, industry, or hours worked.<sup>6</sup>

The breadwinner assumption that animated mid-twentieth-century employment law has likewise collapsed. Approximately 45 percent of Pennsylvania mothers are now primary or co-primary breadwinners for their households.<sup>7</sup> When a woman in such a household is underpaid, the household itself is underpaid, and the underpayment compounds across the working career.

### ***B. The structure of work has transformed in ways the existing statute could not have anticipated.***

The Pennsylvania Equal Pay Law was drafted for a single-employer, single-location, in-person economy. Remote and hybrid employment arrangements, which were essentially nonexistent before 2020, are now a permanent feature of the labor market. Significant numbers of Pennsylvanians work for employers headquartered in other jurisdictions, and the existing statute does not clearly address such cross-jurisdictional employment relationships. Gig employment, per

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<sup>3</sup> Pub. L. No. 111-2, 123 Stat. 5 (2009).

<sup>4</sup> U.S. Census Bureau, Historical Income Tables: People, Table P-40 (showing women's median earnings as a percentage of men's, full-time year-round workers, 1960–2024).

<sup>5</sup> U.S. Bureau of Labor Statistics, Women in the Labor Force: A Databook (latest ed.); see also Pennsylvania Department of Labor & Industry, Center for Workforce Information & Analysis.

<sup>6</sup> U.S. Census Bureau, Educational Attainment in the United States: 2024 (Mar. 2025); see also K. Houghton et al., Gender Pay Gap Similar Among Certificate Degree Graduates and Those from Highly Selective Bachelors Degree Programs But Reasons Why Differ (U.S. Census Bureau Feb. 22, 2024).

<sup>7</sup> Status of Women in the States, Pennsylvania (Institute for Women's Policy Research).



diem and contract employment, multi-state employers, regional pay banding, and location-based pay structures all raise pay-equity questions that the existing statute is not equipped to answer.

The Commonwealth has also fallen behind on pay transparency. Twenty-one states have enacted salary-history bans, and fourteen states plus the District of Columbia have enacted pay-transparency statutes requiring employers to disclose salary ranges in job postings or upon request.<sup>8</sup> Pennsylvania has neither. Each of the Commonwealth's neighbors, New Jersey, New York, Maryland, and Delaware, has a substantively stronger equal pay statute than Pennsylvania.

### ***C. Three contemporary developments make the case for legislative action urgent.***

First, the gender pay gap is widening for the first time in two decades. After approximately twenty years of slow but steady progress, the United States gender pay gap widened in 2023, marking the first statistically significant increase since 2003. It widened again in 2024. Equal Pay Day, which marks the date in the new year by which women's earnings finally equal what men earned in the prior calendar year, fell on March 12 in 2024, March 25 in 2025, and March 26 in 2026.<sup>9</sup> This represents the first consecutive widening of the wage gap since the 1960s—the same decade in which the existing Pennsylvania Equal Pay Act was written.

Second, women are leaving the workforce in significant numbers, and pay is part of the reason. According to data from the United States Bureau of Labor Statistics, approximately 455,000 women exited the United States workforce between January and August 2025. A January 2026 study by Catalyst surveyed women who left the workforce in 2025; 42 percent identified caregiving responsibilities, including the cost of childcare, as the leading reason for voluntary departure, and 18 percent identified dissatisfaction with pay as a contributing factor.<sup>10</sup> A November 2025 LendingTree analysis found that infant care now costs approximately 25 percent more than the median rent on a two-bedroom apartment in the 100 largest United States metropolitan areas.<sup>11</sup> The motherhood penalty compounds the problem: mothers earn approximately 28 percent less in lifetime earnings than women without children, and receive approximately 16 percent less in eventual Social Security retirement benefits.<sup>12</sup> The gender pay gap is therefore not only an income gap, but a retirement security gap.

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<sup>8</sup> AAUW, *The Simple Truth About the Gender Pay Gap: 2025 Update*, at 7 (Feb. 2025) (state pay-transparency and salary-history-ban tabulation).

<sup>9</sup> Equal Pay Day is set annually by the National Committee on Pay Equity using U.S. Census Bureau median earnings data for full-time, year-round workers. See National Committee on Pay Equity, [www.pay-equity.org](http://www.pay-equity.org); AAUW, *Equal Pay Day Calendar*, [www.aauw.org/resources/article/equal-pay-day-calendar/](http://www.aauw.org/resources/article/equal-pay-day-calendar/); U.S. Census Bureau, *Equal Pay Day: March 26, 2026*, [www.census.gov/newsroom/stories/equal-pay-day.html](http://www.census.gov/newsroom/stories/equal-pay-day.html).

<sup>10</sup> U.S. Bureau of Labor Statistics, *Employment Situation Reports (Jan.–Aug. 2025)*; Catalyst, *Women Leaving the Workforce in 2025 (Jan. 2026)*.

<sup>11</sup> LendingTree, *Cost of Child Care vs. Rent in the 100 Largest U.S. Metros (Nov. 2025)*.

<sup>12</sup> M. Rutledge, A. Zulkarnain & S.E. King, *How Much Does Motherhood Cost Women in Social Security Benefits?*, Center for Retirement Research at Boston College, CRR WP 2017-14 (Oct. 2017).



Third, federal protections are receding. On January 21, 2025, Executive Order 11246 was revoked.<sup>13</sup> That Order, in place for nearly six decades and substantially strengthened by Executive Order 13665 in 2014, prohibited federal contractors with contracts exceeding \$10,000 from discharging or otherwise discriminating against employees who asked about, discussed, or disclosed their own pay or that of others. Federal contract workers comprise more than 20 percent of the United States workforce. The revocation removed the only meaningful federal protection against retaliation for pay discussion that reached supervisors and other categories of workers not covered by the National Labor Relations Act. Concurrently, the United States Equal Employment Opportunity Commission's pay-data collection program is in flux, and private employers face increasing federal pressure to roll back pay-equity initiatives.

The Pennsylvania Equal Pay Law was drafted for a workforce that no longer exists, and the federal protections that have for decades partially compensated for the Law's deficiencies are being withdrawn. Absent state legislative action, women in the Commonwealth will face a less protective legal landscape in 2026 than at any point in the last sixty years.

### **III. The Pennsylvania pay gap is wider than the national average and exceptionally severe for women of color and rural workers.**

Pennsylvania women are paid approximately 79 cents for every dollar paid to Pennsylvania men, a figure below the national average. The median annual pay for a Pennsylvania woman in a full-time, year-round position is approximately \$39,905; the corresponding figure for Pennsylvania men is approximately \$50,412, an annual individual wage gap of \$10,507. The Women's Law Project estimates that full-time Pennsylvania women lose more than \$19 billion in combined annual wages to the gender pay gap.<sup>14</sup>

The disparity is dramatically wider for women of color. Black women in Pennsylvania earn approximately 65 cents for every dollar paid to white, non-Hispanic men. Latinas earn approximately 57 cents. Latinas are also the fastest-growing demographic group in the Commonwealth.

At the current rate of progress, Pennsylvania women are not projected to achieve pay equity until 2072. Most American women are projected to achieve pay equity by 2058. Pennsylvania is therefore more than a decade behind the national projection. An entire generation of young women in the Commonwealth would live their full working lives without equal pay if the existing statute is not amended.

The disparity is also geographic. Forty-eight of Pennsylvania's sixty-seven counties are designated rural by the Center for Rural Pennsylvania, and the 2023 rural per-capita income was

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<sup>13</sup> Exec. Order No. 11246, 30 Fed. Reg. 12,319 (Sept. 24, 1965), as amended by Exec. Order No. 13,665, 79 Fed. Reg. 20,749 (Apr. 8, 2014); revoked by Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

<sup>14</sup> Women's Law Project, *The Gender Wage Gap in Pennsylvania* (most recent ed.) (citing U.S. Census Bureau, American Community Survey 1-Year Estimates).



approximately \$16,831 less than the urban per-capita income.<sup>15</sup> Several non-rural municipalities have enacted local anti-discrimination ordinances, but only Philadelphia prohibits salary-history inquiries during the hiring process. Rural Pennsylvanians have no comparable local recourse and depend exclusively on state law.

#### **IV. The existing Pennsylvania Equal Pay Law suffers from eight structural flaws.**

The 1959 Law was meaningful legislation when enacted. Following the 1968 amendment and the absence of further legislative attention since, the Pennsylvania Equal Pay Law today is among the weakest equal pay statutes in the country. The Pennsylvania Bar Association has identified eight specific structural flaws, which are outlined below.

First: the Fair Labor Standards Act exclusion. The 1968 amendment excluded any employee subject to the federal Fair Labor Standards Act from bringing a cause of action under Pennsylvania law. The Fair Labor Standards Act is a federal labor law that establishes nationwide standards for minimum wage, overtime pay, and certain workplace protections, but it does not provide the same comprehensive state-level equal pay remedies and protections contemplated by Pennsylvania law. Because nearly every private-sector worker in Pennsylvania is FLSA-covered, the Pennsylvania Equal Pay Act today reaches only a narrow category of workers. Teachers, nurses, public defenders, factory workers, and most professional employees cannot maintain a cause of action under the Law. The recent decision in *Cavanagh v. County of Delaware*, in which female public defenders alleged “systemic, enduring, and continuing wage disparity,” illustrates the consequences: the plaintiffs' state-law claim was dismissed because the Fair Labor Standards Act covered them.<sup>16</sup>

Second: the absence of a salary-history ban. Pennsylvania employers may freely use an applicant's prior salary to set new compensation. Because prior salary may itself reflect prior discrimination, salary-history matching causes pay disparities to follow a worker from position to position throughout her career.

Third: the absence of an anti-retaliation provision. Pennsylvania law does not prohibit an employer from discharging, demoting, or otherwise penalizing an employee who asks about pay, discusses pay with coworkers, or shares salary information. So long as pay discussion may be suppressed, pay discrimination remains undetectable. The well-known facts of the Lilly Ledbetter case—involving twenty years of undisclosed underpayment under a workplace policy prohibiting employees from discussing wages—could occur today, lawfully, in Pennsylvania.

Fourth: the absence of a paycheck-accrual rule. Pennsylvania's two-year statute of limitations runs from the original discriminatory pay decision, not from each subsequent paycheck that perpetuates the discrimination. By the time most workers discover that they have been

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<sup>15</sup> Center for Rural Pennsylvania, Quick Facts: Rural Pennsylvania (2024).

<sup>16</sup> *Cavanagh v. County of Delaware*, No. 2:23-cv-04323 (E.D. Pa. 2025); see also WIP Report, *supra* n.1, at 7–8.



underpaid, the limitations period has run. Congress corrected this problem in 2009 with the Lilly Ledbetter Fair Pay Act. The Pennsylvania General Assembly has not adopted a corresponding rule.

Fifth: the limitation to sex-based claims. The Pennsylvania Equal Pay Law protects against pay discrimination on the basis of sex only. It does not reach race or ethnicity, despite the substantially wider wage gap experienced by Black women and Latinas in the Commonwealth.

Sixth: the narrow definition of equal work. The existing statute applies an “equal work” standard requiring near-identical positions. Most modern employment is not so categorized, and many genuine pay disparities are placed beyond the statute's reach. Most modern equal pay statutes apply a “substantially similar work” standard, evaluated as a composite of skill, effort, responsibility, and working conditions.

Seventh: statutory penalties that have not kept pace. Statutory fines under the Pennsylvania Equal Pay Law remain at levels set decades ago, including fines as low as \$200. The penalty structure provides no meaningful deterrent against employers that benefit financially from discriminatory pay practices.

Eighth:, the absence of class-action authority and adequate remedies. The absence of class-action authority compounds the problem in cases involving systemic practices that affect entire workforces. In addition, the Law lacks several remedies that are commonly available under modern anti-discrimination statutes, such as compensatory and punitive damages. Without meaningful remedies, many employees lack a practical incentive or ability to pursue claims, particularly where the amount at issue for any one worker is relatively small.

#### **V. The Pennsylvania Bar Association identifies several recommended amendments; four are first-priority.**

In 2025, the Pennsylvania Bar Association adopted a position in support of several amendments to the Pennsylvania Equal Pay Law. The recommendations are comprehensive by design, so that the General Assembly need not revisit the statute in five years. There are four reforms identified as first-priority. They are the most necessary, the most consistent with established law in other jurisdictions and at the federal level, and may be the most palatable as a matter of policy.

Our first recommended reform is removal of the Fair Labor Standards Act exclusion. The 1968 language excluding FLSA-covered workers should be stricken, and a plaintiff should be permitted to maintain claims under both federal and state law. Without this amendment, no other reform will reach the workers who require protection. The amendment does not expand the universe of protected workers; it restores the universe the General Assembly intended to protect when the original Act was passed in 1959.

Second: prohibition of retaliation for pay discussion. Pennsylvania law should prohibit employers from discharging, demoting, or otherwise penalizing employees for asking about pay, discussing pay with coworkers, or sharing salary and benefit information. The federal National Labor Relations Act protects most non-supervisory employees who engage in concerted activity,



but the Act does not cover supervisors and does not clearly protect an employee asking about her own pay or benefits. U.S. Executive Order 11246 had filled the gap for federal contract workers but was revoked in January 2025. The Commonwealth has both the authority and a clear policy basis to fill that gap. The protection imposes no cost on any employer not engaged in pay discrimination.

Third: prohibition of reliance on salary history in setting pay. Pennsylvania employers should be prohibited from inquiring about, or relying on, an applicant's prior salary in setting compensation. Salary-history matching is the single most effective mechanism by which historical pay discrimination perpetuates itself. The Pennsylvania Bar Association adopted this position in 2019 and reaffirmed it in 2025. Twenty-one states and the cities of Philadelphia and Pittsburgh have enacted some form of this rule. The amendment does not constrain employers' ability to set pay; it requires only that pay be set on the basis of the position's value rather than the applicant's prior bargaining position.

Fourth: a six-year statute of limitations and paycheck-accrual rule. The Act should be amended to provide a six-year statute of limitations and to establish that each discriminatory paycheck constitutes a new violation. This is the approach Congress took in the Lilly Ledbetter Fair Pay Act of 2009 with respect to claims under Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. New Jersey adopted the same approach in the Diane B. Allen Equal Pay Act of 2018, which passed the New Jersey Assembly 74-2 and the New Jersey Senate 35-0—overwhelming bipartisan margins.<sup>17</sup> Pennsylvania would simply align its state law with established federal precedent and with the law of its largest neighboring state.

Other recommendations for improving the Equal Pay Law would include clarifying the “substantially similar work” standard, empowering the Pennsylvania Department of Labor and Industry, authorizing class actions, providing for treble and punitive damages, and defining “wages” to include benefits and supplements..

## **VI. Several bills currently pending in the General Assembly substantially overlap with the Pennsylvania Bar Association’s recommendations.**

House Bill 630 is the most comprehensive of the bills currently pending in the 2025–2026 session. It passed the Pennsylvania House on May 5, 2025 by a vote of 112-91 and is now before the Senate Labor and Industry Committee. House Bill 630 would add race and ethnicity to the protected classes, prohibit salary-history inquiries, prohibit retaliation, and substantially increase statutory penalties. The bill also creates a dedicated Equal Pay Enforcement Fund. A nearly identical bill passed the House in the prior session but was not taken up by the Senate. House Bill

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<sup>17</sup> Diane B. Allen Equal Pay Act, N.J. Stat. Ann. § 10:5-12 et seq. (2018).



560 is a companion measure with similar substance. Senate Bill 889, Senate Bill 237, and Senate Bill 1045 address narrower aspects of the same subject matter.<sup>18</sup>

House Bill 630 captures many of the PBA's supported reforms, and the PBA expressed its strong support for the legislation during its consideration in the House. However, our association supports more expansive reforms in addition to those proposed in the bill, such as removal of the 1968 Fair Labor Standards Act exclusion, which House Bill 630 does not fully address, the six-year statute of limitations and paycheck-accrual rule, treble and punitive damages, and class-action authority. The Pennsylvania Bar Association's position is that meaningful reform must incorporate structural changes, not merely strengthen the penalty provisions of the existing framework.

## **VII. The case for reform rests on economic fundamentals and is bipartisan in pedigree.**

Pay equity is not an ideological question. It is an economic and family-stability question that affects approximately half of Pennsylvania's workforce. When women are paid fairly, the additional earnings return to local economies through spending on housing, food, childcare, health care, and retirement savings. The Center for American Progress has estimated that closing the gender pay gap could add billions of dollars annually to the United States economy, and that the cumulative cost of the wage gap to American women between 1967 and 2021 has been approximately \$61 trillion in lost wages.<sup>19</sup>

Approximately 45 percent of Pennsylvania mothers are primary or co-primary breadwinners. When mothers are underpaid, their entire households absorb the loss. When mothers are paid fairly, they remain in the workforce, generating additional payroll tax revenue, additional Social Security contributions, and sustained labor force participation. The structural conditions that have driven approximately 455,000 women out of the United States workforce in 2025 will continue to operate in Pennsylvania absent legislative response. Pay is among those structural conditions.

Our recommended reforms are also bipartisan in pedigree. The Lilly Ledbetter Fair Pay Act passed the United States Senate with bipartisan support. New Jersey's Diane B. Allen Equal Pay Act passed both chambers of the New Jersey Legislature with overwhelming bipartisan margins. The reforms recommended here are not novel or extreme. They reflect the consensus position of the modern American legal system as to what an effective equal pay statute should contain.

## **Conclusion**

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<sup>18</sup> H.B. 630, 209th Gen. Assemb., Reg. Sess. (Pa. 2025); H.B. 560, 209th Gen. Assemb., Reg. Sess. (Pa. 2025); S.B. 889, 209th Gen. Assemb., Reg. Sess. (Pa. 2025); S.B. 1045, 209th Gen. Assemb., Reg. Sess. (Pa. 2025).

<sup>19</sup> Center for American Progress, Playbook for the Advancement of Women in the Economy: Closing the Gender Pay Gap (Mar. 14, 2024).



Pennsylvania was once a leader on equal pay. The Commonwealth was four years ahead of the federal government in 1959. It is now nearly six decades behind and falling further behind with each legislative session. The gender pay gap is widening for the first time in a generation; women are leaving the workforce in significant numbers; and federal protections that previously compensated for the deficiencies of state law are being withdrawn.

The Pennsylvania Bar Association respectfully urges the General Assembly to support comprehensive reform of the Pennsylvania Equal Pay Law—reform that goes beyond any single currently pending bill, and that incorporates, at a minimum, the removal of the Fair Labor Standards Act exclusion, prohibition of retaliation for pay discussion, prohibition of reliance on salary history in setting pay, and a six-year statute of limitations with a paycheck-accrual rule modeled on the federal Lilly Ledbetter Act.

We appreciate the opportunity to testify on this important issue and welcome opportunities to collaborate on pending and future legislation.