

The Other 50%: Employed Women & the Fair Pay & Safe Workplaces Order

By Nora Douglas

Since the introduction of the modern workday, workers have been subject to many forms of discrimination and abuse. Although women comprise almost a quarter of the workforce, they face discriminatory practices in the workforce and restrictive social norms. According to the 1930 census, 24.3 percent of all women in the USA were employed, with every third woman in a group of 10 working as a maid or cleaner. The Great Depression was a difficult time for everyone, but frequently, women suffered the brunt of hardship. To address the alarmingly slumped economy, President Franklin Roosevelt proposed solutions and perused petitions. It is important to analyze his landmark employment stimulus and its effect on women's employment. By understanding past issues, one can evaluate reasons for implementing *the Fair Pay and Safe Workplaces Act* and its effects on the workforce, and subsequently, the effect on women.

During the Great Depression, women's groups were among the lobbyists urging better pay, jobs reforms and affirmative actions to help support themselves. President Roosevelt's 1933 New Deal was the first stimulus package aimed at reviving and boosting the economy, but it came with mixed results. Feminist scholars Eileen Boris and Lisa Levenstein argue that the New Deal was overwhelmingly geared towards infrastructural projects and subsequently jobs where white men predominantly worked.¹ American historian, Paul Conkin said, ". . .the New Deal began the final maturation of our capitalist system . . . and pointed toward the political economy most

¹ Eileen Boris and Lisa Levenstein, *Feminist Academics and the Stimulus Package: A Report from the Field*, *Feminist Studies* 35, no. 1 (2009): 204-09.

capable of maximizing production, consumption, profits, and jobs.”²

One main drawback of this legislation was the Social Security Program, or OASI (*Old-Age and Survivors Insurance Trust Fund*). Since legislation was structured with a white male worker’s interests in mind, social security benefits were applicable only to employees in the manufacturing and commerce industries, excluding government employees, teachers, farmers, and domestic workers. And since minorities and women ostensibly held these positions, they were negatively affected. They were disadvantaged until 1950, when other industries were allowed to participate in OASI. This denial of the opportunity to accumulate funds for retirement as they worked, led to the inability to accumulate retirement benefits over time, which posed a substantial problem for the women as they retired.³ Female employees have often been underrepresented in governmental efforts aimed at addressing economic slumps, thus ultimately affecting their departmentalized participation in the workplace.⁴

The United States was faced with the 2008 economic downturn and President Obama had to respond to that financial crisis. To avoid the New Deal’s faults, feminist academics sent letters to Obama emphasizing the importance of funding ‘women dominated’ industries; stressing the importance of building “not only concrete and steel bridges, but also human bridges, the social connections that create cohesive communities.”⁵ During the 2008 economic recession feminist scholars, academics, and feminist organizations wrote letters to then President-Elect Barack Obama urging him to ensure women

² Paul Keith Conkin, *The New Deal*, Routledge & Kegan Paul, 1968.

³ John E. Hansan, *The New Deal: Part II*, Social Welfare History Project, <https://socialwelfare.library.vcu.edu/eras/great-depression/the-new-deal-part-ii/>, (last visited March 19, 2018).

⁴ Mitra Toossi and Teresa L. Morisi, *Women in the workforce before, during, and after the Great Recession*, Bureau of Labor Statistics, <https://www.bls.gov/spotlight/2017/women-in-the-workforce-before-during-and-after-the-great-recession/home.htm>, (last visited March 19, 2018).

⁵ David B. Woolner, *Feminomics: Breaking New Ground - Women and the New Deal*, Roosevelt Institute, Nov. 3, 2015, <http://rooseveltinstitute.org/feminomics-breaking-new-ground-women-and-new-deal/>, (last visited March 19, 2018).

could be equally employed in typically male dominated industries and given equal pay and protections under the law.⁶ In response, President Obama signed the *Fair Pay and Safe Workplaces Executive Order* for the purpose of holding contractors responsible for upholding workplace laws, wage laws, and civil rights laws while maintaining health and safety standards. The Executive Order was signed to regulate contractors by implementing quantifiable, standardized methods to measure companies with a “satisfactory record of performance, integrity, and business ethics,” in accordance with federal regulations.⁷ According to the Obama Administration, this Order should have “held corporations accountable, cracked down on repeat violators, promoted efficient federal contracting, and given employees information about their paychecks.”⁸ Feminists and advocates for equal pay legislation lauded the many laws which President Obama enacted to protect women’s economic interests.

Laws like the *Fair Pay and Safe Workplaces Executive Order* (EO) and the *Lilly Ledbetter Fair Pay Act* were steps towards ensuring that employers pay underrepresented employees (who are frequently women and minorities) equally and comply with equal pay regulations. The *Lilly Ledbetter Act of 2009*, “recognizes the “reality of wage discrimination,” and allows employees to bypass the statute of limitations to challenge discriminatory paychecks.⁹ This Act allows employees who experienced discrimination more legal clout in achieving justice for their losses.¹⁰ The *Fair Pay Executive Order* has two

⁶ Eileen Boris and Lisa Levenstein, *Feminist Academics and the Stimulus Package: A Report from the Field*. *Feminist Studies* 35, no. 1 (2009): 204-09.

⁷Office of Press Secretary, *Fact Sheet: Fair Pay and Safe Workplaces Executive Order*, National Archives and Records Administration., <https://obamawhitehouse.archives.gov/the-press-office/2014/07/31/fact-sheet-fair-pay-and-safe-workplaces-executive-order>, (last visited March 19, 2018).

⁸Id.

⁹Jason R. Bent, *What the Lilly Ledbetter Fair Pay Act Doesn't Do: 'Discrete Acts' and the Future of Pattern or Practice Litigation*, SSRN Rutgers Law Record, April 22, 2009, 1-33, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1393476, (last visited March 19, 2018).

¹⁰ *Equal Pay Act Of 1963 And Lilly Ledbetter Fair Pay Act Of 2009*, U.S. Equal Employment Opportunity Commission,

policies which impacted female employees: “paycheck transparency and a ban on forced arbitration clauses for sexual harassment, sexual assault or

discrimination claims.”¹¹ Unfortunately, the Executive Order was stopped by a court order and was recently repealed earlier this year as part of President Trump’s priorities. Not surprisingly, an economic issue has been politicized.

Why has this *Fair Pay Executive Order* faced such an onslaught of opposition? It enjoyed support by Democrats for its promise to raise employment standards for more than one in five federal employees who were contracted to do work for the government, but it faced opposition from Republicans.¹² The goal of this policy was to help prevent waste, prevent fraud and abuse of taxpayer dollars and was intended to allow businesses that do comply with requirements to compete with other companies. Ineffective screening methods mean that the government picks companies regardless of their compliance with civil laws, thus continuously breaking the law by selecting bad companies for the contracts. Subsequently, there are many economic impacts that affect both women and men.

Not only does contracting with these sub-par companies hurt taxpayer’s pockets, but it also provides bad value to the government. According to an analysis by the Center for American Progress Action Fund (CAP), companies that have recurring records of workplace violations frequently provide poor performance in delivering their contracts. In fact, one in four federal contractors with poor records of workplace violations subsequently provided subpar performance on the job.¹³ Furthermore, a 2010 report from the

https://www.eeoc.gov/eeoc/publications/brochure-equal_pay_and_ledbetter_act.cfm, (last visited March 19, 2018).

¹¹ Mary Emily OHara, *Trump Pulls Back Obama-Era Protections For Women Workers*, NBCNews.com., April 03, 2017, <https://www.nbcnews.com/news/us-news/trump-pulls-back-obama-era-protections-women-workers-n741041>, (last visited March 19, 2018).

¹² *The Fair Pay and Safe Workplaces EO*, Congressional Review Act, <http://rulesatrisk.org/fair-pay-safe-workplaces/>, (last visited March 19, 2018).

¹³ Karla Walter and David Madland, *At Our Expense*, Center for American Progress

Government Accountability Office analyzed the companies with the 50 largest health and safety penalties (2005 through 2009), finding that even after recurring violations on the job, these companies kept receiving federal contracts to carry out million dollar jobs.¹⁴

Feminists have hailed Obama's order as critical for economic advancement and women's rights. The National Organization for Women (NOW) was "pleased with the way Congress and the Obama administration had approached the need to ensure that women workers benefited from the federal stimulus program."¹⁵ President Obama implemented the federal stimulus program to spark the economy and fund jobs within the healthcare, education and state human resources industries.¹⁶ Like its predecessors, NOW lobbied for funding directed at developing human infrastructure like nursing, teaching, and social work, jobs usually held by women.¹⁷

The beneficial effects of the *Fair Pay and Safe Workplaces Executive Order* and reformative policies like it include increased transparency, which is a precursor to combating pay discrimination. Additionally, the the Executive Order included a clause which put a "ban on forced arbitration clauses for sexual harassment, sexual assault or discrimination claims."¹⁸ This

Action,

<https://www.americanprogressaction.org/issues/economy/reports/2013/12/11/80799/at-our-expense/>, (last visited March 19, 2018).

¹⁴ *Federal Contracting: Assessments and Citations of Federal Labor Law Violations by Selected Federal Contractors*, U.S. Government Accountability Office, Oct. 1, 2010, <http://www.gao.gov/products/GAO-10-1033>, (last visited March 19, 2018).

¹⁵ David B. Woolner, *Feminomics: Breaking New Ground - Women and the New Deal*, Roosevelt Institute, Nov. 3, 2015, <http://rooseveltinstitute.org/feminomics-breaking-new-ground-women-and-new-deal/>, (last visited March 19, 2018).

¹⁶ Christina Hoff Sommers, *No Country for Burly Men*, Weekly Standard. June 29, 2009, <http://www.weeklystandard.com/no-country-for-burly-men/article/17737>, (last visited March 19, 2018).

¹⁷ *Women Deserve Equal Pay*, National Organization for Women, <https://now.org/resource/women-deserve-equal-pay-factsheet/>, (last visited March 19, 2018).

¹⁸ The Editorial Board, *What the Stimulus Accomplished*, The New York Times. Feb. 22, 2014, <https://www.nytimes.com/2014/02/23/opinion/sunday/what-the-stimulus->

acknowledgement of protection needed to combat the power of an aggressor or an aggressor system is essential to boosting a woman's stature in her workplace. Forced arbitration clauses disallow any employee to raise a public sexual harassment lawsuit against a harasser, instead relegating them to private company arbitration. This is harmful because the victims cannot warn others about the harasser, and must destroy any evidence associated with the incident, and largely, the victims are women (one of every six women are sexually harassed).¹⁹ The inclusion of this protection emphasizes the need to consider women's safety and comfort an integral part of a 'safe workplace.'

Recently, however, President Trump repealed this rule, stating (along with his Republican coworkers) that it would bring an undue burden upon business owners. Invariably, this brings up many important concerns for the American worker. Advocates for the provisions in the Executive Order include small business owners, veterans and people with disabilities, civil rights leaders, and many others. Underrepresented groups suffer in many ways, they are cheated out of earned wages and work in dangerous environments where they can be injured (or sometimes killed). For example, multiple Tyson Foods employees alleged non-payment for their overtime work and Verizon harassed Alma Aranda when she tried to take time off to care for her ailing mother by making her do paperwork until her hair fell out in clumps.²⁰ Sadly, these are both companies that fulfill federal contracts that provide services to the government, despite their egregious record of labor violations.²¹

These case studies show how important accountability is for federally contracted companies. Furthermore, the U.S. government employs 16.7% of

accomplished.html, (last visited March 19, 2018).

¹⁹ *Victims of Sexual Violence: Statistics*, RAINN, <https://www.rainn.org/statistics/victims-sexual-violence>, ((last visited March 19, 2018).

²⁰ *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016), Harvard Law Review, <https://harvardlawreview.org/2016/11/tyson-foods-inc-v-bouaphakeo/>, (last visited March 19, 2018).

²¹ Chris Thompson, *Subsidizing Contractor Misconduct*, Amazonews.com, <http://s3.amazonaws.com/corpwatch.org/downloads/MisconductReportCorpWatch.pdf>, (last visited March 19, 2018).

the nation's workforce.²² When federal contracts are awarded to companies engaging in unscrupulous business practices, it affects women negatively and reaffirms those companies. The *Fair Pay and Safe Workplaces* policy is not specifically a feminist policy, but it affects women, nevertheless, who hold 44 percent of government jobs (not including contracted companies).²³ Additionally, President Trump's recent dismissal of this Executive Order, and his ongoing trend of deregulation and preferential treatment for the rich disturbs those advocating for increasing women's access to equal pay and fair practices.²⁴ If the government does not prioritize transparency of its own federally contracted companies, how can we expect private companies to respect civil laws and offer women equal pay? Gender equality issues and policies that level the playing field should not be politicized. In a perfect world, they would be the common ground shared between partisans. Overturning the *Fair Pay and Safe Workplaces Executive Order* due to the alleged "undue burden" it would put on business owners undermines women and minority rights and is a step backwards in equal employment rights for all.

²²G. Scott Thomas, *Governments employ 20 percent or more of workers in nine states*, The Business Journals, May 14, 2012, <https://www.bizjournals.com/bizjournals/on-numbers/scott-thomas/2012/05/governments-employ-20-percent-of.html>, (last visited March 19, 2018).

²³*EEOC Women's Work Group Report*, U.S. Equal Employment Opportunity Commission, https://www.eeoc.gov/federal/reports/women_workgroup_report.cfm, (last visited March 19, 2018).

²⁴*The Fair Pay and Safe Workplaces EO*, Congressional Review Act, <http://rulesatrisk.org/fair-pay-safe-workplaces/>, (last visited March 19, 2018).