

E is for Equity: What women earn and why

Plaintiffs' trial firms are some of the worst offenders of both the equal-pay laws and the concepts of diversity, equity and inclusion

By Micha Star Liberty

"If you can measure it, you can improve it." When it comes to gender-based discrimination and unlawful pay inequities, one has to do both.

Equal-pay laws and policies serve as essential tools in the pursuit of workplace fairness and gender equality, and my dual role as a lawyer and DEI consultant allows me to address both the legal and cultural aspects of promoting diversity, equity, and inclusion in the workplace. We all have obligations that extend beyond legal compliance to promote a broader culture of diversity, equity, and inclusion within our workplace. This involves creating policies and practices that not only comply with equal-pay laws but also foster a more inclusive work environment where all employees feel valued and have equal opportunities for advancement.

And, sadly, in my experience I have found plaintiffs' trial firms are some of the worst offenders of both the equal-pay laws and the concepts of diversity, equity and inclusion. All too often, law-firm owners tell me their staffing, promotion, and pay decisions are based upon who is "top of mind," which is simply code for who is part of the "in group" and resembles the management structure. We have to do better, and we can by thoroughly

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understanding the problems and the fixes.

Equality in the workplace starts with equal pay

Equal-pay laws and policies are critical components of the legal framework aimed at promoting workplace fairness and preventing discrimination based on gender or other protected characteristics. The obvious first step is to understand the problem before moving on to "fixes" which involve advocating for and implementing measures that foster an equitable and inclusive work environment.

Equal-pay laws primarily focus on ensuring that employees receive fair compensation for their work, regardless of gender, race, ethnicity, or other protected characteristics. The principles underlying these laws are grounded in the fundamental concept of equal pay for equal work, emphasizing that employees who perform substantially similar job duties and responsibilities should receive the same compensation, irrespective of their demographic characteristics.

Key aspects of equal-pay laws and policies

- Equal pay for equal work: The cornerstone principle is that individuals performing substantially similar work, requiring similar skill, effort, and responsibility, should be compensated equally, regardless of gender or other protected categories.
- Prohibition of discrimination: Equal-pay laws prohibit employers from discriminating against employees based on gender or other protected characteristics in matters related to compensation, benefits, or other terms and conditions of employment.
- Transparency and accountability: Employers are often required to maintain transparency in their compensation practices. This may involve disclosing pay scales, salary ranges, and related information to ensure accountability and to facilitate employees' understanding of the criteria used for compensation decisions.
- Pay-equity audits: Organizations may conduct pay-equity audits to identify and rectify any existing disparities in pay. This involves a systematic review of compensation practices to ensure compliance with equal-pay laws. It is very important that these reviews occur on an ongoing basis, each time there are staffing changes to be sure your firm is in compliance with the law.
- Remedies and enforcement: Equal-pay laws provide mechanisms for employees to seek redress if they believe they are being unfairly compensated. Remedies may include back pay, adjustments to compensation, and other corrective measures. Enforcement mechanisms may involve government agencies, such as the Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing.

Gender pay gap by race/ethnicity

Statistically across all industries, all women experience pay inequities but some races/ethnicities experience further discrimination based upon those differences.

- Asian women earnings compared to men: According to historical data, Asian women have experienced a smaller gender pay gap compared to other racial and ethnic groups. On average, Asian women earned around 90 cents for every dollar earned by white, non-Hispanic men.
- White women earnings compared to men: On average, white, non-Hispanic women earned approximately 79 to 81 cents for every dollar earned by white, non-Hispanic men.
- Black women earnings compared to men: Black women historically faced a larger pay gap. On average, Black women earned around 63 to 65 cents for every dollar earned by white, non-Hispanic men.
- Hispanic/Latina women earnings compared to men: Hispanic and Latina women faced one of the widest pay gaps. On average, Hispanic women earned around 55 to 57 cents for every dollar earned by white, non-Hispanic men.
- Native American women earnings compared to men: Data specific to Native American women may be less available, but they typically face pay gaps similar to or wider than those experienced by Black and Hispanic/Latina women.

It's "time to catch up"

The concept of "time to catch up" is often symbolically represented by "Equal Pay Day," which is in March this year and marks how far into the next year women must work to earn what men earned in the previous year. The date varies by race/ethnicity, reflecting the respective pay gaps.

- Asian American Pay Day tends to be earlier in the year, reflecting the smaller pay gap. This year it is April 5.
- White Women's Equal Pay Day usually falls after Asian Women's Equal Pay Day but earlier than those for Black, Hispanic, and Native American women.
- Black Women's Equal Pay Day typically falls later in the year, indicating a longer period for Black women to catch up with men's earnings. It is July 27.
- Latina Equal Pay Day is usually the latest in the year, symbolizing a more extended period for Hispanic women to catch up with men's earnings. It is October 5.

It's important to note that these symbolic dates represent averages and are not an exact calculation for individual circumstances. The pay gap and associated dates may vary based on factors such as occupation, education, and geographical location. Efforts to close the gender pay gap involve advocacy for policies promoting pay equity, transparency, and workplace equality. For the most current and precise information, it's advisable to consult the latest reports from organizations such as the American Association of University Women (AAUW) or the U.S. Bureau of Labor Statistics.

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Don't be short-changed

While equal-pay laws play a crucial role in addressing pay disparities based on gender and other protected characteristics, they may fall short in providing complete equity for several reasons:

- Limited scope: Equal-pay laws often focus on gender as a protected characteristic and may not adequately address other factors that contribute to pay disparities, such as race, ethnicity, disability, or other intersectional identities. This limitation can result in inequities for individuals facing multiple forms of discrimination.
- Definition of equal work: The concept of "equal work" may not always capture the nuances of job roles and responsibilities. Job evaluations that solely rely on job titles or formal job descriptions may overlook the actual contributions and complexities of certain roles, leading to disparities in pay for similar levels of effort and responsibility.
- Lack of transparency: The lack of transparency in compensation practices can hinder employees' ability to identify and address pay disparities. Limited access to information about how compensation decisions are made can impede efforts to hold employers accountable for unequal pay practices.
- Negotiation disparities: Negotiation practices during hiring or promotion processes can contribute to pay disparities. Studies have shown that certain groups, particularly women, may be less likely to negotiate their salaries, leading to initial pay differentials that persist over time. Often, women get negatively labeled as aggressive or difficult when they negotiate for a higher rate of pay. Equal-pay laws often do not directly address these sexist stereotypical tropes in negotiation dynamics.
- Enforcement challenges: Enforcement mechanisms may vary in effectiveness, and the burden of proof often falls on the individual employee to demonstrate discrimination. Legal processes can be time-consuming, costly, and emotionally taxing, creating barriers for individuals seeking redress.
- Limited remedies: The remedies available under equal-pay laws may not always be sufficient to address the full extent of the harm caused by pay disparities. While back-pay adjustments are common, other non-monetary remedies, such as changes in workplace practices or enhanced training, may be necessary for a comprehensive solution.
- Cultural and societal factors: Equal-pay laws may not fully address deep-rooted cultural and societal factors that contribute to gender and other disparities. These factors include stereotypes, bias, and societal expectations that can influence hiring, promotion, and compensation decisions.

To address these shortcomings, it is essential to consider a more comprehensive and intersectional approach to workplace equity. This involves recognizing and addressing the interplay of various factors, including gender, race, ethnicity, and other protected characteristics. Additionally, promoting transparency, conducting regular pay equity audits, and addressing negotiation disparities are crucial steps in creating a more equitable work environment.

While equal-pay laws provide a foundation, organizations and policymakers should continuously evaluate and improve these laws to ensure they remain effective in addressing evolving challenges and achieving true workplace equity. In other words, *measure* it and *improve* it.

The compensation gap and its dynamics

The gender gap is a multifaceted issue that extends beyond simple differences in base salaries and is better characterized as a *compensation* gap. This gap tends to widen over time due to a combination of structural, societal, and individual factors that disproportionately affect women throughout their careers. Here's a comprehensive explanation:

- Base salary disparities: The compensation gap begins with differences in base salaries. Women, on average, earn less than their male counterparts for the same or similar work. This initial disparity sets the stage for a broader compensation gap over time.
- Opportunities for advancement: Women may encounter barriers to career advancement, limiting their access to higher-paying positions and leadership roles. Factors such as implicit biases, gender stereotypes, and workplace cultures that favor traditional gender norms contribute to this limitation.
- Occupational segregation: Certain industries and professions may be characterized by occupational segregation, where women are overrepresented in lower-paying fields and underrepresented in higher-paying ones. This segregation exacerbates the compensation gap, as women may have limited access to well-compensated roles.
- Work-life balance challenges: Women often face unique challenges related to work-life balance, including caregiving responsibilities. The expectation that women should shoulder a disproportionate share of caregiving duties can impact their ability to commit to longer work hours or take on roles with higher compensation.
- Negotiation disparities: As mentioned above, negotiation dynamics contribute to the compensation gap. Research indicates that women may be less likely to negotiate their salaries or advocate for promotions, which can result in starting with lower salaries and slower career progression. Moreover, when they do attempt to negotiate, they often experience prejudice and are labeled with stereotypical terminology, like "aggressive" or "pushy."
- Cumulative effect of pay gaps: Over time, these initial disparities and barriers accumulate, creating a cumulative effect that widens the compensation gap. The gap becomes more pronounced with each career transition, promotion, or negotiation point.

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- Retirement and pension disparities: The compensation gap extends into retirement, impacting women's pension and retirement savings. Lower salaries and fewer opportunities for financial advancement during their working years result in reduced financial security in retirement.
- Intersectionality: The compensation gap is compounded for women who belong to multiple marginalized groups, emphasizing the importance of considering intersectionality. Women of color, LGBTQ+ women, and women with disabilities may face intersecting forms of discrimination that contribute to an even wider compensation gap.

Addressing the compensation gap

The compensation gap widens over time due to a combination of systemic and individual factors. Addressing this gap requires comprehensive and targeted efforts across various levels, from policy changes to cultural shifts within organizations.

The most imperative remedy is implementing and advocating for polices that promote pay equity, such as transparency in compensation practices and equal-pay laws. However, in addition, it is necessary to do the following work at your firm.

- Workplace-culture change: Fostering inclusive workplace cultures that challenge gender stereotypes, address bias, and promote equal opportunities for career advancement.
- Support for work-life balance: Providing supportive policies, such as flexible work arrangements and parental leave, to help alleviate the challenges of work-life balance faced by women.
- Promoting negotiation skills: Encouraging and equipping women with negotiation skills to empower them in salary negotiations and career discussions.
- Diversity and inclusion initiatives: Implementing robust diversity and inclusion initiatives to ensure fair representation and advancement opportunities for all individuals.

Public misperceptions: Gender bias and pay disparity

Time and time again, when I post things on social media about gender inequities, I receive what I will call "spirited feedback" in my direct messages. Most are from men, with a tenuous grip on the rules of grammar and agnostic views around proper spelling. Yet, what I have found through this anecdotal evidence is fortified in social-science data confirming implicit bias.

Pay discrimination can be caused by several factors, but each stems from three main discriminatory motives: (1) total denial that there is an actual problem with women earning less than their male counterparts, (2) the way society has gendered discussions around money to paint women as spending money on frivolous luxury purchases and other "selfish" items, and (3) the unquestioned expectation that women will perform emotional labor that goes uncompensated due to gender stereotypes.

In 2019, CNBC reported that 46% of men think there is no gender pay gap. This finding reflects a significant perception gap regarding the existence of gender disparities in pay. Based upon the misogynistic direct messages I get whenever I post on social media about the pay gap, that report needs to be updated.

As advocates fight for justice and promote civil rights, it is important for us all to understand where the vitriol and patriarchal paternalism comes from in order to "help" the necessary market corrections along their way.

The denial of gender-pay disparities by some individuals, including men in decision-making positions, can be attributed to various factors, both societal and psychological. It's important to note that not all men deny the existence of gender pay gaps, and there are individuals and groups actively working towards addressing these disparities. However, for those who do deny or minimize such differences, several factors may contribute to their perspectives, and they are important to understand:

- Lack of awareness or information: Some individuals may not be fully aware of the research, studies, and data that clearly demonstrate the existence of gender pay gaps. Lack of information or exposure to relevant data can lead to a perception that such disparities do not exist.
- Perception of meritocracy: Some people believe in the concept of meritocracy, assuming that everyone is compensated based solely on their skills, qualifications, and performance. This belief can lead to the denial of systemic biases and structural barriers that contribute to gender pay disparities.
- Fear of uncomfortable conversations: Acknowledging gender pay gaps may raise uncomfortable conversations about workplace inequality and discrimination. Some individuals may resist such discussions due to concerns about the implications for their own roles, the organizations they work for, or broader societal issues.
- Skepticism about studies and data: There may be skepticism about the methodologies and findings of studies that reveal gender pay gaps. Some individuals may question the accuracy or reliability of the data, contributing to a belief that disparities are overstated or not significant.
- Perceived threat to status quo: Acknowledging gender pay gaps implies the need for change and the dismantling of existing structures that perpetuate inequality. Some individuals may resist this acknowledgment because it challenges the status quo and may be perceived as a threat to their own advantages or privileges.
- Gender norms and stereotypes: Societal expectations and gender norms can influence individuals' perceptions of what is considered "normal" or "acceptable" in terms of gender roles and pay. Challenging these norms may be met with resistance from those who adhere to traditional views.
- Attribution bias: Some individuals may engage in attribution bias, attributing pay

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disparities to factors other than gender, such as differences in education, experience, or career choices. While these factors can contribute, research shows that even when controlling for such variables, gender pay gaps persist.

It's essential to approach discussions about gender pay disparities with empathy, openness, and a willingness to engage in constructive dialogue. Educating individuals about the evidence supporting the existence of gender pay gaps, fostering awareness, and promoting transparency in compensation practices can contribute to a more informed and equitable workplace. Additionally, initiatives that challenge gender stereotypes and promote diversity and inclusion can help create a culture that values and addresses these issues.

Here's an analysis of possible implications:

- Perception vs. reality: The findings by CNBC suggest a divergence between the perception of men and the reality of gender pay disparities. Numerous studies and data have consistently shown that gender pay gaps exist in various industries and sectors. The 46% figure indicates a substantial portion of men may not fully recognize or acknowledge the issue.
- Awareness and education: The result highlights the importance of ongoing awareness and education efforts regarding gender pay gaps. It suggests that there may be a need for increased dissemination of information, data, and studies that demonstrate the existence and impact of gender pay disparities.
- Communication challenges: The finding may also point to challenges in effectively communicating the issue of gender pay gaps. It could be due to factors such as misinformation, lack of clarity on the definition of the pay gap, or a perception that other factors, besides gender, are primarily responsible for wage differentials.
- Impact on advocacy efforts: Understanding the perceptions of different demographic groups, such as men, is crucial for advocacy efforts. Closing the awareness gap can be instrumental in garnering support for policies and initiatives aimed at addressing gender pay disparities.
- Potential gender biases: The finding might be influenced by gender biases or stereotypes that downplay the significance of gender-related workplace issues. Efforts to challenge and overcome such biases are essential for fostering a more equitable understanding of workplace dynamics.
- Policy implications: Policymakers and organizations aiming to address gender pay gaps may need to tailor their communication strategies to effectively convey the scope and impact of these disparities. Engaging with diverse audiences, including men, in conversations about workplace equity can be a key component of these strategies.

It's important to consider that individual perceptions may be influenced by various factors, including personal experiences, workplace culture, and societal attitudes. Addressing gender pay gaps requires a collaborative effort involving education, advocacy, and policy changes to create a more equitable and inclusive work environment.

Prada purses vs. power suits: The impact of gendered language on spending

A study commissioned by Starling Bank in 2018 explored the gendered language surrounding money in articles published by women's and men's magazines. The key findings highlight significant disparities in how financial topics were portrayed based on gender.

The study revealed that a majority, specifically 65%, of money-related articles in women's magazines characterized women as *excessive spenders*. This characterization may contribute to reinforcing stereotypes that women are more inclined towards frivolous or unnecessary spending rather than focusing on financial management or wealth-building.

In contrast, the study found that 70% of money-related articles targeted toward men emphasized the act of *making* money. This emphasis suggests that financial content directed at men often centers around wealth creation, investment, and income generation. This portrayal may reinforce traditional gender roles associating men with financial success and provider roles.

The study's results indicate a reinforcement of traditional gender stereotypes related to money. Women are portrayed as spenders, potentially reinforcing the stereotype of women being more focused on consumption and lifestyle. On the other hand, men are depicted as earners, perpetuating the idea that financial success is a central aspect of masculinity.

The gendered language in these articles may influence readers' perceptions and attitudes towards money, potentially shaping their financial behaviors. For example, women might internalize the perception that spending is a more natural or expected behavior, while men might feel a heightened pressure to prioritize income generation.

Financial empowerment and equality

The 2018 study underscores the importance of addressing imbalances in how financial information is presented to different genders. Balanced and inclusive representations of both men and women in financial content are crucial for promoting financial literacy, empowerment, and equality.

Recognizing and challenging gendered language in financial discourse creates opportunities for educational interventions. By promoting a more nuanced and gender-neutral understanding of financial matters, individuals can make informed and empowered financial decisions regardless of gender.

The findings also suggest that media outlets and financial institutions play a

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role in shaping societal perceptions about gender and money. Responsible reporting and marketing can contribute to breaking down gender stereotypes and fostering a more inclusive and equitable understanding of financial matters.

The study commissioned by Starling Bank highlights the need for a critical examination of gendered language in financial content. Working from the assumption that women are frivolous with their purchasing power leads to implicit biases that will lead to lower pay for women because of the gender stereotypes.

By promoting more inclusive and balanced narratives, financial institutions and media outlets can contribute to empowering individuals of all genders in their financial decision-making processes and their ability to earn in lockstep with their male counterparts.

Emotional labor performed by women is an equal pay problem

Emotional labor, as a concept, refers to the effort and energy individuals invest in managing emotions, both their own and others' to meet societal and workplace expectations. This often involves expressing or suppressing emotions to conform to certain norms, fostering positive interpersonal relationships, and navigating complex emotional situations. When examining the gendered aspect of emotional labor, research indicates that women are often disproportionately burdened with a higher expectation of performing unpaid emotional labor compared to men.

Types of emotional labor

- Surface acting: Displaying emotions that may not authentically align with one's inner feelings.
- Deep acting: Genuinely feeling and expressing the required emotions.

Professions requiring emotional labor are often stereotypical caregiving, customer service, education, and healthcare roles and often involve significant emotional labor as individuals manage their emotions and navigate the emotions of others.

Gender disparities in unpaid emotional labor

Cultural and societal norms often dictate that women should be more empathetic, nurturing, and emotionally supportive. This translates into higher expectations for women to perform emotional labor, both in professional and personal spheres.

Women are often expected to take on caregiving roles, whether in familial or professional contexts. This includes providing emotional support to family members, children, and colleagues. In the workplace, women may bear the brunt of unpaid emotional labor, not only in their primary job roles, but also in supporting and managing the emotions of their colleagues. This aspect of their contributions often goes unrecognized and uncompensated.

Findings on unpaid emotional labor

- Time use surveys: According to time use surveys, women consistently spend more time on unpaid emotional labor, such as caregiving and household management, compared to men. For instance, the U.S. Bureau of Labor Statistics reported that in 2020, on an average day, women spent more time on caregiving activities than men.
- Impact on work-life balance: Research from organizations like Catalyst and McKinsey & Company indicates that the unequal distribution of emotional labor can negatively impact women's work-life balance, leading to challenges in career advancement and contributing to the gender pay gap.
- Intersectionality: Studies, such as those conducted by the National Women's Law Center, highlight the intersectional nature of unpaid emotional labor. Women from marginalized groups may face additional expectations and burdens, exacerbating the disparities.

Steps to addressing gender disparities

- Policy changes: Advocacy for workplace policies that acknowledge and support work-life balance, parental leave, and mental health initiatives.
- Cultural shifts: Promoting cultural shifts that challenge traditional gender norms and stereotypes around emotional labor.
- Organizational recognition: Encouraging organizations to recognize and value emotional labor as legitimate work in evaluations and promotions.
- Educational efforts: Promoting awareness and education about the gendered aspects of emotional labor to foster empathy and understanding in personal and professional relationships.

While the concept of emotional labor is universal, its gendered distribution highlights the need for systemic changes to ensure a more equitable distribution of emotional labor responsibilities and the recognition of its impact on women's lives.

Top of form

Ethics rule: If equality is not reason enough, remember our Rules of Professional Responsibility provide motivation

Rule 8.4.1 of the California Rules of Professional Conduct addresses prohibited discrimination, within the legal profession. Adopted by the Supreme Court of California and effective as of November 1, 2018, this rule establishes ethical standards to ensure a respectful and inclusive professional environment for attorneys.

Let's break down the key components of Rule 8.4.1.

The intent of Rule 8.4.1 is to explicitly prohibit attorneys from engaging in discriminatory conduct in the course of practicing law. To be sure, this rule extends to *all* aspects of the practice of law, including interactions with clients and colleagues.

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The broad scope of the rule prohibits discrimination based on various protected characteristics, such as race, sex, *gender*, religion, sexual orientation, and other factors recognized by anti-discrimination laws. Attorneys are prohibited from discriminating against others on the basis of protected characteristics in the course of their professional activities.

Attorneys in supervisory roles are charged with taking reasonable steps to prevent and address prohibited conduct within their organizations or under their supervision. Thus, if one is made aware of discriminatory conduct (including pay discrimination) there is an ethical duty to report such behavior to the appropriate authorities.

Rule 8.4.1 aligns with broader efforts to promote diversity and inclusion within the legal profession. It underscores the importance of maintaining a professional environment that is free from discrimination and harassment.

Thus, Rule 8.4.1 of the California Rules of Professional Conduct establishes clear guidelines to ensure that attorneys in California maintain a high standard of professionalism, respect, and inclusivity. The rule reflects the legal profession's commitment to fostering a diverse and equitable environment, while also recognizing the importance of balancing these goals with the duty to engage in vigorous and zealous advocacy.

Conclusion

Whether you're a law-firm owner, an associate experiencing this type of discrimination, or you work with folks from a minoritized community who might be impacted, there is always something that can be done. Always remember, if you can measure it, you can improve it. And we owe that to ourselves and our colleagues.



Liberty

Micha Star Liberty has been an Oakland-based trial attorney representing trauma victims for over 23 years with a focus on clients who have survived sexual assault, harassment, and human trafficking. She is also a Cornell trained Diversity, Equity and Inclusion consultant at her firm, Lionhearted Leader, *where she trains leaders and employees from coast to coast on issues related to bias, equality and trauma-informed leadership.*

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