

Beyond Leveling the Playing Field

CAN THE “OBAMA EFFECT” RESHAPE GENDER EQUALITY?

JUST NINE DAYS after being inaugurated, a newly minted President Barack Obama chose the Lilly Ledbetter Fair Pay Restoration Act as his first bill to sign into law, signaling to women’s rights advocates—and detractors—that things had changed. The Act served to undo the damage done by a conservative-leaning U.S. Supreme Court, who had ruled against Ledbetter in her sex discrimination lawsuit. After nearly 20 years as an employee of the Goodyear Tire Company, Ledbetter discovered that she had been paid at a lower rate than similarly situated male coworkers throughout her career, compounding over time and resulting in extensive lost wages and benefits. When Ledbetter sued, the Court said she was too late, ruling that her 180-day statute

President Barack Obama waits in the Green Room prior to signing an Executive Order for the White House Council on Women and Girls in the East Room, 3/11/09.

OFFICIAL WHITE HOUSE PHOTO BY PETE SOUZA



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of limitations for filing a discrimination complaint had started long ago, when the discriminatory pay rates were set. The Ledbetter Act amended federal law and overrode the Court's decision, stating clearly that each discriminatory paycheck received starts the statute of limitations for an employment discrimination claim anew. Thus, with a stroke of his pen, President Obama sent the message that there was a new sheriff in town when it comes to gender discrimination.

So how has Obama fared in advancing the cause of gender equality in his first year in office, and what comes next if he is serious about this commitment? Obama and his administration have actually fared quite well, although, of course, much remains to be accomplished. After signing the Ledbetter Act and appointing talented women to key roles in his administration, President Obama created two new executive-level entities, a council and a task force, both with women's economic security and work/family topics on their agendas. The administration also made progress by including funding and tax credits for childcare and Head Start within the American Recovery and Reinvestment Act. Even further, there is the promise of significant advancement on issues like equal pay, paid sick days, and expanded family and medical leave—basic necessities in any developed nation that are still lacking in the United States.

Yet an even greater opportunity is at stake: Obama has the opportunity to push Americans to *reshape* the playing field, not simply level it. That is, Obama can fuel the process, already under way, of replacing the outdated norm of an all-or-nothing workplace designed around an “ideal worker” with 24/7 availability and no family responsibilities with a more modern and realistic idea of a “balanced worker,” who has competing demands at work and at home. For Obama to be a truly transformative figure, he must push our society toward becoming a place where being an excellent worker no longer means never seeing your children and where working a manageable schedule no longer relegates you to the margins or the “mommy track.” But before we discuss where Obama might yet go, let's first review where he has so far been.

The Inaugural Year: Laying the Groundwork and First Steps

In short order after taking office, President Obama followed up his signing of the Ledbetter Act with several key actions that demonstrated his commitment to gender equality. He named women to one-third (7) of his 21 cabinet-level posts (4 of the traditional 15 cabinet positions), and appointed a woman of color to a vacancy on the U.S. Supreme Court, a woman chair of his Council of Economic Advisors, and the first-ever female solicitor general. He also established two new executive branch initiatives that offer the possibility for significant policy advancement on gender equality: the Middle Class Task Force (hereafter “Task Force”), made up of key cabinet members and staff and led by Vice President Joe Biden; and the White House Council on Women and Girls (hereafter “Council”), made up of key cabinet members and

staff and led by Senior Advisor to the President Valerie Jarrett. The Task Force is described as an effort to coordinate and expedite policies and initiatives to raise the living standards of middle class working families. One of its five major stated goals in this effort is to improve work/family balance. Likewise, the Council—whose role is to coordinate federal efforts on and ensure that federal programs reflect issues affecting women and girls—includes a focus on work/family balance. Cabinet appointments and new task forces might be criticized as elevating symbol over substance; yet standing alongside the Ledbetter Act, they show a new and high-profile commitment to promoting gender equality at all levels of public and social policy.

While the new Task Force and Council have begun to consider a wide variety of issues relevant to gender equality, they have yet to do significant work on the issue of work/family balance. And if you ask most women living in the United States to name their chief struggle on a daily basis, the answer will likely be the same: the juggling act to both provide financially for and provide care for their families. Fully 95% of American women—and 90% of American men—report work/family conflict and the wish for more family time. Successfully addressing gender equality in the United States means tackling the area where the rubber meets the road for most American women (and men): conflicting demands at work and at home. The administration has done well in setting the stage for taking on this next key issue in the fight for gender equality. It is now time to seize the moment.

Next Steps: Leveling the Playing Field for Mothers and Other Caregivers

The good news is, while the tough work of achieving greater gender equality through reducing work/family conflict still lies ahead, the administration has not only laid the groundwork, but already knows what to do. In their platform as candidates, which became their administration's policy agenda—the “Obama-Biden Plan” (available to view at <http://change.gov/agenda>)—the president and vice president identify several key policies that if successfully addressed will greatly improve economic equality and security for women by reducing immediate work/family conflict. While the legislative landscape largely determines whether this can happen, it is plausible, maybe even likely, that there will be movement on the following key issues.

Short-Term Leaves. The administration has prioritized establishing a minimum number of paid sick days for all U.S. workers, which they can then use to care for themselves, their children, or other family members. Likewise, the Obama-Biden Plan pledged to expand the Family and Medical Leave Act (FMLA) to provide unpaid short-term family and medical leaves to more workers for more reasons. Currently, the FMLA's provision of 12 weeks of unpaid leave covers only those employees who've worked for at least a year and at least 1,250 hours (over 24 hours a week) for an employer with 50 or more employees. And this leave can only be used to care for oneself, for a new child, or for a parent, child, or spouse with a serious health condition.

In terms of meeting American women's immediate needs, these efforts are the obvious place to start—and would begin to align the United States with the rest of the industrialized world. A dumbfounding statistic from the Project on Global Working Families is that only four countries in the world provide no paid maternity leave for new mothers: Lesotho, Papua New Guinea, Swaziland, and the United States. In terms of paid sick leave, the Project reports that while the United States requires no paid sick days, at least 145 other countries do, 136 of them providing a week or more.

Caregiver Discrimination. While paid sick days and family and medical leave are essential to protecting economic security in the short term, raising a child or caring for an elderly or ill family member is not just a short-term proposition. An ongoing threat to gender equality and the economic security of working families, especially mothers, is family responsibilities discrimination, or FRD. Also known as caregiver discrimination, FRD occurs when, despite good performance, an employee is penalized at work—for example, rejected for hire, passed over for promotion, demoted, harassed, or terminated—based on family caregiving responsibilities. Pregnant women, mothers and fathers of young children, and employees with aging parents or sick spouses or partners may encounter FRD when their employers make personnel decisions based on stereotypical notions of how they will or should act given their family responsibilities.

Studies suggest that discrimination against mothers is now the strongest form of employment discrimination. In a 2007 study published in the *American Journal of Sociology*, Stanford sociologist Shelley Correll and her colleagues documented that when compared with similarly situated women without children, mothers were 79% less likely to be recommended for hire, 100% less likely to be promoted, were offered an average of \$11,000 less for the same position, and were held to higher performance and punctuality standards. Given that 80% of American women become mothers by age 44, and that nearly 50% of the U.S. labor market is now made up of women, dramatic workplace discrimination against mothers is a truly serious gender equality issue.

Likewise, studies document that fathers who attempt to step out of the breadwinner role and take on more than a symbolic amount of participation in their children's care are also stiffly penalized at work. Numerous studies document that fathers who take parental leave or have even a short work absence due to family caregiving are recommended for fewer rewards, viewed as less committed, and given lower performance ratings.

Again, the Obama-Biden Plan has pledged to address this problem, by “commit[ting] the government to enforcing recently-enacted Equal Employment Opportunity Commission guidelines on caregiver discrimination.” While there is no express protection for “caregivers” under federal law like there are for race, religion, age, and disability, in 2007 the EEOC issued enforcement guidance detailing how many forms of caregiver discrimination are illegal as sex discrimination under Title VII of the Civil Rights Act of 1964, or associational discrimination under the Americans with Disabilities Act (for example, if a worker is penalized for having a child or spouse with a dis-

ability). By vigorously pursuing this commitment, the Obama administration can make unprecedented strides toward solving the longer-term disadvantages that mothers (and all caregivers) face in the workplace.

And while federal law does not expressly protect private employees from employment discrimination based on family responsibilities, Executive Order 11478, as amended by EO 13152 under President Clinton, does expressly prohibit federal employees from discrimination based on “status as a parent.” In its efforts to be a family-friendly model employer, the federal government should vigorously enforce and pursue this protection within its own workplaces.

Workplace Flexibility. Also key to advancing women's economic equality is the promotion of workplace flexibility, both in schedule and location, to ensure greater opportunities for women to succeed at work given competing demands at home. Once again, the Obama-Biden Plan identified this issue, pledging to create an informational program and assistance for businesses to increase flexibility, creating federal incentives for telecommuting, and making the federal government a model flexible employer.

While training programs and incentives are essential carrots for businesses, already-proposed legislation (The Working Families Flexibility Act) would go further to ensure the advancement of flexible working by establishing a “right to request” flexibility without retaliation, similar to existing policy in the United Kingdom, where any employee may request to change his or her work hours, schedule, or location. Employers are required to engage in an interactive process to discuss this request and must provide legitimate grounds for denial; employees who make such a request are protected from retaliation by their employers; and small employers (those of fewer than 15 employees) are exempted. Establishing a right to request in the United States would be a good first step to promote workplace flexibility in a way that is also not overly burdensome to employers; a 2005 report by the Center for WorkLife Law on similar policies in the U.K. showed that employers' fears of costs were generally unwarranted, as nine out of ten U.K. employers reported no significant problems with the law's implementation.

The Vision for the Future: Toward Reshaping the Playing Field

If the Obama administration simply follows its own road map, it stands to accomplish a great deal in terms of leveling the playing field for women. Of course, it remains to be seen if this will actually happen. Although the administration has sent very promising signals of commitment to the goal, it will take more than the administration's commitment to move forward. And, if there was success on this front, it would serve primarily to help women succeed in an outdated working culture based on masculine norms. President Obama and his administration also have the unique opportunity to not just level but also begin to reshape the playing field.

Breaking Down the Maternal Wall. Enforcement of the EEOC guidance on caregiver discrimination is essential. Yet while a costly lawsuit may be an effective stick against discrimi-

natory employers, it is hardly an efficient way to reduce bias against caregivers. To truly shift the norms in the workplace requires an unearthing of biases and assumptions, as well as steps to identify and break them. Though small and incremental, these might include more effective training, public education, incentives for bias prevention, and pilot programs aimed at reducing bias against caregivers. The goal—a lofty one indeed—should be to erase the often unconscious negative competence assumptions that go along with a pregnancy, leave, or move to a part-time schedule to care for young children. These events must be seen as competency-neutral scheduling and staffing issues, just like a vacation, sabbatical, or reduced schedule to pursue graduate school. The Obama administration must take proactive steps to experiment with ways of preventing mothers from being discriminated against in the first place.

Counteracting the Flexibility Stigma. Flexible work arrangements are not a new idea; despite being introduced in the early 1970s, they have only gradually gained traction. A key barrier to their success is that employees often encounter bias and marginalization when they try to work part-time or flexibly (or expect that they might). Because the common perception is that most employees who seek to work flexibly do so for family caregiving reasons, working flexibly can trigger in supervisors and employers (whether consciously or not) stereotypes like those encountered by working mothers—i.e., that an employee who works flexibly is less reliable, competent, committed to the job, ambitious, or suitable for promotion. The opportunity here is to encourage workplace flexibility while acknowledging and combating the biases in our culture that go along with *actually using* them—again, to encourage reason-neutral flexibility, so that men and women are actively adopting flexible and reduced schedules for a variety of reasons, without fear of career penalties. The reality, especially in this economy, is that no matter how generous an employer's flexibility policies, employees will not take advantage of them if they do so at their own peril.

The administration is already vigorously pursuing legislation that stands to help this goal enormously: health care reform. A major driver behind American employers' preference to have one employee work 60 hours a week instead of two employees working 30 hours each is the additional cost of providing health care benefits to a second employee. If the administration is able to reach its goal of passing health care reform, then achieving meaningful cost control may help weaken this preference. Another important step will be to remove additional economic penalties to part-time work and establish part-time parity in the United States (which would also help reduce the pay gap between women and men in this country). In this way, women and men who work a reduced-hours schedule will receive proportionately the same pay and benefits as those who work full time.



Making the Business Case, Even Amid the Great Recession. No doubt, the largest obstacle to implementing any new policies that reduce work/family conflict and increase gender equality will be the fear of imposing additional burdens on U.S. employers at this critical juncture in our economy. While the stakes may be more extreme, this is by no means a new argument; business groups have opposed every minimum

labor standard throughout time, from the eight-hour workday to the Family and Medical Leave Act of 1993. But times and public opinion changed, and these laws were passed—and U.S. businesses survived (and even prospered).

Countless studies show real economic benefits to instituting policies that prevent bias and better align the structure of the workplace to the reality of its workforce. Among these benefits are (1) increased productivity, worker attachment and engagement, and size of the talent pool; and (2) reduced unplanned absenteeism, turnover and related recruiting and training costs, stress and overwork-related health care costs, and legal liability for discrimination. Rather than causing policymakers to shy away from change for fear of doing anything to upset employers, the current economic crisis could provide the opportunity to use this data to educate employers about how reducing workplace/workforce mismatch is good for the bottom line and the economy as a whole. And as tough as times are now, the recession is not going to last forever; when the economy picks up, those employers who have embraced flexibility, in downsizing and in general, will be better positioned to flex their workforce back up and to attract and retain top talent while doing so.

President Obama is a most unusual leader at a most unusual time. The appointments are in place, the Task Force and Council have both been established, and the hard work of health care reform is approaching fruition. The time is ripe not only to put in place minimum labor standards like short-term leaves and reduced caregiver discrimination, but also to begin unearthing gendered assumptions about how we do work in the United States. It is time to focus on productivity, performance, and talent rather than schedule and face-time. Not only does doing so have the potential to save businesses money, reduce overwork, and increase employment rates, but it offers the promise of achieving real, meaningful gender equality for both women and men at work and at home.

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