

# Emerging Strategies and Progress Toward Pay Equity

Women's Bureau Webinar

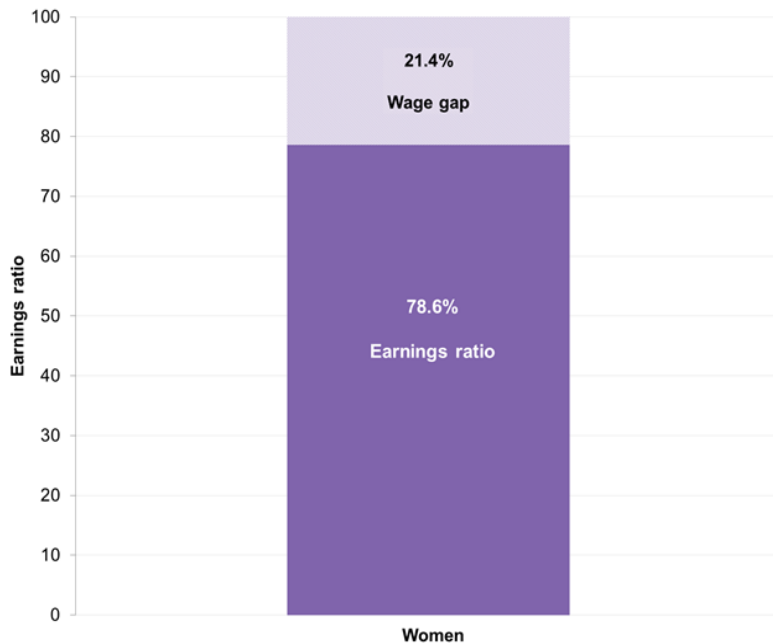
October 27, 2015

# Women's Bureau

## Data & Statistics - Earnings

### Women's to men's earnings ratio and wage gap

2014 women's median annual earnings of full-time, year-round workers, as a percentage of men's

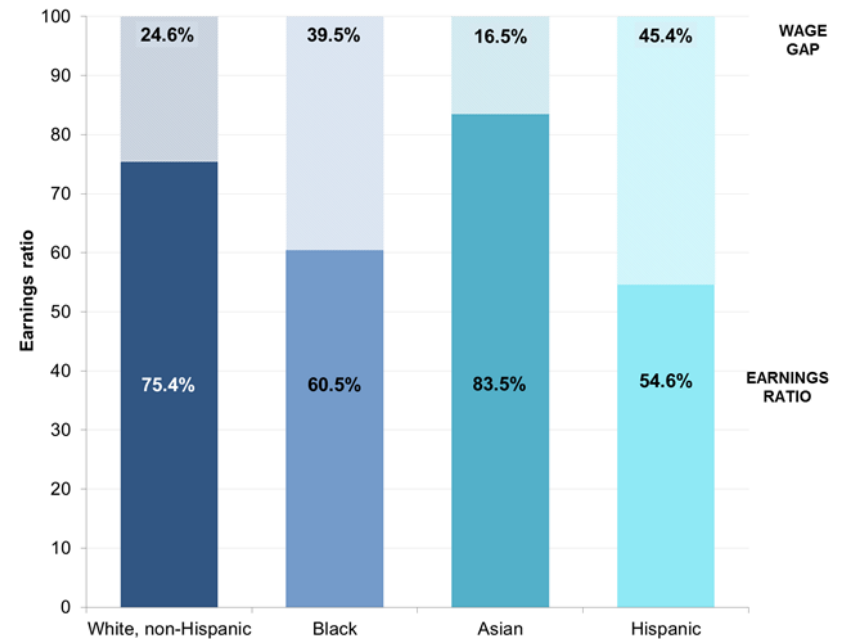


Note: Based on median annual earnings of full-time, year-round workers, 15 years old and over.

Source: U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplements/ Graph by the Women's Bureau, U.S. Department of Labor

### Women's to White, non-Hispanic men's earnings ratios and wage gap, by race and Hispanic or Latino ethnicity

2014 women's median annual earnings of full-time, year-round workers, as a percentage of White, non-Hispanic men's



Note: Based on median annual earnings of full-time, year-round workers, 15 years old and over. Blacks and Asians include people of Hispanic ethnicity. People of two or more races are excluded. Hispanics may be of any race.

Source: U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplements/ Graph by the Women's Bureau, U.S. Department of Labor

## Moderator:

- Latifa Lyles

Director, Women's Bureau, U.S. Department of Labor

## Speakers:

- Jennifer Reisch

Legal Director, Equal Rights Advocates

- Debra Fitzpatrick

Director, Center on Women, Gender & Public Policy,  
Humphrey School of Public Affairs, University of Minnesota

- Debra Carr

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Compliance Programs, U.S. Department of Labor

# THE FAIR PAY ACT OF 2015

The Foundation of a Stronger California

[www.equalrights.org](http://www.equalrights.org)



# About Equal Rights Advocates



Legislative Advocacy



Impact Litigation



Community Education



Direct Representation

# Laws That Prohibit Pay Discrimination, Unequal Pay, & Pay Secrecy Rules

## Federal Laws:

- Equal Pay Act of 1963 (Federal EPA)
- Title VII of the Civil Rights Act of 1964 (Title VII)
- National Labor Relations Act of 1935 (NLRA)



# How does an employer violate the Federal Equal Pay Act (EPA)?

- Prohibits employers from paying people of the “opposite sex” differently for doing the same job
  - Substantially equal skill, effort and responsibility
  - Performed under similar working conditions
  - Within the same establishment
- No discriminatory “intent” required
- Employers do not violate the EPA if the pay difference is based on “any factor other than sex.”

# The exceptions to the rule (of equal pay):

*What can justify paying employees of the opposite sex differently under federal law?*

Where an employee meets her initial burden, an employer may avoid liability by showing pay difference is due to:

- **Seniority** system or rules;
- **Merit** system;
- System of paying people by **quantity of production** (e.g., piece rate or commissions); or
- Any **factor other than sex**
  - a.k.a., the “catch-all” defense.
  - What does it mean? What are its limits? What is legitimate basis for pay differential?



# TITLE VII OF THE CIVIL RIGHTS ACT

- Bans discrimination in all aspects of employment based on a person's race, color, religion, sex, or national origin.
- ER cannot use protected categories as basis for firing, failing to hire, or discriminating against an employee with respect to his/her "compensation, terms, conditions, or privileges of employment."

# How does an employer violate Title VII?

- Employers cannot use “sex” as a factor in determining employees’ pay.
- They cannot do so intentionally (disparate treatment)
- They cannot have a neutral policy that has a disproportionate impact on women as compared to men (disparate impact)

# California Fair Pay Act (SB 358): *Background*

- CA Equal Pay Act in existence since 1949
- Part of California Labor Code, minimum wage law
- Fair Pay Act of 2015, SB 358 (Jackson) amended the CA EPA, making it the strongest in the nation.
- Achieved bipartisan support; endorsed by the Cal Chamber of Commerce

# California Fair Pay Act:

## *Summary of Changes to Law*

- Ensures that employees performing substantially similar work are paid equally
- Eliminates “same establishment” requirement
- Revises the “bona fide factor other than sex” defense to require employers to prove a business necessity for using the factor
- Strengthens EPA’s anti-pay secrecy provisions by prohibiting retaliation or discrimination against employees who disclose, discuss, or inquire about their own or co-workers’ wages for the purpose of exercising rights under the law.
- Ensures that any legitimate, non-sex related factor(s) relied upon are applied reasonably and account for the entire pay differential; and

# California Fair Pay Act: *What Does it Change?*

- Ensures that employees performing substantially similar work are paid equally
  - Changes the requirement of “equal work” to “substantially similar work.”

# California Fair Pay Act Changes (continued)

- Eliminates the “same establishment” provision
  - This requirement prevented employees from being able to compare their salary to that of a coworker who did the same job in a different physical location.

# Provisions of The Fair Pay Act (SB 358): Employer Defenses

- Retains prior exceptions for:
  - Merit system
  - Seniority system
  - Quantity of production-based pay
  - Bona fide factor other than sex

# California Fair Pay Act: *Employer Defenses*

Employer also must prove the factor(s):

- Is/are not based on or derived from sex-based differential in pay;
- Job-related to position and consistent with business necessity;
- Account for the entire differential;
- Applied “reasonably.”



# California Fair Pay Act: Pay Secrecy, Anti-Retaliation Provisions

- *Existing law:* Labor Code already says employers may not bar employees from “disclosing” wages
- *Now,* employers may not bar employees from, or discriminate or retaliate against employees for:
  - Discussing their own wage or wages of others
  - Inquiring about another employee’s wages; or
  - Aiding or encouraging other employees to exercise their rights under the Equal Pay Act

# Provisions of The Fair Pay Act (SB 358): No Intent Requirement

- Irrelevant whether employer consciously created these pay differences among employees.
- If a woman earns less than man for substantially similar work and the employer cannot meet its defense burden, there is a violation of the CA Equal Pay Act.

# California Fair Pay Act: Enforcement & Implementation

- Division of Labor Standards Enforcement has authority to enforce law
  - Workers may file a “wage claim”
  - No administrative exhaustion required
- Private right of action
  - Workers may file a lawsuit alleging violations of the CA EPA.
- Statute of Limitations
  - 2 years (3 years if employer’s actions were “willful”)
  - Retaliation provisions: 1 year

# The Fair Pay Act (SB 358): Remedies

- CA EPA Violation Remedies:
  - Wages (plus interest)
  - Additional equal amount as liquidated damages
  - Attorneys' fees and costs
- Retaliation remedies:
  - Reinstatement
  - Lost Wages and Benefits + interest
  - Equitable Relief

**LEARN MORE**

**[www.equalrights.org](http://www.equalrights.org)**




# Minnesota Women's Economic Security Act of 2014

Debra Fitzpatrick

Center on Women, Gender & Public Policy



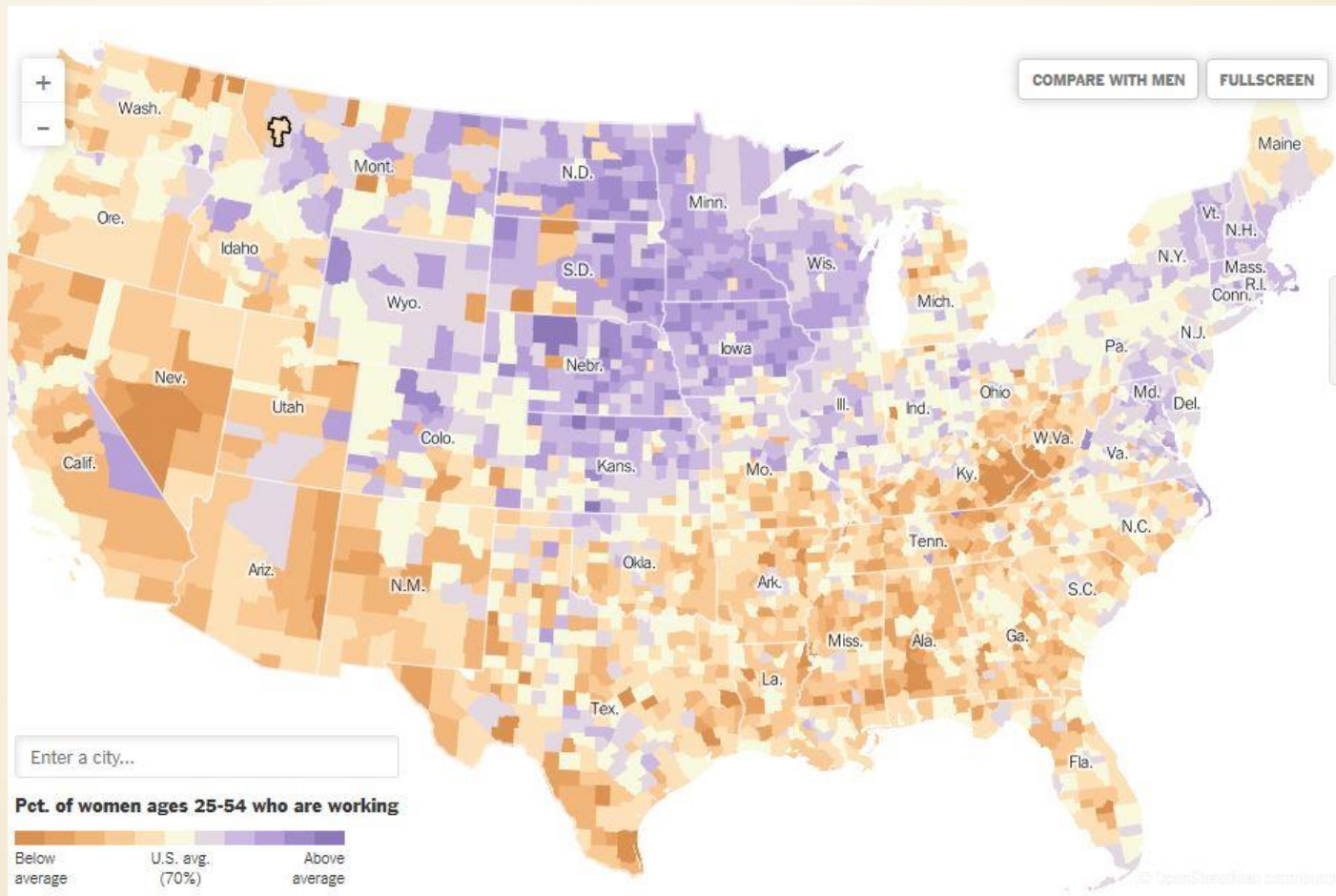
## How One State Plans To Wipe Out Sexism At Work In A Single Bill

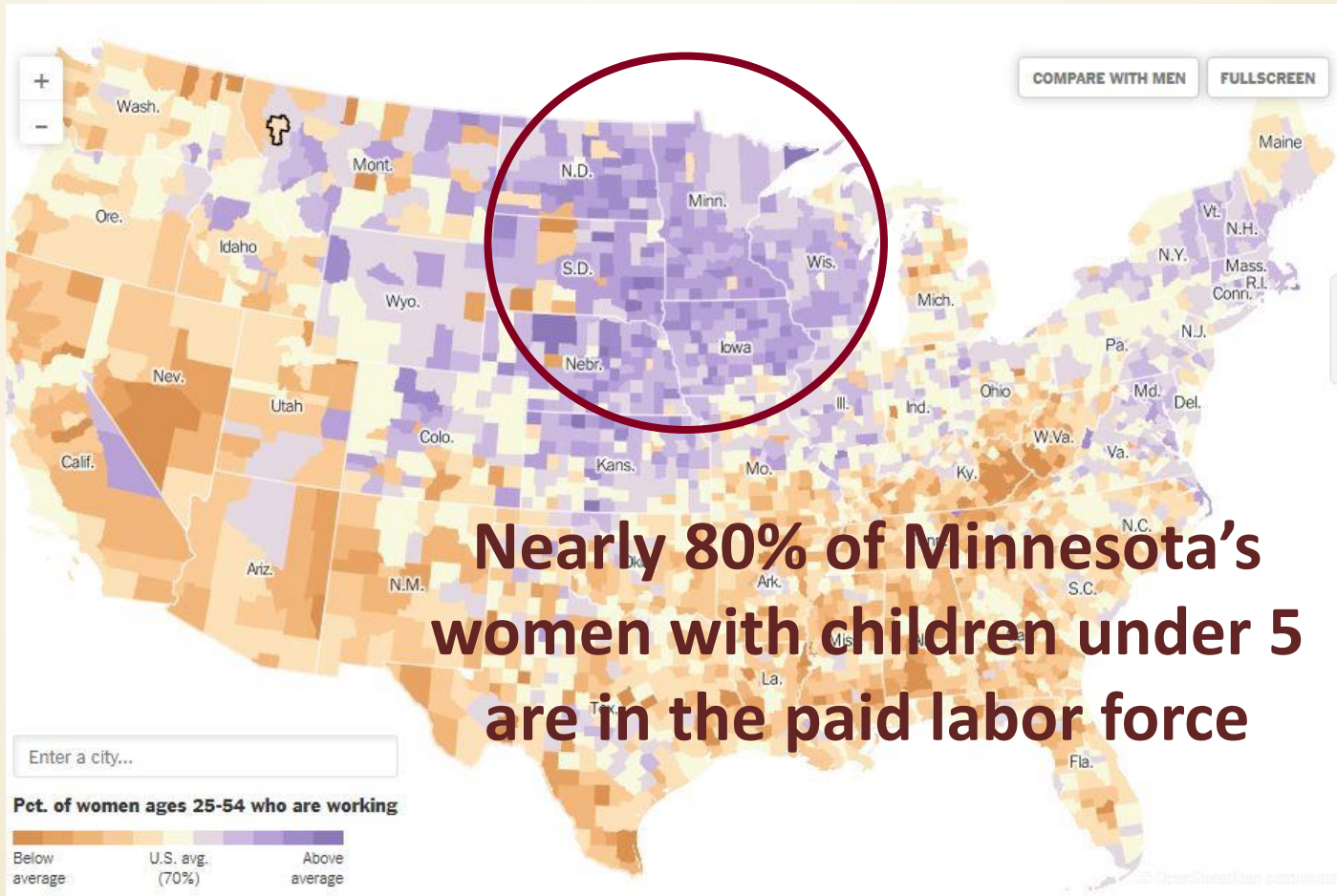
BY **BRYCE COVERT**  POSTED ON JANUARY 31, 2014 AT 9:08 AM











**The pay gap is  
twice as  
large for  
African-  
American,  
Indigenous, and  
immigrant  
women and  
Latinas**





## Local Government Pay Equity

State law requires all public jurisdictions such as cities, counties, and school districts to eliminate any sex-based wage inequities in compensation and submit reports to MMB. For information about reporting, see Resources below.

MMB staff assists local government employers in implementing this law. In 1992, the division began analyzing reports from local governments to ensure that compliance is achieved and maintained. Reports must be submitted electronically via the Minnesota Pay Equity Management System.

**[www.mn.gov/mmb/employee-relations/compensation/laws/local\\_gov/local-gov-pay-equity/](http://www.mn.gov/mmb/employee-relations/compensation/laws/local_gov/local-gov-pay-equity/)**



### What does pay equity mean?

Pay Equity is a method of eliminating discrimination against women who are paid less than men for jobs requiring comparable levels of expertise. This goes beyond the familiar idea of "equal pay for equal work" where men and women with the same jobs must be paid equally. A policy to establish pay equity usually means: 1) that all jobs will be evaluated and given points according to the level of knowledge and responsibility required to do the job; and 2) that salary adjustments will be made if it is discovered that women are consistently paid less than men for jobs with similar points. The following example shows a typical sex-based wage disparity.

Job	Job Evaluation Rating	Salary
Delivery Van Driver (mostly men)	117 points	\$2900 per month
Receptionist (mostly women)	117 points	\$2400 per month

[www.mn.gov/mmb/employee-relations/compensation/laws/local\\_gov/local-gov-pay-equity/](http://www.mn.gov/mmb/employee-relations/compensation/laws/local_gov/local-gov-pay-equity/)





Minnesota Department of  
HUMAN RIGHTS

## Minnesota Department of Human Rights Equal Pay Certificate

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### The Minnesota Human Rights Act: Equal Pay Requirement for State Contractors

On May 11, 2014, Governor Mark Dayton signed the Women's Economic Security Act (WESA) into law. The law, in part, creates an obligation for certain state contractors to obtain an Equal Pay Certificate from the Minnesota Department of Human Rights prior to executing a contract. The new law concerning Equal Pay Certificates can be found in the Minnesota Human Rights Act at Minn. Stat. §363A.44. This document seeks to provide answers to the most frequently asked questions about the new law.

### Frequently Asked Questions

[http://mn.gov/mdhr/compliance/equal\\_pay.html](http://mn.gov/mdhr/compliance/equal_pay.html)





## A GUIDE TO MINNESOTA'S LAWS ABOUT WAGE DISCLOSURE PROTECTION

### WHAT IS WAGE DISCLOSURE PROTECTION?

You are allowed to share information about your wages and working conditions with other people.

### YOUR EMPLOYER CANNOT:

- stop you from telling anyone about your wages or conditions of employment;
- require you to sign a waiver that takes away your right to tell others about your wages or working conditions; or
- treat you differently because you told someone about your wages or working conditions.



<http://www.dli.mn.gov/LS/FaqWesa.asp>



Workforce  
development  
system reinforces  
occupational  
gender  
segregation  
and the wage  
gap







## State grants aim to get more women in hard hats



Angela Porter, 46, of St. Paul, hammered the nails out of the boards as she and her classmates deconstructed a house.



McKenzie Reynolds, 37, of St Paul, pried off the siding of one of the houses used in training the women in the program to become construction workers.



McKenzie Reynolds is part of a 12-week construction trade program at Goodwill-Easter Seals in St Paul.



**Workplaces  
have not  
kept up  
with  
changes in  
our  
families**





Minnesota Department of  
HUMAN RIGHTS

## Minnesota Human Rights Act Expands to include Familial Status in Employment

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### **The Minnesota Human Rights Act: Employment Familial Status Discrimination**

On May 11, 2014, Governor Mark Dayton signed the Women's Economic Security Act (WESA), which amended the prohibitions against employment discrimination in the Minnesota Human Rights Act (MHRA). Now, discrimination based on "familial status" in hiring, promotion, retention and other employment decisions is illegal in Minnesota.

### Frequently Asked Questions

[http://mn.gov/mdhr/employers/familial\\_status.html](http://mn.gov/mdhr/employers/familial_status.html)





## A GUIDE TO MINNESOTA'S LAWS ABOUT PARENTAL LEAVE

### PARENTAL LEAVE

Employees may take up to 12 weeks of unpaid leave upon the birth or adoption of their child when:

1. they work for a company with 21 or more employees;
2. they worked at least half time for 12 months; and
3. they have been with the company for at least 12 months.

#### When does the parental leave start?

- The leave must be taken within 12 months of the birth or adoption.
- Employees must request the leave from their employer.
- Employees can choose when the leave will begin.
- Employers can adopt reasonable policies about when requests for leave must be made.



<http://www.dli.mn.gov/LS/FaqWesa.asp>





## A GUIDE TO MINNESOTA'S LAWS ABOUT PREGNANCY LEAVE, NURSING MOTHERS

### **PREGNANCY LEAVE FROM WORK**

**Female employees may take up to 12 weeks of unpaid leave during or following pregnancy when:**

1. they work for a company with 21 or more employees at one site;
2. they worked at least half time for 12 months; and
3. they have been with the company for at least 12 months.

**Pregnancy leave may be taken if the woman cannot work because of:**

- prenatal care;
- pregnancy;
- childbirth; or
- related health conditions.



<http://www.dli.mn.gov/LS/FaqWesa.asp>

## **PREGNANCY ACCOMMODATIONS AT WORK REQUIRED ACCOMMODATIONS**

**A pregnant employee may request and her employer must provide:**

- more frequent restroom, food and water breaks;
- seating; and
- limits on lifting more than 20 pounds.

## **OTHER ACCOMMODATIONS**

**A pregnant employee may request other reasonable workplace accommodations when:**

- she has been given advice from a health care provider or doula; and
- the accommodation would not impose an undue hardship on the employer's business.

Other accommodations may include the temporary transfer to a less strenuous or hazardous job. An employer cannot require an employee to take an accommodation. An employer cannot retaliate against an employee for requesting or taking an accommodation. Employees may have additional rights under the Minnesota Human Rights Act.

<http://www.dli.mn.gov/LS/FaqWesa.asp>

## NURSING MOTHERS

**A mother who needs to express breast milk for her child at work:**

- must be provided reasonable unpaid break time to express breast milk; and
- must, when possible, be provided a private area to express milk that:
  - » is not a bathroom,
  - » is shielded from view,
  - » is free of intrusion from coworkers and the public, and
  - » has access to an electrical outlet.

The employer must make a reasonable effort to provide a private area to express milk. Employers are not required to provide break time if doing so would seriously disrupt operations. Breaks already provided may fulfill this requirement.



<http://www.dli.mn.gov/LS/FaqWesa.asp>



**WOMEN'S  
ECONOMIC  
SECURITY ACT**



**Questions?**

**[mnwesa.org](http://mnwesa.org)**

**[mn.gov/mdhr](http://mn.gov/mdhr)**

**[dli.mn.gov](http://dli.mn.gov)**



**HUMPHREY SCHOOL  
OF PUBLIC AFFAIRS**  
UNIVERSITY OF MINNESOTA



# Pay Transparency: OFCCP's Final Rule Implementing EO 13665

Debra A. Carr

Office of Federal Contract Compliance  
Programs (OFCCP)

# Facts About Federal Contractors

- An estimated **500,000** businesses are federal contractors in FY 2014.
- These businesses employ approximately **65 million** employees, nationwide.
- These businesses span nearly every type of industry – *e.g.*, agriculture, manufacturing, transportation, defense, science, healthcare, education, construction, hospitality and retail sales, etc.
- The federal government awarded over **\$360 billion** of taxpayer money in FY 2015 alone based on data from USA Spending.gov.

# Executive Order (EO) 13665

- Amends EO 11246, which prohibits employment discrimination by covered federal contractors on the bases of race, color, religion, sex, sexual orientation, gender identity & national origin.
- EO 13665 prohibits the use of pay secrecy agreements by covered federal contractors.
- Applies to every business with a federal contract in excess of \$10,000 that is entered into or modified on or after January 11, 2016.

# Specific Requirements

- Prohibits discharge of, or discrimination against, any applicant or employee because he or she inquired about, discussed, or disclosed their compensation or that of another applicant or employee.
- Requires dissemination of a mandated nondiscrimination notice to applicants & employees, either by electronic or physical posting.
- Requires incorporation of the nondiscrimination notice in existing employee manuals & handbooks.
- Permits individuals discriminated against in violation of EO 13665 to file a discrimination complaint with OFCCP.

# Contractor Defenses

- EO 13665 specifies two potential defenses to an allegation of discrimination:
  - General defense – the contractor may show it discharged or disciplined the employee for a legitimate reason unrelated to their discussion of compensation; OR
  - Essential job functions defense – the contractor may show the employee it acted against disclosed compensation information he or she obtained through performance of his or her essential job functions.

# Questions?

If you would like to ask a question,  
please use the chat feature in WebEx.

Women's Bureau, U.S. Department of Labor

[www.dol.gov/wb](http://www.dol.gov/wb)