



My name is Miriam Clark. I am a partner in the law firm of Ritz Clark & Ben-Asher LLP. I have represented New York employees for more than 35 years. I am also a former president of NELA/NY and current Chair of NELA/ NY’s Legislative Committee. The National Employment Lawyers Association (NELA) is a national organization of attorneys dedicated to the vindication of employees’ rights. NELA/NY, incorporated as a bar association under the laws of New York State, is NELA’s New York State affiliate.

According to a 2024 report by the Institute for Women’s Policy Research, the wage gap between white men and women, especially Black and Latina women, is increasing.

Latina women faced the largest gender racial wage gap, being paid just 59.2 cents on the dollar paid to White men, an amount slightly worse than in 2022 when the ratio was 61.4 cents. Black women earned 65.8 cents on the dollar compared to White men, down from 67.4 percent in 2022. Black and Hispanic/Latina women earn less, largely due to their over-representation in some of the lowest-paying occupations in the Service sector, i.e., health care support, personal care, child care, and food service. But even in these lower-paying jobs, White men still outearn women.<sup>1</sup>

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<sup>1</sup> <https://iwpr.org/new-report-women-earn-less-than-men-in-all-occupations-even-ones-commonly-held-by-women/>

Traditional complaint-based legislation has not succeeded in eroding this gap, in large part because when compensation remains hidden, applicants and employees have no way of knowing whether they are facing pay discrimination based on race, gender, national origin, or membership in other protected classes. Lawyers and enforcement agencies are understandably reluctant to bring pay discrimination claims without such hard pre-suit evidence of pay disparity.<sup>2</sup> Moreover, even when claims are successfully brought against individual companies, these expensive, difficult and time-consuming suits have little effect on the behavior of those employers lucky enough not to be snagged.

One solution that has been shown to lessen the pay gap is salary transparency legislation.<sup>3</sup> This is because salary transparency laws force employers to use objective criteria in setting wages, rather than making subjective, one-off decisions, which often incorporate implicit gender and racial biases. Salary transparency laws also limit the extent to which individual bargaining positions affect compensation, since women and minorities are often disfavored in such settings. For example, studies show that women applicants are often less willing to take the risk of

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<sup>2</sup> The federal and state Equal Pay Acts require that for a plaintiff to make out a prima facie case, she must identify a comparator who is paid more than she. 29 U.S.C. § 206(d); NY CLS Labor § 194. Title VII and the New York State and City discrimination laws also require that for a plaintiff to show she is a victim of disparate treatment, she must identify someone to whom she can reasonably compare herself. See e.g., [Suri v. Grey Global Group, Inc., 2016 N.Y. Misc. LEXIS 5328](#) (Sup. Ct. N.Y. Cty. 2016), aff'd in part and reversed on other grounds, [Suri v Grey Global Group, Inc., 164 A.D.3d 108](#) (1<sup>st</sup> Dept. 2018).

<sup>3</sup> See e.g. Baker, et al, *Pay Transparency and the Gender Gap*, National Bureau of Economic Research, 2019, revised 2021. [https://www.nber.org/system/files/working\\_papers/w25834/w25834.pdf](https://www.nber.org/system/files/working_papers/w25834/w25834.pdf)

negotiating for higher compensation than are men,<sup>4</sup> while Black applicants are viewed negatively when they attempt to do so.<sup>5</sup>

The changes contained in the current bill are necessary to achieve that transparency.

#### Need for objective standards

This bill requires that posted salary ranges be based on objective standards, including the compensation of workers currently employed in similar jobs and the amount currently budgeted for the role. This addition to the legislation is crucial. Under the current law, it is widely reported that employers have been posting ranges that are so wide that they offer no useful information at all to job-seekers or employees.<sup>6</sup>

#### Need to describe all forms of compensation

Employers are increasingly replacing wage compensation with non-cash compensation, such as stock, options, RSU's and the like. A recent report by Morgan Stanley notes that public companies in the U.S. are increasingly paying employees with stock rather than cash, making workers into shareholders.<sup>7</sup> When employers are allowed to omit from job postings, stock, and options and other non-cash forms of compensation, employers can pick and choose which favored employees have access to these valuable perks – often based on implicit biases that disfavor women, especially women of color. On the other hand, the availability of crucial

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<sup>4</sup> “... (W)omen have been found to be less willing than men to negotiate and compete and to be more risk averse.” Blau, Francine & Kahn, Lawrence. (Sept. 2017). *The Gender Wage Gap: Extent, Trends, and Explanations*. Journal of Economic Literature. 55(3), 836. <https://pubs.acaweb.org/doi/pdfplus/10.1257/jel.20160995>

<sup>5</sup> See e.g. Hernandez et al, *Bargaining While Black, The Role of Race in Salary Negotiation*, American Psychological Association (2019) <https://www.apa.org/pubs/journals/releases/apl-apl0000363.pdf>

<sup>6</sup> See <https://www.cnn.com/2022/11/14/success/pay-transparency-wide-salary-ranges/index.html>

<sup>7</sup> [https://www.morganstanley.com/im/publication/insights/articles/article\\_stockbasedcompensation.pdf](https://www.morganstanley.com/im/publication/insights/articles/article_stockbasedcompensation.pdf)

benefits such as disability insurance or paid maternity leave, can be fundamental to applicant decision-making (especially those applicants who are likely to need maternity leave). But female employees are often reluctant to ask questions about such benefits, for fear of signaling to prospective employers that they might be pregnant, or have a disability, and therefore be viewed as less desirable candidates.<sup>8</sup>

### Need for job descriptions

When employers are permitted to post jobs without job descriptions, workers may be lured into accepting positions that sound “executive” or “managerial track”, but which, when filled by female workers, especially women of color, end up involving large amounts of administrative or even menial work.<sup>9</sup> Assignment to these tasks, described in an article in the *Harvard Business Review* as “non-promotable”, can lessen employee chances for promotion.<sup>10</sup> The requirement that job descriptions be posted helps ensure that the same job carries the same requirements and promotional opportunities for workers of all races and genders.

### Need to provide compensation information to current employees upon request

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<sup>8</sup> For examples of numerous articles in the popular press giving advice to candidates about backhanded ways to try to decipher firm parental leave policies while being too afraid to ask directly, see <https://www.image.ie/self/how-to-find-out-about-maternity-leave-before-accepting-a-job-158778>; and <https://money.com/maternity-leave-ask-in-job-interview/>; <https://advicewitherin.com/advice/3-sneaky-ways-to-ask-about-benefits-in-a-job-interview>. The articles assume the reader to be aware of rampant discrimination against pregnant women and advise candidates in general to steer clear of asking about maternity benefits, suggesting instead that they try to decipher this information from websites of other companies, or other people who may have worked for the company at one time, or by asking vague questions in the hopes they will lead to specific answers..

<sup>9</sup> See e.g. the facts set forth in [Suri v. Grey Global Group, Inc., supra at \\*7](#) (Plaintiff claims that Cirullo discriminated against her by treating her like a secretary...asking her to set up meetings..even when she was not invited to the meetings and assigning her work to lower level males)

<sup>10</sup> “Studies of industry and academia (by [Irene De Pater and colleagues](#); [Sara Mitchell and Vicki Hesli](#); and [Joya Misra](#) and colleagues, as well as many others) have shown systematic gender differences in how work is allocated, with women spending relatively more time than men on non-promotable tasks and less time on promotable ones. These differences matter because they help explain why, despite women’s significant [educational and general workplace advances](#), we continue to find [vastly different promotion trajectories](#) for men and women.” <https://hbr.org/2018/07/why-women-volunteer-for-tasks-that-dont-lead-to-promotions>

Salary transparency for current employees allows employees to make informed choices about their possibilities for growth and advancement. It also allows employees and employers to flag and address potential examples of failures of pay equity – for example, a highly qualified employee mysteriously frozen in a position near the bottom of her pay range.

In conclusion, NELA NY strongly urges that the Council pass Intro 808-A, as a crucial step toward achieving the pay equity that New Yorkers deserve, and justice requires.