



our moment

an economic agenda for women & families



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Introduction

IN THE LAST FOUR DECADES THE EDUCATIONAL LEVELS AND WORK EXPERIENCES OF WOMEN HAVE INCREASED DRAMATICALLY. Women are over half of college graduates and nearly half the workforce. But although women have better credentials than ever before, they typically are paid less than men, are more likely than men to work in low-wage jobs, often lack the affordable and high-quality child care, health care—including reproductive health care—and other supports they need to work and care for their families, and are more likely to live in poverty. An economic agenda to address these and other barriers to women's advancement is essential, not only for women and their families, but for the nation as a whole.

Women increased their educational attainment in the 1970s and 1980s, and today more women than men graduate college.¹ Women also increased their labor force participation during this period, from 38 percent in 1970² to 47 percent in 2014.³

The importance of women's income to their families and to the U.S. economy has also increased over the last 40 years. For example, the share of mothers who are sole breadwinners or co-breadwinners increased from about 28 percent in 1967 to over 63 percent in 2012.⁴ Mothers are primary breadwinners in 41 percent of families with children and co-breadwinners—contributing between 25 percent and 50 percent of family earnings—in another 22 percent of families with children.⁵ In fact, most of the growth in family income over the last several decades has been the result of women's increased earnings.⁶ As the Council of Economic Advisers has observed, “Without the gains women have made since 1970, median family income would be \$13,000 less today and our overall economy would be \$2 trillion dollars [*sic*] smaller.”⁷

Despite women's increased education and participation in the labor force, and the importance of women's income to their families and the overall economy, there are still wide disparities in income between women and men. In 2013, the median income of women working full time, year round

was \$40,597, compared to \$50,943 for men.⁸ The median income of African-American women and Latinas was even lower—\$35,381 and \$30,799, respectively.⁹ These disparities not only especially hurt families who rely on women's earnings for all or part of their income; they also contribute to poverty rates for women that are substantially higher than the poverty rates for men. The poverty rate for women in 2013 was 14.5 percent, compared to 11.0 percent for men.¹⁰ The poverty rates for Latinas, African-American women and Native-American women were even higher—23.1 percent for Latinas,¹¹ 25.3 percent for African-American women,¹² and 26.8 percent for Native-American women.¹³

The poverty rate for families with children headed by a woman only in 2013 was 39.6 percent, compared to 19.7 percent for families with children headed by a man only and 7.6 percent for families with children headed by a married couple.¹⁴ The poverty rate for Latina, African-American and Native-American families with children headed by a woman only was nearly 50 percent.¹⁵ More than half of all poor children (58.8 percent) lived in families headed by a woman only.¹⁶

Even with Social Security, more than 11.6 percent of women ages 65 and older lived in poverty in 2013, compared to 6.8 percent of men ages 65 and older.¹⁷ The poverty rate for women ages 65 and older living alone was 19.0 percent compared to 11.3 percent for men ages 65 and older living alone.¹⁸ The poverty rates for women of color ages 65 and older living alone were higher, at 20.4 percent for African-American women,¹⁹ 20.8 percent for Native-American women²⁰ and 23.0 percent for Latinas.²¹ More than two-thirds of the poor ages 65 and older were women.²²

This report explains the factors that contribute to the economic insecurity of women and their families and highlights key components of a federal agenda that are both under consideration and achievable.

The need for an economic agenda for women and families

SEVERAL FACTORS CONTRIBUTE TO THE DISPARITIES IN INCOME AND POVERTY LEVELS BETWEEN WOMEN AND MEN.

DISCRIMINATION IN EMPLOYMENT

Despite the importance of women's earnings to family income and the economy, women who work full time, year round, are typically paid only 78 cents for every dollar paid to men.²³ For African-American women and Latinas, the gap is even larger—they are typically paid only 64 cents and 56 cents, respectively, for every dollar paid to white, non-Latino men.²⁴

The pay gap between women and men exists in nearly every occupation,²⁵ across all education levels,²⁶ and affects women at all income levels.²⁷ Job segregation and the fact that female-dominated jobs pay less than male-dominated jobs contribute to the pay gap,²⁸ but even when women are working in the same jobs as men, they are often paid less.²⁹ Sex stereotyping and other forms of discrimination contribute to the pay gap. For example, employers sometimes perceive women as not tough enough for some jobs,³⁰ or not needing raises or promotions because they aren't breadwinners,³¹ or less committed to their jobs than men—usually because of women's caregiving responsibilities.³² Sexual harassment is a persistent problem, too, particularly among low-wage workers, and workers in traditionally male occupations, such as construction, firefighting, and law enforcement.³³

The Equal Pay Act of 1963, which requires that women and men who are performing essentially the same jobs be paid equally,³⁴ and Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in employment,³⁵ including compensation, have helped reduce pay discrimination. But court decisions have created loopholes in the protections offered by the Equal Pay Act and

Title VII, and in several instances these laws provide incomplete remedies. For example, employers have been permitted to escape accountability for pay disparities even when the reasons for the disparities are not related to business needs.³⁶ In addition, too often employees are in the dark about pay disparities because employers have policies that prohibit employees from voluntarily sharing salary information with their co-workers.³⁷

Although Title VII's prohibition on sex discrimination in employment protects most women, it does not protect one large group of women—those serving in our nation's Armed Forces.³⁸ In fact, until quite recently, the Direct Ground Combat Definition and Assignment Rule expressly excluded women from assignments in which the primary mission is to engage in direct ground combat, and it permitted women to be excluded from a range of other assignments in certain circumstances—in both instances solely because of their gender.³⁹ Then-Secretary of Defense Leon Panetta and Chairman of the Joint Chiefs of Staff Martin Dempsey rescinded this rule in January 2013, and directed the military Services to open all positions and units to women by no later than January 1, 2016.⁴⁰ If any Service wishes to recommend that a position or unit remain closed to women, that recommendation must be personally approved first by the Chairman of the Joint Chiefs and then by the Secretary of Defense, and it must be based on “a rigorous analysis of factual data regarding the knowledge, skills and abilities needed for the position.”⁴¹ At issue is the opening of some 237,000 positions closed to women as of January 2013.⁴²

Two years into the implementation period and despite the Panetta-Dempsey directive to open positions and units “as expeditiously as possible,”⁴³ progress in integrating women into previously closed positions and units has been slow.⁴⁴ As part of the implementation of the directive, the Services

must have in place “validated, gender-neutral” standards for all military jobs,⁴⁵ but there has been little to no transparency about the process the Services are using to establish and/or validate these standards, or the process the Services are using to decide whether to recommend that any positions or units remain closed to women. To the extent that a light has been shown on the implementation process, it suggests that in some instances the performance of one particular group of women is being used to evaluate the performance of all women, and that unless a sufficient number of women can “pass muster,” a Service may recommend that certain positions and/or units remain closed.⁴⁶ To do so would not only deny women the same opportunity to serve their country as men, but also limit the nation’s ability to ensure it has the best military possible by excluding half the population from competing for its positions.

CONCENTRATION IN THE LOW-WAGE WORKFORCE

Women’s concentration in minimum-wage jobs contributes to the pay gap and to their economic insecurity.

The federal minimum wage sets a national floor below which employers generally cannot pay their workers. However, because the federal minimum wage is set by Congress, its value remains the same unless Congress acts, and its purchasing power erodes as the cost of living increases. Congress has raised the federal minimum wage only three times in the last 30 years,⁴⁷ and it is currently just \$7.25 an hour.⁴⁸ If the minimum wage had kept pace with inflation since 1968, it would be nearly \$11.00 an hour today.⁴⁹ The separate federal minimum wage for tipped workers is currently just \$2.13 an hour, less than one-third of the federal minimum wage.⁵⁰ Congress has not raised the federal tipped minimum wage in over 20 years.⁵¹

Women are two-thirds of minimum-wage workers.⁵² A woman working full time, year round at the federal minimum wage of \$7.25 an hour earns just \$14,500⁵³—more than \$4,500 below the poverty line for a mother with two children in 2014.⁵⁴ Women constitute two-thirds of the workers in tipped occupations.⁵⁵ For example, women make up about 70 percent of restaurant servers and nearly 60 percent of bartenders,⁵⁶ which are two groups that together make up nearly 60 percent of the tipped workforce.⁵⁷ Servers and bartenders also experience

poverty at more than double the rate of the workforce as a whole.⁵⁸ Women’s concentration in minimum-wage jobs also contributes to the pay gap.⁵⁹

Women’s concentration in all low-wage jobs, defined as those that typically pay less than \$10.10 an hour, is also high—women are two-thirds of these workers.⁶⁰ They work in jobs such as home health aides, child care workers, fast food workers, cashiers, restaurant servers, and maids and housekeeping cleaners.⁶¹

Many people think that a low-wage worker is someone young, maybe just starting out in work, or working part time while in school. But low-wage women workers do not fit this profile. Only one in ten is a teenager and more than one-quarter are ages 50 and older.⁶² Four out of five women in low-wage jobs have a high school degree or higher; in fact, more than four in ten have some college or higher.⁶³ Close to one-third are mothers—and 40 percent of these mothers have family incomes below \$25,000.⁶⁴ Nearly half of mothers of children under age 18 in the low-wage workforce are single.⁶⁵ More generally, most women in the low-wage workforce do not have a spouse’s income to rely on—two thirds are single.⁶⁶ Half of women in the low-wage workforce work full time and one-quarter of those who work part time do so because they cannot secure full-time work.⁶⁷

Women’s shares of the low-wage workforce are larger than men’s, even though women’s shares of the overall workforce are almost always similar to or smaller than men’s shares of the overall workforce.⁶⁸ In fact, whether comparing by educational level, age, marital or parental status, race, ethnicity or national origin, women make up larger shares of the low-wage workforce than men.⁶⁹ The only group of women that is underrepresented in the low-wage workforce is women with a bachelor’s degree or higher: they are 17 percent of the overall workforce, but only 5 percent of the low-wage workforce.⁷⁰ Their representation is still higher than men’s, however. Men with a bachelor’s degree are 18 percent of the overall workforce but only 3 percent of the low-wage workforce.⁷¹

In short, women need a bachelor’s degree to avoid being overrepresented in low-wage jobs, but men only need to finish high school.

Even in low-wage jobs, women working full time, year round typically face an 8 percent wage gap, and the gap is even larger for African-American women (19 percent) and Latinas (26 percent) when compared to white, non-Latino men.⁷² More than one in six (18 percent) of women in low-wage jobs is poor and nearly one in three lives in a family with income of less than \$25,000.⁷³

Sexual harassment remains a persistent problem in workplaces overall, particularly in low-wage workplaces and nontraditional occupations. In Fiscal Year 2013, the combined total number of harassment charges filed with the federal Equal Employment Opportunity Commission (EEOC) and state and local Fair Employment Practices Agencies was over 30,000.⁷⁴ More than 10,000 of these charges involved sexual harassment, and 82 percent were brought by women.⁷⁵ But these numbers probably do not come close to reflecting the extent of sexual harassment. In a 2011 survey, 25 percent of women in the workforce reported experiencing sexual harassment.⁷⁶ In a 2013 survey, 70 percent of workers who experienced harassment said they never reported it.⁷⁷ Sexual harassment of low-wage workers is particularly pervasive. For example, a survey of 150 female farmworkers in California's Central Valley found that 80 percent had experienced some form of sexual harassment.⁷⁸ A review of EEOC charge data by the Restaurant Opportunities Centers United over an eleven-month period in 2011 found that nearly 37 percent of EEOC sexual harassment charges came from women in the restaurant industry.⁷⁹ Sexual harassment of women in nontraditional jobs also occurs at high rates. For example, a study by the U.S. Department of Labor reported that 88 percent of women construction workers experience sexual harassment at work.⁸⁰

More than fifteen years ago, the Supreme Court put in place strong protections against workplace harassment. Recognizing the potential for supervisors to abuse their power over their subordinates, in *Burlington Industries, Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, the Supreme Court held that employers have a heightened legal responsibility to protect workers from supervisor harassment.⁸¹ *Faragher and Ellerth* established an important principle: because a supervisor's ability to harass is a direct result of the authority given to the supervisor by

the employer, the employer should be liable for the supervisor's actions *unless* the employer can show that it took steps to prevent harassment and to address harassment when it occurred, and that the employee failed unreasonably to take advantage of the opportunities provided by the employer to report and address the harassment.⁸² This rule encourages employers to put policies in place to prevent harassment and to respond promptly and effectively when harassment occurs.

However, the Supreme Court undermined this longstanding principle in 2013 in the narrow 5-4 decision in *Vance v. Ball State University*.⁸³ The Court held that heightened protections from harassment no longer apply to harassment by those higher-ups who direct an employee's daily work activities but do not have the power to hire and fire.⁸⁴ Now, workers who are harassed by their boss must proceed under the more difficult negligence standard that applies in co-worker harassment cases, unless that boss has the power to hire and fire.⁸⁵ And workers' cases may be thrown out as a result. In fact, as of November 2014, at least 43 sexual harassment cases had been dismissed on grounds that the defendant did not meet the *Vance* definition of supervisor and the plaintiff could not meet the co-worker harassment negligence standard.⁸⁶

Unfortunately the *Vance* decision has the potential to have negative consequences for millions of workers, and especially for low-wage workers. There are more than six million lower-level supervisors in our nation's workplaces, and more than half of these oversee low-wage workers.⁸⁷ Although lower-level supervisors typically have significant responsibility for directing entry-level workers' day-to-day activities,⁸⁸ most of these lower-level supervisors have no formal authority to hire or fire workers.⁸⁹ In sum, most employees who exercise day-to-day management authority are not the ones with the formal power to hire or fire employees, and are therefore not supervisors in the eyes of the law when it comes to holding their employers liable for harassment that they might perpetrate.

GAPS IN CRITICAL DIRECT TAX ASSISTANCE

Federal income tax policies play an important part in the economic security of women and their families by basing taxation on an individual's or family's ability to pay, by raising sufficient revenue to fund government programs and

activities that particularly benefit women and their families, and by providing direct tax assistance to women and their families in the form of tax credits.

Tax credits, in particular, especially if they are refundable and thus available as a tax refund to individuals and families without tax liability, can provide important cash assistance.

For example, the federal Earned Income Tax Credit (EITC) is designed to supplement the earnings of low-wage workers, especially those supporting families, and helps offset a portion of the payroll taxes that these workers pay.⁹⁰ The amount of the EITC depends on income, number of children, and tax filing status.⁹¹ The maximum benefit for 2015 for families with qualifying children is \$6,242, and families with such children and adjusted gross incomes of up to \$53,267 are eligible for the EITC.⁹² The maximum benefit in 2015 for individuals and couples without qualifying children is \$503, and individuals and couples without qualifying children and adjusted gross income of up to \$20,330 are eligible for the EITC.⁹³ The credit is refundable, so if a tax filer owes less in federal income taxes than the amount of the EITC for which the filer is eligible, the filer will receive some or all of the credit as a cash tax refund.⁹⁴

The EITC is particularly important to women, who typically earn less than men and are more likely to bear the expenses of raising children on their own. In 2013 more than 29 million tax filers received more than \$69 billion from the EITC.⁹⁵ A large majority—82 percent—of these tax filers had adjusted gross income of less than \$30,000,⁹⁶ and 43 percent of families whose income was \$30,000 or less in 2013 were families headed by a woman only.⁹⁷ The EITC lifted the income of more than 5.3 million people out of poverty in 2013, including more than 2.7 million children and almost 1.5 million adult women.⁹⁸

Considerable research demonstrates the EITC's effectiveness in encouraging work, especially among low-income single mothers, and reducing poverty among families with children.⁹⁹ The average benefit for families with qualifying children was \$2,982 in 2012.¹⁰⁰ In contrast, the EITC for workers without qualifying children (including workers without children, non-custodial parents, and parents whose children are no longer dependent)

does not provide a meaningful work incentive or poverty-reducing benefit. The average benefit for an individual or couple without children in 2012 was just \$277.¹⁰¹

The federal Child Tax Credit (CTC) is designed to help families meet the costs of raising children and helps offset the taxes that families with children pay.¹⁰² The amount of the CTC generally depends on income and number of children.¹⁰³ The maximum benefit is \$1,000 per child; for families with adjusted gross income above specified levels, depending on tax filing status, the amount per child is reduced, eventually to zero, as income rises above \$75,000 for heads of household, \$110,000 for married couples filing jointly, and \$55,000 for married individuals filing separately.¹⁰⁴ The credit is partially refundable; families with earned income above a \$3,000 threshold can receive 15 percent of their earnings above the threshold as a tax refund, up to the maximum \$1,000 per child.¹⁰⁵ In 2013 nearly 23 million tax filers received more than \$27 billion from the non-refundable component of the Child Tax Credit.¹⁰⁶ Forty-four percent of these tax filers had adjusted gross income of less than \$50,000 in 2013,¹⁰⁷ and 34 percent of families whose income was \$50,000 or less in 2013 were families headed by a woman only.¹⁰⁸ More than 21 million tax filers received more than \$28 billion from the refundable component of the Child Tax Credit in 2013.¹⁰⁹ Three-quarters (75 percent) of these tax filers had adjusted gross income of less than \$30,000 in 2013,¹¹⁰ and 43 percent of families whose income was \$30,000 or less in 2013 were families headed by a woman only.¹¹¹

Improvements to both the EITC and CTC in 2009 that increased the tax assistance they provide were also especially beneficial to women and their families. The 2009 improvements to the EITC increased the amount of the credit for families with three or more children, recognizing that larger families have higher living expenses than smaller families, and reduced the marriage penalties for all families.¹¹² The 2009 improvements to the CTC lowered the earned income threshold at which families may claim the refundable component of the credit from above \$10,000 (indexed for inflation for years 2002 through 2008) to \$3,000 (not indexed for inflation), making more low-income families eligible for its benefits and increasing the amount of the credit for families with low earned income.¹¹³ Nearly 12 million tax filers in 2013

had more money to support their families because of the EITC improvements,¹¹⁴ and more than half of those tax filers were women.¹¹⁵ Over 12.7 million tax filers in 2013 had more money to support their families because of the CTC improvements,¹¹⁶ and more than two-thirds of those tax filers were women.¹¹⁷ However, these improvements to the EITC and the CTC will expire in 2017, unless extended by Congress.¹¹⁸

CHILD AND DEPENDENT CARE CHALLENGES

In addition to the challenges of unequal pay and low wages, women are the principal caregivers in most families, often responsible not only for children but also for older individuals and individuals with disabilities, including adult children, spouses, siblings and other family members.¹¹⁹ And many women don't have a partner or other adult who can share these responsibilities. In order to participate in the workforce, they need child and other dependent care.

Many families struggle to afford this care. The average fee for full-time child care ranges from over \$4,000 to over \$16,500 a year, depending on where a family lives, the type of care, and the age of the child.¹²⁰ For example, the average fee for center care for an infant ranges from over \$5,496 a year in Mississippi to over \$16,549 a year in Massachusetts.¹²¹ The average fee for full-day, adult day care is \$70 a day, or \$18,200 a year.¹²²

Low-wage workers particularly struggle to afford the safe and stable child care they need to be able to work, much less the high-quality care their children need to be successful in school. More than one in six employed mothers of very young children (ages three and under) worked in a low-wage job in 2013,¹²³ and finding and affording care for infants and toddlers is particularly difficult.¹²⁴

The primary source of federal funding for child care assistance is the Child Care and Development Block Grant (CCDBG) program,¹²⁵ but federal assistance is also provided by the Child and Dependent Care Tax Credit,¹²⁶ as well as several smaller programs.¹²⁷

The CCDBG program provides federal funds to states to help low- and moderate-income families pay for care and to increase the quality and supply of care.¹²⁸ States determine eligibility for and the amount of assistance provided, within

federal parameters, and must match the federal funding provided.¹²⁹ The state and federal funding provided under CCDBG and related programs is not sufficient to serve all eligible children, however. Only one in six children federally eligible for child care assistance under CCDBG and related programs receives it,¹³⁰ and in 2014 eighteen states had waiting lists or had frozen intake for child care assistance because of inadequate funds.¹³¹

The Child Care and Development Block Grant Act of 2014, signed into law in November 2014,¹³² renews and strengthens the CCDBG program, which was established in 1990 and last reauthorized in 1996. It includes provisions to improve the health and safety of child care, facilitate families' access to care, and improve the quality of care, especially for infants and toddlers, but it does not include provision for the federal funding needed to ensure its effective implementation, much less meet the significant unmet need for child care assistance.¹³³

The federal Child and Dependent Care Tax Credit provides families with a tax credit of between 20 and 35 percent of their employment-related child and dependent care expenses,¹³⁴ based on up to \$3,000 in expenses for one child or dependent and \$6,000 in expenses for two or more children or dependents.¹³⁵ Families at all income levels are eligible for the credit, but the credit is designed to give lower-income families a credit amount based on a higher percentage of their expenses than it gives higher-income families.¹³⁶ Families with adjusted gross income below \$15,000 are entitled to a credit amount of 35 percent of their expenses; families with adjusted gross income above \$15,000 are entitled to a credit amount of a declining percentage of their expenses, reaching 20 percent of expenses for families with adjusted gross income above \$43,000.¹³⁷ Accordingly, the maximum value of the credit ranges from \$600 to \$1,050 for families with one child or dependent, and from \$1,200 to \$2,100 for families with two children or dependents.¹³⁸ However, lower-income families are often not able to actually receive all—or any—of the credit's value because they do not have enough tax liability to offset with the credit, and the credit is not refundable.¹³⁹ Moreover, both the maximum expense limits and the income levels at which the credit percentages decline were last updated in 2001 and are not indexed for inflation.¹⁴⁰

Although several states and cities have initiated programs to expand access to preschool, and the federal Head Start program¹⁴¹ has provided early learning opportunities for many low-income children, many families do not have access to preschool. Only 52 percent of three- and four-year olds (not yet in kindergarten) are enrolled in public or private preschool programs.¹⁴² Approximately 53 percent of African-American three- and four-year olds (not yet in kindergarten) are enrolled in preschool, and 41 percent of Latino three- and four-year olds (not yet in kindergarten) are enrolled in preschool.¹⁴³

Low-income children are less likely to be enrolled in preschool than higher-income children. For example, only 45 percent of three- and four-year olds (not yet in kindergarten) with family income under \$20,000 are enrolled in preschool, compared to 66 percent of such children with family income of \$75,000 or more.¹⁴⁴

These gaps make it difficult for children to have the care and early learning experiences that are critical to their development and future success, and for parents to have the care arrangements that are critical to their success in the workforce and beyond.

INADEQUATE PAID SICK LEAVE AND PAID FAMILY AND MEDICAL LEAVE

Even workers with stable child and dependent care arrangements may need to take time off from work because of their own illness or injury, a family illness or injury, or—more happily—because of the addition of a child to a family by birth or adoption. But few workers have access to paid family leave and many don't even have paid sick days.

Only 13 percent of workers have access to paid family leave and only 65 percent of workers have access to paid sick days through their employers.¹⁴⁵ Fewer than 40 percent of workers have access to paid medical leave through employer-provided, short-term disability insurance.¹⁴⁶

The numbers are even starker for low-wage workers. Of workers in occupations in the bottom 10 percent of the average wage distribution, only 21 percent have access to paid sick days and a paltry 4 percent have access to paid family leave.¹⁴⁷ Only 13 percent of workers in the bottom

10 percent of the average wage distribution have access to paid medical leave through employer-provided, short-term disability insurance.¹⁴⁸

The Family and Medical Leave Act (FMLA) provides important job protection for workers who take time away from work to address a serious health condition, care for a family member with a serious health condition, or care for a new born or newly adopted child.¹⁴⁹ But because it only covers employers with at least 50 employees and employees who have worked a requisite number of hours for the same employer,¹⁵⁰ the FMLA's protections are available to fewer than 60 percent of workers.¹⁵¹ In addition, because it only guarantees unpaid leave, many workers who are covered by the law can't afford to take full advantage of its provisions.

It is startling that the United States is only one of the fifteen most competitive countries that does not guarantee paid parental leave to new mothers, and one of only two of these countries that does not guarantee paid parental leave to new fathers.¹⁵² Equally as startling, the United States is the only highly competitive country that does not guarantee paid medical leave for serious illnesses.¹⁵³

LACK OF CONTROL OVER WORK SCHEDULES OR ABILITY TO ADJUST WORK HOURS

Other working conditions in some jobs often make meeting family responsibilities more difficult, too. All parents are sometimes faced with situations in which school closes early, child care plans fall through at the last minute, or a parent-teacher conference is scheduled during the work day. Without workplace flexibility, these situations can result in unpaid leave and its concomitant loss of income, or other penalties at work, up to and including job loss.

For low-wage workers, the need is not just for workplace "flexibility" in these situations, but for workplace schedules with predictability and stability. Low-wage jobs in particular often have schedules over which workers have little or no control. Many workers in low-wage jobs experience schedules with hours that vary from week to week or month to month, or periodic reductions in work hours when work is slow, leading to major fluctuations in income that put workers and their families in financial jeopardy. Increasingly

employers—especially in restaurant and retail work—are using sophisticated computer technology to determine when they need workers and when they don't. Employers using this technology often have so-called “just-in-time” scheduling practices, which involve giving workers their schedules with very little notice to try to match labor costs to consumer demand. Or they may send workers home during lag times, or require them to work split shifts, where they work for a few hours, are off for a few hours, and then work for a few hours more. These workers receive no payment for the middle hours when they are off, and they have no ability to do anything else during that time. Or workers may be required to work call-in shifts, which means they must call their employer to find out whether they will be scheduled to work that day—and if they are told to report to work, they often must do so within two hours. These kinds of jobs also often require working evenings, weekends or even overnight, or offer only part-time work, despite many workers' need for full-time hours.¹⁵⁴

These challenging work schedules have a cascade of negative consequences for both workers and their families. They result in variable and uncertain incomes, yet their unpredictability makes it impossible for a worker to take a second job, or to participate in education programs that will advance the worker's skills. They make it extremely difficult to arrange child care, especially on nights and weekends. They put severe strains on family and other relationships. Yet many workers are unable to ask for even minor adjustments to their work schedules without suffering retaliation, often in the form of reduced hours.¹⁵⁵

DISCRIMINATION ON THE BASIS OF PREGNANCY AND CAREGIVING RESPONSIBILITIES

The Pregnancy Discrimination Act of 1978 provides that employment discrimination on the basis of pregnancy, childbirth, or related medical conditions is sex discrimination prohibited by Title VII of the Civil Rights Act, and that pregnant workers must be treated the same as other workers who are not pregnant but are “similar in their ability or inability to work.”¹⁵⁶ Yet women continue to face pregnancy discrimination on the job. In recent years, between 3,000 and 4,000 charges of pregnancy discrimination have been filed with the Equal Employment Opportunity Commission each year.¹⁵⁷

Although many women work through their pregnancies without any need for accommodation, some women have a medical need for a temporary adjustment in their job duties or work rules in order to continue to work safely. This is especially true for women in jobs that require lifting, long periods of standing, or repetitive motions. However, too often when pregnant women ask for even modest accommodations, such as the opportunity to sit on a stool or drink water during a long shift, they are instead forced onto unpaid leave, or even fired.¹⁵⁸

Women working in low-wage jobs, which are often physically demanding—for example, jobs in housekeeping, nursing assistance, or the retail or food service sectors—are especially likely to need some sort of accommodation during pregnancy.¹⁵⁹ Yet these same sectors are often marked by inflexible workplace cultures in which employers refuse to make reasonable accommodations, even when they provide these accommodations to workers with similar limitations arising out of disabilities or injuries unrelated to pregnancy.¹⁶⁰ A 2013 survey estimated that more than a quarter of a million pregnant workers are denied their requests for reasonable accommodations nationally every year.¹⁶¹

Some women also face discrimination expressly because of their caregiving responsibilities. One study found that employers recommended mothers for hire less often, recommended lower starting salaries for them, and rated them less competent than non-mothers with nearly identical resumes.¹⁶² In contrast, employers rated fathers for hire more often, regarded them as more competent, and recommended them for higher salaries than non-fathers.¹⁶³ Motherhood also accounts for a large proportion of the wage gap between women and men. Among full-time, year-round workers, mothers typically earn only 70 cents for every dollar paid to fathers,¹⁶⁴ compared to the 78 cents women overall typically earn for every dollar paid to men.¹⁶⁵ A 2013 study documented an average wage penalty for mothers overall of approximately 4 percent per child, rising to 6 percent for low-wage mothers.¹⁶⁶

GAPS IN ACCESS TO HEALTH CARE, INCLUDING REPRODUCTIVE HEALTH CARE

Many women don't have affordable, employer-provided health care that meets their needs, including their need for reproductive health care. For example, only 33 percent of firms with large shares of low-wage workers offered health benefits to their employees in 2014.¹⁶⁷

The Affordable Care Act (ACA)¹⁶⁸ both expands access to health care and corrects many of the long-standing gender inequities in the U.S. health insurance system, including by requiring health plans to cover maternity care,¹⁶⁹ providing coverage for well-women visits and other preventive services important to women without cost-sharing,¹⁷⁰ ending gender rating and other insurance practices in the individual and small-group market that have limited women's access to health insurance,¹⁷¹ and generally prohibiting sex discrimination in health care and in the health insurance industry.¹⁷² The ACA also helps make health coverage more affordable through a combination of tax credits to purchase private insurance, reductions in cost sharing, and expanded Medicaid eligibility.

The United States Supreme Court in its October 2014 term is considering a challenge¹⁷³ to the Internal Revenue Service's determination that eligible residents of all states may receive ACA-authorized tax credits to help them purchase health insurance.¹⁷⁴ The plaintiffs in *King v. Burwell* argue that the tax credits are only available in states that have established their own health insurance exchanges, not states in which the federal government has established and is running the state exchange because the state elected not to do so.¹⁷⁵ A decision in favor of the plaintiffs would mean the loss of the ACA's financial assistance in purchasing health insurance for individuals in the 37 states that turned to the Department of Health and Human Services to set up and operate their health insurance exchanges. Fifty-four percent of the individuals who purchased coverage on the federally facilitated exchanges for 2015 are women.¹⁷⁶ Overall, 87 percent of enrollees are receiving financial assistance to purchase their health coverage on the exchanges, receiving an average of \$263 per month toward the cost of their premiums.¹⁷⁷ Without this financial help, approximately 4.2 million women are at risk of losing their health insurance because they can not afford the full

cost of monthly health insurance premiums.¹⁷⁸ A decision in favor of the plaintiffs in *King* would have both severe consequences for millions of women and their families and destabilize the entire operation of the health care law.

Even with premium assistance, health care costs can be high. For example, a single woman making \$29,175 in 2014 who qualified for a premium tax credit still paid over 8 percent of her income in health care premiums.¹⁷⁹ In addition, she faced the full cost of applicable deductibles, co-payments and co-insurance, which can amount to thousands of dollars. With plans at the most popular level in 2014 offering a median annual deductible of \$2,500,¹⁸⁰ this woman could have paid close to 17 percent of her income in health care expenses (8 percent in premiums and 9 percent in deductibles) and had inadequate resources to meet other needs.¹⁸¹ Premium and cost-sharing help also phases out quickly,¹⁸² leaving moderate-income women and their families with significant responsibility for these costs.

In addition, because of a provision known as the "family glitch," the ACA is not reaching as many families as it should.¹⁸³ Under this provision, individuals offered affordable coverage through an employer are not eligible for subsidized care under the ACA.¹⁸⁴ The Treasury Department has interpreted the provision to mean that as long as the cost to an employee for employee-only coverage meets the ACA's affordability test, all members of the family are ineligible for financial assistance in the health insurance marketplace—even if family coverage through the employer costs far more.¹⁸⁵ One study estimates that 3.9 million individuals are caught in this "glitch" and ineligible for federal tax credits to help them buy coverage in the health care marketplace.¹⁸⁶ As a result, they have to pay, on average, 14 percent of their income to purchase family coverage through an employer.¹⁸⁷

Moreover, in the wake of the Supreme Court decision allowing states to opt out of the ACA's expanded Medicaid coverage, *National Federation of Independent Business v. Sebelius*,¹⁸⁸ the refusal of 22 states as of January 2015 to expand coverage has left approximately 3 million low-income women without health insurance.¹⁸⁹ This gap in coverage leaves many women and their families without coverage for critical benefits like physician visits, prescription drugs, birth control, and maternity care, which poses real risks to their health.

The ACA has made great strides in promoting women's health and economic security by ensuring insurance coverage of all FDA-approved methods of birth control without a co-pay,¹⁹⁰ yet not all women are able to obtain this important benefit. The Supreme Court recently ruled in *Burwell v. Hobby Lobby Stores, Inc.* that under the federal Religious Freedom Restoration Act,¹⁹¹ certain for-profit companies can refuse to comply with the ACA's birth control coverage requirement because of the owners' religious beliefs.¹⁹² This decision puts the health of women employees (and potentially women family members of all employees) at risk by allowing their employers to deny them insurance coverage for birth control. Without insurance coverage, women may not be able to afford the birth control they need; the cost of an IUD can be as much as a full month's pay for a minimum-wage worker.¹⁹³ Losing this critical coverage and being forced to pay out-of-pocket thus directly affects a women's economic stability.

The *Hobby Lobby* decision has potentially far-reaching consequences in other respects as well. At both the federal level and in the several states that have enacted their own Religious Freedom Restoration Acts (RFRAs),¹⁹⁴ it could open the door to challenges to the application of coverage requirements for other health services, such as vaccines or blood transfusions, or of anti-discrimination laws. As Justice Ginsburg said in her dissent, "The court, I fear, has ventured into a minefield."¹⁹⁵

In addition to the women who lost insurance coverage of birth control because of *Hobby Lobby*, there are certain populations, such as women in the military (and family members of military men and women), who are not reached by the ACA and therefore do not have comprehensive contraceptive coverage and counseling.¹⁹⁶ Having to pay out of pocket for these services can put an additional strain on their economic security. Across the country, women have also been punished or fired, or threatened with punishment or firing, by their employers for using birth control, for undergoing in vitro fertilization in order to get pregnant, or for having sex without being married.¹⁹⁷

Failing to provide women with the ability to control and space pregnancy or punishing them when they do become pregnant not only jeopardizes their ability to advance their

education and employment,¹⁹⁸ but could result in an increased need for abortion services. But these services, too, have become harder to obtain and pay for because of restrictive federal and state laws. At the federal level, laws that strictly limit insurance coverage of abortion keep federal employees (including women in the military), low-income residents of the District of Columbia, Medicaid-eligible women and Medicare beneficiaries, Peace Corps volunteers, Native-American women, and women in federal prisons from accessing all medically necessary abortion services.¹⁹⁹ At the state level, too, abortion restrictions prevent women from obtaining medically necessary services. Between 2011 and 2014, states adopted 231 new abortion restrictions.²⁰⁰ These include outright bans on abortion, laws that take away insurance coverage of abortion, unnecessary and burdensome restrictions on abortion providers that are meant to shut them down, and laws forcing a woman to wait a specified amount of time and undergo counseling meant to dissuade her from obtaining an abortion.²⁰¹ These barriers are difficult for any woman to overcome, but especially affect low-income women who have little ability to absorb the attendant costs.

INADEQUATE ACCESS TO EDUCATION AND TRAINING

Because for women it takes a bachelor's degree to avoid overrepresentation in low-wage jobs, ensuring women's access both to college and to higher-paying jobs that are nontraditional for women is important. The rising cost of college education, coupled with the recession, has meant that postsecondary education is out of reach for many students unless they rely on student loans. This can, in turn, mean taking on massive amounts of debt and devoting high percentages of later earnings to loan repayment.²⁰² For example, on average, women who borrow to attend community college take out \$2,000 more in student loans than men who borrow to attend community college.²⁰³ One study found that among full-time workers repaying their loans one year after college graduation, almost half of women were paying more than 8 percent of their earnings towards student loan debt, as were about 40 percent of men.²⁰⁴

Sexual harassment and sexual assault on college campuses also threaten women's educational success. Studies have found that one in five women is a survivor of

sexual assault or attempted sexual assault while in college,²⁰⁵ but fewer than five percent of college women who are survivors of rape or attempted rape report their assaults to the police.²⁰⁶ Unfortunately, in too many instances, college and school officials have failed to protect students from sexual assault and to promptly and effectively address it when it occurs, although required to do so by Title IX of the Education Amendments of 1972, which prohibits sex discrimination—including sexual harassment and sexual assault²⁰⁷—in federally funded education programs.²⁰⁸ The emotional and physical effects of sexual harassment and violence can be devastating, disrupting a student's educational trajectory, leading some students to drop out of school altogether. The 2013 Violence Against Women Act amendments to the Clery Act²⁰⁹ and its implementing regulations²¹⁰ have resulted in new reporting and training requirements on schools for acts of violence, but more needs to be done to prevent and respond to sexual harassment and sexual assault on college campuses.²¹¹

Pregnant and parenting students face particular educational barriers. Despite the prohibition against discrimination on the basis of pregnancy or parenthood in Title IX of the Education Amendments of 1972,²¹² some schools fail to ensure equal educational opportunities for these students. One study found that in 2008 nearly half of student parents also worked full time while enrolled.²¹³ In addition to shouldering caregiving responsibilities, which are heavier for enrolled mothers than for fathers, student parents often have great difficulty finding affordable, good-quality child care.²¹⁴ On-campus child care is limited,²¹⁵ and student parents may also be unable to receive financial assistance to help pay for off-campus child care because some states set limits on child care assistance for parents in college or do not provide any assistance for parents working toward a four-year degree.²¹⁶

Women also remain underrepresented in education and workforce training programs that provide pathways to higher-wage jobs.²¹⁷ For example, women are rarely in the pool of individuals considered for construction apprenticeship opportunities, which offer necessary education and training to secure construction jobs.²¹⁸ And when women participate in construction apprenticeships,

they are less likely to complete their apprenticeships than men due to pervasive harassment and lack of child care, among other barriers.²¹⁹ These roadblocks to higher-wage, higher-skill jobs are detrimental to the economic security of women and their families.

LIMITED RETIREMENT SECURITY

These many barriers to economic security continue to affect women as they age. Women's lower lifetime earnings²²⁰ and longer lifespans than men²²¹ mean they have fewer resources to rely on as they age, and are more likely than men to spend years alone, without the support of a spouse.

Social Security is the foundation of women's economic security in retirement, providing secure benefits for workers and their families that can't be outlived and are adjusted for inflation.²²² However, Social Security benefits, which are based on lifetime earnings, are modest, especially for women. The average Social Security benefit for women ages 65 and older in 2013 was about \$13,500 per year, compared to about \$17,600 for men ages 65 and older.²²³ Yet women are more reliant on Social Security than men are. On average, women beneficiaries ages 65 and older receive 61 percent of their family income from Social Security, compared to 56 percent for men beneficiaries ages 65 and older.²²⁴ Indeed, for 30 percent of women—as compared to 23 percent of men—beneficiaries ages 65 and older, Social Security provides 90 percent or more of their family income.²²⁵

For many women of color, the reliance on Social Security is even higher. Social Security provides 90 percent or more of family income for 37 percent of African-American women beneficiaries ages 65 and older, and for 35 percent of Latina beneficiaries ages 65 and older.²²⁶

Other sources of retirement income are limited for many. Defined benefit pensions are disappearing;²²⁷ only 19 percent of private-sector workers have access to a defined benefit pension.²²⁸ Forty-five percent of families headed by working-age individuals (ages 25 to 64), and 40 percent of families headed by near-retirement-age individuals (ages 55 to 64), have no retirement savings.²²⁹ When all families are considered—including those without retirement accounts—the median account balance for all families headed by individuals ages 25 to 64 is \$3,000; the median

account balance for all families headed by individuals ages 55 to 64 is \$12,000.²³⁰

Low-wage workers are even less likely than other workers to participate in a retirement plan at work. Among women ages 21 to 64 earning less than \$10,000 a year, only 9.6 percent participate in an employer-offered plan; among women ages 21 to 64 earning between \$10,000 and \$20,000 a year, only 20.3 percent participate.²³¹ Many women work part time, but even employers who offer retirement plans are not required to include part-time workers in the plan. Just 24.2 percent of part-time, year-round women workers participate in employer-offered retirement plans, compared to 56.4 percent of full-time, year-round women workers.²³²

The Saver's Credit provides low- and moderate-income individuals with a tax credit of between 20 and 50 percent of their contribution, up to \$2,000 (\$4,000, if married and filing jointly), to a retirement plan or Individual Retirement Account, with the percentage varying by income.²³³ For 2015, the maximum income a tax filer could have and be eligible for the credit ranges from \$30,500 to \$61,000, depending on tax filing status.²³⁴ Because the credit is not refundable, however, it provides little or no help to many individuals who have low or no tax liability but are otherwise eligible for its benefits.²³⁵

DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY

Although federal law prohibits sex discrimination in employment, housing, and education it does not specifically prohibit discrimination on the basis of sexual orientation or gender identity.²³⁶ It also does not prohibit discrimination in public accommodations on the basis of sexual orientation or gender identity—or sex.²³⁷ Moreover, in a key instance—the Social Security Act—federal law prevents some individuals from receiving federal benefits because of their sexual orientation, by providing that the validity of a marriage—and thus eligibility for marriage-based Social Security benefits²³⁸—is determined by the law of the state in which an individual is domiciled at the time she or he applies for benefits, which may be a state that does not recognize same-sex marriage.²³⁹

Although the Supreme Court's decision in *United States v. Windsor* declared unconstitutional the provision of the Defense of Marriage Act that defined marriage, for purposes of federal law, as “only a legal union between one man and one woman as husband and wife,”²⁴⁰ it did not reach the question of whether a state may constitutionally prohibit marriages between two people of the same sex or refuse to recognize marriages validly performed in another state between two people of the same sex.²⁴¹ The Supreme Court in its October 2014 term is considering these questions in four companion cases in which the United States Court of Appeals for the 6th Circuit ruled against the same-sex couples seeking to marry or to have their out-of-state marriages recognized.²⁴²

As with discrimination on the basis of sex, discrimination on the basis of sexual orientation or gender identity often rests on gender stereotypes about supposedly appropriate behavior for women and men. Both sex discrimination and sexual orientation or gender identity discrimination often take the form of punishing or burdening individuals who fail to conform to gender stereotypes. Despite this close relationship, courts have split on whether discrimination on the basis of sexual orientation or gender identity is discrimination on the basis of gender stereotypes prohibited under federal sex discrimination law.²⁴³ As a result, individuals who face discrimination because of who they are or who they love may be without recourse.

In addition, *Burwell v. Hobby Lobby Stores, Inc.*, by upholding the right of a for-profit business to rely on the federal Religious Freedom Restoration Act to justify its refusal to provide contraceptive coverage to its employees,²⁴⁴ has given new life to efforts to rely on state RFRA to justify actions that discriminate on the basis of sexual orientation or gender identity. Indiana's RFRA, for example, expressly defines a person who may assert the protection of its law to include individuals and businesses, and provides that they may assert this protection against other private parties, even when the government is not involved.²⁴⁵ Widespread criticism of a March 2015 version of Indiana's RFRA²⁴⁶ for its apparent justification of discrimination based on sexual orientation and gender identity²⁴⁷ led to April changes in the law to clarify its application.²⁴⁸ The changes, however, did not expressly prohibit such discrimination, but only removed reliance on RFRA as

an authorized justification for it or as a defense to it.²⁴⁹ The changes also did not affect the ability of private individuals and businesses to rely on RFRA to refuse to provide health care coverages or services, such as contraception.²⁵⁰

Discrimination on the basis of sexual orientation or gender identity inflicts specific harm on women. Nationwide, a higher proportion of lesbians live in poverty (nearly 23 percent) than heterosexual women (about 21 percent), heterosexual men (about 15 percent), or gay men (almost 21 percent).²⁵¹ Women in same-sex couples have a median annual personal income of \$38,000, compared to \$47,000 for men in same-sex couples, and \$48,000 for men in heterosexual couples.²⁵² Further, among those under age 50, lesbian, gay, bisexual and transgender (LGBT) women are far more likely than LGBT men to be raising children—48 percent compared to 20 percent²⁵³—and LGBT parents are more likely than heterosexual parents to live close to poverty.²⁵⁴ In addition, 47 percent of transgender individuals report they were either fired, not advanced, or not hired due to their gender identity,²⁵⁵ and one study found that the earnings of transgender women fell by nearly one third following their gender transition.²⁵⁶

ATTACKS ON UNIONIZATION AND COLLECTIVE ACTION

Unionization can provide important benefits and protections to women in many jobs. Union members make more than their non-union counterparts, and the difference is especially pronounced for women. Women in unions earn 32 percent more than their non-union counterparts; in contrast, men in unions earn 21 percent more than their non-union counterparts.²⁵⁷ These benefits are even greater for some women of color. For example, Latinas in unions earn a whopping 46 percent more than their non-union counterparts.²⁵⁸ Women in unions not only earn more, they are paid more equally.²⁵⁹ Among union members, the wage gap between women and men is 40 percent smaller than the wage gap between women and men who are non-union members.²⁶⁰

Collective bargaining also empowers women and men to have a voice in work hours, scheduling practices, and time off so they can better attend to both their work and family responsibilities. One study found that private-sector union workers are far more likely than non-union workers to have access to paid sick days, paid family leave, paid vacation time, and retirement and comprehensive health insurance

benefits that cover all of their needs.²⁶¹ Another study found that women who are union workers are 36 percent more likely to have health insurance through their job than non-union workers.²⁶²

Although collective action is a clear pathway to good jobs, today only 10.5 percent of employed women are union members.²⁶³

Although there are several reasons for the overall decline in union membership, including the decline of manufacturing jobs, attacks on organizing and collective bargaining rights at both the state and federal levels are an important factor.²⁶⁴

Under the National Labor Relations Act (NLRA), most workers in the private sector have the right to organize and bargain collectively, but in practice the law provides limited protection of these rights. For example:

The time between worker petitions for representation elections and the elections themselves can take many months. The environment surrounding the election can be intimidating since there are no constraints on employer-initiated captive-audience speeches and penalties for firing union supporters and other acts of coercion are minimal. There is strong empirical evidence that coercion is widespread and has increased in frequency over time. When representation elections are won, there are no real remedies when an employer fails to bargain in good faith.²⁶⁵

Although the law itself could be stronger, continuing efforts by some lawmakers to undermine the agency that enforces the Act, the National Labor Relations Board—by blocking nominations, cutting funding, and interfering with investigations—have also taken a toll.²⁶⁶

Some states have enacted so-called right-to-work laws²⁶⁷ that hinder workers' efforts to organize and bargain collectively. These laws make it illegal for unions to negotiate a contract that allows them to collect "fair share" dues from all of the employees who benefit from the union contract.

The organizing and bargaining rights of public employees are a particular target; in 2011 and 2012, fifteen state legislatures passed laws limiting public employees'

rights to bargain collectively, although in three of those states the laws were vetoed or overturned by a voter referendum.²⁶⁸ The weakening of public employee unions is a particular concern for women, because over half (60 percent) of unionized women are in the public sector.²⁶⁹

In addition, a recent 5-4 Supreme Court decision, *Harris v. Quinn*, limited the rights of home care workers—who provide services to older individuals and individuals with disabilities through the Medicaid program—to form strong unions, on the grounds they are not “full-fledged public employees.”²⁷⁰ This decision not only adversely affects this group of predominantly female workers but also unionized child care providers who are paid with public funds or publicly regulated—another group of predominantly female workers.²⁷¹

These are the reasons for a women’s economic agenda.

An economic agenda for women and families

RECOGNIZING THAT WHEN WOMEN SUCCEED, THEIR FAMILIES AND THE NATION AS A WHOLE PROSPER,

legislators and executives at both the federal and state levels are proposing and implementing measures to address the economic challenges facing women and their families. For example, House Minority Leader Nancy Pelosi and several other women legislators in July 2013 released “When Women Succeed, America Succeeds: An Economic Agenda for Women and Families,” which includes measures to improve pay, combat employment discrimination, provide paid family and medical leave and expand access to high-quality, affordable child care and preschool.²⁷² In October 2013, Senator Kirsten Gillibrand unveiled a similar “American Opportunity Agenda.”²⁷³ And in July 2014, several members of the House of Representatives released the House Republican Women’s Package: “Solutions to Empower Americans At Work and At Home.”²⁷⁴ President Obama’s White House Summit on Working Families, held in June 2014, also shone a spotlight on these challenges and what could be done to address them.²⁷⁵ And, with polls showing the popularity of measures designed to increase economic security, particularly among women voters in national, state, and local elections,²⁷⁶ this is an opportune time to define and press an economic agenda for women and families.

There are many measures that could and should be part of a comprehensive economic agenda for women and families. This report is not intended to be an exhaustive discussion of these measures, but rather to highlight some key components of such an agenda at the federal level that are both currently under consideration and potentially achievable, noting, in appropriate places, efforts that have been made to address them. Although largely beyond the scope of this report, it is important to acknowledge that states and localities have taken the lead on several of these issues. Minnesota, for example, enacted a Women’s

Economic Security Act in 2014 that contains provisions addressing several of the issues discussed in this report.²⁷⁷ In many instances there are analogous measures that have been, or could be, part of similar state- or local-level women’s economic agendas.²⁷⁸

CLOSING THE WAGE GAP, ENSURING EQUAL PAY, AND OTHERWISE INCREASING PROTECTIONS AGAINST SEX DISCRIMINATION IN EMPLOYMENT

The proposed Paycheck Fairness Act would strengthen the Equal Pay Act in a number of ways by making it easier to identify and remedy discriminatory pay decisions, closing loopholes in the law, and providing incentives for employers to voluntarily comply with the law.²⁷⁹ For example, the bill would prohibit retaliation against employees for discussing their pay, bring the remedies for equal pay violations in line with those available for other pay discrimination based on race or ethnicity by allowing individuals who win their equal pay cases to recover compensatory and punitive damages, and tighten the defenses available to employers who claim a business justification for providing unequal pay.²⁸⁰

The Paycheck Fairness Act (PFA) passed the House of Representatives twice²⁸¹ but, although commanding a majority, failed to secure the 60 votes necessary to overcome a filibuster in the Senate four times, including twice in 2014.²⁸²

The proposed Fair Pay Act would address the devaluation of women’s work simply because it is performed by women.²⁸³ The bill would require that female-dominated jobs receive the same pay as male-dominated jobs that require equivalent skill level, effort, responsibility and working conditions.²⁸⁴

The proposed Fair Employment Protection Act would address the ruling in *Vance v. Ball State University* by amending Title VII of the Civil Rights Act and similar

non-discrimination laws to restore strong protections against harassment.²⁸⁵ It would make clear that employers may be vicariously liable for harassment by individuals with the authority to undertake or recommend tangible employment action or with the authority to direct an employee's daily work activities.²⁸⁶ Robust protection against sexual harassment is essential to women's success in the workplace.

Administrative actions can help improve efforts to secure equal pay, too. For example, in April 2014, President Obama issued an Executive Order prohibiting federal contractors from retaliating against employees who voluntarily discuss their compensation,²⁸⁷ and a Presidential Memorandum instructing the Secretary of Labor to promulgate new regulations requiring federal contractors to submit summary data "on employee compensation, including data by sex and race."²⁸⁸ Both of these measures are intended to provide greater information on pay disparities so that these disparities can be remedied.

The Department of Defense took action against one of the last instances of express sex discrimination in federal law and policy when it rescinded the Direct Ground Combat Definition and Assignment Rule in 2013 and directed the opening of all military positions and units to women by no later than January 1, 2016.²⁸⁹ The full implementation of this directive will require that military assignments be based on individual merit and ability, not gender.

States have also taken steps to improve their equal pay laws. Vermont, Minnesota, and Louisiana have recently amended their laws against sex discrimination in employment to tighten the defenses available to employers who pay male and female employees different wages for the same job.²⁹⁰ And New Jersey and New Hampshire recently banned punitive pay secrecy policies.²⁹¹

These are important steps toward addressing both the lower pay that women receive when performing the same jobs as men and the effect of job segregation by gender on the pay gap and women's opportunity to succeed, both of which devalue women's work simply because it is performed by women.

INCREASING THE MINIMUM WAGE

The proposed Raise the Wage Act would restore the value of the federal minimum wage, beginning in 2016, by raising it to \$12.00 an hour by 2020, then indexing it to keep pace with wages overall by maintaining a constant ratio between the minimum wage and the median wage.²⁹² The bill would also phase out the federal tipped minimum wage, gradually increasing it until it is equal to the regular minimum wage.²⁹³

If there were only one federal minimum wage and it were \$12.00 an hour today, the annual earnings for a full-time minimum wage worker would increase by \$9,500—and the annual earnings for a full-time tipped minimum wage worker would increase by \$19,740—to \$24,000, enough to more than lift a family of three out of poverty.²⁹⁴ The proposed Original Living Wage Act would go further, raising the minimum wage in 2015 to above \$12.00 an hour, under a formula that would ensure a full-time minimum-wage worker enough to more than lift a family of four out of poverty.²⁹⁵ Because women are the majority of workers who would get a raise under these proposals, they would also narrow the wage gap.²⁹⁶ For example, the average wage gap in states with a minimum wage at or above \$8.00 an hour (17.7 cents) is 22 percent smaller than the average wage gap in states with a minimum wage of \$7.25 an hour (22.7 cents).²⁹⁷

The Economic Policy Institute estimates that if the minimum wage were increased to \$12.00 an hour by 2020, more than 35 million workers would get a raise, including nearly 6.7 million workers earning between \$12.00 and \$13.00 an hour, who would see their pay increase due to the higher floor set by the new minimum wage.²⁹⁸ Women are nearly 20 million (55.9 percent) of all affected workers,²⁹⁹ including more than 6.3 million mothers—representing 27.3 percent of all mothers in the workforce with children under 18.³⁰⁰ Of the more than 9.7 million total workers affected who are parents, 31.4 percent are the sole providers for their families.³⁰¹

Eliminating the tipped minimum wage is particularly important for women. In the eight states that have only one minimum wage instead of a separate minimum wage for tipped workers, women fare considerably better on two key measures: the overall wage gap and poverty rates for tipped workers.³⁰² Women working full time, year round in

these states have an average wage gap that is 14 percent smaller than the average wage gap in the states that follow the federal standard.³⁰³ In states with only one minimum wage, average wage gaps among full-time, year-round workers are also smaller for African-American women—9 percent smaller—and Latinas—6 percent smaller—than they are among states that follow the federal standard.³⁰⁴ The average poverty rate for women tipped workers in these states is 33 percent lower than in states that follow the federal standard (14.9 percent v. 22.1 percent).³⁰⁵ The average poverty rate for women servers and bartenders—the largest group of tipped workers—is 37 percent lower in these states than in states that follow the federal standard (17.9 percent v. 28.3 percent).³⁰⁶

Administrative actions can also help more workers benefit from a higher minimum wage. For example, in regulations effective January 1, 2015, the Department of Labor extended minimum-wage and overtime protections to home care workers³⁰⁷—a poorly paid group of workers that is overwhelmingly female and disproportionately women of color.³⁰⁸ In February 2014, President Obama issued an Executive Order raising the minimum wage for workers on new federal contracts to \$10.10 an hour, annually adjusted for inflation.³⁰⁹ The Executive Order also raised the minimum wage for tipped workers on new federal contracts, which will gradually reach 70 percent of the minimum wage and increase by inflation as the minimum wage increases.³¹⁰

Many states are ahead of the federal government here. As of February 2015, twenty-nine states and the District of Columbia have minimum wages above the federal level, including ten states that index the minimum wage to keep pace with inflation.³¹¹ Some municipalities have minimum wage levels as high as \$15.00 an hour.³¹² But all state minimum wages are below \$12.00 an hour,³¹³ and only a federal minimum wage increase can ensure a minimum wage of at least that amount for workers across the country.

Eliminating the pay gap and increasing the minimum wage would increase women's cash income and reduce poverty, but still fall short of what many women and their families need to achieve a basic level of economic security. Indeed, a recent study estimated that two parents must each earn at least \$16.79 an hour to provide economic stability in a

family with two children.³¹⁴ Thus, ensuring basic economic security for women and their families requires a combination of higher cash wages, child support, cash income supports, assistance to meet critical needs such as child care, health care, and education, and measures to increase asset building and retirement security.

INCREASING THE EARNED INCOME TAX CREDIT AND PROTECTING THE VALUE OF THE EARNED INCOME TAX CREDIT AND CHILD TAX CREDIT

President Obama's proposed Fiscal Year 2016 budget would reform the Earned Income Tax Credit for workers without qualifying children. It would double the maximum credit amount (from \$503 in 2015 to about \$1,000 in 2016), increase the amount of income that individuals and couples can earn and remain eligible for the credit (from \$14,820 in 2015 to \$18,173 in 2016, for a single individual, and from \$20,330 in 2015 to \$23,763 in 2016, for a married couple), and expand the age range of workers who are eligible for the credit (from ages 25 through 64 to ages 21 through 66).³¹⁵ Other recent bills have proposed similar reforms.³¹⁶ The Administration estimates that the similar reforms it proposed in 2014 would benefit 13.5 million low-income workers.³¹⁷ Approximately 6.1 million of these workers are women, 44 percent of whom are women of color.³¹⁸ Of the 3.3 million adults aged 21 to 24 who would be helped by the proposal, nearly half (45 percent) are women; of the 300,000 workers ages 65 or 66 who would be helped, two-thirds are women.³¹⁹ The proposed expansion would particularly help young women entering the labor force and students working to support themselves, as well as older women approaching retirement, all groups of women who are often financially strapped.

The President's proposal, and the proposed legislation, would also make permanent the improvements to the EITC and Child Tax Credit enacted in 2009, currently in effect only through 2017.³²⁰ Making these improvements permanent would ensure they continue to reduce marriage penalties and increase benefits for many low-income families. Women are more than one-half of the beneficiaries of the EITC improvements and more than two-thirds of the beneficiaries of the Child Tax Credit improvements.³²¹

ENSURING ACCESS TO CHILD CARE AND EARLY LEARNING

President Obama's proposed Fiscal Year 2016 budget would significantly increase funding for the Child Care and Development Block Grant Program. It would provide an additional \$82 billion over ten years to make child care assistance available to all children under age four in families with incomes at or below 200 percent of poverty—and require states to develop plans for improving the supply of high-quality care.³²² This proposal would expand access to child care assistance to over 1.1 million more children by 2025, bringing to more than 2.6 million the number of children who would receive assistance each month.³²³ It would provide an additional \$266 million increase in funding to help states meet the cost of the new requirements of the 2014 CCDBG reauthorization and \$100 million for competitive grants to “test and evaluate innovative child care models that better meet the needs of working families, including those who work non-traditional hours.”³²⁴ It would also increase funding for Head Start by \$1 billion in Fiscal Year 2016, to allow all Head Start programs to operate for a full school day and full school year.³²⁵

President Obama's proposed Fiscal Year 2016 budget would increase the federal Child and Dependent Care Tax Credit, especially for families with young children—but would not make the credit refundable.³²⁶ The proposed Child and Dependent Care Tax Credit Enhancement Act is modeled on President Obama's proposal—and would make the expanded credit fully refundable.³²⁷ It would increase the maximum credit amount for families with children under age five to \$3,000 for families with one child (based on 50 percent of up to \$6,000 in expenses) and \$6,000 for families with two or more children (based on 50 percent of up to \$12,000 in expenses).³²⁸ The percentage of expenses that determines the credit amount would not begin to decline until adjusted gross income exceeds \$120,000, and families with adjusted gross income up to \$178,000 would be eligible for a credit amount that is higher than under current law.³²⁹ The maximum credit amount for families with children or dependents ages five and older would be unchanged, at \$1,050 for families with one child or dependent (based on 35 percent of up to \$3,000 in expenses) and \$2,100 for families with two or more children

or dependents (based on 35 percent of up to \$6,000 in expenses).³³⁰ However, the percentage of expenses that determines the credit amount would not begin to decline for these families until adjusted gross income exceeds \$120,000, and families with adjusted gross income up to \$148,000 would be eligible for a credit amount that is higher than under current law.³³¹ Both the maximum expense limits and the income levels at which the credit percentages change would be indexed for inflation so the credit does not continue to lose value over time.³³²

The proposed Strong Start for America's Children Act³³³ builds on a proposal by President Obama in his 2013 State of the Union address³³⁴ and included in his subsequent budget proposals.³³⁵ It would provide \$75 billion over ten years to make high-quality preschool available to all four-year-old children in families with incomes at or below 200 percent of poverty.³³⁶ It would also expand early learning opportunities for infants and toddlers by allowing states to set aside a portion of the funds for high-quality infant and toddler care and by providing grants for high-quality early care and education for children under age four through partnerships between Early Head Start and child care programs.³³⁷

Hearings were held on the Strong Start legislation in 2014,³³⁸ but it was not scheduled for floor action.

Administrative action can also help increase families' ability to secure child care that meets their needs. For example, the federal Office of Child Care proposed regulations for the Child Care and Development Block Grant program in 2013 that would increase health and safety protections for children and otherwise improve the quality of care and make the program more accessible for families.³³⁹ Although the regulations were withdrawn before they were finalized because of the need to incorporate provisions of the CCDBG reauthorization legislation signed into law in December 2014,³⁴⁰ many of their provisions will likely be proposed in the updated regulations.

Some states and cities are out ahead in their efforts to improve child care and early learning. Oklahoma and Georgia have state-funded preschool programs available to all four-year-old children.³⁴¹ The District of Columbia³⁴² and Vermont³⁴³ have state-funded preschool programs

available to all three- and four-year-old children. In the past year, several other states and cities have taken major steps to establish new, or expand existing, preschool programs, including Michigan,³⁴⁴ California,³⁴⁵ and New York City.³⁴⁶

Many states, too, have child and dependent care tax credits, or child care tax credits, some of which have higher maximum values than the federal credit.³⁴⁷ New York's Child and Dependent Child Credit, for example, has a maximum value of \$2,310.³⁴⁸ Louisiana has a Child Care Credit for families with children under age thirteen, which has a maximum value of \$2,100,³⁴⁹ and a separate school readiness Child Care Expense Credit for families with children under age six enrolled in child care centers rated by the state's Quality Start rating system, which has a maximum value of \$2,100 per child.³⁵⁰ Families eligible for both Louisiana credits may claim both. The New York credit,³⁵¹ the two Louisiana credits,³⁵² and the child care credits of ten other states are refundable.³⁵³

PROVIDING PAID SICK DAYS AND PAID FAMILY AND MEDICAL LEAVE

The proposed Healthy Families Act would guarantee workers the right to earn up to seven paid sick days per year to recover from their own illness or to care for a sick family member.³⁵⁴

The proposed Family and Medical Insurance Leave Act (the FAMILY Act) would create a national family and medical leave insurance program to provide paid leave for the reasons covered by the Family and Medical Leave Act.³⁵⁵ Funded by contributions from employers and employees, it would provide partial wage replacement for up to twelve workweeks to employees to address their own serious health issues, including pregnancy or childbirth; to address the serious health issues of a parent, spouse, domestic partner or child; to care for a new child; and/or for specific military caregiving and leave purposes.³⁵⁶ Workers would be allowed to contribute and benefit from the paid leave provided regardless of their employer's size or their length of time on the job.³⁵⁷

A number of states and localities have passed laws requiring employers to permit workers to earn paid sick days. In 2011, Connecticut³⁵⁸ became the first state to do so, and California³⁵⁹ and Massachusetts³⁶⁰ have since done

so. In 2006, San Francisco became the first locality to do so,³⁶¹ and several other localities have since done so as well.³⁶²

Three states, California,³⁶³ New Jersey,³⁶⁴ and Rhode Island,³⁶⁵ offer paid family and medical leave, funded through employer-employee or employee-only payroll contributions and administered through the state's disability insurance program.³⁶⁶

ENSURING FAIR WORK SCHEDULES

The proposed Schedules That Work Act would give employees the right to request a change in their work schedules and clear protection from retaliation for those making such requests.³⁶⁷ It would also give employees who need a schedule change in order to accommodate certain critical needs and obligations—caregiving, a serious health condition, pursuit of education or training, or (for a part-time worker) a second job—a right to receive that change if the employer does not have a business reason for denying it.³⁶⁸ And it would give employees in certain industries in which scheduling abuses have been well documented—restaurant, retail, and building cleaning services—a right to two weeks' advance notice of work schedules and extra pay if they are sent home without being allowed to work their scheduled shifts, given less than 24 hours' notice of whether they have to report for work, or assigned to work a shift of non-consecutive hours with an unpaid break of more than one hour.³⁶⁹

A number of states have laws or regulations that provide workers with protection against certain scheduling practices. For example, Massachusetts, Connecticut, New Hampshire, New York, New Jersey, Oregon, Rhode Island and the District of Columbia require employers to pay additional compensation to employees who are sent home before the conclusion of their scheduled shifts.³⁷⁰ California and the District of Columbia require employers to provide additional compensation to workers required to work a split shift—a schedule of daily hours in which the hours worked are not consecutive.³⁷¹ Vermont and San Francisco have recently enacted laws that require employers to consider requests from employees for changes in their schedules and protect employees making those requests from retaliation.³⁷² And in 2014, San Francisco passed the Retail Workers Bill of Rights, becoming the first locality to require

certain large retail and restaurant employers to provide two weeks' notice of schedules to employees, with additional compensation for changes in shifts and for on-call shifts for which the employee is required to be available but not called in to work.³⁷³

ENDING DISCRIMINATION ON THE BASIS OF PREGNANCY AND CAREGIVING RESPONSIBILITIES

The United States Supreme Court, in *Young v. United Parcel Service*, recently confirmed the important protection that the Pregnancy Discrimination Act (PDA) provides to pregnant workers who need changes in their job duties because of physical limitations arising from pregnancy, and provided a road map for establishing a claim that an employer violated the PDA by refusing to accommodate a pregnant worker when the employer accommodated many other workers with similar limitations.³⁷⁴ The proposed Pregnant Workers Fairness Act (PWFA) would strengthen and simplify the rights of pregnant workers by providing a clear rule that workers who need changes in job duties because of physical limitations arising from pregnancy, childbirth, or related medical conditions are entitled to reasonable accommodations³⁷⁵—the very same types of accommodations that employers routinely provide for workers with non-pregnancy-related disabilities under the Americans With Disabilities Act.³⁷⁶ The PWFA is a response to court decisions, including the decisions of the lower courts in the *Young* case,³⁷⁷ seen as misinterpreting the language and intent of the Pregnancy Discrimination Act to permit employers to refuse accommodations to pregnant workers who need them.³⁷⁸

Administrative action can help as well. The Equal Employment Opportunity Commission recently issued strong guidance³⁷⁹ addressing the right of pregnant workers to receive the accommodations they need under both the Pregnancy Discrimination Act³⁸⁰ and the Americans with Disabilities Act.³⁸¹ Under the PDA, as the EEOC guidance explains, employers must make accommodations for pregnant workers who need them if they accommodate workers with needs arising out of on-the-job injuries or non-pregnancy-related disabilities.³⁸² Under the ADA, employers must make reasonable accommodations for employees who have pregnancy-related impairments that

substantially limit a major life activity and thus qualify as disabilities under the ADA.³⁸³ The Office of Federal Contract Compliance Programs has recently proposed regulations that similarly would make clear that employers with federal contracts must provide the same accommodations for pregnant workers who need them that they provide or are obligated to provide to other workers with similar inability to work, such as workers with disabilities or occupational injuries.³⁸⁴ Although some changes in these administrative pronouncements may occur to ensure their consistency with the *Young* decision, they are important examples of the ways in which administrative actions can address the need for pregnancy-related accommodations.

Some states, too, have acted to specifically protect the right of pregnant workers to secure job accommodations. Twelve states explicitly require some forms of accommodation for at least some pregnant workers.³⁸⁵ Eight of these states—California, Delaware, Hawaii, Illinois, Maryland, Minnesota, New Jersey, and West Virginia—have adopted broad pregnancy accommodation laws similar to the federal Pregnant Workers Fairness Act, requiring covered employers to provide reasonable accommodations for limitations arising out of pregnancy, unless the accommodation would pose an undue hardship to the employer.³⁸⁶ The laws in Delaware, Illinois, Maryland, Minnesota, New Jersey, and West Virginia were all passed since 2013, and garnered unanimous support in Delaware, Illinois, and West Virginia, and near-unanimous support in New Jersey (only one legislator voted against).³⁸⁷ Alaska, Connecticut, Louisiana, and Texas offer narrower protections in that they apply only to certain categories of public employees, or require accommodation only in the form of transfer to an available position.³⁸⁸ Since 2013, broad pregnancy accommodation laws have also passed in New York City, Philadelphia and Pittsburgh, Pennsylvania, and Providence and Central Falls, Rhode Island, as well as the District of Columbia.³⁸⁹

There are few explicit protections against caregiver discrimination in federal law, but in 2007 the EEOC issued enforcement guidance to educate employers and employees about caregiver discrimination, detailing examples of when employer conduct may run afoul of Title VII's prohibition on sex discrimination in employment, such as by treating fathers differently from mothers in the

workplace or relying on assumptions about the “commitment” of mothers to their job when determining job assignments or making promotion decisions.³⁹⁰

Some state laws include explicit protections against caregiver discrimination, including Alaska, the District of Columbia, Minnesota and New Jersey.³⁹¹ Over sixty localities also prohibit some form of caregiver discrimination in their employment nondiscrimination statutes.³⁹²

ENSURING ACCESS TO HEALTH CARE, INCLUDING REPRODUCTIVE HEALTH CARE

Enhanced federal funding for premium tax credits and cost-sharing reductions would provide greater help to families with their health insurance costs and improve their access to health care services when they need them. In addition, fixing the ACA’s “family glitch” would make more families eligible for premium tax credits. The expansion of Medicaid coverage permitted by the ACA in the states that have not yet adopted such coverage would both reduce the cost and increase the coverage of care for the many families that would become eligible for its benefits. And if the Supreme Court rules in *King v. Burwell*³⁹³ that premium tax credits are only available in states that have established their own health insurance exchanges, unless policymakers take further actions, millions of individuals and their families would lose their health insurance.

The proposed Protect Women’s Health from Corporate Interference Act (known colloquially as the “Not My Boss’s Business” bill) would address the Supreme Court’s decision in *Hobby Lobby* by specifically prohibiting employers from denying individuals insurance coverage of health care services required by law.³⁹⁴ The proposed Access to Contraception for Women Servicemembers and Dependents Act would guarantee that all those who rely on the military for health care have this important benefit,³⁹⁵ which is critical not only to their health and economic security, but also to basic military readiness and quality of life.

Beyond birth control coverage, laws can prohibit employers from using religion or other individual beliefs to discriminate against their employees for reproductive health decisions like using birth control or undergoing in vitro fertilization in order to get pregnant. In 2014, for example, the District of

Columbia passed a law prohibiting employers from discriminating against employees because of a reproductive health decision.³⁹⁶

Lifting restrictions on insurance coverage of abortion at the federal and state level would ensure that a woman is able to make a real decision about whether or not to end a pregnancy. Eliminating the other types of state and federal restrictions on abortion would protect women’s access to essential reproductive health care. The proposed federal Women’s Health Protection Act would make unlawful limitations or requirements that single out the provision of abortion services for restrictions that are more burdensome than restrictions imposed on medically comparable services, do not significantly improve women’s health or the safety of abortion services, and make abortion services more difficult to access.³⁹⁷

IMPROVING EDUCATION AND TRAINING

Addressing the student debt crisis is important to ensure higher education is more accessible for women—and men. The expansion of Pell grants, which help low-income students attend college without burdening them with debt, would help, as would allowing individuals with outstanding student loan debt to refinance at the lower interest rates currently offered to new borrowers.

President Obama’s proposed Fiscal Year 2016 budget would index Pell grant awards for inflation, maintaining their value over time.³⁹⁸ It would also provide \$60 billion over ten years for two years of free tuition to students enrolled at least half-time in a community college and on track to earn an associate’s degree, the first half of a bachelor’s degree, or a training certificate for a job in a high-growth field.³⁹⁹ Such an investment would help make college more affordable for low- and middle-income families—particularly women, who make up 56 percent of community college students.⁴⁰⁰ Federal funding would cover 75 percent of the cost, with states making up the difference.⁴⁰¹ If every state participated, an estimated 9 million students could benefit each year from the proposal.⁴⁰²

Administrative actions can also help students pay for schooling. For example, President Obama’s proposed Fiscal Year 2016 budget would simplify the federal

student loan application form to make it more accessible to students.⁴⁰³

The proposed Campus Accountability and Safety Act would create incentives for schools to take proactive steps to address sexual assault on their campus.⁴⁰⁴ The bill establishes new resources for student survivors, requires additional training of campus personnel, establishes an annual, anonymous survey about student experience with sexual assault, and adds additional penalties for failing to comply with existing federal requirements.⁴⁰⁵ The proposed Survivor Outreach and Support Campus Act would require colleges and universities to establish an independent, on-campus advocate to support survivors of sexual assault.⁴⁰⁶

Administrative action can also help prevent and respond to sexual harassment and sexual assault on campuses. The Office for Civil Rights of the Department of Education in 2014 provided new guidance to schools on their obligations to comply with Title IX in their response to sexual assault.⁴⁰⁷ The Obama Administration has also used an interagency task force, the White House Task Force to Protect Students from Sexual Assault, to improve and better coordinate its response to Title IX complaints and to provide resources to colleges and universities in their efforts to prevent and respond to sexual harassment and sexual assault.⁴⁰⁸ President Obama's proposed Fiscal Year 2016 budget would double the funding for the Administration's campus violence initiative to support and implement the recommendations of the White House Task Force to Protect Students from Sexual Assault.⁴⁰⁹

Stronger enforcement of antidiscrimination laws, both in colleges and in career and technical education classes and apprenticeships, would improve the pipelines to better-paying, traditionally male jobs. Similarly, strengthening contractors' affirmative action goals would increase the recruitment and retainment of women in nontraditional jobs and apprenticeships.⁴¹⁰

INCREASING RETIREMENT SECURITY

Improving Social Security benefits would be the most effective way to increase women's retirement security because coverage under Social Security is nearly universal and benefits are secure, life-long, and inflation-adjusted.

Experts and advocates have proposed reforms, and members of Congress have introduced a variety of proposals to enhance benefits. For example, the proposed Strengthening Social Security Act would use the Consumer Price Index for the Elderly, which takes account of elders' higher health care costs, to determine the annual cost-of-living adjustment and adjust the formula to increase benefits overall.⁴¹¹ The proposed Social Security Enhancement and Protection Act would reform the Special Minimum Benefit to improve benefits for workers with low lifetime earnings, including by giving credit for lost or reduced earnings due to caregiving,⁴¹² and the proposed Retirement and Income Security Enhancements (RAISE) Act would reform the benefit for surviving spouses to provide more adequate and equitable benefits for the survivors of low- and moderate-income couples.⁴¹³ Although Social Security currently faces a long-term shortfall, with modest adjustments both the shortfall can be met and the program improved. All of the above bills would, in addition to increasing benefits, increase solvency by subjecting annual earnings above the current maximum to the payroll tax.⁴¹⁴

To expand retirement savings, President Obama's proposed Fiscal Year 2016 budget would require employers who offer 401(k) plans to extend eligibility to part-time workers (those working 500 hours per year or just under 10 hours a week) who have worked for the same employer for at least three years,⁴¹⁵ and require employers in business for at least two years with more than ten workers to offer an automatic Individual Retirement Account option to which employees could contribute by payroll deduction.⁴¹⁶ These provisions would help women in particular achieve greater retirement security.

Improving the Saver's Tax Credit for low- and moderate-income individuals who contribute to a retirement plan, and making it refundable, would increase the capacity of these individuals to save. Coupling that change with the creation of new, low-cost savings options, would further increase their retirement savings. The proposed Savings for American Families' Future Act would make the Saver's Credit refundable and increase the amount of the refund it provides, if the individual claiming the refund consents to its deposit in a retirement account.⁴¹⁷

PROHIBITING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY

The proposed Student Non-Discrimination Act would prohibit discrimination on the basis of actual or perceived sexual orientation or gender identity against students in any program or activity receiving federal financial assistance.⁴¹⁸ The proposed Employment Non-Discrimination Act would prohibit employment discrimination on the basis of sexual orientation and gender identity.⁴¹⁹ The Employment Non-Discrimination Act passed the Senate in 2013 but did not come to a vote in the House of Representatives.⁴²⁰ Because its religious exemption is broader than the religious exemption in Title VII of the Civil Rights Act,⁴²¹ stronger protections are likely to be included in any new version of the bill. Strong protections are also needed against discrimination on the basis of sexual orientation and gender identity in education, housing and public accommodations. These protections are an important element of a women's economic agenda because of the particular economic vulnerability of lesbians and bisexual and transgender women, which is both the result of such discrimination and compounds it.

The proposed Social Security and Marriage Equality Act would ensure that same-sex married couples, regardless of where they live, are eligible to receive Social Security benefits on the same basis as other married couples.⁴²² A decision by the United States Supreme Court in favor of the same-sex couples challenging the refusal of their states to allow them to marry, or to recognize their marriages performed in other states,⁴²³ would both address the current law limitation on receipt of Social Security benefits and provide broader protection for same-sex married couples nationwide.⁴²⁴

Administrative action can also help. The policy of the federal government, as stated by the United States Office of Personnel Management (OPM), is that all federal workplaces be free of discrimination, including discrimination on the basis of sexual orientation and gender identity,⁴²⁵ and in July 2013 President Obama issued an Executive Order prohibiting federal contractors from discriminating on the basis of sexual orientation and gender identity.⁴²⁶ Since the Supreme Court's decision in

United States v. Windsor,⁴²⁷ OPM has also extended benefits to legally married same-sex spouses of federal employees and annuitants.⁴²⁸

More broadly, after the *Windsor* decision, President Obama directed the Attorney General to work with other members of the Cabinet "to review all relevant federal statutes to ensure this decision . . . is implemented swiftly and smoothly,"⁴²⁹ and the agencies have since been issuing conforming interpretations of federal laws and regulations. For example, the Department of Labor has defined spouse under the Family and Medical Leave Act⁴³⁰ to include a spouse in a same-sex marriage.⁴³¹

Beyond same-sex marriage, the Civil Rights Division of the United States Department of Justice has issued guidance explaining that federal employment, housing, education, and other statutes that prohibit discrimination based on sex "protect[] all people (*including LGBTI people*) from . . . discrimination based on a person's failure to conform to stereotypes associated with [a] person's real or perceived gender."⁴³² In addition, the Equal Employment Opportunity Commission has ruled that discrimination against transgender individuals is sex discrimination actionable under Title VII of the Civil Rights Act.⁴³³

The laws of several states and localities are ahead of federal law; about half the states prohibit discrimination on the basis of sexual orientation or gender identity or both.⁴³⁴ The interrelation of these laws with state religious freedom laws continues to pose questions on the extent of their protection,⁴³⁵ however, and many states don't provide any protection against discrimination on these grounds.

SUPPORTING UNIONIZATION AND COLLECTIVE ACTION

Protecting and strengthening collective bargaining rights, new forms of worker organizing, and the ability to come together to enforce employment rights in court would enhance worker protections for both women and men. Giving women a chance to make their voices heard in America's workplaces is key to their economic success.

The proposed Employee Free Choice Act would help eliminate delays in obtaining union recognition by establishing that if over 50 percent of employees sign valid authorization cards, a union would automatically be

formed.⁴³⁶ The proposed Employee Empowerment Act would provide workers subjected to unfair labor practices with remedies in addition to these provided by the National Labor Relations Act,⁴³⁷ including, for example, the protections of the civil rights laws for workers who are retaliated against because they engage in organizing activities.⁴³⁸ It would also require automatic arbitration of first contracts after six months of unsuccessful bargaining, a provision designed to encourage good-faith bargaining.⁴³⁹

Conclusion

THE NEED IS GREAT, BUT AN ECONOMIC AGENDA FOR WOMEN AND FAMILIES IS ACHIEVABLE because the issues it addresses are central to the lives of women and their families. Indeed, the centrality of the issues is the reason for the broad public support for the components of the agenda. What is needed now is to turn that support into a demand for action—and into action itself. Senator Kirsten Gillibrand has expressed it well:

We need a “Rosy the Riveter” moment
If you remember that iconic image, sleeves rolled up, slogan, “We can do it!” Women in America responded because the American people needed them. It was a call to action to say, we need you to work in these industries because men are fighting during World War II. Women responded. They responded because they were told two things: that they could do it and that they would make a difference. . . . We need a call to action today. . . . So every woman in America, every man in America . . . need[s] to speak up, need[s] to demand action [on women’s economic issues], . . . that’s what our democracy is about.⁴⁴⁰

This is our moment.

Endnotes

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- 11 *Id.*
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- 18 *Id.*
- 19 *Id.*
- 20 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2013 AMERICAN COMMUNITY SURVEY, Tbl. C17001C: Poverty Rates in the Past 12 Months by Sex by Age (2014), *available at* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_C17001C&prodType=table.
- 21 CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. POV-01: Age and Sex of All People, Family Members and Unrelated Individuals Iterated by Income-to-Poverty Ratio and Race (2014), *available at* http://www.census.gov/hhes/www/cpstables/032014/pov/pov01_000.htm.
- 22 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. POV-01: Age and Sex of All People, Family Members and Unrelated Individuals Iterated by Income-to-Poverty Ratio and Race (2014), *available at* http://www.census.gov/hhes/www/cpstables/032014/pov/pov01_000.htm.
- 23 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, CURRENT POPULATION SURVEY, U.S. DEP'T OF COMMERCE, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. PINC-05: Work Experience in 2013—People 15 Years Old and Over by Total Money Earnings in 2013, Age, Race, Hispanic Origin, and Sex (2014), *available at* http://www.census.gov/hhes/www/cpstables/032014/perinc/pinc05_000.htm.
- 24 *Id.* Here, too, figures are for full-time, year-round workers.
- 25 See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CURRENT POPULATION SURVEY, ANNUAL AVERAGES, Tbl. 39: Median Weekly Earnings of Full-Time Wage and Salary Workers by Detailed Occupation and Sex (2014), *available at* <http://www.bls.gov/cps/aa2013/cpsaat39.htm>. These data are for 2013.
- 26 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. PINC-03: Educational Attainment—People 25 Years and Older by Total Money Earnings in 2013, Age, Race, Hispanic Origin, and Sex (2014), *available at* <http://www.census.gov/hhes/www/cpstables/032014/perinc/toc.htm>.
- 27 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. PINC-05: Work Experience in 2013 – People 15 Years Old and Over by Total Money Earnings in 2013, Age, Race, Hispanic Origin, and Sex (2014), *available at* <http://www.census.gov/hhes/www/cpstables/032014/perinc/toc.htm>.
- 28 Philip Cohen, *The Persistence of Workplace Gender Segregation in the US*, 7 SOCIOLOGY COMPASS 889, 889-92 (2013), *available at* <http://www.terpconnect.umd.edu/~pnc/SocComp2013.pdf>.
- 29 BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CURRENT POPULATION SURVEY, ANNUAL AVERAGES FOR 2013, Tbl. 39: Median Weekly Earnings of Full-Time Wage and Salary Workers by Detailed Occupation and Sex (2014), *available at* <http://www.bls.gov/cps/aa2013/cpsaat39.htm>.
- 30 See Joan C. Williams, *The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination and Defang the “Cluelessness” Defense*, 7 EMP. RTS. & EMP. POL'Y J. 401, 408 (2003).
- 31 See, e.g., Alison A. Reuter, Comment, *Subtle but Pervasive: Discrimination against Mothers and Pregnant Women in the Workplace*, 33 FORDHAM URB. L.J. 1369, 1403 (2006); Joan C. Williams, *Toward a Reconstructive Feminism: Reconstructing the Relationship of Market Work and Family Work*, 19 N. ILL. U. L. REV. 89, 113-16 (1998).
- 32 See Joan C. Williams & Stephanie Bornstein, *Caregivers in the Courtroom: The Growing Trend of Family Responsibility Discrimination*, 41 U.S.F. L. REV. 171, 177-78 (2006); Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1894-96 (2000).
- 33 See *infra* notes 74-80 and accompanying text.
- 34 29 U.S.C. § 206(d) (2012).
- 35 42 U.S.C. § 2000e(k) (2012).
- 36 See generally NAT'L WOMEN'S LAW CTR., PAYCHECK FAIRNESS: CLOSING THE “FACTOR OTHER THAN SEX” GAP IN THE EQUAL PAY ACT (2011), *available at* <http://www.nwlc.org/resource/paycheck-fairness-closing-factor-other-sex-gap-equal-pay-act-o> (discussing several decisions in which courts have accepted a “factor other than sex” defense from employers as explaining the alleged pay discrimination, without examining whether the proffered factor was job related or consistent with business needs, or whether the factor had roots in sex-based discrimination).

- 37 See INST. FOR WOMEN'S POLICY RESEARCH, PAY SECRECY AND THE WAGE GAP (2014), available at <http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1> (finding that nearly half of all employees across the workforce report that discussing or asking about their wages is either directly prohibited or otherwise discouraged by their employers); cf. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), in which the plaintiff did not learn of the discrepancy between her pay and the pay of several of her male counterparts until late in her career, which, the Supreme Court held, barred her from filing a Title VII claim because of the statute's 180-day statute of limitations. Congress overrode this ruling in the Lily Ledbetter Fair Pay Act, 42 U.S.C. § 2000e-5(e) (2012), which makes clear that each time compensation is paid, the 180-day period for filing a pay discrimination lawsuit with respect to that compensation re-sets.
- 38 29 C.F.R. § 1614.103(d)(1) (2014) (Equal Employment Opportunity Commission regulations interpreting Title VII as not applying to complaints of discrimination by military members). See also *Janniery v. U.S. Army*, 34 F. Supp. 2d 850, 853 (E.D.N.Y. 1999) (holding that Title VII does not apply to uniformed members of the armed forces) (citing *Roper v. Dep't of the Army*, 832 F.2d 247 (2d Cir.1987), and *Cedano v. U.S. Gov't.*, No. 86–CV–2223, 1989 WL 23901 (E.D.N.Y. March 13, 1989)); *Golding v. U.S.*, 48 Fed. Cl. 697, 721 (2001) *aff'd*, 47 F. App'x 939 (Fed. Cir. 2002) (holding that Title VII does not apply to military personnel). Additionally, women who are employed by small employers—those with fewer than 15 employees—are also unprotected. See 42 U.S.C. §2000e(b) (2012) (limiting the term “employer” to employers with 15 or more employees).
- 39 Memorandum from the Sec'y of Def. to the Sec'ys of Army, Navy, Air Force, and to Chairman, Joint Chiefs of Staff, and to Ass't. Sec'ys of Defense (Personnel & Readiness, and Reserve Affairs) on Direct Ground Combat Definition and Assignment Rule (Jan. 13, 1994), available at <http://big.assets.huffingtonpost.com/irectGroundCombatDefinition-AndAssignmentRule.pdf>. For a historical review of military assignment policies, see NAT'L WOMEN'S LAW CTR., RESTRICTIONS ON ASSIGNMENTS OF MILITARY WOMEN: A BRIEF HISTORY (2015), available at http://www.nwlc.org/sites/default/files/pdfs/women_in_military_assigments_a_brief_history_revised_Jan_2015.pdf.
- 40 Memorandum from Sec'y of Defense & Chairman, Joint Chiefs of Staff to Sec'ys of the Military Dep'ts, Acting Under Sec'y of Defense (Personnel & Readiness), and Chiefs of Military Services on Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule 1 (Jan. 24, 2013), available at <http://www.defense.gov/news/WISRJointMemo.pdf>.
- 41 *Id.* at 1-2.
- 42 Claudette Roulo, *Defense Department Expands Women's Combat Role*, U.S. DEP'T OF DEFENSE NEWS, Jan. 14, 2013, available at <http://www.defense.gov/news/newsarticle.aspx?id=119098>.
- 43 Memorandum on Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule, *supra* note 40, at 1.
- 44 As of April 2015, the Department of Defense has notified Congress of its intention to open approximately 92,000 positions that were closed on January 24, 2013. Joint Case Management Statement 8, *Hegar v. Carter*, No. 12-CV-06005 (N.D. Ca. Apr. 23, 2014). *Hegar* challenges, on constitutional grounds, the categorical exclusion of women on account of their sex from “entire military career fields, from all-male units, from certain schools and training programs, and from thousands of jobs.” *Id.* at 1.
- 45 Memorandum on Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule, *supra* note 40, at 1.
- 46 See, e.g. Gretel C. Kovach, *Women in Ground Combat: Can They Do It?*, U-T SAN DIEGO, Feb. 14, 2015, available at <http://www.utsandiego.com/news/2015/feb/14/women-in-combat-debate-2016-deadline/>.
- 47 See Fair Labor Standards Amendments of 1989, Pub. L. No. 101-157 § 2, 103 Stat. 938 (1989) (raising the federal minimum wage from \$3.35 to \$4.25 per hour by 1991); Small Business Job Protection Act of 1996, Pub. L. No. 104-188 § 2104, 110 Stat. 1755, 1928-1929 (1996) (raising the wage to \$5.15 per hour by 1997); U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Pub. L. No. 110-28 § 8102, 121 Stat. 112, 188 (2007) (raising the wage to \$7.25 per hour by 2009).
- 48 29 U.S.C. § 206(a) (2012).
- 49 Nat'l Women's Law Ctr. calculations based on a starting point of the high-water mark for the federal minimum wage, \$1.60 in 1968, see, e.g., Doug Hall, Commentary, *Increasing the Minimum Wage is Smart for Families and the Economy*, SUN SENTINEL, May 16, 2011 available at http://articles.sun-sentinel.com/2011-05-16/news/fl-dhcol-minimum-wage-outlook-0515-20110516_1_minimum-wage-american-workers-middle-class-teenagers (stating, “The federal minimum wage was at its highest mark in 1968, worth more than 15 percent more than it is today”), and an ending point of 2015, using the BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CPI Inflation Calculator, available at http://www.bls.gov/data/inflation_calculator.htm (last visited Apr. 1, 2015), arriving at a minimum wage of \$10.79 for 2015.

- 50 29 U.S.C. § 203(m) (2012). Under federal law, an employer may pay a tipped employee a minimum cash wage of \$2.13 per hour and count the employee's tips to satisfy the remainder of its minimum wage obligation, taking a "tip credit" of up to \$5.12 per hour (the minimum wage of \$7.25 minus the minimum cash wage of \$2.13). *See id*; *see also* WAGE & HOUR DIVISION, U.S. DEP'T OF LABOR, TIPPED EMPLOYEES UNDER THE FAIR LABOR STANDARDS ACT (2013), *available at* <http://www.dol.gov/whd/regs/compliance/whdfs15.pdf> (discussing the "tip credit" in FLSA). If an employee's tips combined with the employer's direct wages do not equal \$7.25 per hour, the employer must make up the difference. *Id.* A tipped employee is defined as "any employee engaged in an occupation in which [she or] he customarily and regularly receives more than \$30 a month in tips." 29 U.S.C. § 203(t) (2012).
- 51 SYLVIA A. ALLEGRETTO & DAVID COOPER, ECON. POLICY INST. & CTR. ON WAGE & EMP'T DYNAMICS, TWENTY-THREE YEARS AND STILL WAITING FOR CHANGE: WHY IT'S TIME TO GIVE TIPPED WORKERS THE REGULAR MINIMUM WAGE 2 (2014), *available at* <http://s2.epi.org/files/2014/EPI-CWED-BP379.pdf>.
- 52 Nat'l Women's Law Ctr. calculations based on BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, BLS REPORTS, CHARACTERISTICS OF MINIMUM WAGE WORKERS, 2013, Tbl. 1: Wage and Salary Workers Paid Hourly Rates with Earnings At or Below the Prevailing Federal Minimum Wage, By Selected Characteristics, 2013 Annual Earnings (2014), *available at* <http://www.bls.gov/cps/minwage2013.pdf>. Women are two-thirds of minimum-wage workers, both ages 16 and older (62 percent) and ages 25 and older (64 percent). The term "minimum-wage workers" refers to workers making the minimum wage or less.
- 53 Nat'l Women's Law Ctr. calculations based on 29 U.S.C. § 206 (2012), assuming 40 hours per week, 50 weeks per year at \$7.25 per hour.
- 54 The poverty threshold for this family was \$19,073 in 2014. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, POVERTY THRESHOLDS FOR 2014 BY SIZE OF FAMILY AND NUMBER OF RELATED CHILDREN UNDER 18 YEARS (2014), *available at* <https://www.census.gov/hhes/www/poverty/data/threshld/thresh14.xls>.
- 55 TWENTY-THREE YEARS AND STILL WAITING, *supra* note 51. Women are 48.3 percent of the total workforce, but 66.6 percent of the tipped workforce. *Id.* These figures are based on an average of three years of data for 2011 through 2013. *Id.*
- 56 *Id.* at 23.
- 57 *Id.* at 7.
- 58 *Id.* at 13.
- 59 *See infra* notes 296-297, 302-304 and accompanying text.
- 60 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2013 Annual Social and Economic Supplements (2013) [hereinafter 2013 Annual Social and Economic Supplements] (*using* MIRIAM KING ET AL., UNIV. OF MINN., INTEGRATED PUBLIC USE MICRODATA SERIES: VERSION 3.0 (2010)). These figures are for 2012. Here, as in other National Women's Law Center calculations throughout this report, "low-wage jobs" are detailed occupations with median hourly wages of \$10.10 per hour or less nationally, in this instance based on the BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL EMPLOYMENT STATISTICS, May 2013 National Occupational Employment and Wage Estimates United States (2014), *available at* http://www.bls.gov/oes/current/oes_nat.htm [hereinafter 2013 National Occupational Employment and Wage Estimates]. All figures are for employed workers unless otherwise noted.
- 61 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 62 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 63 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 64 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 65 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 66 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 67 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 68 *See* 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.

- 69 See 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 70 See 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 71 See 2013 Annual Social and Economic Supplements, *supra* note 60; 2013 National Occupational Employment and Wage Estimates, *supra* note 60.
- 72 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 Annual Social and Economic Supplements (2014) (*using* MIRIAM KING ET AL., UNIV. OF MINN., INTEGRATED PUBLIC USE MICRODATA SERIES: VERSION 3.0 (2010)). These figures are for 2013.
- 73 *Id.*
- 74 E-mail from Indu Kundra, Program Planning & Analysis Div., U.S. Equal Emp't Opportunity Comm'n, to Lauren Khouri, Nat'l Women's Law Ctr. (Feb. 27, 2014) (on file with the National Women's Law Center).
- 75 E-mail from Indu Kundra, Program Planning & Analysis Div., U.S. Equal Emp't Opportunity Comm'n, to Lauren Khouri, Nat'l Women's Law Ctr. (Mar. 3, 2014) (on file with the National Women's Law Center).
- 76 ABC NEWS & WASHINGTON POST, ONE IN FOUR WOMEN REPORT WORKPLACE HARASSMENT (2011), available at <http://www.Langerresearch.com/uploads/1130a2WorkplaceHarassment.pdf>.
- 77 HUFFINGTON POST & YOUGov, POLL OF 1,000 ADULTS IN UNITED STATES ON WORKPLACE SEXUAL HARASSMENT (2013), available at http://big.assets.huffingtonpost.com/toplines_harassment_0819202013.pdf.
- 78 Irma Morales Waugh, *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women*, 16 VIOLENCE AGAINST WOMEN 237,241 (2010), available at <http://ncfh.org/pdfs/2ka/8716.pdf>. See also Nancy Krieger et al., *Social Hazards on the Job: Workplace Abuse, Sexual Harassment, and Racial Discrimination*, 36 INT'L J. HEALTH SERVS. 51, 63 (2006), available at <http://joh.sagepub.com/content/36/1/51.full.pdf>.
- 79 REST. OPPORTUNITIES CTRS. UNITED ET AL., TIPPED OVER THE EDGE: GENDER INEQUALITY IN THE RESTAURANT INDUSTRY 23 (2012), available at <http://rocunited.org/tipped-over-the-edge-gender-inequality-in-the-restaurant-industry/>. See also REST. OPPORTUNITIES CTRS. UNITED & FORWARD TOGETHER, THE GLASS FLOOR: SEXUAL HARASSMENT IN THE RESTAURANT INDUSTRY (2014).
- 80 U.S. DEP'T OF LABOR ADVISORY COMM. ON OCCUPATIONAL SAFETY & HEALTH, WOMEN IN THE CONSTRUCTION WORKPLACE: PROVIDING EQUITABLE SAFETY AND HEALTH PROTECTION (1999), available at <https://www.osha.gov/doc/accsh/haswicfor-mal.html>. See also Gunseli Berik et al., Gender and Racial Training Gaps in Oregon Apprenticeship Programs 14 (Dep't of Economics Working Paper Series, Paper No. 2008-15, 2008); Elizabeth J. Bader, *Skilled Women Break Through Barriers to Entry and Promotion in Trades Work*, TRUTH-OUT.ORG (October 6, 2012), <http://truth-out.org/news/item/11927-skilled-women-break-through-barriers-to-entry-and-promotion-in-trades-work>; MARK BENDICK, JR., ET. AL, A NATIONAL REPORT CARD ON WOMEN IN FIREFIGHTING 1 (2008), available at <http://iwomen.org/wp-content/uploads/2014/07/35827WSP.pdf>; NATIONAL CTR. FOR WOMEN & POLICING, RECRUITING & RETAINING WOMEN: A SELF-ASSESSMENT GUIDE FOR LAW ENFORCEMENT 133 (2000), available at <https://www.ncjrs.gov/pdffiles1/bja/185235.pdf>.
- 81 Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 763-65 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 802-807 (1998). See also *Ellerth*, 524 U.S. at 754-55 (applying the principles of agency law to Title VII employer liability).
- 82 *Ellerth*, 524 U.S. at 763-65; *Faragher*, 524 U.S. at 801-07. See also U.S. EQUAL EMP'T OPPORTUNITY COMM'N, NOTICE No. 915.002, ENFORCEMENT GUIDANCE ON VICARIOUS EMPLOYER LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS (1999), available at <http://www.eeoc.gov/policy/docs/harassment.html>.
- 83 133 S. Ct. 2434 (2013).
- 84 *Id.* at 2443, 2448.
- 85 *Id.* at 2448.
- 86 Bryce Covert, *Exclusive: 43 Sexual Harassment Cases That Were Thrown Out Because of One Supreme Court Decision*, THINK PROGRESS (Nov. 24, 2014, 11:24 AM), <http://thinkprogress.org/economy/2014/11/24/3596287/vance-sexual-harassment/> (citing analysis by the National Women's Law Center of 133 sexual harassment cases brought under Title VII that cited *Vance*, as of Nov. 24, 2014). See also Testimony of Fatima Goss Graves, Vice Pres. for Educ. & Emp't, Nat'l Women's Law Ctr., to the Equal Emp't Opp'ty Comm'n on Preventing and Addressing Workplace Sexual Harassment (Jan. 14, 2015), available at <http://www.nwlc.org/resource/fatima-goss-graves-testifies-eeoc-preventing-and-addressing-workplace-sexual-harassment>.
- 87 Nat'l Women's Law Ctr. calculations based on BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL EMPLOYMENT SURVEY, May 2012 National Occupational Employment and Wage Estimates (2012), available at http://www.bls.gov/oes/2012/may/oes_nat.htm.

- 88 See Steven Kerr et al., *The First-Line Supervisor: Phasing Out or Here to Stay?* 11 ACAD. OF MGMT. REV 103, 103-0404 (1986) (providing a list of twelve traditional functions and activities that are typically included in a lower-level supervisor's job—referred to by the author as “first-line supervisory jobs”—including, for example, planning and scheduling, training employees, managing performance, and coordinating and controlling work, among others).
- 89 Colin Hales, *Rooted in Supervision, Branching into Management: Continuity and Change in the Role of First-Line Manager*, 42 J. MGMT. STUD. 471, 473 (2005).
- 90 26 U.S.C.A. § 32 (West 2013).
- 91 26 U.S.C.A. § 32(b) (West 2013). See *infra* notes 92-93.
- 92 2015 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates, INTERNAL REVENUE SERV., <http://www.irs.gov/Individuals/Preview--EITC-Income-Limits> (last updated Nov. 21, 2014). The 2015 maximum credit amount for individuals, heads of household, and married couples filing jointly is \$3,359 for families with one qualifying child, \$5,548 for families with two or more qualifying children, and \$6,242 for families with three or more qualifying children. *Id.* The 2015 income limitation for single individuals and heads of household is \$39,131 for families with one qualifying child, \$44,454 for families with two or more qualifying children, and \$47,747 for families with three or more qualifying children. *Id.* The 2015 income limitation for married couples filing jointly is \$20,330 for families with one qualifying child, \$44,651 for families with two qualifying children, and \$53,267 for families with three or more qualifying children. *Id.* Married couples must file a joint return to claim the EITC. 26 U.S.C.A. § 32(d) (West 2013).
- 93 *Id.* The 2015 income limitation for individuals without qualifying children filing as single or as a head of household is \$14,820; the 2015 income limitation for married couples without qualifying children filing jointly is \$20,330. *Id.* Married couples must file a joint return to claim the EITC. 26 U.S.C.A. § 32(d) (West 2013).
- 94 See 26 U.S.C.A. § 36B (West 2013).
- 95 INTERNAL REVENUE SERV., U.S. DEP'T OF TREAS., SOI TAX STATS – INDIVIDUAL INCOME TAX RETURNS, Tbl. 1: Individual Income Tax Returns, Tax Year 2013 Preliminary Data: Selected Income and Tax Items, by Size of Adjusted Gross Income (2015), available at <http://www.irs.gov/pub/irs-soi/13in01pl.xls> [hereinafter SOI TAX STATS].
- 96 *Id.*
- 97 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. PINC-01: Selected Characteristics of Families by Total Money Income (2014), available at http://www.census.gov/hhes/www/cpstables/032014/faminc/finc01_000.htm. By comparison, 19 percent of all families in 2013 were families headed by a woman only. The Census Bureau data are based on family income, which is used here as a proxy for adjusted gross income because for many families gross income and adjusted gross income are the same, given the limited number of deductions that may be claimed to reduce gross income to adjusted gross income. See INTERNAL REVENUE SERV., 1040A TAX INSTRUCTIONS 41 (2014), available at <http://www.irs.gov/pub/irs-pdf/i1040a.pdf> (filing instructions for Earned Income Tax Credit); INTERNAL REVENUE SERV., U.S. INDIVIDUAL INCOME TAX RETURN 1040A, at 2, lines 22, 42a (2014), available at <http://www.irs.gov/pub/irs-pdf/f1040a.pdf>.
- 98 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT (2014) (using CPS Table Creator), available at <http://www.census.gov/cps/data/cpstablecreator.html>.
- 99 See, e.g., ARLOC SHERMAN ET AL., CTR. ON BUDGET & POLICY PRIORITIES, VARIOUS SUPPORTS FOR LOW-INCOME FAMILIES REDUCE POVERTY AND HAVE LONG-TERM POSITIVE EFFECTS ON FAMILIES AND CHILDREN (2013), available at <http://www.cbpp.org/files/7-30-13pov.pdf>.
- 100 CTR. ON BUDGET & POLICY PRIORITIES, POLICY BASICS: THE EARNED INCOME TAX CREDIT 1 (2015), available at <http://www.cbpp.org/files/policybasics-eitc.pdf>.
- 101 *Id.*
- 102 26 U.S.C.A. § 24 (West 2013).
- 103 26 U.S.C.A. § 24(a)-(b) (West 2013).
- 104 See 26 U.S.C.A. § 24(b) (West 2013).
- 105 26 U.S.C. § 24(d)(4) (2013). Beginning in 2018, the \$3,000 threshold will increase to \$10,000. *Id.*
- 106 SOI TAX STATS, *supra* note 95.
- 107 SOI TAX STATS, *supra* note 95.

- 108 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. PINC-01: Selected Characteristics of Families by Total Money Income (2014), available at http://www.census.gov/hhes/www/cpstables/032014/faminc/finc01_000.htm. By comparison, 19 percent of all families in 2013 were families headed by a woman only. *Id.* The Census Bureau data are based on family income, which is used here as a proxy for adjusted gross income. See *supra* note 97.
- 109 SOI TAX STATS, *supra* note 95.
- 110 SOI TAX STATS, *supra* note 95.
- 111 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. PINC-01: Selected Characteristics of Families by Total Money Income (2014), available at http://www.census.gov/hhes/www/cpstables/032014/faminc/finc01_000.htm. By comparison, 19 percent of all families in 2013 were families headed by a woman only. *Id.* The Census Bureau data are based on family income, which is used here as a proxy for adjusted gross income. See *supra* note 97.
- 112 See 26 U.S.C.A. § 32(b)(3) (West 2013).
- 113 See 26 U.S.C.A. § 24(d)(4) (West 2013).
- 114 Nat'l Women's Law Ctr. calculations based on TAX POLICY CTR., THE NUMBERS, Tbl. T12-0248 (2012), available at <http://www.taxpolicycenter.org/numbers/Content/PDF/T12-0248.pdf>. Table T12-0248 projects number of filers in 2013.
- 115 Nat'l Women's Law Ctr. calculations based on *id.* and CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2010 AMERICAN COMMUNITY SURVEY (2011) (as compiled for download by STEVEN RUGGLES ET. AL., UNIV. OF MINN., INTEGRATED PUBLIC USE MICRODATA SERIES: VERSION 5.0 (2010)).
- 116 Nat'l Women's Law Ctr. calculations based on TAX POLICY CTR., THE NUMBERS, *supra* note 114, at Tbl. 12-0246. Table T12-0246 projects number of filers in 2013.
- 117 Nat'l Women's Law Ctr. calculations based on *id.* and 2010 AMERICAN COMMUNITY SURVEY, *supra* note 115.
- 118 See 26 U.S.C. § 32(b)(3) (2012) (EITC) & 26 U.S.C. § 24(b)(4) (2012) (CTC). The failure to extend these improvements would push about 16.4 million people into, or deeper into, poverty. See CHUCK MARR ET AL., CTR. ON BUDGET & POLICY PRIORITIES, LETTING KEY PROVISIONS OF WORKING-FAMILY TAX CREDITS EXPIRE WOULD PUSH 16 MILLION PEOPLE INTO OR DEEPER INTO POVERTY 1 (2015), available at <http://www.cbpp.org/files/11-12-14tax.pdf>.
- 119 KENNETH MATOS & ELLEN GALINSKY, FAMILIES & WORK INST. & SOC'Y FOR HUMAN RES. MGMT., WORKPLACE FLEXIBILITY IN THE UNITED STATES: A STATUS REPORT 1 (2011), available at <http://familiesandwork.org/downloads/WorkplaceFlexibilityinUS.pdf>; see also OXFAM AM., HARD WORK, HARD LIVES: SURVEY EXPOSES HARSH REALITY FACED BY LOW-WAGE WORKERS IN THE US 7 (2013), available at <http://www.oxfamamerica.org/static/oa4/low-wage-worker-report-oxfam-america.pdf>. In 2013 women spent nearly twice as much time on caregiving as men did. Nat'l Women's Law Ctr. calculations based on BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, AMERICAN TIME USE SURVEY SUMMARY, Tbl. 1: Time Spent in Primary Activities and Percent of the Civilian Population Engaging in Each Activity, Averages Per Day by Sex, 2013 Annual Averages (2014), available at <http://www.bls.gov/news.release/atus.t01.htm>. Figures are for all individuals and include individuals caring for and helping household members.
- 120 CHILD CARE AWARE OF AM., PARENTS AND THE HIGH COST OF CHILD CARE: 2014 REPORT 21, available at <http://www.usa.childcareaware.org/costofcare>. These figures are for 2014.
- 121 *Id.*
- 122 Nat'l Women's Law Ctr. calculations based on METLIFE MATURE MKT. INST. & LIFEPLANS INC., MARKET SURVEY OF LONG-TERM CARE COSTS: THE 2012 METLIFE MARKET SURVEY OF NURSING HOME, ASSISTED LIVING, ADULT DAY SERVICES, AND HOME CARE COSTS 5 (2012), available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2012/studies/mmi-2012-market-survey-long-term-care-costs.pdf> (annual cost calculated from daily cost, assuming care is used 5 days a week for 52 weeks a year). Adult day care programs generally provide health, social, and personal care, and related support services for functionally or mentally impaired adults.
- 123 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENTS (2014) (using MIRIAM KING ET AL., UNIV. OF MINN., INTEGRATED PUBLIC USE MICRODATA SERIES: VERSION 3.0 (2010)).
- 124 See, e.g., CHILD CARE AWARE OF AM., *supra* note 120, at 15, 22, 24, 40-41, available at <http://www.usa.childcareaware.org/costofcare> (describing the costs and challenges of infant care in the United States); NAT'L ASS'N OF CHILD CARE RES. & REFERRAL AGENCIES, CHILD CARE IN THIRTEEN ECONOMICALLY DISADVANTAGED COMMUNITIES 15-19 (2006), available at http://www.naccrra.org/sites/default/files/default_site_pages/2011/13_disadvantaged_comm_report_2006.pdf (describing how the scarcity in child care spaces can lead to high prices for infant care, particularly for parents living

- at or below the poverty line); HELEN RAIKES ET AL., CHILD CARE QUALITY AND WORKFORCE CHARACTERISTICS IN FOUR MID-WESTERN STATES 68 (2003), *available at* http://ccfl.unl.edu/projects_outreach/projects/current/ecp/pdf/final_11-25-03.pdf (discussing the quality of infant and toddler care); CHILD CARE SERVICES ASS'N, WHO'S CARING FOR OUR BABIES NOW?: REVISITING THE 2005 PROFILE OF EARLY CARE AND EDUCATION FOR CHILDREN BIRTH TO THREE IN NORTH CAROLINA 20 (2008), *available at* http://www.childcareservices.org/downloads/research/IT_State%20report_08.pdf (finding that, "[o]verall, the high demand for infant/toddler care as evidenced by requests for referrals coupled with the insufficient growth in slots for these same children has left many parents struggling to find sufficient care for their babies"); Cal. Child Care Res. & Referral Network, 2013 California Child Care Portfolio at Statewide Profiles (2013), *available at* http://www.rnnetwork.org/2013_portfolio (presenting a portrait of child care supply, demand, and cost statewide and county by county, including infant and toddler care).
- 125 42 U.S.C.A. § 9858 (West 2014), *as amended by* Child Care and Development Block Grant Act of 2014, PL 113-186, 128 Stat 1971 (2014). *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-325T, EARLY LEARNING AND CHILD CARE: FEDERAL FUNDS SUPPORT MULTIPLE PROGRAMS WITH SIMILAR GOALS, STATEMENT OF KAY E. BROWN, DIRECTOR, EDUC. WORKFORCE, & INCOME SEC. 4, 10-11 (2014), *available at* <http://www.gao.gov/assets/670/660685.pdf> [hereinafter U.S. GOV'T ACCOUNTABILITY OFFICE, EARLY LEARNING AND CHILD CARE] (highlighting Kay E. Brown's testimony before the H. Comm. on Educ. & the Workforce).
- 126 26 U.S.C. § 21 (2012).
- 127 *See generally* U.S. GOV'T ACCOUNTABILITY OFFICE, EARLY LEARNING AND CHILD CARE, *supra* note 125, at 4, 10-11.
- 128 *See generally* 42 U.S.C.A § 9858 (West 2014), *as amended by* Child Care and Development Block Grant Act of 2014, PL 113-186, 128 Stat 1971 (2014).
- 129 *Id.*
- 130 OFFICE OF ASS'T SEC'Y. FOR PLANNING & EVAL., U.S. DEP'T OF HEALTH & HUMAN SERVS., ESTIMATES OF CHILD CARE ELIGIBILITY AND RECEIPT FOR FISCAL YEAR 2011, at 1 (2015), *available at* <http://aspe.hhs.gov/hsp/12/childcareeligibility/ib.pdf>. This figure is the most recent year for which data are available.
- 131 KAREN SCHULMAN & HELEN BLANK, NAT'L WOMEN'S LAW CTR., TURNING THE CORNER: STATE CHILD CARE ASSISTANT POLICIES 2014, at 3 (2014), *available at* http://www.nwlc.org/sites/default/files/pdfs/nwlc_2014statechildcareassistancereport-final.pdf.
- 132 Pub. Law No. 113-186, 128 Stat 1971 (2014).
- 133 *See generally id.*
- 134 26 U.S.C. § 21(a)(2) (2012).
- 135 26 U.S.C. § 21(c) (2012).
- 136 *See* 26 U.S.C. § 21(a)(2) (2012).
- 137 Nat'l Women's Law Ctr. calculations based on 26 U.S.C. § 21(a)(2) (2012).
- 138 Nat'l Women's Law Ctr. calculations based on 26 U.S.C. §§ 21(a)(2), (c) (2012).
- 139 *See* NANCY DUFF CAMPBELL ET AL., NAT'L WOMEN'S LAW CTR., MAKING CARE LESS TAXING: IMPROVING STATE CHILD AND DEPENDENT CARE TAX PROVISIONS 12-13 (2011), *available at* http://www.nwlc.org/sites/default/files/pdfs/nwlc-mclt2011-without-report_card_inside_and_bookmarked.pdf.
- 140 *See* Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L No. 107-16 § 204, 115 Stat. 38 (codified as amended at 42 U.S.C. §§ 21(c), (a)(2) (2012)).
- 141 42 U.S.C. §§ 9831-9852c (2012).
- 142 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, SCHOOL ENROLLMENT, CURRENT POPULATION SURVEY, Tbl. 3. Nursery and Primary School Enrollment of People 3 to 6 Years Old, by Control of School, Attendance Status, Age, Race, Hispanic Origin, Mother's Labor Force Status and Education, and Family Income: October 2013 (2014), *available at* <http://www.census.gov/hhes/school/data/cps/2013/tables.html>.
- 143 *Id.*
- 144 *Id.*
- 145 BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS SURVEY, LEAVE BENEFITS: ACCESS, Tbl. 32: Leave Benefits: Access, Civilian Workers, National Compensation Survey March 2014 (2014), *available at* <http://www.bls.gov/ncs/ebs/benefits/2014/ownership/civilian/table32a.htm>. Figures exclude federal government workers and those in private households.

- 146 BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS SURVEY, LEAVE BENEFITS: ACCESS, Tbl. 16: Insurance benefits: Access, Participation, and Take-up Rates, Civilian Workers, National Compensation Survey March 2014 (2014), available at <http://www.bls.gov/ncs/ebs/benefits/2014/ownership/civilian/table16a.htm>. Figures exclude federal government workers and those in private households. According to an analysis using different survey data, the 2013 National Health Interview Survey, 61 percent of all workers ages 18 and older had access to paid sick days through their main job or business in 2013. RACHEL O'CONNOR ET AL., INST. FOR WOMEN'S POLICY RESEARCH, PAID SICK DAYS ACCESS VARIES BY RACE/ETHNICITY, SEXUAL ORIENTATION AND JOB CHARACTERISTICS 3 (2014), available at <http://www.iwpr.org/publications/pubs/paid-sick-days-access-varies-by-race-ethnicity-sexual-orientation-and-job-characteristics>. Breakouts by race or ethnicity show that 70 percent of Asian, non-Latino workers, 64 percent of white, non-Latino workers, 60 percent of African-American, non-Latino workers and 49 percent of Latino workers had access to paid sick days through their main job or business in 2013. *Id.*
- 147 BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS SURVEY, LEAVE BENEFITS: ACCESS, Tbl. 32: Leave Benefits: Access, Civilian Workers, National Compensation Survey, March 2014 (2014), available at <http://www.bls.gov/ncs/ebs/benefits/2014/ownership/civilian/table32a.htm>. Figures exclude federal government workers and those in private households. Twenty-two percent of high-wage workers—defined as workers in occupations with wages in the highest 10 percent—have access to paid family leave, compared to only 4 percent of low-wage workers—defined as workers in occupations with wages in the lowest 10 percent; similarly, 90 percent of high-wage workers have access to paid sick leave, compared to only 21 percent of low-wage workers. *Id.*
- 148 BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS SURVEY, LEAVE BENEFITS: ACCESS, Tbl. 16: Insurance Benefits: Access, Participation, and Take-up Rates, Civilian Workers, National Compensation Survey, March 2014 (2014), available at <http://www.bls.gov/ncs/ebs/benefits/2014/ownership/civilian/table16a.htm>. Figures exclude federal government workers and those in private households.
- 149 29 U.S.C. § 2612 (2012).
- 150 See 29 U.S.C. § 2611 (2)(A) (2012) (providing that the FMLA only covers employers with 50 or more employees, and that an “eligible employee” is one who has been employed for at least 12 months by the employer from whom she or he is requesting leave, and who has worked for at least 1,250 hours for that employer during the previous 12-month period).
- 151 See ABT ASSOCS., U.S. DEP'T OF LABOR, FAMILY AND MEDICAL LEAVE IN 2012: TECHNICAL REPORT 21 (2014), available at <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf> (finding that 59.2% of employees work in covered FMLA worksites and have worked the requisite number of hours to be covered by the FMLA).
- 152 Allison Earle et al., *International Perspectives on Work-Family Policies: Lessons from the World's Most Competitive Economies*, 21 FUTURE OF CHILDREN 191, 198 (2011), available at http://futureofchildren.org/futureofchildren/publications/docs/21_02_09.pdf. The article defines the “most competitive countries” as those that “ranked among the top twenty countries in competitiveness in at least eight of the ten years between 1999 and 2008,” based on the World Economic Forum's annual Global Competitiveness Report. *Id.* at 197.
- 153 JODY HEYMAN ET AL., CTR. FOR ECON. & POLICY RESEARCH, CONTAGION NATION: A COMPARISON OF PAID SICK DAY POLICIES IN 22 COUNTRIES 8-11 (2009), available at <http://www.cepr.net/documents/publications/paid-sick-days-2009-05.pdf>.
- 154 For discussions of the scheduling practices described in this paragraph, see generally Steven Greenhouse, *A Push to Give Steadier Shifts to Part-Timers*, N.Y. TIMES, July 16, 2014, at A1, available at http://www.nytimes.com/2014/07/16/business/a-push-to-give-steadier-shifts-to-part-timers.html?_r=0; Steven Greenhouse, *Part-Time Schedules, Full-Time Headaches*, N.Y. TIMES, July 19, 2014, at B1, available at <http://www.nytimes.com/2014/07/19/business/part-time-schedules-full-time-headaches.html>; Jodi Kantor, *Working Anything But 9 to 5*, N.Y. TIMES, Aug. 13, 2014, <http://www.nytimes.com/interactive/2014/08/13/us/starbucks-workers-scheduling-hours.html>; LIZ WATSON ET AL., COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (2014), available at <http://www.nwlc.org/sites/default/files/pdfs/collateral-damage-scheduling-fact-sheet.pdf>.
- 155 For descriptions of workers' stories related to scheduling challenges, see generally NAT'L WOMEN'S LAW CTR. & MS. FOUND. FOR WOMEN, LISTENING TO WORKERS: CHILD CARE CHALLENGES IN LOW-WAGE JOBS 5-7 (2014), available at http://www.nwlc.org/sites/default/files/pdfs/listening_to_workers_child_care_challenges_in_low-wage_jobs_6.24.14.pdf; NAT'L WOMEN'S LAW CTR., THE SCHEDULES THAT WORK ACT: GIVING WORKERS THE TOOLS THEY NEED TO SUCCEED (2014), available at http://www.nwlc.org/sites/default/files/pdfs/schedules_that_work_act_fact_sheet_7.22.14.pdf.
- 156 42 U.S.C. § 2000e(k) (2012).
- 157 U.S. EQUAL EMP'T OPPORTUNITY COMM'N, PREGNANCY DISCRIMINATION CHARGES FY 2010-FY 2014, available at http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy_new.cfm.
- 158 See generally NAT'L WOMEN'S LAW CTR. & A BETTER BALANCE, IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS (2013), available at http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf.

- 159 *Id.* at 5-7. Women of color and immigrant women often make up a disproportionate share of workers in some low-wage jobs that are physically demanding. See NAT'L LATINA JUST. FOR REPRODUCTIVE HEALTH & NAT'L WOMEN'S LAW CTR., ACCOMMODATING PREGNANCY ON THE JOB: THE STAKES FOR WOMEN OF COLOR AND IMMIGRANT WOMEN (2014), available at http://www.nwlc.org/sites/default/files/pdfs/the_stakes_for_woc_final.pdf.
- 160 See generally NAT'L WOMEN'S LAW CTR. & A BETTER BALANCE, *supra* note 158.
- 161 NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, LISTENING TO MOTHERS: THE EXPERIENCE OF EXPECTING AND NEW MOTHERS IN THE WORKPLACE 3 (2014), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>.
- 162 Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC. 1297, 1315-17 (2007), available at http://gender.stanford.edu/sites/default/files/motherhoodpenalty_0.pdf (In addition to penalties such as lower starting salaries and lower performance ratings for women without children, mothers were judged significantly less competent and committed than women without children. Mothers were also held to harsher performance and punctuality standards. Mothers were allowed to be late to work significantly fewer times than non-mothers, and they needed a significantly higher score on the management exam than non-mothers to be considered hireable.).
- 163 *Id.* at 1316-17 (Rather than receiving a fatherhood penalty, fathers were actually advantaged over non-fathers. For example, applicants who were fathers were rated significantly more committed to their job than non-fathers. Fathers were allowed to be late to work significantly more times than non-fathers. Finally, they were offered significantly higher salaries than non-fathers.).
- 164 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT (using MIRIAM KING ET AL., UNIV. OF MINN., INTEGRATED PUBLIC USE MICRODATA SERIES: VERSION 3.0 (2010)), available at <https://cps.ipums.org/cps/index.shtml>. Mothers and fathers are individuals with at least one related child under age 18 at home.
- 165 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, 2014 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT, Tbl. PINC-05: Work Experience in 2013—People 15 Years Old and Over by Total Money Earnings in 2013, Age, Race, Hispanic Origin, and Sex, available at http://www.census.gov/hhes/www/cpstable/032014/perinc/pinc05_000.htm.
- 166 MICHELLE J. BUDIG, THIRD WAY, THE FATHERHOOD BONUS & THE MOTHERHOOD PENALTY: PARENTHOOD AND THE GENDER GAP IN PAY 17 (2013), available at http://content.thirdway.org/publications/853/NEXT_Fatherhood_Motherhood.pdf.
- 167 KAISER FAMILY FOUND. & HEALTH RESEARCH & EDUCATIONAL TRUST, EMPLOYER HEALTH BENEFITS: 2014 ANNUAL SURVEY 38 (2014), available at <http://files.kff.org/attachment/2014-employer-health-benefits-survey-full-report>. Firms with low-wage workers are defined in this analysis as firms in which 35 percent or more of employees earn \$23,000 a year or less. *Id.*
- 168 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010), (codified as amended in scattered sections of 26 U.S.C. & 42 U.S.C. (2012)).
- 169 42 U.S.C.A. § 18022 (West 2013).
- 170 42 U.S.C. § 300gg-13(a)(4) (2012); 45 C.F.R. § 147.130 (2014); HEALTH RES. & SERVS. ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., WOMEN'S PREVENTIVE SERVICES GUIDELINES, available at <http://www.hrsa.gov/womensguidelines>.
- 171 42 U.S.C. § 300gg (2012) (listing the accepted reasons a plan may vary premium rates, which do not include gender). The ACA defines the small group market as businesses with 100 or fewer employees, although states can choose to define small groups as businesses with 50 or fewer employees until 2016. 42 U.S.C. § 18024 (2012).
- 172 42 U.S.C. § 18116 (2012) (prohibiting discrimination in health programs receiving federal dollars, including insurance, and other programs conducted by the federal government, including the ACA's health insurance exchanges).
- 173 See *King v. Burwell*, 135 S. Ct. 475 (2014).
- 174 See 26 C.F.R. § 1.36(B)-2 (2014).
- 175 Brief for Petitioner at 1-5, *King v. Burwell*, 135 S. Ct. 475 (2014) (No. 14-114).
- 176 OFFICE OF ASS'T SEC'Y FOR PLANNING & EVAL., U.S. DEP'T OF HEALTH & HUMAN SERVS., ISSUE BRIEF, HEALTH INSURANCE MARKETPLACES 2015 OPEN ENROLLMENT PERIOD: MARCH ENROLLMENT REPORT 24 App., Tbl 1 (2015), available at http://aspe.hhs.gov/health/reports/2015/MarketPlaceEnrollment/Mar2015/ib_2015mar_enrollment.pdf.
- 177 *Id.* at 15.
- 178 Nat'l Women's Law Ctr. calculation based on *id.* at Tbl 4.

- 179 Nat'l Women's Law Ctr. calculation based on OFFICE OF ASS'T SEC'Y FOR PLANNING & EVAL., DEP'T OF HEALTH & HUMAN SERVS., 2014 POVERTY GUIDELINES (2014), *available at* <http://aspe.hhs.gov/Poverty/14poverty.cfm>, and Patient Protection and Affordable Care Act, 26 U.S.C. § 36B (2012). Income of \$29,175 in 2014 would be 250 percent of the Federal Poverty Line for a single individual; the ACA sets premium responsibility at 8.05 percent for an individual at this income level.
- 180 BREAKAWAY POLICY & ROBERT WOOD JOHNSON FOUND., EIGHT MILLION AND COUNTING: A DEEPER LOOK AT PREMIUMS, COST SHARING, AND BENEFIT DESIGN IN THE NEW HEALTH INSURANCE MARKETPLACES 6 (2014), *available at* http://www.rwjf.org/content/dam/farm/reports/issue_brief/2014/rwjf412878 [hereinafter EIGHT MILLION AND COUNTING]. In 2014, 69 percent of enrollees chose a silver plan, and the plan is therefore often referred to as the "most popular" plan level. See OFFICE OF ASS'T SEC'Y FOR PLANNING & EVAL., *supra* note 176 at 12, Tbl. 4.
- 181 Nat'l Women's Law Ctr. calculation, based on 2014 POVERTY GUIDELINES, *supra* note 179, 26 U.S.C. § 36B (2012), and EIGHT MILLION AND COUNTING, *supra* note 180.
- 182 See 26 U.S.C. § 36B (2012) (premium assistance) & 42 U.S.C. § 18071 (2012) (cost-sharing reductions).
- 183 Larry Levitt & Gary Claxton, *Measuring the Affordability of Employer Health Coverage*, KAISER FAMILY FOUND. (2011), <http://kff.org/health-costs/perspective/measuring-the-affordability-of-employer-health-coverage/>.
- 184 26 U.S.C. § 36B(c)(2)(C) (2012).
- 185 6 C.F.R. § 1.36(B)-2 (2014).
- 186 Larry Levitt & Gary Claxton, *supra* note 183.
- 187 Larry Levitt & Gary Claxton, *supra* note 183.
- 188 132 S. Ct. 2566, 2608 (2012).
- 189 NAT'L WOMEN'S LAW CTR., STATES MUST CLOSE THE GAP: LOW INCOME WOMEN NEED HEALTH INSURANCE 1 (2014), *available at* http://www.nwlc.org/sites/default/files/pdfs/new_nwlc_mindthegap_updateoct2014.pdf. At the time of this publication, 23 states had not adopted the ACA's Medicaid expansion, but the publication excluded Wisconsin from its total of 22 states because the state's Medicaid program includes coverage of adults with income below the federal poverty line, and adults with income above the federal poverty line are eligible for an ACA subsidy, so Wisconsin did not have a gap in coverage. *Id.* at 40 n. 4. The resulting gap in coverage in the remaining 22 states left over 3 million low-income women without health insurance. *Id.* at 2. With Indiana's adoption of the Medicaid expansion in January 2015, the number of states that have not expanded Medicaid dropped to 22 and the number of low-income women who remain in the coverage gap dropped to approximately 3 million. See *Id.* at 3 Tbl. 1.
- 190 42 U.S.C.A. § 18022 (West 2014).
- 191 42 U.S.C. § 2000bb *et seq.* (2012). The Religious Freedom Restoration Act provides generally that government may not "substantially burden a person's exercise of religion" unless the burden to the person "is in furtherance of a compelling state interest" and is the "least restrictive means of furthering that compelling state interest." *Id.* § 2000bb-i (a), (b).
- 192 134 S. Ct. 2751, 2759 (2014).
- 193 Brief for the Guttmacher Institute & Professor Sara Rosenbaum as Amici Curiae Supporting Petitioners, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (Nos. 13-354, 13-356), at 16.
- 194 As of April 2015, 21 states have such laws. See *State Religious Freedom Restoration Acts*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx> (last updated Apr. 6, 2015).
- 195 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2805 (2014) (Ginsburg, J., dissenting).
- 196 See TRICARE & U.S. DEP'T OF DEFENSE, TRICARE COVERED SERVICES 8 (2014), *available at* www.tricare.mil/~media/Files/TRICARE/.../Cvrd_Svcs_FS.pdf; TRICARE & U.S. DEP'T OF DEFENSE, TRICARE AND THE AFFORDABLE CARE ACT 1 (2015), *available at* http://www.wbamc.amedd.army.mil/Documents/News/TRICARE_and_the_Affordable_Care_Act_Fact_Sheet.pdf.
- 197 See, e.g., *Jury Rules Discrimination by Cincinnati Archdiocese*, RECORD-JOURNAL, June 8, 2013, *available at* 2013 WLNR 14096999 (describing case of Christa Dias, an unmarried teacher for two schools with the Archdiocese of Cincinnati, Ohio, who was fired after she became pregnant through artificial insemination); Statement of Michelle McCusker, *Pregnant Teacher Fired by Catholic School* (Nov. 21, 2005), *available at* <http://www.nyclu.org/node/861> (explaining that, after revealing her pregnancy, preschool teacher Michelle McCusker was fired from a Catholic school in New York for becoming pregnant outside of marriage); Doug Erickson, *Wisconsin Diocese Offers Birth Control*

- Insurance, but Warns Employees Not to Use It*, WCF COURIER.COM (Aug. 10, 2010, 8:00 PM), available at http://wcfcourier.com/news/local/wisconsin-diocese-offers-birth-control-insurance-but-warns-employees-not/article_0b904262-a4e4-11df-bde9-001cc4c002e0.html (describing warning by the Madison Catholic Diocese to employees that if they took advantage of the birth control provided by a 2009 Wisconsin law requiring insurance coverage of birth control, they could face termination).
- 198 See, e.g., Jennifer J. Frost & Laura Duberstein Lindberg, *Reasons for Using Contraception: Perspectives of U.S. Women Seeking Care at Specialized Clinics*, 87 *CONTRACEPTION* 465, 465 (2013) (“Economic analyses have found clear associations between the availability and diffusion of oral contraceptives[,] particularly among young women, and increases in U.S. women’s education, labor force participation, and average earnings, coupled with a narrowing in the wage gap between women and men.”); ADAM SONFIELD ET AL., GUTTMACHER INST., *THE SOCIAL AND ECONOMIC BENEFITS OF WOMEN’S ABILITY TO DETERMINE WHETHER AND WHEN TO HAVE CHILDREN* (2013), available at <http://www.guttmacher.org/pubs/social-economic-benefits.pdf> (providing an extensive review of studies that document how controlling family timing and size contributes to educational and economic advancements).
- 199 Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. E, Tit. VI, § 613-614 (2015) (federal employees); 10 U.S.C. § 1093(a) (2013) (women in the military); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. E, Tit. VIII, § 810 (2015) (D.C. residents); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. G, Tit. V, § 506-507(2015) (Medicaid-eligible women and Medicare beneficiaries); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. J, Tit. III (2015) (Peace Corps volunteers); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. B, Tit. V, § 506-507 (2015) (Native-American women); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. B, Tit. II, § 202-203 (2015) (women in federal prisons).
- 200 See ELIZABETH NASH ET AL., GUTTMACHER INST., *LAWS AFFECTING REPRODUCTIVE HEALTH AND RIGHTS: 2014 STATE POLICY REVIEW*, <http://www.guttmacher.org/statecenter/updates/2014/statetrends42014.html> (last visited Mar. 20, 2015).
- 201 See, e.g., 2014 Miss. Legis. Serv. 506 (West) (codified at MISS. CODE ANN. §§ 41-41-131 to -145) (banning all abortions after 20 weeks of pregnancy, with only very limited exceptions in cases of medical emergencies and severe fetal anomalies, and no exceptions when a pregnancy results from rape or incest); 2014 Ind. Legis. Serv. P.L. 124-2014 (H.E.A. 1123) (West) (codified at IND. CODE ANN. § 27-8-13.4-2 (West) (prohibiting private insurance companies from providing coverage of abortion); 2014 La. Acts 45 (codified at LA. REV. STAT. ANN. §§ 40:1299.35.2(A), 40:1299.35.2.1, 40.2175.3(2), 40.2175.3(5) (2014)) & 2014 Okla. Sess. Laws 1223 (codified at OKLA. STAT. tit. 63, § 1-748 (2014)) (requiring abortion providers to obtain hospital admitting privileges); 2014 Mo. Laws H 124 (codified at MO. ANN. STAT. § 188.027 (West 2014)) (forcing women to wait 72 hours before obtaining an abortion).
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- 203 Nat’l Women’s Law Ctr. calculations based on NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., 2011-12 NATIONAL POSTSECONDARY AID STUDY (2014) (*using* NCE Power Stats), (Women who borrowed money to attend public, two-year institutions borrowed an average of \$12,598 and men borrowed an average of \$10,575.).
- 204 See CHRISTIANNE CORBETT & CATHERINE HILL, *AM. ASS’N OF UNIV. WOMEN, GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE GRADUATION 3* (2012), available at <http://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf> (stating that in 2009, 47 percent of women were paying more than 8 percent of their earnings toward student loan debt, compared to 39 percent of men).
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- 207 As of February 18, 2015, there were 102 sexual violence cases at 97 postsecondary institutions under investigation by the Office for Civil Rights. E-mail from Erin Randall, Ass’t, Office for Civil Rights, U.S. Dep’t of Educ., to Helen Oh, Program Ass’t, Nat’l Women’s Law Ctr. (Feb. 23, 2015, 2:35 PM EST) (on file with the National Women’s Law Center).
- 208 20 U.S.C. § 1681 (2012).
- 209 Violence Against Women Reauthorization Act, PL 113-4, sec. 304, 127 Stat 54, 89 (amending 20 U.S.C.A. § 1092(f) (West 2013)) (2013).
- 210 34 C.F.R. §§ 106.1-106.71 (2014).
- 211 See *THE HUNTING GROUND* (CNN Films 2014) (documenting cases of campus sexual assault, institutional responses, and the effect on survivors and their families).

- 212 34 C.F.R. § 106.40 (2014).
- 213 KEVIN MILLER, ET AL., INST. FOR WOMEN'S POLICY RESEARCH, IMPROVING CHILD CARE ACCESS TO PROMOTE POSTSECONDARY SUCCESS AMONG LOW-INCOME PARENTS 1 (2011), available at <http://www.iwpr.org/publications/pubs/improving-child-care-access-to-promote-postsecondary-success-among-low-income-parents>.
- 214 *Id.*
- 215 *Id.* (estimating that “only 5 percent of the child care needed by student parents is supplied at on-campus child care centers”).
- 216 See SARAH MINTON ET AL., THE URBAN INST., THE CCDF POLICIES DATABASE BOOK OF TABLES: KEY CROSS-STATE VARIATIONS IN CCDF POLICIES AS OF OCT. 1, 2013, at 31-41 (2014), available at <http://www.urban.org/UploadedPDF/2000021-The-CCDF-Policies-Database-Book-of-Tables.pdf>.
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- 218 See ADVISORY COMM. ON OCCUPATIONAL SAFETY & HEALTH, U.S. DEP'T OF LABOR, WOMEN IN THE CONSTRUCTION WORKPLACE: PROVIDING EQUITABLE SAFETY AND HEALTH PROTECTION (1999), available at <http://www.osha.gov/doc/accsh/haswicformal.html> (reporting on inadequate training for women in the construction industry). See also SUSAN MOIR ET AL., UNFINISHED BUSINESS: BUILDING EQUALITY FOR WOMEN IN THE CONSTRUCTION TRADES 8 (2011), available at http://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1004&context=irc_pubs.
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- 224 SOC. SEC. ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., INCOME OF THE POPULATION 55 OR OLDER, 2012, Tbl. 9.B: Percentage Distribution of Persons in Beneficiary Families, Sex and Age, 2012 (2014), available at http://www.ssa.gov/policy/docs/statcomps/income_pop55/2012/sect09.pdf.
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- 226 *Id.*
- 227 See NARI RHEE, NAT'L INSTIT. ON RET. SEC., THE RETIREMENT SAVINGS CRISIS: IS IT WORSE THAN WE THINK? 6, Fig. 3 (2013), available at <http://www.copera.org/pdf/Misc/NIRS6-13.pdf>. This study is based on 2010 data.
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- 236 See Fair Housing Act, 42 U.S.C. §§ 3604-3607 (2012); Civil Rights Act of 1964: Title VII (Equal Employment Opportunities), 42 U.S.C. § 2000e-16b (2012); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (2012).
- 237 See Civil Rights Act of 1964: Title II (Public Accommodations), 42 U.S. C. § 2000a (2012).
- 238 A spouse, surviving spouse, or divorced spouse (if the marriage lasted at least ten years) is eligible for Social Security benefits based on the earnings record of a spouse or former spouse who has retired, become disabled, or died. 42 U.S.C. § 402 (2012).
- 239 42 U.S.C. 3416(h)(l)(A)(i) (2012). Thus, for example, the surviving spouse of a same-sex couple, legally married in one state but living in a state that does not recognize their marriage at the time of an application for surviving spouse benefits, would be ineligible for these benefits. Another provision of federal law similarly prevents some individuals from receiving veterans benefits because of their sexual orientation, by providing that the validity of a marriage is determined by the law of the place where the couple resided at the time of the marriage or the law of the place where the couple resided when the right to benefits accrued. 38 U.S.C. § 103(c) (2012). See also News Release, Office of Public & Intergovernmental Affairs, U.S. Dep't of Veterans Affairs, VA Provides Guidance to Same-Sex Married Couples Seeking Benefits (June 20, 2014), available at <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2562>.
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- 241 133 S. Ct. 2675 (2013).
- 242 *Obergefell v. Hodges*, 772 F. 3rd 388 (6th Cir. 2014), cert. granted, 135 S. Ct. 1039 (Jan. 16, 2015) (No. 14-556); *Tanco v. Haslam*, 772 F. 3rd 388 (6th Cir. 2014), cert. granted, 135 S. Ct. 1040 (Jan. 16, 2015) (No. 14-562); *DeBoer v. Snyder* 772 F. 3rd 388 (6th Cir. 2014), cert. granted, 135 S. Ct. 1040 (No. 14-571); *Bourke v. Beshear* 772 F. 3rd 388 (6th Cir. 2014), cert. granted, 135 S. Ct. 1041 (Jan. 16, 2015) (No. 14-574).
- 243 *Compare Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757, 763-64 (6th Cir. 2006); *Spearman v. Ford Motor Co.*, 231 F.3d 1080, 1085-86 (7th Cir. 2000); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 261 (1st Cir. 1999); *Smith v. Liberty Mut. Ins. Co.*, 569 F.2d 325, 326-27 (5th Cir. 1978) with *Doe ex rel. Doe v. City of Belleville, Ill.*, 119 F.3d 563, 593 n. 27 (7th Cir. 1997), vacated and remanded on other grounds, 523 U.S. 1001 (1998); *Henderson v. Labor Finders of Va., Inc.*, No. 3:12-CV-600, 2013 WL 1352158, at *5 (E.D. Va. Apr. 2, 2013); *Centola v. Potter*, 183 F. Supp. 2d 403, 410 (D. Mass. 2002).
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- 246 2015 Ind. Legis. Serv. P.L. 3-2015 (S.E.A. 101) (West). Under this version of the law, for example, a baker who refused on religious grounds to provide a wedding cake for a same-sex marriage could assert the law as a defense to a claim of discrimination based on sexual orientation.
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- 254 *Id.* at 5. Figure is based on Gallup Daily Tracking Survey, June-Sept. 2012.
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- 256 Kristen Schilt & Matthew Wiswall, *Before and After: Gender Transitions, Human Capital and Workplace Experiences*, 8 B.E. J. OF ECON. ANALYSIS & POL’Y 1, 12 (2008), available at <http://sites.google.com/site/tincheuk/transgender.pdf> (finding that those who transition from male-to-female lose about 31 percent of their earnings following transition).
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- 276 See, e.g., Emily Swanson, *AP-GFK Poll: Most Americans Favor a Higher Minimum Wage*, ASSOCIATED PRESS, Feb. 19, 2015, <http://ap-gfcpoll.com/featured/findings-from-our-latest-poll-15> (finding that 60 percent of Americans support increasing the minimum wage; 60-66 percent of Americans support requiring paid sick and parental leave; and 56 percent of Americans support free community college); GUY MOLYNEUX, HART RESEARCH, SUPPORT FOR A FEDERAL MINIMUM WAGE OF \$12.50 OR MORE (2015), available at <http://www.nelp.org/page/-/rtmw/Minimum-Wage-Poll-Memo-Jan-2015.pdf?nocdn=1> (finding that 75 percent of Americans support raising the minimum wage to \$12.50 by the year 2020); GREENBERG QUINLAN ROSNER RESEARCH, PROTECTING ACCESS TO REPRODUCTIVE HEALTH CARE AND ABORTION AS AN ELECTORAL PRIORITY (2014), available at <http://plannedparenthoodaction.org/files/7714/1580/3490/11-11-14-NARAL-PPAF-Post-Election-Poll-Memo.pdf> (finding that 78 percent of respondents following the 2014 mid-term elections agreed that either “having an abortion is morally acceptable and should be legal,” or that while they are personally against abortion, they do not believe that the government should prevent a woman from making that decision for herself); News Release, Nat'l P'ship for Women & Families, New Poll: Across Party and Demographic Lines, Voters Need and Want Laws That Support Families' Economic Security (Nov. 10, 2014), <http://www.nationalpartnership.org/news-room/press-releases/new-poll-across-party-and-demographic-lines-voters-need-and-want-laws-that-support-families-economic-security.html> (finding that 81 percent of voters said it is important for lawmakers to consider new laws that help keep working families economically secure); Jeffrey M. Jones, *Americans Say Equal Pay Top Issue for Working Women*, GALLUP, Oct. 13, 2014, <http://www.gallup.com/poll/178373/americans-say-equal-pay-top-issue-working-women.aspx> (finding that 39 percent of Americans said that equal pay is the top issue facing working women in the United States today, and 20 percent said equal opportunity for career advancement is; no other issue was cited by more than 10 percent of Americans); *First Five Years Fund Poll Shows Strong Bipartisan Support for Federal Action on Early Education; Broad Support for Federal Plan By Republicans, Democrats and Independents*, FIRST FIVE YEARS FUND (July 17, 2014), <http://www.ffyf.org/first-five-years-fund-poll-shows-strong-bipartisan-support-for-federal-action-on-early-education-broad-support-for-federal-plan-by-republicans-democrats-and-independents/> (finding that 71 percent of voters support spending now to get later economic gains from early childhood education); Tyler Kingkade, *Americans Have Little Faith in Colleges to Handle Sexual Assault Cases*, THE HUFFINGTON POST (Feb. 2, 2014, 5:01 PM) http://www.huffingtonpost.com/2014/02/06/college-sexual-assault-poll_n_4739108.html (finding that 12 percent of respondents said colleges do a “good job” handling sexual violence on campus, compared to 42 percent who said they do a “bad job”).
- 277 See generally 2014 Minn. Laws Ch. 239 (Women's Economic Security Act (WESA) various provisions established and modified, and money appropriated); 2014 Minn. Laws Ch. 312; (omnibus supplemental appropriations); 2014 Minn. Laws Ch. 166 (private and public employee labor standards provided, minimum wage regulated, and state employee use of donated vacation leave regulated); 2014 Minn. Laws Ch. 188 (landlords and tenants; victims of violence remedies established, and Housing Opportunity Made Equitable (HOME) pilot project established).
- 278 See NAT'L WOMEN'S LAW CTR., MOVING WOMEN & FAMILIES FORWARD, A STATE ROADMAP TO ECONOMIC JUSTICE, available at http://www.nwlc.org/sites/default/files/pdfs/nwlc_economicroadmap2015.pdf.

- 279 S. 862, 114th Cong. (2015); H.R. 1619, 114th Cong. (2015).
- 280 S. 862, 114th Cong. (2015); H.R. 1619, 114th Cong. (2015).
- 281 See H.R. 12, 111th Cong. (2009), CONGRESS.GOV, <https://www.congress.gov/bill/111th-congress/house-bill/12/actions?q=%7B%22search%22%3A%5B%22HR+12%22%5D%7D> (last visited Apr. 23, 2015) (reporting that Paycheck Fairness Act passed the House with a recorded vote of 256-163); H.R. 1338, 110th Cong. (2007). CONGRESS.GOV, <https://www.congress.gov/110th-congress/house-bill/1338/actions?q=%7B%22search%22%3A%5B%22H.R.+1338%22%5D%7D> (last visited Apr. 23, 2015) (reporting that Paycheck Fairness Act passed the House with a recorded vote of 247-178).
- 282 S. 3772, 111th Cong. (2010), CONGRESS.GOV, <https://www.congress.gov/bill/111th-congress/senate-bill/3772/all-actions> (last visited Apr. 20, 2015) (reporting that the cloture vote on the motion to proceed to the bill failed by a vote of 58-41 on November 17, 2010, lacking a supermajority needed to proceed); S. 3220, 112th Cong. (2012), CONGRESS.GOV, <https://www.congress.gov/bill/112th-congress/senate-bill/3220/all-actions> (last visited Apr. 20, 2015) (reporting that the cloture vote on the motion to proceed to the bill failed by a vote of 52-47, lacking a supermajority); S. 2199, 113th Cong. (2014), CONGRESS.GOV, <https://www.congress.gov/bill/113th-congress/senate-bill/2199/all-actions> (last visited Apr. 20, 2015) (reporting two failed cloture votes, both of which constituted a majority, but not the supermajority needed to proceed to a vote on the bill: a cloture vote on the motion to proceed to the bill that failed by a vote of 53-44 on April 9, 2014, and a cloture vote on the motion to proceed to the bill that failed by a vote of 52-40 on Sept. 15, 2014).
- 283 H.R. 1787, 114th Cong. (2015).
- 284 *Id.* § 3.
- 285 H.R. 4227, 113th Cong. (2014); S. 2133, 113th Cong. (2014).
- 286 H.R. 4227, 113th Cong. § 2(b) (2014); S. 2133, 113th Cong. § 2(b) (2014).
- 287 Exec. Order No. 13665, 79 Fed. Reg. 20749 (Apr. 11, 2014).
- 288 Memorandum from President Obama to Sec'y of Labor on Advancing Pay Equality Through Compensation Data Correction (Apr. 8, 2014), available at <https://www.whitehouse.gov/the-press-office/2014/04/08/presidential-memorandum-advancing-pay-equality-through-compensation-data>.
- 289 Memorandum on Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule, *supra* note 40.
- 290 Vermont (V.T. STAT. ANN. tit. 21, §§ 495(a)(7)(B)-(a)(8) (West 2013)); Minnesota (MINN. STAT. § 181.172 (West 2014)); Louisiana (LA. REV. STAT. § 23:664 (2013)).
- 291 New Jersey (N.J. STAT. ANN. § 10:5-12 (West 2014)); New Hampshire (N.H. REV. STAT. ANN. § 275:41-b (2015)).
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- 293 *Id.*
- 294 Nat'l Women's Law Ctr. calculations based on a 40-hour work week for 50 weeks per year and CENSUS BUREAU, U.S. DEP'T OF COMMERCE, POVERTY THRESHOLDS FOR 2014 BY SIZE OF FAMILY AND NUMBER OF CHILDREN UNDER 18 YEARS, <http://www.census.gov/hhes/www/poverty/data/threshld/> (last visited Mar. 20, 2015) (showing that the poverty threshold for three people, including two children, was \$19,073 in 2014).
- 295 See H.R. 122, 114th Cong. (2014).
- 296 A higher minimum wage generally would narrow the wage distribution, effectively narrowing the wage gap. See Nicole M. Fortin & Thomas Lemieux, *Institutional Changes and Rising Inequality*, 11 J. ECON. PERSPECTIVES 75, 78 (1997), available at https://www.aeaweb.org/atypon.php?return_to=/doi/pdfplus/10.1257/jep.11.2.75. See also Francine D. Blau & Lawrence M. Kahn, *Gender Differences in Pay*, 14 J. ECON. PERSPECTIVES 75, 93 (2000), available at http://econ2.econ.iastate.edu/classes/econ321/orazem/blau_wages.pdf (finding that "wage institutions that consciously raise minimum pay levels, regardless of gender, will tend to lower male-female wage differentials").
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- 298 *Data Tables: Raising the Minimum Wage to \$12 by 2020 Would Lift Wages for 35 Million Workers*, Tbl. 1 (2015), ECON. POLICY INST., <http://www.epi.org/publication/data-tables-raising-the-minimum-wage-to-12-by-2020-would-lift-wages-for-35-million-workers/> (last visited May 8, 2015).
- 299 *Id.* at Tbl. 2A.
- 300 *Id.*
- 301 Nat'l Women's Law Ctr. calculations based on *id.*
- 302 KATHERINE GALLAGHER ROBBINS ET AL., NAT'L WOMEN'S LAW CTR., STATES WITH EQUAL MINIMUM WAGES FOR TIPPED WORKERS Have Smaller Wage Gaps for Women Overall and Lower Poverty Rates for Tipped Workers (2014), available at http://www.nwlc.org/sites/default/files/pdfs/tipped_minimum_wage_worker_wage_gap_nov_2014.pdf. The eight states are Alaska, California, Hawaii, Minnesota, Montana, Nevada, Oregon, and Washington. Hawaii is included as an "equal treatment" state with no tip credit because it has a maximum tip credit of 25 cents, which is allowed only if the total wages an employee receives from her/his employer plus tips equal at least 50 cents more than the regular minimum wage. These figures are for 2013.
- 303 *Id.* The calculation stems from averaging the wage gaps, giving equal weight to each state.
- 304 *Id.* The comparison here is to the wages of white, non-Latino men. The percentage difference in poverty rates for male tipped workers between equal treatment states and states with a tipped minimum wage of \$2.13 per hour is smaller than for female tipped workers but still substantial. The average poverty rate for male tipped workers is 12.2 percent in equal treatment states—28 percent lower than in states with a \$2.13 tipped minimum wage (17.0 percent). Figures include all employed workers and are based on the 2008-2012 American Community Survey Five-Year Estimates.
- 305 *Id.*
- 306 *Id.*
- 307 Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60454 (Oct. 1, 2013) (codified at 29 C.F.R. pt. 552), available at <https://www.federalregister.gov/articles/2013/10/01/2013-22799/application-of-the-fair-labor-standards-act-to-domestic-service>. This rule is the subject of litigation in *Home Care Assoc. of Am. v. Weill*, No. 14-967 (D.D.C.). For more information, see Wage & Hour Division, *We Count on Home Care: DOL Appeals Decision in Lawsuit Brought by Associations of Home Care Companies*, U.S. DEP'T OF LABOR, <http://www.dol.gov/whd/homecare/litigation.htm> (last visited Apr. 20, 2015).
- 308 Nat'l Women's Law Ctr. calculations based on CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2013 AMERICAN COMMUNITY SURVEY (2014) (using STEVEN RUGGLES ET AL., UNIV. OF MINN., INTEGRATED PUBLIC USE MICRODATA SERIES: VERSION 5.0 (2010)). "Home care workers" are individuals in the occupations "personal care aides," and "nursing, psychiatric and home health aides" working in the "home health care services" or "individual and family services" industries. Approximately 88 percent of home care workers are women; of these, 30 percent are African-American women and 20 percent are Latinas. *Id.*
- 309 Exec. Order No. 13658, 79 C.F.R. § 9851 (2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-02-20/pdf/2014-03805.pdf>.
- 310 *Id.*
- 311 *2015 Minimum Wage by State*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx> (last updated Feb. 24, 2015).
- 312 For example, the minimum wage in San Francisco, California will reach \$15.00 an hour in 2018. See S.F. Ordinance No. 140687 (2014), available at <http://www.sfgsa.org/modules/showdocument.aspx?documentid=12434> (to be codified at S.F. Admin. Code Ch. 12R, §§ .3, .4, .7, .10, .11, .17). The minimum wage in Seattle, Washington, will reach \$15.00 an hour for some large employers in 2017 and at least that level for all employers by 2021. See Seattle Ordinance No. 124490 (2014), available at http://www.seattle.gov/council/issues/minimumwage/attachments/Ord_124490.pdf (to be codified at Seattle Muni Code §§ 14.19.010-14.19.080).
- 313 See *2015 Minimum Wage by State*, *supra* note 311.
- 314 Allison Earle et al., *Job Characteristics Among Working Parents: Differences by Race, Ethnicity and Nativity*, MONTHLY LABOR REV., May 2014, at 6, available at <http://www.bls.gov/opub/mlr/2014/article/job-characteristics-among-working-parents-1.htm>.
- 315 U.S. DEP'T OF TREAS., GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FY 2016 REVENUE PROPOSALS 147-148 (2015), available at <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf> [hereinafter GENERAL EXPLANATIONS OF ADMINISTRATION'S FY 2016 REVENUE PROPOSALS].

- 316 See Working Families Tax Relief Act, S. 836, 113th Cong. (2013); Earned Income Tax Credit Improvements and Simplification Act, H.R. 902, 114th Cong. (2015); The EITC for Childless Workers Act, H.R. 4117, 113th Cong. (2014); The Julia Carson Responsible Fatherhood and Healthy Families Act, H.R. 2359, 113th Cong. (2013); 21st Century Worker Tax Cut Act, S. 2162, 113th Cong. (2014).
- 317 EXEC. OFFICE OF THE PRESIDENT & U.S. TREAS. DEP'T, THE PRESIDENT'S PROPOSAL TO EXPAND THE EARNED INCOME TAX CREDIT 2 (2014), available at http://www.whitehouse.gov/sites/default/files/docs/eitc_report.pdf [hereinafter PRESIDENT'S FY 2015 EITC PROPOSAL]. See also CHUCK MARR & CHYE-CHING HUANG, CTR. ON BUDGET & POLICY PRIORITIES, STRENGTHENING THE EITC FOR CHILDLESS WORKERS WOULD PROMOTE WORK AND REDUCE POVERTY 11 (2015), available at <http://www.cbpp.org/files/7-15-13tax.pdf> (estimating that 13.5 million workers would benefit from the President's 2016 proposal).
- 318 PRESIDENT'S FY 2015 EITC PROPOSAL, *supra* note 317, at 12; E-mail from Hallie Schneir, Exec. Office of the President, to Joan Entmacher, Nat'l Women's Law Ctr. (Mar. 21, 2014) (on file with the National Women's Law Center) [hereinafter E-mail from Hallie Schneir].
- 319 PRESIDENT'S FY 2015 EITC PROPOSAL, *supra* note 317, at 2; E-mail from Hallie Schneir, *supra* note 318.
- 320 See GENERAL EXPLANATIONS OF ADMINISTRATION'S FY 2016 REVENUE PROPOSALS, *supra* note 315, at 2-6; Earned Income Tax Credit Improvement and Simplification Act, H.R. 902, 114th Cong. (2015); Child Tax Credit Permanency Act, H.R. 1286, 114th Cong. (2015).
- 321 See *supra* notes 115, 117 and accompanying text.
- 322 U.S. DEP'T OF HEALTH & HUMAN SERVS., FISCAL YEAR 2016 BUDGET IN BRIEF 9, 126 (2015), available at <http://www.hhs.gov/budget/fy2016/fy-2016-budget-in-brief.pdf>.
- 323 *Id.*
- 324 *Id.* at 9-10.
- 325 *Id.* at 121.
- 326 GENERAL EXPLANATIONS OF ADMINISTRATION'S FY 2016 REVENUE PROPOSALS, *supra* note 315, at 127.
- 327 S. 820, 114th Cong. (2015).
- 328 Nat'l. Women's Law Ctr. calculations based on S. 820, 114th Cong. (2015).
- 329 *Id.*
- 330 *Id.*
- 331 *Id.*
- 332 S. 820, 114th Cong. § 2(f). The proposed Helping Working Families Afford Child Care Act, S. 661, 114th Cong. (2015), would increase the Child and Dependent Care Tax Credit's expense limits to \$8,000, for families with one child or dependent, and \$16,000, for families with two or more children or dependents, thereby increasing the maximum credit amounts to \$2,800 and \$5,600 respectively. Nat'l Women's Law Ctr. calculations based on S. 661, 114th Cong. § 2(a)(2) (2015). The maximum credit amount would begin to decline for families with adjusted gross income above \$110,000 and phase out entirely for families with adjusted gross income above \$250,000. See Senator Patty Murray, *Helping Working Families Afford Child Care Act of 2015*, available at http://www.murray.senate.gov/public/_cache/files/29b6ad2c-2023-4a14-ae4-729607f3de3c/helping-working-families-afford-child-care-act-fact-sheet-pdf.
- 333 S. 2452, 113th Cong. (2014); H.R. 3461, 113th Cong. (2013).
- 334 Speeches & Remarks, The White House Office of the Press Sec'y, Remarks by the President in the State of the Union Address (Feb. 12, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/02/12/remarks-president-state-union-address>.
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- 338 *Expanding Access to Quality Early Learning: The Strong Start for America's Children Act: Hearing before the*

- Comm. on Health, Educ., Labor & Pensions*, 113th Cong. (2014), available at www.help.senate.gov/hearings/hearing/?id=8f6b62eb-5056-a032-5263-d3d193<042eb.
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- 340 See Speeches & Remarks, The White House Office of the Press Sec'y, Remarks by the President at the Signing of the Reauthorization of the Care and Development Block Grant Program (Nov. 19, 2014), available at <https://www.whitehouse.gov/the-press-office/2014/11/19/remarks-president-bill-signing>.
- 341 See W.S. BARNETT ET AL., NAT'L INST. FOR EARLY EDUC. RESEARCH, THE STATE OF PRESCHOOL 2013, at 47-48, 109-110 (2013), available at <http://nieer.org/sites/nieer/files/yearbook2013.pdf>.
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364 N.J. STAT. ANN. § 43:21-38 (West 2008).

365 R.I. GEN. LAWS ANN. § 28-41-35 (West 2013).

366 See NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, STATE PAID FAMILY LEAVE INSURANCE LAWS (2015), *available at* <http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf>.

367 S. 2642, 113th Cong. (2014); H.R. 5159, 113th Cong. (2014).

368 S. 2642, 113th Cong. (2014); H.R. 5159, 113th Cong. (2014).

369 S. 2642, 113th Cong. (2014); H.R. 5159, 113th Cong. (2014).

370 See CONN. AGENCIES REGS. § 31-62-D2(d) (2001) & CONN. AGENCIES REGS. § 31-62-E1 (2001); 454 MASS. CODE REGS. § 27.04 (2015); N.H. REV. STAT. ANN. § 275:43-a) (1985); N.J. ADMIN. CODE § 12:56-5.5 (1995); N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.3 (1987); OR. ADMIN. R. 839-021-0087 (2013); R.I. GEN. LAWS ANN. § 28-12-3.2 (2004); D.C. MUN. REGS. tit. 7, § 907 (1994).

371 See CAL. CODE REGS. tit. 8, § 11040 (2001); D.C. MUN. REGS. tit. 7, § 906 (1994).

372 See 21 VT. STAT. ANN. tit.21, § 309 (West, 2014); S.F. Admin. Code Ch. 12Z (2013).

373 See S.F. Pol. Code art. 33G (2015).

374 135 S. Ct. 1338, 1353-56 (2015). The plaintiff in this case, Peggy Young, was a pregnant UPS worker whose medical provider recommended that she not lift more than 20 pounds. *Id.* at 1344. UPS denied her the opportunity to do light-duty work that it provided to other categories of workers with similar limitations. *Id.* The lower court held that the PDA did not require UPS to provide Peggy Young light duty. *Id.* at 1347-48 (citing *Young v. United Parcel Service*, 707 F.3d 437, 446 (4th Cir. 2013)). The Supreme Court vacated the judgment of the lower court and remanded the case for further proceedings consistent with its opinion. *Id.* at 1355-56.

375 S. 942, 113th Cong. (2013); H.R. 1975, 113th Cong. (2013).

376 42 U.S.C. § 12112 (2012).

377 *Young v. United Parcel Serv., Inc.*, No. CIV.A. DKC 08-2586, 2011 WL 665321 (D. Md. Feb. 14, 2011), *aff'd*, *Young v. United Parcel Serv., Inc.*, 707 F.3d 437 (4th Cir. 2013).

378 See, e.g., *Reeves v. Swift Transp.*, 446 F.3d 637 (6th Cir. 2006); *Serednyj v. Beverly Healthcare LLC*, 656 F.3d 540 (7th Cir. 2011).

- 379 OFFICE OF LEGAL COUNSEL, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE No. 915.003, PREGNANCY DISCRIMINATION AND RELATED ISSUES (2014), *available at* http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm [hereinafter EEOC PREGNANCY GUIDANCE].
- 380 42 U.S.C. § 2000e(k) (2012).
- 381 42 U.S.C. §§ 1211-12117 (2012).
- 382 See EEOC PREGNANCY GUIDANCE, *supra* note 379.
- 383 *Id.*
- 384 Discrimination on the Basis of Sex, 80 Fed. Reg. 5246 (proposed Jan. 30, 2015) (to be codified at 41 C.F.R. pt. 60-20), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-01-30/pdf/2015-01422.pdf>.
- 385 The twelve states are Alaska (ALASKA STAT. §39.20.510 (1992)), California (CAL. GOV'T CODE § 12945 (West 2012)), Connecticut (CONN. GEN. STAT. ANN. § 46a-60 (West 2011)), Delaware (DEL. CODE ANN. tit. 19, § 711 (West 2014)), Hawaii (HAW. REV. STAT. § 778-1 (West 2013) & HAW. CODE R. § 12-46-107 (Lexis-Nexis 1990)), Illinois (775 Ill. COMP. STAT. ANN. 5/2-102(H) (West 2015)), Louisiana (LA. REV. STAT. ANN. § 23:342 (1997)), Maryland (MD. CODE ANN. STATE GOV'T § 20-609 (West 2013)), Minnesota (MINN. STAT. § 181.9414 (2014)), New Jersey (N.J. STAT. ANN. § 10:5-12(s) (West 2014)), Texas (TEX. LOC. GOV'T CODE ANN. § 180.004 (West 2001)), and West Virginia (W. VA. CODE ANN. §5-11(B)-2 (West 2014)).
- 386 See *State and Local Laws Protecting Pregnant Workers*, A BETTER BALANCE <http://www.abetterbalance.org/web/our-issues/fairness-for-pregnant-workers/310> (last visited Mar. 20, 2015) (listing states and cities with pregnancy accommodation laws, including information on whether bills passed unanimously, or, in the case of New Jersey, with a single dissenting vote).
- 387 *Id.*
- 388 *Id.*
- 389 See 61 D.C. Reg. 011368 (Oct. 31, 2014); N.Y. Admin. Code 8-107(22) (2013); Phila. Code § 9-1128 (2014); Pittsburgh Admin. Code art. VII, § 161.44 (2014); Providence Ordinance No. 2014-10 (2014) (to be codified at Providence Code of Ordinances §§ 16-57).
- 390 OFFICE OF LEGAL COUNSEL, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE No. 915.002, UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES (2007), *available at* <http://www.eeoc.gov/policy/docs/caregiving.html>.
- 391 See ALASKA STAT. § 18.80.220(a) (2007); D.C. CODE §§ 2-1401.01, 2-14101.02, 1-2502(12) (2007); MINN. STAT. ANN. § 363A.08 (West 2014); N.J. STAT. ANN. §§ 10:5-4, -5, (West 2010) & N.J. ADMIN. CODE § 4A:7-3.1(a) (2008).
- 392 See STEPHANIE BORNSTEIN & ROBERT J. RATHMELL, CTR. FOR WORKLIFE LAW, UNIV. OF CAL. HASTINGS COLL. OF LAW, CAREGIVERS AS A PROTECTED CLASS?: THE GROWTH OF STATE AND LOCAL LAWS PROHIBITING FAMILY RESPONSIBILITIES DISCRIMINATION 2 (2009), *available at* <http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf>.
- 393 759 F.3d 358 (4th Cir.) *cert. granted*, 135 S. Ct. 475 (Nov. 7, 2014) (No. 14-114). See *supra* notes 174-178 and accompanying text.
- 394 S. 2578, 113th Cong. (2014); H.R. 5051, 113th Cong. (2014).
- 395 S. 358, 114th Cong. (2015); H.R. 742, 114th Cong. (2015).
- 396 Reproductive Health Non-Discrimination Amendment Act, 2015 D.C. Legis. Serv. 54594 (West). 102 (*amending* D.C. Code § 2-1401.05 (2007)).
- 397 S. 217, 114th Cong. (2015); H.R. 448, 114th Cong. (2015).
- 398 U.S. DEP'T OF EDUC., FISCAL YEAR 2016 BUDGET SUMMARY AND BACKGROUND INFORMATION, *supra* note 335, at 40.
- 399 *Id.* at 59-60.
- 400 Nat'l Women's Law Ctr. calculations based on NAT'L CTR. FOR EDUC. STATISTICS, INTEGRATED POSTSECONDARY EDUCATION DATA SYSTEM (*using* IPEDS Data Center), *available at* <http://nces.ed.gov/ipeds/datacenter>. These data are based on interrelated surveys conducted annually by the National Center for Education Statistics. The data cited are from fall 2013 enrollment surveys.
- 401 U.S. DEP'T OF EDUC., FISCAL YEAR 2016 BUDGET, *supra* note 335, at 59-60.
- 402 Statements & Releases, The White House Office of the Press Sec'y., Fact Sheet: White House Unveils America's College Promise Proposal: Tuition-Free Community College for Responsible Students (Jan. 9, 2015), *available at* <http://www.whitehouse.gov/the-press-office/2015/01/09/fact-sheet-white-house-unveils-america-s-college-promise-proposal-tuitio>.

- 403 U.S. DEP'T OF EDUC., FISCAL YEAR 2016 BUDGET SUMMARY AND BACKGROUND INFORMATION, *supra* note 335, at 40-41.
- 404 S. 590, 114th Cong. (2015); H.R. 1310, 114th Cong. (2015).
- 405 S. 590, 114th Cong. (2015); H.R. 1310, 114th Cong. (2015).
- 406 S. 706, 114th Cong. (2015); H.R. 1490, 114th Cong. (2015).
- 407 OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE (2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/ga-201404-title-ix.pdf>.
- 408 See generally THE WHITE HOUSE, NOT ALONE: THE FIRST REPORT OF THE WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT (2014), available at <https://www.notalone.gov/assets/report.pdf>. See also NOT ALONE: TOGETHER AGAINST SEXUAL ASSAULT, <https://www.notalone.gov> (last visited Mar. 22, 2015) (the official website of the White House Task Force to Protect Students from Sexual Assault).
- 409 OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, FY 2016 CONGRESSIONAL BUDGET SUBMISSION 10 (2015), available at https://edit.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/30_office_on_violence_against_women_ovw.pdf. See also U.S. DEP'T OF JUSTICE, FY 2016 DOJ REQUEST: STATE, LOCAL AND TRIBAL LAW ENFORCEMENT ASSISTANCE 3 (2015), available at http://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/01/30/3_2016_state_and_local_chart.pdf.
- 410 For ways in which these goals could be further strengthened, see NAT'L WOMEN'S LAW CTR., WOMEN IN CONSTRUCTION: STILL BREAKING GROUND 9-10 (2014), available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_womeninconstruction_report.pdf.
- 411 S. 567, 113th Cong. (2013); H.R. 3118, 113th Cong. (2013).
- 412 H.R. 1374, 113th Cong. (2013).
- 413 S. 2455, 113th Cong. (2014).
- 414 Strengthening Social Security Act, S. 567, 113th Cong. (2013) & H.R. 3118, 113th Cong. (2013); Social Security Enhancement and Protection Act, H.R. 1374, 113th Cong. (2013); Retirement and Income Security Enhancements (RAISE) Act, S. 2455, 113th Cong. (2014). See also Office of the Chief Actuary, *Proposals Affecting Trust Fund Solvency*, SOC. SEC. ADMIN., <http://www.ssa.gov/OACT/solvency/> (last visited Mar. 22, 2015). Under current law, only annual earnings of up to \$118,500 are subject to the payroll tax in 2015. See *Frequently Asked Questions: What Is the Current Maximum Amount of Taxable Earnings for Social Security This Year?*, SOC. SEC. ADMIN., <https://faq.ssa.gov/link/portal/34011/34019/Article/3817/What-is-the-current-maximum-amount-of-taxable-earnings-for-Social-Security-this-year> (last updated Jan. 2, 2015).
- 415 GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FY 2016 REVENUE PROPOSALS, *supra* note 315, at 140. Each year in which the employee worked 500 hours would count toward vesting requirements. The retirement plan would not be required to expand eligibility for employer matching contributions. *Id.*
- 416 *Id.* at 135-137. Employers would not be required to contribute but could claim a temporary tax credit for establishing auto-IRAs.
- 417 H.R. 837, 113th Cong. (2013).
- 418 S. 439, 114th Cong. (2015); H.R. 846, 114th Cong. (2015).
- 419 S. 815, 113th Cong. (2013); H.R. 1755, 113th Cong. (2013).
- 420 See Leigh Ann Caldwell, *Senate Passes LGBT Anti-Discrimination Bill*, CNN (Nov. 8, 2013, 7:46 AM), <http://www.cnn.com/2013/11/07/politics/senate-lgbt-workplace-discrimination/>; Lauren Fox, *GOP Leaders Still Oppose ENDA*, U.S. NEWS & WORLD REPORT (June 16, 2014, 5:10 PM), <http://www.usnews.com/news/articles/2014/06/16/gop-house-leaders-still-oppose-enda-despite-obama-action>.
- 421 Compare S. 815 § 6, 113th Cong. (2014) with 42 U.S.C. § 2000e-1 (2012).
- 422 H.R. 5024, 113th Cong. (2014).
- 423 See *supra* notes 238-239 and accompanying text.
- 424 It would, for example, also address the current limitation on receipt of Veterans benefits by same-sex married couples. See *supra* note 239.
- 425 See *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*, U.S. OFFICE OF PERSONNEL MGMT., <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/> (last visited Apr. 21, 2015).

- 426 See Exec. Order No. 13672, 79 Fed. Reg. 42971 (July 23, 2014); David Hudson, *President Obama Signs a New Executive Order to Protect LGBT Workers*, THE WHITE HOUSE BLOG, (July 21, 2014, 3:00 PM), <http://www.whitehouse.gov/blog/2014/07/21/president-obama-signs-new-executive-order-protect-lgbt-workers>. See also Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors, 41 C.F.R. § 60 (2014).
- 427 133 S. Ct. 2675 (2013); see *supra* notes 240-242 and accompanying text.
- 428 See Memorandum from Elaine Kaplan, Acting Dir. of U.S. Office of Personnel Mgmt. to Heads of Exec. Dep'ts & Agencies on Guidance on the Extension of Benefits to Married Gay & Lesbian Federal Employees, Annuityants, and Their Families, (June 28, 2013), available at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5700>.
- 429 Statements & Releases, The White House Office of the Press Sec'y, Statement by the President on the Supreme Court Ruling on the Defense of Marriage Act (June 26, 2013), available at <https://www.whitehouse.gov/doma-statement>.
- 430 29 U.S.C. § 2612 (2014).
- 431 See Definition of Spouse Under the Family and Medical Leave Act, 29 C.F.R. 3825 (2014).
- 432 CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, PROTECTING THE RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) INDIVIDUALS (2013) (emphasis in original), available at <http://www.justice.gov/crt/publications/lgbtbrochure.pdf>. See also Memorandum from Eric Holder, Atty. General to The President on Implementation of *United States v. Windsor*, (June 20, 2014), available at <http://www.justice.gov/iso/opa/resources/9722014620103930904785.pdf>. The United States Department of Housing and Urban Development has similarly construed the sex discrimination prohibition in the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (2012). See Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662, 5666 (Feb. 3, 2012) (“[T]he Fair Housing Act’s prohibition of discrimination on the basis of sex prohibits discrimination against LGBT persons in certain circumstances, such as those involving nonconformity with gender stereotypes.”). And the United States Department of Education’s Office for Civil Rights has stated that harassment of students “on the basis of their LGBT status” is prohibited by Title IX, 20 U.S.C. §§ 1681-1688 (2012), when such harassment is motivated by sex-stereotyping. Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., Office for Civil Rights, to Colleagues 7-8 (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.
- 433 Macy v. Holder, Appeal No. 0120120821 (U.S. Equal Emp’t Opportunity Comm’n, Apr. 20, 2012).
- 434 See *generally Maps of State Laws & Policies*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/state_maps (last visited Mar. 22, 2015) (showing an interactive map of states that fully support, partially support, and do not support same-sex marriage and other relationship recognition laws); See also *Non-Discrimination Laws: State by State Information – Map*, AM. CIVIL LIBS. UNION, <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map> (last visited Mar. 22, 2015) (showing an interactive map of states that have employment non-discrimination laws based on sexual orientation and gender identity, and states with such laws that only cover sexual orientation).
- 435 See *supra* notes 244-250 and accompanying text.
- 436 H.R. 1409, 111th Cong. (2009).
- 437 29 U.S.C. § 160 (2012).
- 438 H.R. 5280, 113th Cong. (2014).
- 439 *Id.*
- 440 Senator Kristin Gillibrand, Ctr. for Am. Progress, Panel Discussion, Why Women’s Economic Security Matters for All 16-17 (Sept. 18, 2014), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/09/09.18.14-CAP-Womens-Economic-Security-transcript.pdf>.



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