

4 Tips To Help Employers Attack The Wage Gap

By **Amanda Ottaway**

Law360 (June 8, 2021, 6:50 PM EDT) -- Recent statistics show that the gender wage gap has held steady for at least a decade. But while it may seem like straightforward sexism, experts say a complex range of factors can trip up even well-intentioned employers and affect what male and female workers take to the bank.

On average, women earned 84 cents for every dollar men earned in 2020, while Black, Latina and Native American women earned even less, according to an analysis of federal government data released in May by the Pew Research Center.

Though the Equal Pay Act of 1963 bars sex-based discrimination in pay for equal work, women are more likely to adjust their schedules for family responsibilities, less likely to hold high-level senior positions and less likely to successfully negotiate higher pay, experts said.

"The wage gap, and the differences in median annual pay for women versus men, is the product of many different forces that stratify our workforce," said Sanford Heisler Sharp LLP partner Alexandra Harwin.

Here, experts lay out four tips to help employers tackle the wage gap.

Embed Time Off Into Company Culture

Littler Mendelson PC shareholder Denise Visconti said it's key for employers to not only offer paid time off, but also model its use for employees of any gender. She noted the growing popularity of paternity leave, pointing out that several state family leave laws already allow parents of any gender to take time off for caregiving.

If, in a heterosexual partnership, the parents stack their new-child leave — for example, the mother takes leave after the child joins the family and then returns to work, piggybacked by the father taking leave — that could help take a bite out of the wage gap, Visconti said.

Employers should also lead by example, she noted.

"Really socialize the fact that this is something not only you have the capability to do based on our policies, but you really should do because it's the right thing to do, or it's the right thing to do for your family," she said.

Employers could also let employees hop on and off the company ladder, experts said. For example, a worker shouldn't have their aspirations for a promotion or partnership dashed because they took time off for childbirth or child-rearing.

Visconti compared it to employees taking military leave, when there's a recognition of the value of what they're doing with that time away from work. Employers should consider not just letting employees return to the same rung of the ladder, but to wherever they'd be had they not taken time off, she said.

Women pulling back at work to have children has contributed, "not necessarily [in] a sinister way, but certainly contributed to the male population continuing up that ladder," Visconti said.

Even seemingly objective factors, like seniority and merit-based pay, can lead to problems if they're harder to attain by employees with less time on the job, said Crowell & Moring LLP partner Trina Fairley Barlow. Women who step away from work could have a tougher time earning seniority status, she pointed out.

And taking time off for family responsibilities can hurt job-seekers, too. Gaps in applicants' resumes can turn employers off, noted Maya Raghu, director of workplace equality and senior counsel at the National Women's Law Center.

The fact that millions of women left the workforce during the COVID-19 pandemic — many because they had no other child care options — could worsen the wage gap, she said, particularly for Black and Latina women who lost or left jobs in higher numbers.

Consider Limiting Salary Negotiations

When it comes to pay equity, consistency is key. And one way inconsistencies can get into an employer's pay structure is through bonuses and other perks.

Companies are trying to set neutral pay ranges based on jobs and shell out compensation within those ranges, a practice that Littler's Visconti called "pricing the job." But a manager relenting to one employee's request for more pay could throw off that carefully calibrated system.

Visconti pointed out that employers may make what seem like small exceptions, but they can add up to larger discrepancies. For instance, a manager might offer more money to a prospective employee if he thinks the job price is too low. Or a company may allow a manager to keep his salary steady while reducing his workload.

Those kinds of things can create "an instant pay equity problem," Visconti said.

Time's Up Chief Operating Officer Monifa Bandele said that salary negotiations can often have a negative impact on female workers. Employers sometimes justify not giving raises to women by saying the women didn't ask for more money, but often when women do ask for more, they can be viewed as "nagging" or ungrateful, she said.

"We still have a lot of companies, or sometimes it's really chunks of companies or sections of companies or managers, allowing people to negotiate," Visconti said.

Set Schedules with Intention

Scheduling practices can help chip away at the wage gap and blunt its impact. The COVID-19 pandemic not only illustrated how office workers can benefit greatly from flexible scheduling, but demonstrated the variety of approaches businesses can take, said Time's Up's Bandele.

"COVID has shown businesses across the country that there's all kinds of models that could be in place," she said.

Flexibility not only benefits female caregivers, but the entire workplace, said Sanford Heisler's Harwin.

"A general policy that affords greater flexibility is going to promote equity within workplaces, and employers should really think about the opportunities that the pandemic has afforded to rethink arbitrary requirements," including some in-person interactions, she said.

Employers should also be careful not to assume what their employees can or can't handle based on their out-of-work responsibilities, Harwin added.

Harwin also noted that in high-wage, long-hour jobs like finance and law, female employees often have to — or feel pressured to — scale back to part time just to be able to leave the office by dinnertime, which can hurt their pay and career trajectory.

Meanwhile, for low-wage workers, a consistent schedule could be most helpful, Bandele said. Some industries use what's called "just-in-time" scheduling, which involves employees in industries like retail coming onto the worksite with little notice and makes it difficult for them to plan for child care, she said. Low-wage workers also often don't have access to paid leave, the National Women's Law Center's Raghu pointed out.

Lean Into the Ongoing Cultural Shift

Experts say there's current a cultural shift toward customers, employees and investors pushing for diversity. The Biden-Harris administration has said that closing the wage gap is a priority, though the Paycheck Fairness Act, which aims to alleviate sex-based pay discrepancies, stalled Tuesday in the U.S. Senate. Some states, not content to wait on federal action, have passed their own equal pay laws.

Though it can be difficult to know where change should begin — in society, in employer policies or in the law — Time's Up's Bandele said a societal shift is the first piece. Then, if employers successfully adopt family-friendly policies, that could in turn push the legislative needle, she said.

"Instead of trying to contort employees into being the perfect type of employee for the workplace, how can we change the workplace so that it's best for all of your employees, including the caregivers," Bandele said.

Embracing the cultural shift is smart for employers because there's fierce competition for talent — talent that increasingly wants benefits, equality and work-life balance, Visconti said. Like the wage gap itself, what many workers want in a job is about more than just straight pay.

"I think it's an opportunity for employers to really think about not just how much are you paying ... but what does the company look like from a diversity perspective, what does it look like from a policy

perspective, what does it look like in terms of other opportunities, upward mobility" and leave options, she said.

Crowell & Moring's Fairley Barlow said she's seen an "evolution" in what employers are thinking about since she started practicing law in 1996. Increasingly, companies are coming around to the reality that programs and policies that help them retain women and workers of color are also good for their business, she said.

"Everybody's trajectory won't be the same," Fairley Barlow said.

--Additional reporting by Alexis Shanes. Editing by Abbie Sarfo.