

Responses to Objections to the NYS Fair Pay Act

Objection 1: Legislation already exists to cover this issue in the form of the Equal Pay Act of 1963 and the Civil Rights Act of 1964.

Response: Not only do the Equal Pay Act of 1963 and the Civil Rights Act of 1964 not cover equal-pay-for-work-of-comparable-worth they are also unenforceable in regards to equal-pay-for-equal-work in the private sector. The vast majority of workers are employed in the private sector where salaries can be kept secret and employees can be fired for sharing salary information. Without information as to the salaries of their co-workers it is impossible for employees to know if they are being paid equally. This issue is corrected by the proposed NYS Fair Pay Act language that prohibits employers from discharging or intimidating employees who disclose or discuss wages.

The courts have interpreted the Federal Equal Pay Act and Civil Rights Act very narrowly. Thus, despite the inclusion of the “skill, effort, responsibility and working conditions” boilerplate language the legal interpretation has been that “substantially equal” means that employees must be doing the same work, in other words be in the same job title, for the legislation to apply. The proposed pay equity legislation is needed to apply to between-job-title differences, where the job skills and responsibilities are of equal value to the employer but the work being done is not the same work.

Objection 2: Public employers would be required to conduct multiple job evaluation studies.

Response: The process of determining comparable worth requires that all jobs of a particular employer be evaluated using the same evaluation tool. So only one job evaluation study is needed. Such a study rates jobs according to specified criteria (such as education required, experience required, physical skill required, number of people supervised, resources for which one is responsible, desirability of the work site environment, etc.). Most cities and counties and many school districts in NYS currently do job evaluation studies. If the job worth points currently in use have been derived from different job evaluation systems then a re-evaluation of either the job titles that are disproportionately held by males or those disproportionately held by females and/or minorities could be necessary. The legislation does not require additional studies if the disproportionately male and female/minority job titles have been assigned job worth points using the same equitable job evaluation process.

Objection 3: Employees might challenge the results of compensation studies.

Response: Employees have the right to challenge the basis on which their compensation is determined. This legislation would increase the likelihood of challenge only if inequities exist relative to the gender and race predominance of those in the job titles being studied. Since the only mechanism for enforcement is through complaint, elimination of the complaint possibility would render the legislation unenforceable. Employees must have a mechanism to correct unfair compensation practices.

Objection 4: “The appropriate forum in which a claim may be raised that some workers may have equivalent jobs, but disparate pay, is in collective negotiations.” “This bill is a circumvention of the bargaining process.”

Response: Not true. The language of the New York State Fair Pay bill provides that “This section shall not be construed to impede, infringe or diminish the rights and benefits which accrue to employees...or otherwise diminish the integrity of the existing collective bargaining relationship.” Many unions and bargaining units including NYS AFL-CIO, NYSUT, UUP, UPSEU and CSEA endorse this legislation. Without this legislation, employers can refuse to include the issue of pay equity in contract negotiations.

Objection 5: Comparable worth rejects market involvement in the determination of pay.

Response: Nothing in the proposed pay equity legislation rejects or ignores the market or supply and demand. The commonly used classification and compensation practices make allowances for market differentials and may continue to do so. When the salaries of computer programmers or engineers are driven up by market shortages, the jobs in these categories are allowed salaries not reflected by their job evaluation points. The mechanism to do this is called a market differential. These market-driven exceptions would also be exempt when considering appropriate wages for comparable job titles where females and minorities predominate.

The proposed pay equity legislation addresses the classification and compensation practices internal to the employing organization. The focus is on the specific mechanisms within organizations that generate between-job-title gender and race based pay inequities. If an employing organization is utilizing one job evaluation system for the blue-collar male- dominated job titles and another for the administrative and another for clerical female-dominated job titles so that the gender inequities will not be visible, this practice would be eliminated by the proposed pay equity legislation. While most employees do not have access to information about how they are paid, employers do and can study their consequences for gender and race pay inequities and make any needed alteration in these practices. It is the fairness of these within-employer compensation practices that is the focus of the proposed pay-equity legislation.

Objection 6: Supply and demand or the free market determines workers pay. The higher the demand for a skill or service the higher the pay and all workers can strive for high-demand jobs.

Response: Traditional jobs predominantly done by women and minorities include high-skilled/high-demand positions such as teachers, nurses, day-care workers and health-care professionals in long-term care facilities. Shortages in these fields are commonly recognized but supply and demand does not seem to respond. Nurses will be recruited from South America, the salaries of day-care workers and health-care professionals will be kept low, even if it means hiring those who are really not qualified to do the work. Those with children or elderly relatives in these facilities understand how devastating this can be to the delivery of needed services. The important skills and responsibilities of these jobs need to be recognized rather than hiding behind the facade that supply and demand will magically fix the problem.