

## Tracking Women In Management

Law360, New York (October 20, 2010) -- "Rep. Carolyn Maloney, D-N.Y., chair of the House side of the Joint Economics Committee, used the GAO report as an opportunity to push the Senate for passage of the Paycheck Fairness Act. 'The findings of the GAO report make it clear that legislation is needed to close outstanding loopholes that allow for gender pay discrimination,' she said." (As quoted in Employment Law360, Sept. 29, 2010).

"Some of the unexplained differences in pay seen here could be explained by factors for which we lacked data or are difficult to measure, such as level of managerial responsibility, field of study, years of experience or discriminatory practices, all of which may affect earnings. Our analysis neither confirms nor refutes the presence of discriminatory pay practices." GAO-10-892 R, Women in Management: Analysis of Female Managers' Representation, Characteristics and Pay (hereafter, GAO Report), Sept. 20, 2010, p. 8.

The heated debate surrounding the Paycheck Fairness Act, as well as the quotations above, suggest that the U.S. Government Accountability Office's recent report is far more likely to be cited than read. In addition, the data the report fails to consider and the questions to which it demurs may be as important as those it analyzes and addresses.

The fundamental difficulty in studies that are similar to the GAO's is the problem of specifying how the comparisons that are drawn would appear if all were right with the world. That is, although "equality," in terms of equal treatment and equal opportunity is a goal to which all aspire, that norm does not readily translate into a statistical criterion against which actual pay and employment patterns can be compared. This is obvious in the first set of comparisons undertaken by the GAO.

The question addressed is, "What is the representation of women in management positions compared to their representation in nonmanagement positions by industry?" GAO Report at p. 2. The implicit suggestion is that, in a fair world, the two ought to be equal.

However, the utility of this comparison was disparaged by the U.S. Supreme Court more than 20 years ago in *Wards Cove Packing Co. v. Atonio*, and for good reason. In many industries, nonmanagerial jobs do not require or develop the set of skills that are required of managers and, therefore, they are not "feeder" positions.

A good example is provided by the construction industry. The GAO report indicates that in that industry, women hold 12 percent of the managerial jobs, but only 10 percent of the nonmanagerial positions. But this surely is an "apples and oranges" comparison.

There is nothing inherent in nonmanagerial construction work that is likely to prepare those employees to manage the firms for which they work. It is far more likely that these companies recruit managers from business and technical schools than from the company's rank and file. As *Wards Cove* aptly instructs, comparisons must be drawn between the qualified job applicants and those hired for the position.

Although this information was not available to the GAO researchers, and their inquiry responded to directions of the Joint Economic Committee, nevertheless this type of meaningless comparison illustrates the tendency of implicitly adopting a norm of equality between two data items merely because they are juxtaposed.

More difficult and subtle issues arise when making gender pay comparisons. The central fact that confounds these comparisons is that men and women often occupy different roles in the family and make different choices with respect to their careers. Although these differences may be somewhat less within relatively narrowly defined fields, the GAO report adopts an extremely expansive definition of “management.”

The GAO report defines “managers” to include more than 1,000 job titles, including those as disparate as “school principal, zoo directors, parking garage managers, nurse administrators and chief executives.”

Although the GAO researchers further divide their sample into 13 industrial categories, the wide variation in managerial jobs, by their definition, makes it impossible to know the extent to which gender differences in pay reflect the gender distribution among jobs that pay differently, albeit in the same industry, as opposed to gender pay differences within the same job.

For example, the GAO report tacitly recognizes that the pay of a nursing administrator in the manufacturing sector will be compared to that of CEOs in that same sector. Of course one might question why CEOs are disproportionately male, but that disparity is not likely to be affected by the Paycheck Fairness Act.

The extent to which career decisions affect gender pay differences even among employees who are “similarly situated” in the narrowest sense is explored in a July 2010 article by Professors Marianne Bertrand, Claudia Goldin and Lawrence Katz, appearing in *American Economic Journal: Applied Economics*.

They studied cohorts of graduates from the same elite MBA program, and compared the career and pay trajectories of men and women. They reported significant gender differences in their course curricula (males were more likely to take finance courses), the hours spent at work and career interruptions, all of which combined to produce gender differences in pay even greater than those reported by the GAO.

None of this information was available to the GAO researchers and as a result there is no way to know the extent to which the gender pay disparities they report might have similar explanations.

Nevertheless, those who routinely work with compensation data provided by major employers will recognize that the gender gap reported by the GAO is far greater than customarily is alleged in gender discrimination suits. For example, the expert reports in *Dukes v. Wal-Mart Stores Inc.*, are available online.

The plaintiffs’ expert estimated a gender disparity of 12 to 14 percent without controlling for the job title of salaried employees, which was reduced to 5 to 7 percent when that control was added.

These are roughly one-half to one-quarter of what the GAO reports.

It is unfortunate that the estimates obtained by the GAO researchers, based upon data that omit important differentiating factors, are likely to dominate the public discussion of this important question. The disappointment is all the greater because the GAO may be uniquely situated to provide a most helpful guidepost for this discussion.

As noted at the outset, the debate regarding gender equity suffers in that it lacks a benchmark regarding how pay would differ, if at all, in a nondiscriminatory world. The pay practices and patterns of the federal government, a putative nondiscriminator, therefore would be enormously helpful in answering this question.

The GAO would perform an invaluable service if it chose to analyze the wealth of information regarding federal government employees, controlling for a much richer array of neutral factors than the women in management study could consider. The results of such a study would provide a real-world benchmark to which private employers might be compared, and the difference would provide a more useful measure of the actual gender gap in pay.

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